



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 24, 2019

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Title

Rules and Forms: Electronic Filing and Service

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257

Recommended by

Information Technology Advisory Committee  
Hon. Sheila F. Hanson, Chair

Agenda Item Type

Action Required

Effective Date

January 1, 2020

Date of Report

August 14, 2019

Contact

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### Executive Summary

The Information Technology Advisory Committee recommends the Judicial Council amend several rules of court relating to electronic filing and service that implement legislation that requires parties and other persons provide express consent to electronic service. In particular, the amendments (1) specify how notice of consent to electronic service is to be given, (2) provide example language for consent, and (3) require electronic filing service providers and electronic filing managers to transmit consent to the courts. In addition, the committee recommends amendments to the rule governing signatures on electronically filed documents. The amendments will reduce the reliance on paper for signatures and include other persons in addition to the parties within the scope of the rule.

### Recommendation

The Information Technology Advisory Committee recommends the Judicial Council, effective January 1, 2020, amend the California Rules of Court as follows:

1. Amend rule 2.251 to specify how notice of consent to electronic service is to be given, and add an advisory committee comment on example language for consent;

2. Amend rule 2.255 to require electronic filing service providers and electronic filing managers to transmit the consent to the court; and
3. Amend rule 2.257 to include requirements for electronic signatures on documents signed under penalty of perjury when the declarant and filer are not the same person, allow electronic signatures of opposing parties, include other persons in addition to the parties within the scope of the rule, and add an advisory committee comment about electronic signatures.

The text of the amended rules is attached at pages 8–11.

### **Relevant Previous Council Action**

In 2017, the Judicial Council sponsored Assembly Bill 976 (Stats. 2017, ch. 319), which amended provisions of Code of Civil Procedure section 1010.6 (section 1010.6) to (1) authorize the use of electronic signatures for signatures made under penalty of perjury on electronically filed documents, (2) provide for a consistent effective date of electronic filing and service across courts and case types, (3) consolidate the mandatory electronic filing provisions, and (4) codify provisions that are currently in the California Rules of Court<sup>1</sup> on mandatory electronic service, effective date of electronic service, protections for self-represented persons, and proof of electronic service. The Legislature amended AB 976 to add a provision requiring that starting January 1, 2019, parties and other persons must provide express consent to permissive electronic service. Effective January 1, 2019, the Judicial Council amended rules 2.251 and 2.257 to account for these new requirements in section 1010.6.

### **Analysis/Rationale**

#### **Rules 2.251 and 2.255**

In 2017, the Legislature amended section 1010.6 to require all persons to provide express consent to electronic service. Rule 2.251(b) had previously allowed the act of electronic filing alone to be evidence of consent to receive electronic service for represented persons, but the 2017 amendments to section 1010.6 eliminated this option. Section 1010.6 does, however, allow a person to provide express consent electronically by “manifesting affirmative consent through electronic means with the court or the court’s electronic filing service provider, and concurrently providing the party’s electronic address with that consent for the purpose of receiving electronic service.” (Section 1010.6(a)(2)(A)(ii).)

The Legislature did not provide for what it means to “manifest affirmative consent through electronic means.” To fill this gap, the Judicial Council amended rule 2.251(b), effective January 1, 2019, to provide a process for manifesting affirmative consent through electronic means by allowing a party to file a form or to consent through an electronic filing service provider (EFSP). One of the objectives of the EFSP option was to replicate the prior process of consenting by the

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<sup>1</sup> All further references to “rule” or “rules” are to the California Rules of Court.

act of electronic filing while also ensuring, consistent with legislative direction, that parties and other persons have expressly consented. Neither section 1010.6 nor the electronic filing and service rules of court detail how notice is to be given to the court, as well as to other parties or persons in the case, that a party or other person has provided express consent. The Information Technology Advisory Committee sought specific comments on these issues when the prior proposal to amend rule 2.251(b) circulated for comment in 2018. One superior court suggested the rules should be amended to create standard language for consent to service and include a provision requiring that if a person consents, that person is required to serve notice on all other parties. The committee found the court's suggestions helpful and added amending the rules to its annual agenda for 2019. The proposed amendments to rule 2.251 would require parties or other persons who have "manifested affirmative consent through electronic means" to serve notice of this consent on all parties and other persons. The proposal would also add an advisory committee comment citing an example of language for consenting to electronic service. The proposed amendments to rule 2.255 would require EFSPs and electronic filing managers (EFMs) to promptly transmit to the court a party's or other person's acceptance of consent to receive electronic service.

### **Rule 2.257**

Effective January 1, 2019, consistent with the statutory requirement, the Judicial Council adopted an amendment to rule 2.257(b) to create a procedure for electronic signatures on electronically filed documents signed under penalty of perjury. Under that procedure, the declarant signs with an electronic signature and declares under penalty of perjury under the laws of the state of California that the information submitted is true and correct. (Rule 2.257(b)(1).)

The proposed amendments to rule 2.257(b) would add requirements for electronic signatures on electronically filed documents signed under penalty of perjury when the declarant is not the filer. Because electronic signatures are simple to create and not necessarily unique on their face, there is more of a concern about their validity if the filer and the signer are different people. Under the proposed requirements, the electronic signature must be (1) unique to the declarant, (2) capable of verification, (3) under the sole control of the declarant, and (4) linked to data in such a manner that if the data are changed, the electronic signature is invalidated. These requirements are designed to ensure that the application of the signatures is the act of the person signing, can be proven as such, and may be invalidated if the document is altered after being electronically signed. The requirements in the proposed rule are similar to those for digital signatures under Government Code section 16.5(a). A digital signature is a type of secure electronic signature that may be used in communications with public entities. (Gov. Code, § 16.5.) The requirements in the proposed rule are largely the same as for a digital signature, but unlike a digital signature, the proposed rule does not require electronic signatures to conform to the Secretary of State's regulations, which prescribe the use of specific technologies. (See Gov. Code, § 16.5(a)(5); Cal. Code Regs., tit. 2, §§ 22000–22005.)

Even with the change to rule 2.257(b) to account for signatures under penalty of perjury, when an opposing party signature is needed, rule 2.257(d) still requires the use and retention of a

printed document with ink signatures. According to the California Department of Child Support Services (DCSS), which suggested the committee address this issue, the requirement for the continued retention of paper is a challenge for local child support agencies and DCSS as more courts require electronic filing. Currently, local child support agencies generate thousands of stipulations in child support cases that either are physically signed at an in-person appointment or, more often, mailed out for the signing party to review, sign, and mail back to the caseworker. This can be a protracted process, particularly when the signing party resides out of state or multiple signatures are needed. DCSS suggested that the rule be amended because the ability to electronically file stipulations containing electronic signatures would drastically reduce the time it takes to obtain a filed stipulation and update the child support case based on the parties' agreement. For example, DCSS could send an email a link to an electronic signature application that would allow a party to view and sign documents electronically.

The proposed amendments strike the subdivision (d) heading that reads "Documents requiring signatures of opposing parties" and instead incorporate its requirements under (c), which governs documents not signed under penalty of perjury. Subdivision (d) would no longer be necessary for signatures of opposing parties under penalty of perjury as those requirements would be captured in subdivision (b). The proposal adds an option for electronic signatures when the electronic signature is unique to the person using it, capable of verification, under the sole control of the person using it, and linked to data in such a manner that if the data are changed, the electronic signature is invalidated. This option would allow for an entirely paperless process.

Finally, the proposed amendments include "other persons" within the scope of the rules. Section 1010.6 includes "other persons" in addition to parties within its scope. Accordingly, "other persons" has been added to rule 2.257 where appropriate.

### **Policy implications**

The proposal advances the judicial branch goal of promoting rule changes that facilitate the use of technology. (*Strategic Plan for Technology 2019–2022*, pp. 14–15.) In particular, it advances an objective of ensuring "current rules and legislation do not inhibit the use of technology solutions." (*Id.* at p. 14.)

### **Comments**

The proposal circulated for public comment from April 11 through June 10, 2019, as part of the regular spring comment cycle. The following six commenters responded to the invitation to comment:

1. Superior Court of San Diego County, which agreed with the proposal;
2. Superior Court of Orange County, Juvenile Court and Family Law Divisions, which did not take a position on the proposal;
3. JRS, which disagreed with the proposal;
4. Orange County Bar Association, which agreed with the proposal;
5. DCSS, which agreed with the proposal; and

6. Executive Committee of the Family Law Section of the California Lawyers Association, which agreed with the proposed amendments to rule 2.257, but took no position on the proposed amendments to rules 2.251 and 2.255.

JRS raised the most significant issues in detailed comments. The Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee raised several issues. With respect to the proposed amendments to rules 2.251 and 2.255, JRS raised concerns about the courts' ability to maintain records of parties' consent to electronic service transmitted through EFSPs. The committee considered these concerns, but determined that they relate more to issues with the requirements of section 1010.6 that went into effect on January 1, 2019, than with the proposed rule amendments, which are limited. Effectively, all that the proposed amendments do is ensure that parties, other persons, and the court receive notice that someone has, as stated in section 1010.6, "manifested consent [to electronic service] through electronic means with the court or the court's electronic filing service provider." The issues JRS raised with respect to rules 2.251 and 2.255 would amendments to section 1010.6's requirements for express consent to electronic service.

JRS also raised concerns about the amendments for electronic signatures of nonfilers under rule 2.257. JRS was concerned that courts would be expected to verify or technically validate electronic signatures on electronically filed documents that they accept for filing. This could present significant challenges for courts. The committee considered these concerns. The proposal was not intended to require the courts to validate or otherwise verify electronic signatures when they are filed. Rather, it was intended to ensure that the electronic signature was the act of the signer and not someone else, and verifiable if a dispute were to arise. Because electronic signatures are simple to create and not necessarily unique on their face, there is more of a concern about the validity of electronic signatures if the filer and the signer are different people.

The confusion may be with the proposed language as circulated for comment. That proposal provided that an electronic signature must be "linked to data in such a manner that if the data are changed, the electronic signature *may be declared invalid by the court.*" The proposed language in italics injects a possible court decision about the signature, which JRS may be reading as necessitating court involvement in validating the electronic signature.

In developing the proposal, the committee had originally considered stating the electronic signature must be "linked to data in such a manner that if the data are changed, the electronic signature *is invalidated.*" In the invitation to comment, the committee sought specific comments on the language "the electronic signature *may be declared invalid by the court*" versus "the electronic signature *is invalidated.*" After discussing JRS's comments and the options to address the concerns, the committee decided to return to the language "the electronic signature is invalidated."

The benefit of the "is invalidated" language is that it is consistent with the attributes of digital signatures, codified in the Government Code and the California Code of Regulations. All digital signatures must be "linked to data in such a manner that if the data are changed, the digital

signature is invalidated.” (Gov. Code, § 16.5(a)(4).) The only difference between a digital signature under the Government Code and an electronic signature under the proposed rule, is that the rule would not require an electronic signature to adhere to the Secretary of State’s digital signature regulations, which require the use of specific technologies. (Cal. Code Regs., tit. 2, §§ 22000–22005.)

The technical attributes and technology underpinning a compliant electronic signature should not impair the court’s authority to resolve disputes about an electronic signature. The committee determined that this is best addressed in a clarifying advisory committee comment stating, “The requirements for electronic signatures that are compliant with the rule do not impair the power of the courts to resolve disputes about the validity of a signature.”

### **Alternatives considered**

The committee considered the alternative of continuing to require the retention of ink signatures on printed forms for rule 2.257(d), but determined that creating an option for an entirely paperless process would be preferable. In considering the requirements for electronic signatures by persons other than the filer, the committee considered and sought specific comments on two options that are discussed in detail in the “Comments” section, above.

### **Fiscal and Operational Impacts**

JRS commented that the proposal may have significant fiscal impact, impact existing automated systems, increase court staff workload, and impact on local or statewide justice partners. In particular, JRS noted that it would take significant resources to enable some courts’ systems to accept information transmitted from an EFSP to the court about a person’s consent to electronic service through the EFSP. As discussed in the “Comments” section, above, some of the issues raised pertain more to requirements in the Code of Civil Procedure than the rules. As also discussed, to address issue JRS raised about staff and technical challenges related to validation of signatures, the committee revised the language in the rule amendment and added an advisory committee comment.

The Superior Court of San Diego County commented that implementation would include notifying and training staff and updating internal procedures.

DCSS commented that it is working on establishing statewide processes for electronic service for local child support agencies and that the amendments will improve the way it and local child support agencies do business with case participants and the courts.

### **Attachments and Links**

1. Cal. Rules of Court, rules 2.251, 2.255, and 2.257, at pages 8–11
2. Chart of comments, at pages 12–20.
3. Link A: Code of Civil Procedure section 1010.6,  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=1010.6](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=1010.6).

4. Link B: Government Code section 16.5,  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=16.5.](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=16.5)
5. Link C: California Code of Regulations, title 2, sections 22000–22005,  
[https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I3E9DC970D49411DEBC02831C6D6C108E&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I3E9DC970D49411DEBC02831C6D6C108E&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))

Rules 2.251, 2.255, and 2.257 of the California Rules of Court are amended, effective January 1, 2020, to read:

**Rule 2.251. Electronic service**

**(a) \* \* \***

**(b) Electronic service by express consent**

(1) A party or other person indicates that the party or other person agrees to accept electronic service by:

(A) Serving a notice on all parties and other persons that the party or other person accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party or other person agrees to accept service; or

(B) Manifesting affirmative consent through electronic means with the court or the court's electronic filing service provider, and concurrently providing the party's electronic service address with that consent for the purpose of receiving electronic service. A party or other person may manifest affirmative consent by serving notice of consent to all parties and other persons and either:

~~(C) A party or other person may manifest affirmative consent under (B) by:~~

(i) Agreeing to the terms of service ~~agreement~~ with an electronic filing service provider, which clearly states that agreement constitutes consent to receive electronic service ~~electronically~~; or

(ii) Filing Consent to Electronic Service and Notice of Electronic Service Address (form EFS-005-CV).

(2) \* \* \*

**(c)–(k) \* \* \***

**Advisory Committee Comment**

**Subdivision (b)(1)(B).** The rule does not prescribe specific language for a provision of a term of service when the filer consents to electronic service, but does require that any such provision be clear. *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-CV) provides an example of language for consenting to electronic service.



1 Subdivisions (c)–(d). \* \* \*

2  
3 **Rule 2.255. Contracts with electronic filing service providers and electronic filing**  
4 **managers**

5  
6 (a)–(b) \* \* \*

7  
8 (c) **Transmission of filing to court**

9  
10 (1) An electronic filing service provider must promptly transmit any electronic  
11 filing, ~~and~~ any applicable filing fee, and any applicable acceptance of consent  
12 to receive electronic service to the court directly or through the court's  
13 electronic filing manager.

14  
15 (2) An electronic filing manager must promptly transmit an electronic filing, ~~and~~  
16 any applicable filing fee, and any applicable acceptance of consent to receive  
17 electronic service to the court.

18  
19 (d)–(f) \* \* \*

20  
21 **Rule 2.257. Requirements for signatures on documents**

22  
23 (a) **Electronic signature**

24  
25 An electronic signature is an electronic sound, symbol, or process attached to or  
26 logically associated with an electronic record and executed or adopted by a person  
27 with the intent to sign a document or record created, generated, sent,  
28 communicated, received, or stored by electronic means.

29  
30 (b) **Documents signed under penalty of perjury**

31  
32 When a document to be filed electronically provides for a signature under penalty  
33 of perjury of any person, the document is deemed to have been signed by that  
34 person if filed electronically provided that either of the following conditions is  
35 satisfied:

36  
37 (1) The declarant has signed the document using an electronic signature and  
38 declares under penalty of perjury under the laws of the state of California that  
39 the information submitted is true and correct. If the declarant is not the  
40 electronic filer, the electronic signature must be unique to the declarant,  
41 capable of verification, under the sole control of the declarant, and linked to  
42 data in such a manner that if the data are changed, the electronic signature is  
43 invalidated; or

1  
2 (2) The declarant, before filing, has physically signed a printed form of the  
3 document. By electronically filing the document, the electronic filer certifies  
4 that the original, signed document is available for inspection and copying at  
5 the request of the court or any other party. In the event this second method of  
6 submitting documents electronically under penalty of perjury is used, the  
7 following conditions apply:  
8

9 (A) At any time after the electronic version of the document is filed, any  
10 party may serve a demand for production of the original signed  
11 document. The demand must be served on all other parties but need not  
12 be filed with the court.  
13

14 (B) Within five days of service of the demand under (A), the party or other  
15 person on whom the demand is made must make the original signed  
16 document available for inspection and copying by all other parties.  
17

18 (C) At any time after the electronic version of the document is filed, the  
19 court may order the filing party or other person to produce the original  
20 signed document in court for inspection and copying by the court. The  
21 order must specify the date, time, and place for the production and must  
22 be served on all parties.  
23

24 (D) Notwithstanding (A)–(C), local child support agencies may maintain  
25 original, signed pleadings by way of an electronic copy in the statewide  
26 automated child support system and must maintain them only for the  
27 period of time stated in Government Code section 68152(a). If the local  
28 child support agency maintains an electronic copy of the original,  
29 signed pleading in the statewide automated child support system, it may  
30 destroy the paper original.  
31

32 **(c) Documents not signed under penalty of perjury**  
33

34 (1) If a document does not require a signature under penalty of perjury, the  
35 document is deemed signed by the party if the document is person who filed it  
36 electronically.  
37

38 ~~**(d) Documents requiring signatures of opposing parties**~~  
39

40 (2) When a document to be filed electronically, such as a stipulation, requires the  
41 signatures of opposing parties or persons other than the filer not under penalty  
42 of perjury, the following procedures ~~applies~~ apply:  
43

1           ~~(1)(A)~~ The party filing the document must obtain the signatures of all parties  
2           ~~on a printed form of the document. The opposing party or other person~~  
3           has signed a printed form of the document before, or on the same day  
4           as, the date of filing.

5           ~~(2)~~—The party filing the document electronic filer must maintain the  
6           original, signed document and must make it available for inspection  
7           and copying as provided in ~~(a)(b)~~(2) of this rule and Code of Civil  
8           Procedure section 1010.6. The court and any other party may demand  
9           production of the original signed document in the manner provided in  
10          ~~(a)(b)(2)(A–C)(A)–(C).~~

11          ~~(3)~~—By electronically filing the document, the electronic filer indicates that  
12          all parties have signed the document and that the filer has the signed  
13          original in his or her possession; or

14  
15          (B) The opposing party or other person has signed the document using an  
16          electronic signature and that electronic signature is unique to the person  
17          using it, capable of verification, under the sole control of the person  
18          using it, and linked to data in such a manner that if the data are  
19          changed, the electronic signature is invalidated.

20  
21       ~~(e)(d)~~ **Digital signature**

22  
23           A party or other person is not required to use a digital signature on an electronically  
24           filed document.

25  
26       ~~(f)(e)~~ **Judicial signatures**

27  
28           If a document requires a signature by a court or a judicial officer, the document  
29           may be electronically signed in any manner permitted by law.

30  
31                               **Advisory Committee Comment**

32  
33           The requirements for electronic signatures that are compliant with the rule do not impair the  
34           power of the courts to resolve disputes about the validity of a signature.

## SPR19-40

### Rules and Forms: Electronic Filing and Service

#### (Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)

All comments are verbatim unless indicated by an asterisk (\*).

	Commenter	Position	Comment	Committee Responses
1.	California Department of Child Support Services By Lara Chandler Racine Attorney III	A	<p>The California Department of Child Support Services (DCSS) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies (LCSAs), and our case participants. DCSS is in support of the proposals made in this invitation.</p> <p>Rule 2.251</p> <p>This rule requires the manifestation of affirmative consent to accept electronic service and specifies how notice of consent to electronic service is to be given as well as provides examples via the EFSP and EFM of language for consent. The proposal addresses the stated purpose and provides clarity to the affirmative consent process.</p> <p>The proposed changes are supported by the DCSS and our LCSAs. DCSS maintains the e-filing platform by which participating LCSAs e-file their legal documents. The local agency, however, is necessarily the party accepting service. While DCSS has not been advised that e-service is a widespread issue throughout our e-filing counties, it has been reported as problematic for those local agencies that have received some sort of e-service. DCSS has not yet established statewide protocols and electronic addresses for electronic service and so the counties getting e-served are receiving those documents inconsistently, i.e. individual staff email accounts, etc. The affirmative consent process will allow DCSS sufficient time to vet the protocol for e-service at LCSAs and establish a more consistent</p>	The committee appreciates the support and comments.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR19-40****Rules and Forms: Electronic Filing and Service****(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
			<p>and effective approach that protects the due process of all parties involved.</p> <p>Rule 2.257</p> <p>The Invitation to Comment proposes to amend Rule 2.257, to allow electronic signatures on e-filed documents containing signatures of opposing parties not under penalty of perjury. As this change was at the request of DCSS, and the language meets our needs to e-file documents such as stipulations, we are in full support of the amendments. The proposal addresses the stated purpose and provides language that will enhance the way DCSS does business with our case participants and the court.</p>	
2.	<p>California Lawyers Association Executive Committee of the Family Law Section By Saul Bercovitch Director of Governmental Affairs</p>	A	<p>FLEXCOM agrees with the proposed amendments to Rule of Court 2.257.</p> <p>FLEXCOM has no comment on the proposed amendments to Rules of Court 2.254 and 2.255.</p>	The committee appreciates the support.
3.	<p>Orange County Bar Association By Deirdre Kelly President</p>	A	The OCBA believes the proposal addresses the stated purpose.	The committee appreciates the support.
4.	<p>Superior Court of California, County of Orange Juvenile Court and Family Law Divisions By Cynthia Beltrán Administrative Analyst Family Law and Juvenile Court</p>	NI	<p><input type="checkbox"/> Rule 2.251 Electronic Service</p> <p><input type="checkbox"/> Clarification is needed to indicate if the filing portal should allow the party to proceed with an electronic filing if they do not consent to the terms requiring them to submit to “affirmative consent” for all documents.</p>	<p>The committee appreciates the comments.</p> <p>Regarding the comment on rule 2.251, the comment is outside the scope of the proposed amendments, but raises an important issue for the committee’s consideration, which the committee may consider in a future rule proposal.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

## SPR19-40

### Rules and Forms: Electronic Filing and Service

#### (Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)

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	Commenter	Position	Comment	Committee Responses
			<p><input type="checkbox"/> Rule 2.257 Requirement for signatures on documents</p> <p><input type="checkbox"/> If the electronic signature is declared invalid, will the court be expected to set a hearing on their own motion for the parties to appear or proceed in another manner?</p> <p><b>Request for Specific Comments.</b></p> <ul style="list-style-type: none"><li>▪ <i>What would the implementation requirements be for courts?</i></li></ul> <p>Judges and staff would be informed of the changes. Updates to procedures and the case management system may be needed. Discussions will be needed with the case management system vendor, Tyler, to identify system and process changes needed for compliance.</p>	Regarding the comment on rule 2.257, how to proceed would be up to the court.
5.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer	A	<p>Q: Does the proposal appropriately address the stated purpose?</p> <p>Yes.</p> <p>Q: The committee considered including a requirement that the electronic signature be “linked to data in such a manner that if the data are changed, the electronic signature is invalidated.” However, the committee was concerned that this would remove authority that would appropriately belong to the court and decided on changing “the electronic signature is invalidated” to “the electronic signature may be declared invalid by the court.” Is the</p>	The committee appreciates the support and the comments.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

## SPR19-40

### Rules and Forms: Electronic Filing and Service

#### (Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)

All comments are verbatim unless indicated by an asterisk (\*).

	Commenter	Position	Comment	Committee Responses
			<p>proposed language preferable? Is the particular requirement necessary?</p> <p>The proposed language is preferable, as it leaves authority with the judicial officer.</p> <p>Q: What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.</p> <p>Notifying/training staff and updating internal procedures.</p>	
6.	TCPJAC/CEAC Joint Rules Subcommittee (JRS) on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)	N	<p>Do not agree with proposed changes.</p> <p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"><li>• Significant fiscal impact</li><li>• Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.)</li><li>• Increases court staff workload</li><li>• Impact on local or statewide justice partners.</li></ul> <p>Some case management systems currently have no mechanism for EFSPs to submit consent by a party for tracking purposes. Systems would need to be re-designed to support this process and allow court staff to easily identify who consented. This will</p>	<p>The committee appreciates the comments and concerns raised.</p> <p>The input about impacts, which will be reflected in the report to the Judicial Council.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

## SPR19-40

### Rules and Forms: Electronic Filing and Service

#### (Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)

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	Commenter	Position	Comment	Committee Responses
			<p>likely be a complicated change that involves the EFSP systems as well as the core CMS and will be a cost impact to the court.</p> <p>On the signature side of the proposal, if the court is required to validate signatures, besides the cost and challenges of implementing a technical solution to validate signature authentication and data integrity, we have concerns about the public understanding how to implement the digital protections that ensures no data is changed. Just doing research on the issue, we had to have an expert in the field of digital discovery explain to us step by step how this process would work. This rule change adds technical validation requirements for compliance that courts are not prepared to handle and puts courts in the position of rejecting documents for non-compliance for an issue that has other avenues of resolution. If a document's signature authenticity is challenged, the parties should be required to address these challenges through a motion process.</p> <p>Furthermore, the JRS believes that courts should not serve as the custodian of eService consent. If there is a dispute between the parties as to the consent to eservice between them, they can bring that dispute before the courts and submit their evidence of notice at that time without having the courts go through an onerous administrative process of receiving, storing and tracking electronic service consents between the parties that is rarely challenged.</p>	<p>As long as there has been electronic service, consent has been required. By statute, where electronic service is permitted, but not required, the court can only electronically serve documents issued by the court if the person being served has consented. (Code Civ. Proc, § 1010.6(a)(2)(A)(ii), (a)(3).) Unless electronic service is mandatory, the clerk should only be electronically serving parties and other persons that have consented to it. The proposed rule amendments do not change this process.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated



## SPR19-40

### Rules and Forms: Electronic Filing and Service

#### (Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)

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	Commenter	Position	Comment	Committee Responses
			<p>For courts that use eService, the requirement to track consent for each party on a case will increase workload. The clerk will need to review filings for each party to ensure a consent form is on file and only select eService for those parties, while mailing service to others. In cases with multiple parties, this will be cumbersome and time consuming for courts that routinely eService.</p> <p>Suggested modifications: It is important to note, that there is an option in the code, CCP 1010.6(d), to allow courts the option of implementing mandatory eService via local rule for Civil. As eService is critical for our day to day operations to serve court orders, our court has already received approval to implement such a local rule for Civil. The ability to have mandatory eService by local rule is NOT being impacted by this proposal. However, because the local rule option is not applicable to other case types such as Probate, the comments below are submitted for consideration, as the proposed process will impact staff workload.</p> <p>REQUESTED CLARIFICATION: 1) For Rule 2.251 §(b)(1)(B)—verbiage was added “a party or other person may manifest affirmative consent by serving notice of consent to all parties and other persons and either:...” Clarification is requested as to whether the EFSP, EFM, individual parties or their attorney(s) are required to provide electronic service.</p>	<p>Rule 2.251(b) concerns permissive electronic service, not mandatory electronic service. In that context, no one is required to use electronic service.</p>

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			<p>2) For Rule 2.255 § (a)(c)(2)—clarification is requested. Is the intent of the transmittal to be a filed judicial council form document filed into each individual case or data transmitted back to the case management system for each individual case? Additionally, would attorneys be able to file consent at the attorney level or party level (for those with multiple cases) or will it be on a case by case basis?</p> <p>3) For rule 2.251, clarification is needed to indicate if the filing portal should allow the party to proceed with an electronic filing if they do not consent to the terms requiring them to submit to “affirmative consent” for all documents.</p> <p>4) For rule 2.257(b)(1): Will clarification be provided on who will be expected to verify the electronic signature, if needed? The court does not currently verify signatures of documents it has received. Any ambiguity in the rule that could place a burden on the court to verify signatures should be clarified to indicate that it is not the court’s responsibility to verify signatures on documents it accepts for filing. Any rule that requires the court to verify signatures will have a tremendous fiscal impact on the court. The rule should be modified to require the parties to maintain the metadata for the electronic signature and the court is not responsible for this process.</p> <p>5) The requirements for signatures poses significant challenges because our case management system “flattens” documents when they are filed, so if I am correct, the court would likely be unable to</p>	<p>Consent would be applicable to each individual case. It could be recorded on a Judicial Council form or in data transmitted from the EFSP. Attorneys cannot file consent at the attorney level or party level. Code of Civil Procedure section 1010.6 requires consent to be in the “specific action.” (Code Civ. Proc., § 1010.6(a)(2)(A)(2).)</p> <p>This is outside the scope of the proposed amendment, but an important consideration to rule 2.251 in general. The proposal does not address this issue, but the committee will consider it for a future rule amendment.</p> <p>With respect to the electronic signature amendments, the proposal was not intended to require the court to validate or otherwise verify signatures when they are filed. Rather, it was intended to ensure that the electronic signature was the act of the signer and not someone else, and verifiable if a dispute were to arise. Because electronic signatures are simple to create and not necessarily unique on their face, there is more of a concern about the validity of electronic signatures if the filer and the signer are different people. The committee considered several options, including those suggested by JRS. Ultimately, the committee decided to return to the alternative language that it had considered stating the electronic signature must be “linked to data in such a manner that if the data are changed, the electronic signature is invalidated.” The benefit of</p>

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	Commenter	Position	Comment	Committee Responses
			<p>determine whether an electronic signature is valid. The proposed amendment to Rule 2.257(b)(1) for documents signed under penalty of perjury reads in part: “If the declarant is not the electronic filer, the electronic signature must be unique to the declarant, capable of verification, under sole control of the declarant, and linked to data in such a manner that if the data are changed, the electronic signature may be declared invalid by the court.” A court cannot verify a signature that simply reads “-s- “and the data behind it showing who signed it, when, and where, is not stored by the filing system. Also, if any electronically filed document is unsigned that is required to be signed under penalty of perjury, would the court simply assume that there is a wet-signed copy of the document under Rule 2.257(b)(2)? Please see comments in above-paragraph relating to court’s inability to verify signatures.</p> <p>6) The California’s Uniform Electronic Signatures Act contains less stringent requirements for signatures under penalty of perjury than the proposed new rule and should be considered in modifying the signature requirements:</p> <p>Civil Code section 1633.11 subdivision (b) reads: In a transaction, if a law requires that a statement be signed under penalty of perjury, the addition to the electronic signature, all of the information as to which the declaration pertains together with a declaration under penalty of perjury by the person who submits the electronic signature that the information is true and correct.</p>	<p>this language is that it is identical to an attribute of a digital signature, which is a known standard in California. Digital signatures are codified in the Government Code and the Code of Regulations. All digital signatures must have the attribute of being “linked to data in such a manner that if the data are changed, the digital signature is invalidated.” (Gov. Code, § 16.5(a)(4).) The only difference between a digital signature under the Government Code and an electronic signature under the proposed rule would be that the electronic signature would not have to adhere to the Secretary of State’s digital signature regulations, which require the use of specific technologies. (Cal. Code Regs., tit. 2, §§ 22000-22005.)</p>

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### Rules and Forms: Electronic Filing and Service

#### (Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)

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			Civil Code section 1633.2 subdivision (h) defines an “electronic signature” to mean “an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record. For purposes of this title, a “digital signature” as defined in subdivision (d) of Section 16.5 of the Government Code is a type of electronic signature.”	

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