



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 24, 2019

Title

Rules and Forms: Remote Access to
Electronic Records by Government Entities

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 2.540

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 13, 2019

Contact

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Executive Summary

The Information Technology Advisory Committee recommends the Judicial Council amend rule 2.540 of the California Rules of Court to add “county public administrator” and “county public conservator” to the list of government entities that may be granted remote access to certain court electronic records, and make a minor amendment to the good cause provision of the rule. These amendments will make the rule more comprehensive and remove a need to make a good cause finding for those entities.

Recommendation

The Information Technology Advisory Committee recommends the Judicial Council, effective January 1, 2020, amend rule 2.540(b)(1) to:

1. Add “county public administrator” to the list of government entities in the rule, and allow remote access to probate electronic records by county public administrators;
2. Add “county public conservator” to the list of government entities in the rule, and allow remote access to criminal, mental health, and probate electronic records by county public conservators; and

3. Change “statutory duties” to “legal duties” in the standard for good cause.

The text of the amended rule is attached at page 4.

Relevant Previous Council Action

Rule 2.540 of the California Rules of Court¹ is one of several new rules addressing remote access to electronic records by government entities that the Judicial Council adopted effective January 1, 2019. Rule 2.540 identifies which government entities may have remote access to which types of electronic records. The rule includes a good cause provision under which a court may grant remote access to electronic court records to additional government entities and case types beyond those specifically identified in the rule.

Analysis/Rationale

During the public comment period in 2018 when rule 2.540 was first proposed, a commenter recommended that it include county public administrators and county public conservators. When drafted, rule 2.540 was intended to include state and local government entities with regular business before the courts. The Information Technology Advisory Committee determined that county public administrators and county public conservators fell within this scope and the rule should be amended to include them. Under the amendments, courts could permit (1) a county public administrator to have remote access to probate electronic records and (2) a county public conservator to have remote access to electronic criminal, mental health, and probate electronic records. Remote access for a county public administrator is tailored to electronic records relevant to administering decedents’ estates. Remote access for a county public conservator is tailored to electronic records relevant to serving as conservator of an estate or person.

In addition to the listed state and local government entities, rule 2.540 includes a good cause provision under which a court may grant remote access to electronic court records to government entities and case types beyond those specifically identified in the rule. The standard for good cause is “the government entity requires access to the electronic records in order to adequately perform its statutory duties or fulfill its responsibilities in litigation.” (Rule 2.540(b)(1)(O).) The committee received a suggestion to change “statutory duties” to “legal duties” to be more comprehensive, as legal obligations may stem from more than statute.

Policy implications

The proposed amendments are noncontroversial. No commenters raised policy issues with the proposal. The proposed amendments will facilitate remote access for government entities consistent with the intent of the rule.

Comments

This proposal was circulated for public comment from April 11 to June 10, 2019, as part of the regular spring comment cycle. Four commenters responded to the invitation to comment: the

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

Superior Court of San Diego County, the Superior Court of Orange County, the Juvenile Court and Family Law Divisions of the Superior Court of Orange County, and the Orange County Bar Association (OCBA). Three commenters agreed that the proposal appropriately addressed its stated purpose. The San Diego County court and OCBA both agreed with the proposal. The Orange County court did not take a position, but the court's Juvenile Court and Family Law Divisions commented that they would be in agreement if and when the court is able to offer remote access.

Alternatives considered

The alternative would be to maintain the status quo, but the amendments would be preferable because they would make the rule more comprehensive.

Fiscal and Operational Impacts

Adding county public administrators and county public conservators to the list of government entities the court may allow to remotely access electronic records will remove a need to make a good cause finding for those entities. The proposed amendments are not expected to result in any costs.

Attachments and Links

1. Cal. Rules of Court, rule 2.540, at page 4
2. Chart of comments, at page 5

Rule 2.540 of the California Rules of Court is amended, effective January 1, 2020, to read:

1 **Rule 2.540. Application and scope**

2
3 **(a) Applicability to government entities**

4
5 The rules in this article provide for remote access to electronic records by
6 government entities described in (b). The access allowed under these rules is in
7 addition to any access these entities or authorized persons working for such entities
8 may have under the rules in articles 2 and 3.
9

10 **(b) Level of remote access**

11
12 (1) A court may provide authorized persons from government entities with
13 remote access to electronic records as follows:

14
15 (A)–(M) * * *

16
17 (N) County public conservator: criminal electronic records, mental health
18 electronic records, and probate electronic records.

19
20 (O) County public administrator: probate electronic records.

21
22 ~~(N)~~(P) Federally recognized Indian tribe (including any reservation,
23 department, subdivision, or court of the tribe) with concurrent
24 jurisdiction: child welfare electronic records, family electronic records,
25 juvenile justice electronic records, and probate electronic records.

26
27 ~~(O)~~(Q) For good cause, a court may grant remote access to electronic
28 records in particular case types to government entities beyond those
29 listed in (b)(1)(A)–~~(P)~~~~(N)~~. For purposes of this rule, “good cause”
30 means that the government entity requires access to the electronic
31 records in order to adequately perform its statutory legal duties or fulfill
32 its responsibilities in litigation.

33
34 ~~(P)~~(R) All other remote access for government entities is governed by
35 articles 2 and 3.

36
37 (2)–(3) * * *

38
39 **(c) * * ***

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(Amend Cal. Rules of Court, rule 2.540)**

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

	Commenter	Position	Comment	Committee Responses
1.	Orange County Bar Association By Deirdre Kelly President	A	Does the proposal appropriately address the stated purpose? By adding remote electronic access to the public administrator for court probate records and to the public conservator (aka public guardian) for remote access to court probate, criminal, and mental health records, the proposal fulfills its stated purpose.	The committee appreciates the support.
2.	Superior Court of California, County of Orange By Denise Parker Program Coordinator/Specialist IMPACT Team – Criminal/Traffic Operations West Justice Center	NI	Request for Specific Comments: No significant change, adds the two entities listed in the summary to the list of entities that can access court records electronically. The court is still exploring alternatives to comply with the rule of court changes that were effective January 2019 governing access for justice partners. The proposal does appropriately address the stated purpose.	The committee appreciates the comments.
3.	Superior Court of California, County of Orange Juvenile Court and Family Law Divisions By Cynthia Beltrán Administrative Analyst Family Law and Juvenile Court	A	Currently, Orange County does not offer remote access to electronic records on Family Law or Juvenile case files. However, if/when we do, we would be in agreement with the changes. It would require major enhancements to our case management system.	The committee appreciates the comments.
4.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer	A	Q: Does the proposal appropriately address the stated purpose? Yes. No additional comments.	The committee appreciates the support.

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