



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 24, 2019

Title

Appellate Procedure: Uniform Formatting
Rules for Electronic Documents

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 8.40, 8.44,
8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and
8.252

Recommended by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair
Information Technology Advisory
Committee
Hon. Sheila F. Hanson, Chair

Agenda Item Type

Action Required

Effective Date

January 1, 2020

Date of Report

August 6, 2019

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Executive Summary

The Appellate Advisory Committee and the Information Technology Advisory Committee propose revising several rules of the California Rules of Court to make uniform the formatting guidelines for electronic documents filed in appellate courts. The rules currently lack various requirements established by local rule. Moreover, most local rules differ in their requirements and scope. By establishing uniform rules for all appellate courts, this proposal will ease the burden on filers caused by differing formatting rules. The proposal originated from a suggestion by a member of the Joint Appellate Technology Subcommittee of the Appellate Advisory Committee and the Information Technology Advisory Committee.

Recommendation

The Appellate Advisory Committee and the Information Technology Advisory Committee recommend that the Judicial Council, effective January 1, 2020, amend California Rules of Court:

1. Rule 8.40, to limit its scope to cover requirements for documents filed in paper form;
2. Rule 8.44(c), to:
 - Allow a court to require by local rule the submission of an electronic copy of a paper filing; and
 - Delete references to local court requirements for electronically filed documents, because e-filing is now mandatory and the format of electronic documents is addressed in rule 8.74;
3. Rule 8.46, to update a cross-reference to rule 8.40 (paper format) and to add a cross-reference to rule 8.74 (electronic format);
4. Rule 8.71, to impose mandatory electronic filing with some limited exceptions, including those established by the *Supreme Court Rules Regarding Electronic Filing*;
5. Rule 8.72, to set out the e-filing responsibilities of courts and electronic filers, and to add an advisory committee comment regarding an electronic filer's responsibilities not to harm the court's electronic filing system or other users of that system;
6. Rule 8.74, to establish uniform formatting rules for electronic documents filed with the appellate courts, and to implement formatting requirements drawn from some best practices developed among the various appellate courts through their local rules and from courts' experience reviewing electronic documents. The amendments to rule 8.74 prioritize uniformity, readability, and user-friendly formatting requirements, as follows:
 - Subdivision (a) addresses format and formatting requirements for all electronic documents;
 - Subdivision (b) sets out additional formatting requirements for documents prepared for electronic filing in the reviewing court, such as font, line spacing, margins, page alignment, and hyperlinks;
 - Subdivision (c) specifies formatting requirements for certain documents, including briefs, requests for judicial notice, appendixes, agreed statements and settled statements, reporters' transcripts and clerks' transcripts, exhibits, and sealed and confidential records;
 - Subdivision (d) provides that this rule prevails over other formatting provisions;
7. Rules 8.77 and 8.78, to make technical changes to existing cross-references;
8. Rule 8.204(b), to provide formatting requirements for briefs filed in paper form; and
9. Rule 8.252, to establish the procedure for seeking judicial notice of a matter, and to reflect the presumption of electronic filing unless an exemption applies.

The text of the amended rules is attached at pages 13–23.

Relevant Previous Council Action

Over the past three decades, the Judicial Council has regularly acted to facilitate the integration of technology in the work of the courts. For instance, the Judicial Council sponsored legislation in 1999 authorizing electronic filing and service in the trial courts. (Sen. Bill 367; Stats. 1999, ch. 514.) It first adopted implementing rules for the trial courts, effective January 1, 2003. The council expanded those rules in 2013 to address mandatory electronic filing and service in response to the enactment of Assembly Bill 2073 (Stats 2012; ch. 320). In addition, the Judicial Council has adopted rules extending electronic filing and service to the appellate courts, first in 2010 as a pilot project in the Court of Appeal, Second Appellate District, and then in 2012 to all appellate courts. Effective January 1, 2016, the Judicial Council adopted an initial round of technical rule amendments to address language in the rules that was incompatible with statutes and rules governing electronic filing and service and with e-business practices in general.

Analysis/Rationale

Although electronic filing is now common practice in California's appellate courts, the standards and requirements in the courts vary widely, consisting of a patchwork of differing local rules and formatting guidelines. The intent of these proposed amendments is to foster uniformity among the courts. The committees looked for best practices already in place in the appellate courts and proposed changes based upon the courts' experiences to date with electronic filings. The amendments are intended to improve legibility, readability, and functionality of electronic filings on monitors, screens, and ebook readers used by the bench, bar, and public. Finally, the amendments to rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252 aim to achieve internal consistency—to the extent practicable—between existing rules for paper filings and electronic filings.

Policy implications

Because the appellate courts implemented electronic filing at different times, the rules governing electronically filed documents differ greatly between the districts. For the benefit of the courts, practitioners, and litigants, this proposal institutes mandatory electronic filing, and establishes consistent statewide formatting requirements for the appellate courts.

Comments

In total, 18 individuals, organizations, court staff, and trial and appellate courts submitted comments on this proposal. Four commenters indicated that they agreed with the proposal, 2 indicated that they agreed with the proposal if modified, and 12 did not indicate a position on the proposal but suggested changes or asked for additional clarity or consistency with other rules. (Four of the 12 indicated that they were against one specific provision: the proposed ban on Times New Roman font.) Several comments were extensive and included responses to the questions asked by the committees and suggestions for modifying the proposal. Broadly speaking, the comments addressed three areas: (1) rule language, scope, and clarity; (2) technology; and (3) page layout and content.

A chart of the comments received and the committees' responses is attached at pages 24–59.

Rule language, scope, and clarity

Rule 8.40's exceptions and cross-references to other rules. Two commenters asked for clarity on rule 8.40(a), which as circulated for public comment addressed the form of filed documents. One commenter noted that the provision suggests the existence of exceptions to mandatory electronic filing but that the rule does not reference any specific exceptions. Another commenter indicated that subdivision (a) requires compliance with “the relevant format provisions” of this rule and other rules, but that it is not entirely clear which other format provisions are relevant to electronic filing.

Because the proposal used already existing rules to implement uniform formatting, subdivision (a) was duplicative of several other rules. Under the circumstances, the committees recommend that rule 8.40 be amended to reflect only cover requirements for paper documents, thereby eliminating potentially confusing cross-references to the rules concerning mandatory electronic filing, exceptions, and format provisions for paper documents. The committees also recommend amending rules 8.74 and 8.204 to make the few remaining cross-references easier to discern.

Rule 8.74's scope and complexity. Several commenters observed that, as circulated for public comment, rule 8.74(a) (Format of electronic documents) applied to all electronic documents, and as a result it imposed formatting requirements on documents not prepared for filing in the first instance in a reviewing court. The commenters noted that such documents—including appendixes, transcripts, trial exhibits, and other documents—likely will already have margins, text, and line spacing that cannot, or should not, be reformatted to comply with rule 8.74. The commenters suggested modifying the proposal to make clear that only certain parts of rule 8.74(a) apply to all documents filed in electronic form. The e-filing working group staff of the Supreme Court commented that the text-searchable portable document format (PDF) provision set out in rule 8.74(a)(1) required e-filers to convert rather than scan documents to ensure text searchability, but staff noted that certain documents, including handwritten documents, forms, and diagrams, may not be amenable to being “converted” by a means other than scanning, or if they can be converted to PDF without scanning a paper document, the PDFs may nevertheless not be text searchable.

Based on these comments, the committees propose expanding the proposal’s exception in subdivision (a)(1) for documents that an electronic filer possesses only in paper form to include documents that cannot practicably be converted to a text-searchable file, for example, if the document is entirely or substantially handwritten, a photograph, or a graphic that is not primarily text-based. To clarify this allowance, the committees recommend adopting an advisory committee comment explaining subdivision (a)(1)’s exceptions. (See the comment to amended rule 8.74(a)(1), at page 21.)

The committees also recommend adding a new subdivision (b), “Additional formatting requirements applicable to documents prepared for electronic filing in the first instance in a reviewing court.” As its title indicates, new subdivision (b) outlines additional formatting requirements for documents prepared for electronic filing in the reviewing court, whereas subdivision (a) sets out the essential formatting requirements applicable to all electronic

documents. As modified after public comment, the rule treats documents prepared for filing in the reviewing court differently from documents created before the appeal, but it establishes several baseline formatting requirements applicable to all electronic documents. The committees recommend including an advisory committee comment explaining subdivision (b)'s scope. (See the comment to amended rule 8.74(b), at page 21.)

In response to public comments asking for additional clarity, the committees further propose adding to rule 8.74(b) each of the relevant formatting provisions in rules 8.40(c) and 8.204(b). The proposal circulated for public comment relied on cross-references for these requirements, which commenters found confusing. By adding each of the relevant formatting provisions to rule 8.74, and expressly limiting the application of rules 8.40 and 8.204(b) to briefs and petitions filed in paper form, the rules will more clearly state those formatting requirements applicable to electronic filings and those applicable to paper filings.

Sealed materials, manual filings, and paper copies. The e-filing working group staff of the Supreme Court identified a potential need for clarification in the provision concerning sealed and confidential records. Specifically, the staff offered more consistent terminology and suggested expanding the provision to address both the filing of pages that have redactions and the filing of documents with multiple pages omitted. One bar association commenter suggested that more detailed instructions with respect to manual filings, electronic filing of sealed materials, and delivery of paper copies of electronic filings would be helpful.

The committees recommend implementing the suggestions from Supreme Court staff with minor changes. With respect to the bar association's request for more guidance on these issues, the committees will retain these comments for future consideration. If courts' and e-filers' experiences with electronic filing warrant action, the committee could address these provisions in the future. In some instances, the committees expect courts will continue to publish formatting tips and guidelines supplementing the uniform rules, and these publications may address the commenter's concerns.

Technical amendments. Four rules—one addressed in the invitation to comment (rule 8.204) and three others (rules 8.46, 8.77, and 8.78)—require technical amendments because of existing cross-references. The proposed changes to rule 8.40 would make existing cross-references in rules 8.46 and 8.204 concerning cover requirements inaccurate. The committees recommend minor changes to update those existing cross-references, including adding a cross-reference to rule 8.74(a) for documents filed in electronic form. Technical amendments to rules 8.77(a)(3) and 8.78(a)(2)(B) are necessary because of moving the electronic-filer-responsibilities provision into rule 8.72(b)(2) from rule 8.74(a)(4).

Suggested changes to rules outside the proposal. Two commenters noted that other rules related to electronic filing were not part of the proposal. One commenter suggested updating all existing provisions relating to electronic filing, including requirements for signatures (rules 8.42 and 8.75), general provisions for sealed and confidential records (rule 8.45), electronic service (rule 8.78), court order for electronic service (rule 8.79), form of the record (rule 8.144), and new

authorities (rule 8.254). The comment from the e-filing working group staff of the Supreme Court noted that the proposal does not amend rule 8.78(a)(2)(B)'s provision concerning consent to electronic service. The equivalent rule for the trial court, rule 2.251(b)(1)(B), was recently amended to be in compliance with newly enacted section 1010.6 of the Code of Civil Procedure, which, at least in the trial courts, no longer permits use of the act of electronic filing to serve as consent. The committees recommend addressing this issue in part by adding rule 8.74(a)(9)(A), which would provide that "inclusion of a fax number or email address on any electronic document does not constitute consent to service by fax or email unless otherwise provided by law."

Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for amendment by the Judicial Council, the committees will retain the commenters' suggestions concerning other rules in title 8 for future consideration. At this time, the committees recommend only the technical amendment to update the existing cross-reference in rule 8.78. The committees will consider possible changes to rule 8.78's consent and electronic service provisions during the winter rule cycle.¹ As to rules 8.42, 8.45, 8.75, 8.79, 8.144, and 8.254, the committee will consider additional changes if experience with electronic filing warrants amendments to these other rules.

Technology

File-size restrictions. Several commenters who expressed support for the proposal questioned rule 8.74's 25-megabytes file-size restriction. These commenters also asked whether the 300-page limit for certain appendixes was necessary if it is possible for e-filers to prepare those volumes within the 25-megabytes file-size restriction, and questioned the wisdom of requiring manual filing for filings containing over five volumes when only one court has such a volume limitation in place.

The committees considered deferring action on the file-size restriction and leaving the limits to the courts. However, the committees recommend ultimately retaining the proposal's 25-megabytes file-size restriction. The principal reason not to defer action on the file-size restriction is that the 25-megabytes limit is already uniform across the state by local rule. Concerns were raised about establishing a rule with a file-size limit when capacity may change. Although there are some drawbacks to codifying technological parameters such as file size when technological changes could outpace the Judicial Council's rules cycles, ultimately, the motivating purpose of this proposal is uniformity. That goal would be lost if each court were permitted to set unique file-size limits on e-filers. Although commenters suggested that an increased file size might be possible, none indicated that the existing 25-megabytes restriction was unworkable or regularly compromised their electronic filings.

¹ California Rules of Court, rule 8.78(a)(2)(B) still provides: "The act of electronic filing shall be deemed to show that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule [8.72(b)(2)], unless the party serves a notice on all parties and files the notice with the court that the party does not accept electronic service and chooses instead to be served paper copies at an address specified in the notice."

In response to the comments, the committees made two minor changes to the proposal concerning multiple-volume filings and manual filings. First, the committees modified rule 8.74(a)(5) to permit electronic filings that exceed the 300-page limit applicable to certain types of documents (e.g., rule 8.124(d)(1) (appendixes), rule 8.144(b)(6) (clerks' and reporters' transcripts), and rule 8.144(g) (agreed or settled statements)). Because an electronic filing may contain multiple documents or volumes, the proposal would allow electronic filings comprising multiple volumes—each 300 pages or fewer—as long as each component complies with those rules' page limitations and the electronic filing does not exceed 25 megabytes. The proposed rule, as modified following public comment, acknowledges the 300-page limit for certain documents and provides that the individual components of an electronic filing must comply with the page limit of those other rules. Second, as the commenters note, only one court requires manual filing when an electronic filer seeks to file an electronic document consisting of more than 5 files. The committees recommend increasing the manual-filing restriction to 10 files because filings consisting of more than 5 files are common in complex cases. Under existing limits in the Appellate Court Case Management System (ACCMS), a 10-volume limit would not exceed the file-size restrictions currently in place, and the increase from 5 to 10 will relieve electronic filers from the burden of manual filing in more cases.

Color component prohibition. Two commenters who agreed with the proposal if modified asked whether rule 8.74's prohibition on color components was necessary in light of existing technology, and advocated for color components to be permitted if possible. These commenters emphasized that color components can be persuasive in appellate advocacy. One commenter noted that only one appellate district prohibits filings with color components. The invitation to comment erroneously indicated that color components were not supported in ACCMS. The committees have since confirmed that color components on their own do not present a problem for ACCMS. Instead, color components necessarily increase file size, and increased file size affects loading time. With this new information, the committees recommend permitting electronic documents with color components as long as they do not exceed the file-size limit of 25 megabytes, as provided by amended rule 8.74(a)(8). Although the color cover provisions of rule 8.40, as modified, apply only to paper filings, the committees recommend expressly prohibiting color covers for electronic documents to avoid unnecessarily large file sizes where color covers are not required.

Based on the public comments and the allowance for electronic filings with color components, the committees modified the proposal to delete the references to PowerPoint and "documents containing photographs or any color component" in rules 8.74(a)'s manual filing provision. The provision would still specify a format for manually filed photographs, because color photographs may require manual filing on electronic media if the file exceeds 25 megabytes. At the Joint Appellate Technology Subcommittee meeting on July 1, 2019, subcommittee members expressed concerns about original electronic files when an e-filer has to convert the format of an electronic media file for filing. Based on this concern, the committees modified the proposal to add a provision that requires an electronic filer to retain the original electronic media file if it must be converted to a required format for manual filing.

Filing problems. One commenter requested that rule 8.72's court-responsibilities provision speak to filing deadlines. The commenter asked that courts be required to address deadlines or extensions of time in any notice required by the provision. The committees have declined to add provisions concerning deadlines that add responsibilities for the courts because, under rule 8.71, filing a document electronically does not alter any filing deadline. Unless a court elects to provide otherwise in a notice to a party, it would be incumbent on the party or other person adversely affected by a filing problem, on receipt of notice of the problem, to seek relief from the court. Because existing rules already address exemptions from electronic filing (rule 8.71(d)) and a clerk's rejection of documents for filing based on noncompliance with applicable filing requirements (rule 8.77(b)), the committees chose to eliminate the proposed provision circulated as 8.74(d), which also addressed these issues. If future experience supports reallocating responsibility from electronic filers to the courts, the committees will reconsider the provisions concerning deadlines and rejection or correction of noncompliant electronic filings.

Virus and harmful computer code requirement. The appellate practice section of a bar association protested that rule 8.72(b)'s "all reasonable steps" requirement for electronic filers was likely to cause confusion.² The commenter suggested that rule 8.72(b)(1) be rewritten to state that "[e]ach electronic filer must: (1) Comply with all electronic filing requirements in these rules and not intentionally file any document containing computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system."

Based on this comment, the committees recommend clarifying an e-filer's responsibilities with an advisory committee comment advising electronic filers that an absence of intent to harm is insufficient to comply with the subdivision. The committees did not want inadvertently to condone willful neglect or recklessness, but rather want to encourage e-filers to take affirmative steps to avoid causing harm. The committees recommend giving an example of a reasonable step electronic filers can take to ensure that a filing does not contain harmful computer code in the advisory committee comment to subdivision (b)(1).

Hyperlinks. In response to the questions presented in the invitation to comment, some commenters indicated that "hyperlinks" might not be commonly understood, but one court stated that the term is sufficiently clear and does not warrant further explication. Another commenter noted that rule 8.74 encourages the use of hyperlinks, but that the rule was drafted in a manner suggesting that hyperlinks are used only to link to legal authority, not to exhibits and appendixes.

Based on these comments, the committees recommend amending the hyperlinks provision to include appendixes and exhibits. (See Amended Cal. Rules of Court, rule 8.74(b)(5).) With respect to defining the term *hyperlinks*, the committees concluded that concerns about the clarity of the term were unwarranted because the term is reasonably well known and because use of

² The relevant provision of rule 8.72 would provide: "[¶] (1) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system."

hyperlinks is encouraged but not required. The committees, however, support the courts' publishing instructions on how to create hyperlinks.

Page layout and content

Several comments addressed formatting standards, including page numbering, bookmarking, font, line spacing, page alignment, and margins. With respect to documents prepared for original filing in the reviewing courts, several commenters expressed preferences or concerns about font styles and size, footnote size, use of emphasis, line spacing, page alignment, and margins.

Page numbering. The proposed pagination rule, rule 8.74(a)(2), is consistent with the requirements set by local rules around the state. Despite the existing uniformity, one commenter advocated for the use of roman numerals for prefatory pages, such as tables of contents and tables of authorities. According to the commenter, using separate pagination for tables is superior to consecutive page numbering that the courts currently require by local rule because the pagination of the main document (e.g., brief or petition) can be finalized before any tables are created. The committees considered this comment but declined to allow for separate numbering systems for prefatory pages and the main document. As a court commenter supporting the pagination requirement noted, consecutive, all-arabic pagination allows courts and parties to accurately locate a cited page and ensures that page citations are consistent throughout a document. The utility of matching page numbers to an electronic page counter justifies any burden on electronic filers imposed by the pagination requirement. The committees understand that, at least at present, an electronic page counter cannot be reset to match the page number when different page numbering systems are employed in a document. The committees considered allowing e-filers to place tables at the end of a document to avoid problems filers may face when they create tables of contents and authorities under this pagination rule. The committees maintained the provision as circulated, because the proposed pagination rule has been in place for some time by local rule and changing the placement of tables would be a significant change that was not presented for public comment.

Bookmarking. Commenters uniformly wrote in favor of requiring bookmarks in electronic documents. Two commenters, however, suggested relaxing the proposed requirements. One commenter asked for an exception to the bookmarking requirement for shorter documents—like requests for extensions of time—where bookmarks might not be as helpful to readers. Another commenter requested that the technical requirement for setting bookmarks to retain a reader's selected zoom setting be voluntary, instead of mandatory, because existing software requires several mouse clicks to set each and every bookmark. The committees considered these requests but chose not to change the bookmarking provision. Creating bookmarks for shorter documents will not be labor-intensive, and if the zoom-level requirement were merely voluntary, many e-filers would rely on default settings that do not preserve a reader's preferred view. Although the bookmarking requirements will require e-filers to spend additional time preparing their documents for filing, the utility of bookmarks for readers outweighs the burdens placed on e-filers.

Font. As circulated for public comment, the proposed amendments to rule 8.74 required a proportionally spaced serif font such as Century Schoolbook and expressly prohibited the use of Times New Roman. The proposal came from the Court of Appeal, Second Appellate District's local rule, which seeks to promote readability. Four comments against the prohibition on Times New Roman were received, and two more commenters questioned whether the prohibition on this particular font, which itself is a proportionally spaced serif font, was necessary. Just one commenter supported banning Times New Roman, but that commenter suggested that if Times New Roman were not permitted, filers who do not have Century Schoolbook font installed may choose an even less legible font. Based on these comments, the committees removed the proposal's prohibition on Times New Roman. However, the committees retained the proposal's stated preference for Century Schoolbook, because it is considered to be one of the most readable fonts and is preferred by most appellate judges in the state.

One commenter asked why the rule required 13-point font, instead of 14-point font. Another commenter suggested that footnote size be set at 12-point instead of 13-point font. The local rules of all six appellate districts and the Supreme Court require a 13-point font for body text and footnotes. In light of the existing uniform standard, the committees declined to modify the proposal based on the comments concerning font size.

Several commenters requested that sans-serif fonts be allowed, and one commenter asked that use of all capitals in headings be prohibited because text in all caps is virtually unreadable. To promote readability, the committees recommend permitting use of sans-serif fonts in headings, subheadings, and captions and prohibiting the use of all capitals for emphasis. The committees considered but did not endorse the commenter's request to prohibit all caps in headings, where they are regularly used in short headings like "Introduction," "Discussion," and "Conclusion." If experience shows that practitioners are using all caps for longer headings that are difficult to read, the committees will revisit the issue.

Line Spacing. One commenter noted that rule 8.74's 1-1/2 line-spacing requirement is unclear, especially if read in conjunction with rule 8.204(b)(5), which defines single spaced as "six lines to a vertical inch." The committees modified the proposal to identify the requirement as "1.5 spacing," rather than "1-1/2 spacing," because word processors use a decimal to define the line spacing option between single-spaced and double-spaced. Additionally, as noted above, the proposal has since been modified to make rules 8.74 and 8.204(b) now stand alone, eliminating the inconsistency identified by the commenter. To the extent the commenter urged the committee to repeal the definition of *single-spaced* in the provision applicable to paper documents, the committees note that six lines to a vertical inch is a measurement for typewriters. Although line spacing on word processors can be set in various ways, typewriters have greater mechanical limitations. The committees anticipate that those seeking to file in paper form rather than electronically will frequently prepare their documents using a typewriter, and as a result, this archaic provision will continue to be instructive.

Page alignment. One commenter asked why rule 8.74 prohibits full-page justification and requested that the formatting rules allow for full justification with hyphenation. The committees

considered this comment but declined to modify the proposal's requirement for left-aligned text. The rule was taken from the Second Appellate District's electronic formatting guidelines, which recognize that left-aligned text is easier to read than justified text.

Margins. A commenter noted that Microsoft Word uses default margins of 1-inch, and wondered whether future technologies like the Transcript Assembly Program might allow for 1-inch margins in electronic filings. Based on this and other comments, and as discussed above, the committees modified the proposal to clarify that documents not originally prepared for electronic filing in appellate courts such that the margin requirements for clerks' and reporters' transcripts are not directly affected by rule 8.74's margin requirements. At present, only one appellate district requires 1-1/2 inch margins on all sides. The committees also modified the proposal to provide for 1-inch margins on the top and bottom, so that paper and electronic documents have the same margin requirements. The committees retained the proposed 1-1/2 inch left and right margins because wider side margins allow readers additional room for notations, both on paper and in most annotation software for electronic documents. The committees decided to prioritize the readability and usability of a document (especially briefs and petitions) over the default settings of Microsoft Word, which Microsoft may change in the future and which users can adjust on their own. The committees will consider in the future margin requirements for transcripts after courts have more experience with mandatory electronic filing under the uniform rules, as well as if technological changes warrant revision.

Alternatives considered

This proposal initially focused on rules for exhibits and bookmarking, but was expanded in scope to include comprehensive formatting requirements for documents filed in electronic form. In addition to the initial focus and the alternatives considered in response to the public comments, the committees considered deferring action, but determined that the experience of the Supreme Court and the Courts of Appeal thus far warranted action. The committees concluded that the proposed changes were necessary to (1) institute mandatory electronic filing with limited exceptions, (2) make the appellate rules across the state consistent, and (3) eliminate confusion for appellate court litigants and practitioners who presently must comply with unique formatting requirements in each appellate district. The committees concluded that the proposed changes were necessary to give guidance and direction to e-filers, and to clarify the format requirements for documents filed in paper and electronic form.

Fiscal and Operational Impacts

The proposed rules are intended to make electronic formatting rules consistent in the appellate courts. The committees expect efforts will be needed to amend local rules to harmonize them with the amended rules.³ The appellate courts likely will incur some cost to train staff on the new

³ The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee expressed support for the proposal but raised a concern about the proposal's impact on court operations, namely the time needed to amend local rules. No stakeholders from the Courts of Appeal answered the timing question, so the committees expect that the appellate courts will have adequate time to amend their local rules before the January 2020 effective date.

rules and the procedures arising from them. No other costs or implementation challenges are anticipated.

Attachments and Links

1. Cal. Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252, at pages 13–23
2. Chart of comments, at pages 24–59

Rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252 of the California Rules of Court are amended, effective January 1, 2020, to read:

1 **Rule 8.40. ~~Form of filed documents~~ Cover requirements for documents filed in**
2 **paper form**

3
4 **(a) ~~Form~~**

5
6 ~~Except as these rules provide otherwise, documents filed in a reviewing court may~~
7 ~~be either produced on a computer or typewritten and must comply with the relevant~~
8 ~~provisions of rule 8.204(b).~~

9
10 **~~(b)~~ Cover color**

11
12 (1)–(2) * * *

13
14 (3) A paper brief or petition not conforming to (1) or (2) must be accepted for
15 filing, but in case of repeated violations by an attorney or party, the court
16 may proceed as provided in rule 8.204(e)(2).

17
18 **~~(e)~~ (b) Cover information**

19
20 (1)–(2) * * *

21
22
23 **Rule 8.44. Number of copies of filed documents**

24
25 **(a)–(b) * * ***

26
27 **(c) Electronic copies of paper documents**

28
29 ~~A court that permits electronic filing will specify any requirements regarding~~
30 ~~electronically filed documents in the electronic filing requirements published under~~
31 ~~rule 8.74. In addition, Even when filing a paper document is permissible, a court~~
32 ~~may provide by local rule for the submission of an electronic copy of a document~~
33 ~~that is not electronically filed the paper document either in addition to the copies of~~
34 ~~the document required to be filed under (a) or (b) or as a substitute for one or more~~
35 ~~of these copies. The local rule must specify the format of the electronic copy and~~
36 ~~provide for an exception if it would cause undue hardship for a party to submit an~~
37 ~~electronic copy.~~

38
39 **Rule 8.46. Sealed records**

40
41 **(a)–(c) * * ***

1 **(d) Record not filed in the trial court; motion or application to file under seal**

2
3 (1)–(2) * * *

4
5 (3) To lodge a record, the party must transmit the record to the court in a secure
6 manner that preserves the confidentiality of the record to be lodged. The
7 record must be transmitted separately from the rest of a clerk’s or reporter’s
8 transcript, appendix, supporting documents, or other records sent to the
9 reviewing court with a cover sheet that complies with rule 8.40(e)(b) if the
10 record is in paper form or rule 8.74(a)(9) if the record is in electronic form,
11 and that labels the contents as “CONDITIONALLY UNDER SEAL.” If the
12 record is in paper format, it must be placed in a sealed envelope or other
13 appropriate sealed container.

14
15 **(e)–(g)** * * *

16
17 **Rule 8.71. Electronic filing**

18
19 **(a) Mandatory electronic filing**

20
21 Except as otherwise provided by these rules, the Supreme Court Rules Regarding
22 Electronic Filing, ~~the local rules of the reviewing court,~~ or court order, all parties
23 are required to file all documents electronically in the reviewing court.

24
25 **(b)–(g)** * * *

26
27 **Rule 8.72. Responsibilities of court and electronic filer**

28
29 **(a) ~~Publication of electronic filing requirements~~ Responsibilities of court**

30
31 (1) The court will publish, in both electronic form and print formats, the court’s
32 electronic filing requirements.

33
34 **~~(b) Problems with electronic filing~~**

35 (2) If the court is aware of a problem that impedes or precludes electronic filing,
36 it must promptly take reasonable steps to provide notice of the problem.

37
38 **(b) Responsibilities of electronic filer**

39 Each electronic filer must:

- 1 (1) Take all reasonable steps to ensure that the filing does not contain computer
2 code, including viruses, that might be harmful to the court's electronic filing
3 system and to other users of that system;
- 4
- 5 (2) Furnish one or more electronic service addresses, in the manner specified by
6 the court, at which the electronic filer agrees to accept service; and
7
- 8 (3) Immediately provide the court and all parties with any change to the
9 electronic filer's electronic service address.

11 Advisory Committee Comment

12

13 Subdivision (b)(1). One example of a reasonable step an electronic filer may take is to use a
14 commercial virus scanning program. Compliance with this subdivision requires more than an
15 absence of intent to harm the court's electronic filing system or other users' systems.

16

17 ~~Rule 8.74. Responsibilities of electronic filer~~ Format of electronic documents

18

19 ~~(a) — Conditions of filing~~

20

21 ~~Each electronic filer must:~~

- 22
- 23 ~~(1) Comply with any court requirements designed to ensure the integrity of~~
24 ~~electronic filing and to protect sensitive personal information;~~
- 25
- 26 ~~(2) Furnish information that the court requires for case processing;~~
27
- 28 ~~(3) Take all reasonable steps to ensure that the filing does not contain computer~~
29 ~~code, including viruses, that might be harmful to the court's electronic filing~~
30 ~~system and to other users of that system;~~
- 31
- 32 ~~(4) Furnish one or more electronic service addresses, in the manner specified by~~
33 ~~the court, at which the electronic filer agrees to accept service; and~~
34
- 35 ~~(5) Immediately provide the court and all parties with any change to the electronic~~
36 ~~filer's electronic service address.~~

37

38 ~~(b) — Format of documents to be filed electronically~~

- 39
- 40 ~~(1) A document that is filed electronically with the court must be in a format~~
41 ~~specified by the court unless it cannot be created in that format.~~

- 1 ~~(2) The format adopted by a court must meet the following minimum~~
2 ~~requirements:~~
3
4 ~~(A) The format must be text-searchable while maintaining original document~~
5 ~~formatting.~~
6
7 ~~(B) The software for creating and reading documents must be in the public~~
8 ~~domain or generally available at a reasonable cost.~~
9
10 ~~(C) The printing of documents must not result in the loss of document text,~~
11 ~~format, or appearance.~~
12
13 ~~(3) The page numbering of a document filed electronically must begin with the~~
14 ~~first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2,~~
15 ~~3). The page number may be suppressed and need not appear on the cover~~
16 ~~page.~~
17
18 ~~(4) If a document is filed electronically under the rules in this article and cannot be~~
19 ~~formatted to be consistent with a formatting rule elsewhere in the California~~
20 ~~Rules of Court, the rules in this article prevail.~~

21
22 **(a) Formatting requirements applicable to all electronic documents**

- 23
24 (1) Text-searchable portable document format: Electronic documents must be in
25 text-searchable portable document format (PDF) while maintaining the
26 original document formatting. In the limited circumstances in which a
27 document cannot practicably be converted to a text-searchable PDF, the
28 document may be scanned or converted to non-text-searchable PDF. An
29 electronic filer is not required to use a specific vendor, technology, or
30 software for creation of a searchable-format document, unless the electronic
31 filer agrees to such use. The software for creating and reading electronic
32 documents must be in the public domain or generally available at a
33 reasonable cost. The printing of an electronic document must not result in the
34 loss of document text, formatting, or appearance. The electronic filer is
35 responsible for ensuring that any document filed is complete and readable.
36
37 (2) Pagination: The electronic page counter for the electronic document must
38 match the page number for each page of the document. The page numbering
39 of a document filed electronically must begin with the first page or cover
40 page as page 1 and thereafter be paginated consecutively using only arabic
41 numerals (e.g., 1, 2, 3). The page number for the cover page may be
42 suppressed and need not appear on the cover page. When a document is filed

1 in both paper form and electronic form, the pagination in both versions must
2 comply with this paragraph.

3
4 (3) *Bookmarking:* An electronic bookmark is a descriptive text link that appears
5 in the bookmarks panel of an electronic document. Each electronic document
6 must include an electronic bookmark to each heading, subheading, and the
7 first page of any component of the document, including any table of contents,
8 table of authorities, petition, verification, memorandum, declaration,
9 certificate of word count, certificate of interested entities or persons, proof of
10 service, exhibit, or attachment. Each electronic bookmark must briefly
11 describe the item to which it is linked. For example, an electronic bookmark
12 to a heading must provide the text of the heading, and an electronic
13 bookmark to an exhibit or attachment must include the letter or number of the
14 exhibit or attachment and a brief description of the exhibit or attachment. An
15 electronic appendix must have bookmarks to the indexes and to the first page
16 of each separate exhibit or attachment. Exhibits or attachments within an
17 exhibit or attachment must be bookmarked. All bookmarks must be set to
18 retain the reader's selected zoom setting.

19
20 (4) *Protection of sensitive information:* Electronic filers must comply with rules
21 1.201, 8.45, 8.46, 8.47, and 8.401 regarding the protection of sensitive
22 information, except for those requirements exclusively applicable to paper
23 form.

24
25 (5) *Size and multiple files:* An electronic filing may not be larger than 25
26 megabytes. This rule does not change the limitations on word count or
27 number of pages otherwise established by the California Rules of Court for
28 documents filed in the court. Although certain provisions in the California
29 Rules of Court require volumes of no more than 300 pages (see, e.g., rules
30 8.124(d)(1), 8.144(b)(6), 8.144(g)), an electronic filing may exceed 300
31 pages so long as its individual components comply with the 300-page volume
32 requirement and the electronic filing does not exceed 25 megabytes. If a
33 document exceeds the 25-megabyte file-size limitation, the electronic filer
34 must submit the document in more than one file, with each file 25 megabytes
35 or less. The first file must include a master chronological and alphabetical
36 index stating the contents for all files. Each file must have a cover page
37 stating (a) the file number for that file and the total number of files for that
38 document, (b) the volumes contained in that file, and (c) the page numbers
39 contained in that file. (For example: File 2 of 4, Volumes 3–4, pp. 301–499.)
40 In addition, each file must be paginated consecutively across all files in the
41 document, including the cover pages for each file. (For example, if the first
42 file ends on page 300, the cover of the second file must be page 301.) If a
43 multiple-file document is submitted to the court in both electronic form and

1 paper form, the cover pages for each file must be included in the paper
2 documents.

3
4 (6) *Manual Filing:*

5
6 (A) When an electronic filer seeks to file an electronic document consisting
7 of more than 10 files, or when the document cannot or should not be
8 electronically filed in multiple files, or when electronically filing the
9 document would cause undue hardship, the document must not be
10 electronically filed but must be manually filed with the court on an
11 electronic medium such as a flash drive, DVD, or compact disc (CD).
12 When an electronic filer files with the court one or more documents on
13 an electronic medium, the electronic filer must electronically file, on
14 the same day, a “manual filing notification” notifying the court and the
15 parties that one or more documents have been filed on electronic
16 media, explaining the reason for the manual filing. The electronic
17 media must be served on the parties in accordance with the
18 requirements for service of paper documents. To the extent practicable,
19 each document or file on electronic media must comply with the format
20 requirements of this rule.

21
22 (B) Electronic media files such as audio or video must be manually filed.
23 Audio files must be filed in .wav or mp3 format. Video files must be
24 filed in .avi or mp4 format.

25
26 (C) If manually filed, photographs must be filed in .jpg, .png, .tif, or .pdf
27 format.

28
29 (D) If an original electronic media file is converted to a required format for
30 manual filing, the electronic filer must retain the original.

31
32 (7) *Page size:* All documents must have a page size of 8-1/2 by 11 inches.

33
34 (8) *Color:* An electronic document with a color component may be electronically
35 filed or manually filed on electronic media, depending on its file size. An
36 electronic document must not have a color cover.

37
38 (9) *Cover or first-page information:*

39
40 (A) Except as provided in (B), the cover—or first page, if there is no
41 cover—of every electronic document filed in a reviewing court must
42 include the name, mailing address, telephone number, fax number (if
43 available), email address (if available), and California State Bar number

1 of each attorney filing or joining in the document, or of the party if he
2 or she is unrepresented. The inclusion of a fax number or email address
3 on any electronic document does not constitute consent to service by
4 fax or email unless otherwise provided by law.

5
6 (B) If more than one attorney from a law firm, corporation, or public law
7 office is representing one party and is joining in the document, the
8 name and State Bar number of each attorney joining in the electronic
9 document must be provided on the cover. The law firm, corporation, or
10 public law office representing each party must designate one attorney to
11 receive notices and other communication in the case from the court by
12 placing an asterisk before that attorney’s name on the cover and must
13 provide the contact information specified under (A) for that attorney.
14 Contact information for the other attorneys from the same law firm,
15 corporation, or public law office is not required but may be provided.

16
17 **(b) Additional formatting requirements applicable to documents prepared for**
18 **electronic filing in the first instance in a reviewing court**

19
20 (1) Font: The font style must be a proportionally spaced serif face. Century
21 Schoolbook is preferred. A sans-serif face may be used for headings,
22 subheadings, and captions. Font size must be 13-points, including in
23 footnotes. Case names must be italicized or underscored. For emphasis,
24 italics or boldface may be used or the text may be underscored. Do not use all
25 capitals (i.e., ALL CAPS) for emphasis.

26
27 (2) Spacing: Lines of text must be 1.5 spaced. Footnotes, headings, subheadings,
28 and quotations may be single-spaced. The lines of text must be unnumbered.

29
30 (3) Margins: The margins must be set at 1-1/2 inches on the left and right and 1
31 inch on the top and bottom. Quotations may be block-indented.

32
33 (4) Alignment: Paragraphs must be left-aligned, not justified.

34
35 (5) Hyperlinks: Hyperlinks to legal authorities and appendixes or exhibits are
36 encouraged but not required. However, if an electronic filer elects to include
37 hyperlinks in a document, the hyperlink must be active as of the date of
38 filing, and if the hyperlink is to a legal authority, it should be formatted to
39 standard citation format as provided in the California Rules of Court.
40

1 **(c) Additional formatting requirements for certain electronic documents**

2
3 (1) Brief: In addition to compliance with this rule, an electronic brief must also
4 comply with the contents and length requirements stated in rule 8.204(a) and
5 (c). The brief need not be signed. The cover must state:

6
7 (A) The title of the brief;

8
9 (B) The title, trial court number, and Court of Appeal number of the case;

10
11 (C) The names of the trial court and each participating trial judge; and

12
13 (D) The name of the party that each attorney on the brief represents.

14
15 (2) Request for judicial notice or request, application, or motion supported by
16 documents: When seeking judicial notice of matter not already in the
17 appellate record, or when a request, application, or motion is supported by
18 matter not already in the appellate record, the electronic filer must attach a
19 copy of the matter to the request, application, or motion, or an explanation of
20 why it is not practicable to do so. The request, application, or motion and its
21 attachments must comply with this rule.

22
23 (3) Appendix: The format of an appendix must comply with this rule and rule
24 8.144 pertaining to clerks' transcripts.

25
26 (4) Agreed statement and settled statement: The format for an agreed statement
27 or a settled statement must comply with this rule and rule 8.144.

28
29 (5) Reporter's transcript and clerk's transcript: The format for an electronic
30 reporter's transcript must comply with Code of Civil Procedure section 271
31 and rule 8.144. The format for an electronic clerk's transcript must comply
32 with this rule and rule 8.144.

33
34 (6) Exhibits: Electronic exhibits must be submitted in files no larger than 25
35 megabytes, rather than as individual documents.

36
37 (7) Sealed and confidential records: Under rule 8.45(c)(1), electronic records
38 that are sealed or confidential must be filed separately from publicly filed
39 records. If one or more pages are omitted from a record and filed separately
40 as a sealed or confidential record, an omission page or pages must be inserted
41 in the publicly filed record at the location of the omitted page or pages. The
42 omission page or pages must identify the type of page or pages omitted. Each
43 omission page must be paginated consecutively with the rest of the publicly

1 filed record. Each single omission page or the first omission page in a range
2 of omission pages must be bookmarked and must be listed in any indexes
3 included in the publicly filed record. The PDF counter for each omission
4 page must match the page number of the page omitted from the publicly filed
5 record. Separately-filed sealed or confidential records must comply with this
6 rule and rules 8.45, 8.46, and 8.47.

7
8 **(d) Other formatting rules**

9
10 This rule prevails over other formatting rules.

11
12 **Advisory Committee Comment**

13
14 **Subdivision (a)(1).** If an electronic filer must file a document that the electronic filer possesses
15 only in paper form, use of a scanned image is a permitted means of conversion to PDF, but
16 optical character recognition must be used, if possible. If a document cannot practicably be
17 converted to a text-searchable PDF (e.g., if the document is entirely or substantially handwritten,
18 a photograph, or a graphic such as a chart or diagram that is not primarily text based), the
19 document may be converted to a non-text-searchable PDF file.

20
21 **Subdivision (a)(3).** An electronic bookmark’s brief description of the item to which it is linked
22 should enable the reader to easily identify the item. For example, if a declaration is attached to a
23 document, the bookmark to the declaration might say “Robert Smith Declaration,” and if a
24 complaint is attached to a declaration as an exhibit, the bookmark to the complaint might say
25 “Exhibit A, First Amended Complaint filed 8/12/17.”

26
27 **Subdivision (b).** Subdivision (b) governs documents prepared for electronic filing in the first
28 instance in a reviewing court and does not apply to previously created documents (such as
29 exhibits), whose formatting cannot or should not be altered.

30
31 **Subdivision (c)(7).** In identifying the type of pages omitted, the omission page might say, for
32 example, “probation report” or “Marsden hearing transcript.”

33
34 **Rule 8.77. Actions by court on receipt of electronic filing**

35
36 **(a) * * ***

37
38 (1)–(2) * * *

39
40 (3) *Transmission of confirmations*

41
42 The court must arrange to send receipt and filing confirmation to the
43 electronic filer at the electronic service address that the filer furnished to the

1 court under rule ~~8.74(a)(4)~~ 8.72(b)(2). The court or the electronic filing
2 service provider must maintain a record of all receipt and filing
3 confirmations.

4
5 (4) * * *

6
7 **(b)–(e)** * * *

8
9 **Rule 8.78. Electronic service**

10
11 **(a)** * * *

12
13 (1) * * *

14
15 (2) A party indicates that the party agrees to accept electronic service by:

16
17 (A) * * *

18
19 (B) Electronically filing any document with the court. The act of electronic
20 filing shall be deemed to show that the party agrees to accept service at
21 the electronic service address that the party has furnished to the court
22 under rule ~~8.74(a)(4)~~ 8.72(b)(2), unless the party serves a notice on all
23 parties and files the notice with the court that the party does not accept
24 electronic service and chooses instead to be served paper copies at an
25 address specified in the notice.

26
27 (3) * * *

28
29 **(b)–(g)** * * *

30
31 **Rule 8.204. Contents and format of briefs**

32
33 **(a)** * * *

34
35 **(b) Format of briefs filed in paper form**

36
37 (1)–(9) * * *

38
39 (10) If filed in paper form, the cover must be in the color prescribed by rule
40 ~~8.40(b)(a)~~. In addition to providing the cover information required by rule
41 ~~8.40(e)(b)~~, the cover must state:

42
43 (A) The title of the brief;

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- (B) The title, trial court number, and Court of Appeal number of the case;
- (C) The names of the trial court and each participating trial judge; and
- (D) The name of the party that each attorney on the brief represents.

(11) * * *

(c)–(e) * * *

Rule 8.252. Judicial notice; findings and evidence on appeal

(a) Judicial notice

(1)–(2) * * *

(3) If the matter to be noticed is not in the record, the party must ~~serve and file a copy with the motion or explain~~ attach to the motion a copy of the matter to be noticed or an explanation of why it is not practicable to do so. The pages of the copy of the matter or matters to be judicially noticed must be consecutively numbered, beginning with the number 1. The motion with attachments must comply with rule 8.74 if filed in electronic form.

(b) * * *

(c) Evidence on appeal

(1)–(2) * * *

(3) For documentary evidence, a party may offer ~~the original, a certified copy, a photocopy, or, in a case in which electronic filing is permitted, an electronic copy,~~ or if filed in paper form, the original, a certified copy, or a photocopy. The court may admit the document into evidence without a hearing.

SPR19-07

Appellate Procedure: Uniform Formatting Rules for Electronic Documents

(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)

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

	Commenter	Position	Comment	Committees Responses
1.	Jessica Coffin Butterick Lead Appellate Court Attorney Court of Appeal, Second Appellate District	AM	<p>I would agree with the new rules if modified. Please see my comments below.</p> <p>Rule 8.74(a)(8) — Font 13 pt Century in footnotes is HUGE. Footnote point size should be 12. I hate Times New Roman as much as the next person and am glad you're banning it, but there are lots of terrible system fonts out there. If you're going to ban TNR, please also ban Cambria, which is even worse, and will be people's next choice if they don't have Century Schoolbook installed on their machines.</p> <p>Rule 8.74(a)(9) — Spacing Headings should be added to the list of things that can be single-spaced to clarify that they are they not considered "lines of text" that must be 1.5 spaced. (Headings should not be single-spaced.) More importantly, what does 1.5 spacing mean in the context of this rule? True 1.5 line spacing (150% of point size) is 20.5 points for a 13pt font. This is what the rule should mean. In Microsoft Word, however, the "1.5 lines" spacing option yields spacing of about 175% of point size, and many people seem to think that's what 1.5 spacing means. (See explanation at https://practicaltypography.com/line-spacing.html)</p> <p>On its own, that doesn't matter all that much, but it becomes a big problem if we're supposed to</p>	<p>The committees thank the commenter and note the support for the proposal if modified.</p> <p>The committees appreciate the commenter's concerns. The committees decline to recommend differing font sizes, or banning additional proportional-spaced fonts. Based on this and other comments, the committees have deleted the proposals' prohibition on the use of Times New Roman, but the committees have preserved the preference for Century Schoolbook, because it is considered to be one of the most readable fonts.</p> <p>The committees agree that headings should be added to the list of things that may be single-spaced, and made this change. To the extent the comment relates to interaction between rules 8.74 and rule 8.204(b), based on this comment and others, the committees have modified the proposed amendments to rules 8.74 and 8.204(b).</p> <p>The committees considered the commenter's concern about rule 8.204(b)(5)'s line spacing</p>

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

SPR19-07

Appellate Procedure: Uniform Formatting Rules for Electronic Documents

(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)

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

	Commenter	Position	Comment	Committees Responses
			<p>interpret 1.5 spacing in terms of rule 8.204(b)(5). That rule unwisely redefines a typographical term in California by defining single line spacing as “six lines to a vertical inch.” Applying that definition, 1.5 line spacing is 4 lines per vertical inch. But neither true 1.5 line spacing (150% of point size) nor MS Word line spacing (175% of point size) complies with that definition. (Please see the attached document, which I prepared to demonstrate what the rule 8.204(b)(5) definition looks like in practice and how it differs from what both typographers and MS Word adherents consider 1.5 line spacing. It also shows why the definition is problematic for single line spacing with 13pt fonts.) [Commenter’s document not attached to comment chart.]</p> <p>Or are we supposed to disregard rule 8.204(b)(5)? I can’t tell.</p> <ul style="list-style-type: none"> · Proposed rule 8.40(a) tells us we must comply with “relevant format provisions” of rule 8.204. This certainly seems relevant. · Proposed rule 8.74(d) tells us to comply with other formatting provisions unless it’s impossible to do so. It’s possible to comply with rule 8.204(b)(5), even if it’s not advisable. · Proposed rule 8.74(b)(1) tells us we must comply with rule 8.204 “except for the requirements exclusively applicable to paper format including the provisions in rule 8.204(b) (2), (4), (5), and (6).” I find this baffling (see my comments to rule 8.74(b)(1) below), but if it means we shouldn’t 	<p>measurement, as well as the commenter’s public comment submitted in advance of the Appellate Advisory Committee’s open meeting, but determined that the line spacing provision for paper documents exists to assist those preparing documents using typewriters, where line spacing options are limited by mechanics.</p> <p>The committees thank the commenter for this input. Based on this comment and others, the committees have modified the proposal to clarify the line-spacing requirements of rule 8.74, and to eliminate the cross-references between rule 8.74 and rules 8.40 and 8.204(b). The proposal now would amend subdivision (b) of rule 8.204 to apply only to documents filed in paper form, and to add the relevant provisions of rules 8.40(c) and 8.204(b) to rule 8.74.</p>

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

SPR19-07

Appellate Procedure: Uniform Formatting Rules for Electronic Documents

(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)

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	Commenter	Position	Comment	Committees Responses
			<p>comply with the 6-lines-per-vertical-inch definition of line spacing, the consequence is that we'll be using at least TWO DIFFERENT definitions of the same typographical term in California courts depending on the method of filing. I suppose that's better than having to comply with rule 8.204(b)(5), but revising rule 8.204(b)(5) seems like a better choice. Please revise rule 8.204(b)(5) as part of this project. It should be consistent with this rule.</p> <p>Rule 8.74(a)(11) — Alignment Why can't paragraphs be justified? This seems arbitrary. Justification should be allowed as long as hyphenation is turned on. Regardless, if we're going to regulate things like justification, while we're at it, can we please tell people not to use all-caps headings if the heading is more than 3–5 words long? They are impossible to read. (Rule 8.204(b)(3) allows the complete heading to be in capital letters.)</p> <p>Rule 8.74(b)(1) — Brief As mentioned above, you should really, really revise rule 8.204 as part of this project. It should be consistent with rule 8.74(a). If you're not going to revise rule 8.204, you need to, AT MINIMUM, revise proposed rule 8.74(b)(1) to tell people EXACTLY which provisions of rule 8.204 continue to apply to electronically-filed documents and which don't. For example: “Electronic filers must still comply with rule</p>	<p>The committees decline to recommend adding an allowance for justified alignment because left-aligned text is easier to read than justified text. Based on this comment, the committees have proposed adding a prohibition on the use of all capitals for emphasis but did not endorse the commenter's request to prohibit all caps in headings, where they are regularly used in short headings like “Introduction,” “Discussion,” and “Conclusion.”</p> <p>The committees thank the commenter for this input. Based on this and other comments, the committees have modified the proposal to clarify that rule 8.204(b) would not apply to electronic filings. The relevant requirements will instead be in rule 8.74.</p>

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

SPR19-07**Appellate Procedure: Uniform Formatting Rules for Electronic Documents****(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

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

	Commenter	Position	Comment	Committees Responses
			<p>8.204(X), (Y), and (Z). They do not need to comply with (R), (S), or (T), which only apply to paper filers.” I do statutory interpretation for a living. I have thought deeply and at length about legal typography. Yet, based on the text of proposed rule 8.74(b)(1), I would be hard-pressed to tell you which provisions of rule 8.204 continue to apply. Does “including the provisions in rule 8.204(b)(2), (4), (5), and (6)” refer to the requirements electronic briefs must also comply with? Or, since there’s no comma after the word “format,” is that text part of the “except for” clause, meaning that those provisions are among those that are exclusively applicable to paper format? It would be a lot more straightforward if you (1) made the rule two sentences, and (2) made it clear which provisions are still in and which are out.</p> <p>Rule 8.40(a) — Form of electronic documents This rule tells me I must comply with rule 8.74 AND rule 8.204. But rule 8.74(b) tells me I don’t need to comply with the provisions that exclusively relate to paper filing. Unfortunately, as discussed above, I don’t know what the relevant portions of rule 8.204 are.</p>	<p>Based on this comment and others, the committees have modified the proposal to eliminate the cross-references between rule 8.74 and rules 8.40 and 8.204(b). The proposal now would amend subdivision (b) of rule 8.204 to apply only to documents filed in paper form, and to add the relevant provisions of rules 8.40(c) and 8.204(b) to rule 8.74.</p>
2.	California Academy of Appellant Lawyers by John Taylor, Jr., President Burbank	A	As the current president of the California Academy of Appellate Lawyers, I’m writing on behalf of its membership to support SPR19-07. The Academy consists of more than 100 California appellate lawyers with substantial experience in the briefing	The committees thank the commenter, and note the California Academy of Appellant Lawyers’ support for the proposal.

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

SPR19-07

Appellate Procedure: Uniform Formatting Rules for Electronic Documents

(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)

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	Commenter	Position	Comment	Committees Responses
			<p>and argument of appeals in the California court system. The Academy has a vital interest in ensuring that the rules governing appellate practice promote the efficient and fair administration of justice at the appellate level. The Academy strongly endorses the enactment of uniform requirements for electronic filing throughout the State. We have some suggestions on the content of the proposed new state-wide rules for electronic documents filed in the appellate courts. It appears that in seeking to accommodate less technologically advanced Districts, the proposed rules will impose some limitations on more technologically advanced Districts and the lawyers who have cases there. We therefore strongly urge that, if the proposed rules are adopted in their present form, steps be taken to rapidly improve all Districts’ technological capability so there can be uniform rules that permit the best practices that more advanced Districts already follow. The Academy has identified four items for comment, the first two of which involve subjects that should be revised when technologically feasible to increase access to e-filing.</p> <p>1. File number/size limitation. Proposed rules 8.74(a)(5) & (6) indicate that electronic files can be up to 25MB, but (i) under subdivision (5) they must be limited to 300 pages if that is what the other rules require—particularly including appendices; and (ii) under subdivision (6) “an electronic document consisting of more than</p>	<p>The committees appreciate the commenter’s input and have modified the proposed multiple-file provision to allow an electronic filing if the combined volumes of an electronic filing satisfy the 25 megabytes file-size limit and the individual component volumes of the electronic filing comply with any applicable 300-page</p>

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			<p>five files” must be manually filed (in electronic form, but manually rather than e-filed).</p> <p>In other words, any appendix of more than five 300-page volumes must be filed manually even if the total file size is less than 25MB. And, apparently, only a single 25MB file—not multiple files—can be e-filed, so that if a 4-volume appendix exceeds 25M it must be manually filed, if even it could be filed as a 20MB and a 10MB file.</p> <p>Appendices that exceed five 300-page volumes are relatively common—and indeed frequent for our members, who tend to handle large, complex cases. In recent years, these appendices could be filed entirely electronically in some Districts. The proposed limitations therefore represent a step backward for lawyers and their staff in those Districts, creating more work and reducing some existing benefits of electronic filing.</p> <p>2. Documents with color components Rule 8.74(a)(13) prohibits electronic filing of “an electronic document with any color component.” While many judicial readers may not care about colored covers or signatures, color can be an important part of a presentation. For example, a key exhibit may only make sense in color. A party may even want to include that color exhibit in their brief because it lucidly explains something that text cannot effectively convey. The Academy suggests</p>	<p>requirement(s). The proposal also would amend the manual filing requirement for multiple files or volumes, changing the limit to 10 rather than 5. The committees will consider additional changes in the future if they are supported by technological changes.</p> <p>The committees agree that color components may be helpful, and have modified the proposal to allow for color components in electronic filings as long as the file complies with the file-size limit.</p>

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			<p>that the courts may not wish to discourage documents with color that can make the document more useful to the court.</p> <p>The invitation to comment says that color “causes problems with ACCMS” (p. 4), but doesn’t explain the nature of those problems. The proposal suggests that PDFs with color components are not problematic. Because any document with color can be converted to PDF, the rule could require that any document with a color component (other than videos) must be filed in PDF and, in that case, could be filed electronically, rather than manually. While color PDFs can be large, PDF programs provide ways to reduce the file size. Rather than banning color, the present or future rules could include technical specifications that keep file sizes small. Manual filing should remain an option, but the rules should make it unnecessary.</p> <p>3. Manual filing and date of filing It would seem fair to parties and practitioners throughout the state that a manually filed document be considered filed on the date the notice of manual filing is submitted, and the physical electronic media with the actual document is sent to the court, rather than requiring the electronic media to be delivered to the court on the due date.</p>	<p>The committees have confirmed that color does not cause problems for ACCMS, but that color components may cause loading problems because color components increase file size.</p> <p>The committees thank the commenter for this input. The committees decline to add provisions concerning deadlines and effective filing dates where service and delivery requirements already exist in the rules. The committees will revisit the issue if courts’ experience with manual delivery of electronic media warrants additional action.</p>

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			<p>4. Paper copies We suggest the rules provide that in cases in which the Court wants paper copies of a filing, the filer be notified of that requirement by email. The filer should be given a specific deadline to file the paper copy. The Ninth Circuit has followed this practice for many years, and it works well. Among other things, this avoids parties submitting paper copies only to find that the clerk requests changes to a document, requiring another set of paper copies to be prepared and delivered. It will also ensure the Courts receive paper copies timely, as requirements for paper are few and diminishing and such requirements can be easily overlooked.</p> <p>In sum, the Academy supports state-wide uniformity for e-filing procedures, but hopes that the various appellate districts will strive to achieve technological uniformity, so that the problems identified above can be corrected soon, if not in the current rule cycle.</p>	<p>The committees appreciate this input, and note that the proposal does not require courtesy paper copies of electronic filings.</p> <p>No response required.</p>
3.	Court of Appeal, Fifth Appellate District by Brian Cotta, Clerk/Executive Officer	NI	<p>In regard to: “Proposed subdivision (a)(13) specifies that a document with any color component must be manually filed rather than electronically filed. This is because color causes problems in ACCMS. The subdivision prohibits color components in electronically filed documents.”</p> <p>Comment: Since the documents and viewing location will be changed from ACCMS to Hyland OnBase, will the existing challenge/issue not be</p>	<p>The committees appreciate the commenter’s concern. Based on this and other comments, the committees have modified the proposal to allow</p>

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			<p>resolved on its own rather soon or does another technical issue apply that is unrelated to where the actual document(s) is/are stored or accessed?</p> <p>In regard to: “Rule 8.124 (appendixes), 8.144 (form of the record), and 8.212 (service and filing of briefs) were reviewed, and it was determined that amendments to those rules are not needed at this time.”</p> <p>Comment: I would kindly suggest and request that Rule 8.144 (Form of the record) be updated to require 1.0 inch margins (or larger from left edge) rather than 1.25. My reasoning to justify the request is that Microsoft Word used to have default margins of 1.25 inch (version 2003 and prior), but since Microsoft Word 2007, have 1.0 inch margins. The margin requirement is/was likely to allow for binding and related hole punching. However, with electronic use now surpassing what is actually printed, loosening this requirement will also for more progressive technology applications (e.g. TAP) to be used for clerk’s transcript assembly and therefore be in compliance of the rule.</p>	<p>for color components in electronic filings as long as the file complies with the file-size limit.</p> <p>The committees thank the commenter for this input. With respect to the commenter’s suggestion to amend rule 8.144 (Form of record) to provide for 1-inch margins, that rule is beyond the scope of this proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain the suggestion for future consideration if technological changes warrant change to margin requirements for clerk’s and reporter’s transcripts. To the extent this comment relates to the 1-1/2 inch margin requirement found in proposed rule 8.74, the proposed rule amendments are intended to implement best practices from the courts of appeal. The committees considered 1-inch margins but chose 1-1/2 inch margins because wider side margins allow readers additional room for notations, both on paper and in most annotation software for electronic documents. In choosing a margin requirement, the committees weighed the readability of a document over the default settings of Microsoft Word. Microsoft Word is not the only word processing software that practitioners use to create electronic filings, and default settings change and can be adjusted.</p>

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				Based on this and other comments, however, the committees have added a proposed subdivision to rule 8.74 providing that the margin provision applies to documents prepared for filing in the first instance in the reviewing court, not to documents like transcripts generated in the superior courts.
4.	Criminal Justice Legal Foundation by Kent Scheidegger, Legal Director and General Counsel Sacramento	NI	<p>The Criminal Justice Legal Foundation is a nonprofit, public interest organization promoting the rights of victims of crime in the criminal justice system. We submit this comment regarding the proposed rules on formatting electronic documents. We are particularly concerned with the formatting of appellate briefs, as that is our primary activity in the judicial system.</p> <p>Proposed Rule 8.74(a)(2) quite reasonably requires that “[t]he electronic page counter for the electronic document must match the page number for each page of the document.”</p> <p>* * *</p> <p>What is most remarkable about the rule’s prohibition of traditional numbering, though, is the complete absence of any reason for it. Traditional numbering, if matched in the PDF file, causes no inconvenience to the reader whatever. There is simply no reason to forbid it. The United States Supreme Court allows it. The federal courts of appeals allow it. California courts should allow it.</p>	<p>The committees thank the commenter for providing input on this proposal.</p> <p>The committees considered but declined to modify the proposal as suggested to permit separate numbering for prefatory pages. The proposal’s pagination requirement implements rules that already exist in California’s appellate courts. All six appellate districts and the Supreme Court use consecutive arabic-numbering as set forth in the proposal. The committees appreciate that numbering all pages, including preliminary pages such as tables, in this manner may require additional preparation time, but consecutive pagination allows courts and parties to accurately locate the cited pages and ensures that page citations are consistent throughout a document. The utility of page numbers that match an</p>

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			<p>CJLF respectfully suggests that the second and third sentences of the proposed Rule 8.74(a)(2) be deleted and the language in italics below inserted: (2) <i>Pagination: The electronic page counter for the electronic document must match the page number for each page of the document. This requirement may be met either by (i) beginning with the first page or cover page as page 1 and using only Arabic numerals (e.g., 1, 2, 3), or (ii) using Roman numerals for the tables and Arabic numerals for the body of the document and conforming the electronic page counter of the electronic document to match. The page number for the cover page may be suppressed and need not appear on the cover page, or if method (ii) above is used the cover page may be unnumbered. When a document is filed in both paper and electronic formats, the pagination in both versions must comply with this subparagraph.</i></p> <p>[The commenter provided extensive comments, not all of which addressed specific provisions of the proposal. Certain portions of the comment therefore are not included in this chart.]</p>	<p>electronic page counter (which cannot be re-set to match the page number) justifies any burden on electronic filers imposed by this pagination requirement. The committees will reconsider this requirement if technology changes.</p>
5.	Jeffrey Ehrlich Ehrlich Law Firm Claremont	NI	<p>I am a certified appellate specialist and have been practicing appellate law in California for over 35 years. I would urge the Council not to adopt the current proposal concerning the font style or typefaces that are acceptable. The current proposal seems to uncritically track the conclusions of the ABA’s “Leap from E-filing” publication, which</p>	<p>The committees thank the commenter for this input. Based on this and other comments, the committees have deleted the proposal’s prohibition on the use of Times New Roman.</p>

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			<p>in turn seems to express the idiosyncratic beliefs of the author or authors of that publication about which typefaces are desirable.</p> <p>First, I see no reason to ban Times New Roman. While that font is too small to read comfortably in 12-point weight, it's fine in 13-point or 14-point. I don't use that font, but the custom "Equity" font that I do use, which was created by Matthew Butterick, is very similar. By banning Times New Roman font, the proposal adds uncertainty about what fonts are acceptable, particularly because Times New Roman is a proportionally spaced font with a serif face, as the rule requires.</p> <p>Second, with the update to the rules concerning typeface styles, I think it's time to delete the ban on san serif fonts. I note that this comment form uses a san serif font, and it is highly readable. Most electronic devices now display text in san serif fonts, and they are highly readable -- perhaps more readable than fonts with a serif face.</p> <p>When I started in appellate practice, Horvitz & Levy used a very readable san serif font for all of its briefs. Given the chance, I would love to use Matthew Butterick's "Concourse" san serif font, which is highly readable and very attractive.</p>	<p>No further response required.</p> <p>The committees appreciate the commenter's input on this issue. The committees decline to recommend allowing sans-serif fonts in body and footnote text because of their more limited readability, but the committees have recommended adding an allowance for sans-serif fonts in headings, subheadings, and captions.</p>
6.	Horvitz & Levy by Andrea Russi, Senior Counsel San Francisco	A	<p>We agree with this proposal and believe adopting one uniform rule for electronic filing across the six districts will make life easier for everyone.</p> <p>One suggestion:</p>	<p>The committees thank the commenter for this input and note the agreement with the proposal.</p>

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			The new electronic filing rule does not specifically address the service of electronic documents. The current version of Rule 8.78 addresses electronic service but neither rule incorporates the language of the current local rules on electronic filing. The existing local rules address TrueFiling. (See Third District Rule 5(l); Sixth District Rule 2(j); First District Rule 16(j)). The uniform electronic filing rule should contain similar language about service. The new rule on electronic filing should cross-reference Cal Rules of Court, Rule 8.78 re: Electronic Service. Revised Rules 8.72 or 8.74 should contain language about the service of electronic filings, including an explanation of TrueFiling.	The suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will consider this suggestion during the next rules cycle.
7.	Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee	A	The JRS notes the following impact to court operations: <ul style="list-style-type: none"> • Requires development of local rules and/or forms. The JRS also notes that the proposal should be implemented because it seeks to streamline and establish consistencies for electronic filing requirements among all appellate courts. As it will also require local rule changes, a 3-month period of time considering the rule revision process may be insufficient depending upon when the changes are approved. A 6-month time table is more realistic.	The committees appreciate the commenter’s input and note JRS’s support for the proposal.
8.	Hon. Jo-Lynne Lee Superior Court of Alameda County	NI	I would oppose a change to the appellate rules prohibiting the use of Times New Roman. I prefer this font myself and don’t understand the reason why it should be prohibited.	The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the proposal’s prohibition on the use of Times New Roman.

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			Perhaps it is because increasing the font size to 13 impacts use of Times New Roman? An explanation would help.	
9.	Lynn Loschin Senior Research Attorney Court of Appeal, Fourth Appellate District	NI	<p>As a research attorney who works with e-filed documents every day, I appreciate the opportunity to comment on the proposed changes.</p> <p>Pagination: Clarification that hard-coded page numbers must match electronic page counters is very useful. Being able to see what page I am looking at by looking at the counter, rather than scrolling to the bottom of the page, saves a great deal of time. It's also much more efficient to find pages using the counter than it is to scroll or search for them. I support this proposed change.</p> <p>Bookmarks: The requirement that bookmarks retain the reader's selected zoom setting is particularly welcome, as this has been a consistent problem with e-filed documents. When this option is not selected, it renders both bookmarks and the ability to use custom zoom settings less useful, and there is no way to quickly change all bookmarks to this option in bulk. I support this proposed change.</p> <p>Fonts: I am uncertain about prohibiting the use of Times New Roman. It's what everyone is must accustomed to and is the standard for most courts around the country, including California's trial courts. Further, there are far worse fonts that could be chosen that aren't specifically banned.</p>	<p>The committees thank the commenter for providing input on this proposal.</p> <p>The committees note the commenter's support for 8.74's pagination requirements.</p> <p>The committees note the commenter's support for 8.74's bookmarking requirements, including retention of a reader's selected zoom setting.</p> <p>The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the proposal's prohibition on the use of Times New Roman.</p>

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			<p>I am also unsure why sans serif fonts are not allowed - they generally look better on screens (while serif fonts look better in print), which is why most web sites, including courts.ca.gov, use sans serif fonts. So much of our work is done on screens now that I am not sure that prohibiting all sans serif fonts is the direction the courts should be going.</p> <p>I would suggest a modification to the proposed rule that recommends specific fonts (maybe two or three others in addition to Century), but does not ban either Times New Roman or all sans serif fonts.</p>	<p>The committees decline to recommend allowing sans-serif fonts in body and footnote text because of their more limited readability, but the committees have recommended adding an allowance for sans-serif fonts in headings, subheadings, and captions.</p> <p>See responses above.</p>
10.	Steven Murray Sherman Oaks	NI	<p>The rules regarding useable fonts should not be changed. Prohibiting Times New Roman and requiring Century Schoolbook would seriously interfere with many small firms and sole practitioners who have established formats for appellate work. The cost of appellate work is already so high, why enact a new rule which would take significant time and effort to implement. And prohibiting 14 point fonts (as this Equity Text A) does a disservice to the appellate staff and justices which have to read volumes of material.) In plain English, don't fix what is not broken.</p> <p>If any changes are needed (and I seriously doubt that), make them optional. Or better yes, as now, let each Division of the Court of Appeal or the Supreme</p>	<p>The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the proposal's prohibition on the use of Times New Roman. The committees decline, however, to recommend allowing font sizes other than 13-point.</p> <p>The committees appreciate the commenter's input, but favor uniformity over the existing patchwork of local rules, which make practice in the appellate courts more complicated than is necessary.</p>

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			Court make its own determination if any thinks change is necessary. Note the Second District stands alone, there has been no rush to follow.	
11.	Orange County Bar Association (OCBA) by Deirdre Kelly, President	AM	The OCBA believes the proposal appropriately addresses its stated purposes if amended as follows: (1) proposed Rule 8.40 provides for electronic filing “unless these rules provide otherwise” but no references are given to any of the exceptions which are given to the basic format provisions; to this point the OCBA can only determine the “exceptions” to be under Rules 8.44, 8.71, 8.74 & 8.79 for undue hardship, significant prejudice, format problems, self-represented parties, trial courts, and Supreme Court rules, but they are scattered about the rules and difficult to locate; (2) proposed Rule 8.44(c) defeats the purpose of creating uniform rules by allowing “by local rule” for required submission of electronic copies of any paper documents which may be authorized for filing by the rules; this authorization defeats the purposes of all stated exceptions to the electronic filing rules; (3) the OCBA recommends that the Judicial Council also consider amendments to the following additional rules which are applicable to electronic filing, service, signatures, and documents: Rule 8.42 (requirements for signatures), Rule 8.45 (general provisions for sealed and confidential records), Rule 8.75 (requirements for signatures), Rule 8.78 (electronic service), Rule 8.79 (Court order for electronic service), Rule 8.144 (form of the record), and Rule 8.254 (new authorities).	<p>The committees thank the commenter and note the OCBA’s support for the proposal if modified. Based on this and other comments, the committees deleted the cross-references to exceptions in rule 8.40(a).</p> <p>With respect to rule 8.44(c)’s allowance for local rules requiring electronic copies of paper filings, the committees appreciate that local rules may not be uniform, which is the principal goal of this proposal. However, the proposed requirement here applies only to paper filings, and paper filers likely will not be able to comply with the uniform formatting requirements set forth in these rules. Therefore, the committees defer to the courts as to what format they require for electronic copies of paper filings.</p> <p>With respect to amending additional rules in title 8 that are applicable to electronic filing, service, signatures, and other documents, the suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule</p>

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				10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain the suggestion for future consideration.
12.	Daniel Repp Sacramento	NI	<p>I'm offering comment in response to proposed Rule 8.74. Specifically, I write to urge the committee to change that portion of the rule (8.74(a)(8)) that would bar the use of Times New Roman of appellate briefs. Times New Roman should not be banned.</p> <p>* * *</p> <p>(1) There's No Conflict Between the Appellate Districts Regarding Font Choice, So There Is No Need for a Uniform Rule Regarding Font Choice</p> <p>I do not see how the specific proscription against Times New Roman furthers the purpose of uniformity in appellate court electronic document filing requirements. First, the e-filing requirements of only one district (i.e., the Second District) actually touch on the subject matter of font choice, so there is no true conflict among the Districts' Local Rules that has to be ironed out with a uniform rule. In this sense, the portion of the rule banning the use of Times New Roman (8.74(a)(8)) goes to far.</p> <p>* * *</p> <p>Reasonable minds can disagree about what's easiest on the eyes (I can read Times New Roman all day), but I don't think it's fair for one person's idea of what's readable (Century Schoolbook) to come at the</p>	<p>The committees thank the commenter for this input. Based on this and other comments, the committees have deleted the proposal's prohibition on the use of Times New Roman.</p> <p>No response required.</p> <p>No response required.</p>

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			<p>expense of someone else's choice on the matter (whatever they prefer that's easiest on their eyes). At the risk of sounding like someone who's already read too much into this, I'm also going to say that I can't help but worry that this proposed rule unfairly favors the convenience of appellate justices and their staff (a small population) at the expense of practicing lawyers and their staff (a much larger body by comparison).</p> <p>(5) People Should Be Allowed to Use San Serif Fonts, Even if Some People Hate Them</p> <p>I understand that sans serif fonts can come off as too casual (I disagree with their use in pleadings), but this one (Century Gothic) is more readable than Arial and Tahoma, and even some of the fancy serif fonts out there. Why shouldn't someone be allowed to use it in a brief? It gets the job done.</p> <p>* * *</p> <p>[The commenter provided extensive comments, not all of which addressed specific provisions of the proposal. Certain portions of the comment therefore are not included in this chart.]</p>	<p>The committees appreciate the commenter's input. The committees decline to recommend allowing sans-serif fonts in body and footnote text because of its more limited readability. However, the committees have added an allowance for sans-serif fonts in headings, subheadings, and captions.</p>
13.	Appellate Practice Section of the San Diego County Bar Association by Heather Guerena, Chair	NI	The Appellate Practice Section of the San Diego County Bar Association shared with its membership the proposed changes to the California Rules of Court contained in Invitation to Comment SPR19-07. After canvassing its membership and discussing the proposed changes among its board and other interested members, the Appellate Practice Section	The committees thank the commentator for this input.

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			<p>has the following comments about those proposed changes:</p> <p>General Comments: The Invitation to Comment requested comments on these two general topics.</p> <p>1. Does the proposal appropriately address the stated purposes?</p> <p>The Executive Summary of the Invitation to Comment states that the purposes of the proposed changes include creating uniform formatting rules to provide consistency and clarity across all the appellate courts in California. The Appellate Practice Section believes that practitioners benefit from having, to the extent possible, one set of rules for all California appellate courts and that the proposed rules generally seem to promote the stated purposes. The Appellate Practice Committee further believes that acceptance of the proposed changes would be enhanced if the Judicial Council also expressed that the proposed rule changes are intended to improve the readability of electronic filings on electronic readers used by judicial officers and staff and that the proposed changes are based upon the courts' experiences with electronic filings and electronic readers to date. Users should want their filings to be readable without difficulty and are more likely to embrace the proposed changes if they</p>	<p>The committees appreciate this feedback.</p>

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			<p>understand that these changes are designed to ease reading on electronic reading devices.</p> <p>Because the proposed rules would bring about a major change from the days of paper filing documents, the Appellate Practice Committee suggests that the Judicial Council organize a webinar with speakers drawn from court staff, practitioners, and perhaps software vendors to explain the rules and address issues practitioners may encounter in implementing them. Such a webinar should be broadcast statewide by video and audio over the internet, and it should be recorded for playback by anyone not able to attend the live session. Questions about the changes also should be solicited in advance of the webinar and during the webinar itself.</p> <p>2. Are there terms that need further reference or definition, such as the words “omission page” or file-type references like “.mp3” or “hyperlink”? The terms “omission page” and “hyperlink” in particular may not be well-known to all electronic filers, especially those who have limited experience to date with electronic filing. Users of the rules would benefit from providing some definition or description of these terms, as is discussed further below in the Appellate Practice Section’s comments to specific proposed rule changes.</p> <p>Specific Comments:</p>	<p>The committees support the suggestion for a webinar, which could be offered by a bar group or continuing education provider. The Judicial Council’s Center for Judicial Education and Research (CJER) provides educational services that support continuing professional development for justices, judges, subordinate judicial officers, and court personnel. CJER does not organize or provide education for practitioners.</p> <p>The committees thank the commenter for this input. The committees note that an advisory committee comment gives two examples of the type of information to include in identifying pages omitted. Because hyperlinks are encouraged but not required, the committees decided not to define this reasonably well-known term.</p> <p>No response required.</p>

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

SPR19-07

Appellate Procedure: Uniform Formatting Rules for Electronic Documents

(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)

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			<p>The Appellate Practice Section’s specific comments to the proposed rule changes are as follows: Rule 8.40 No comments. Rule 8.44 No comments. Rule 8.71(a) No comments.</p> <p>Rule 8.72 Rule 8.72(a)(1): Electronic filers should benefit from having courts publish, in both electronic and print formats, their electronic filing requirements. Such publications would be a logical place to include a statement that the requirements are intended to improve the readability of such filings on electronic readers.</p> <p>Rule 8.72(a)(2): As is proposed, the rules should retain the requirement that the courts take reasonable steps to provide notice of a problem that impedes or precludes electronic filing. Any such notice likely would raise the question whether, and to what extent, the stated problem requires or supports a postponement of filing deadlines. To minimize uncertainty among filers and unnecessary phone calls or other communications to court staff after each notice is given, the proposed rule should also state something like: “Any such notice should state whether, and to what extent, any filing deadlines affected by the problem are extended.”</p> <p>Rule 8.72(b): Paragraph (1) of this proposed rule incorporates current Rule 8.74(a)(3), which requires</p>	<p>The committees thank the commenter for this input.</p> <p>The committees thank the commenter for this input. The proposal does not require courts to provide anything more than notice to the parties because under rule 8.71 filing a document electronically does not alter any filing deadline. Unless a notice from a court provides otherwise, it would be incumbent on a party or attorney adversely affected by a problem that impedes or precludes electronic filing, upon receipt of notice of the problem, to seek appropriate relief from the court.</p> <p>The committees thank the commenter for this input. The committees decline to add a mental-</p>

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			<p>each filer to “take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court’s electronic filing system and to other users of that system.” This rule seems likely to cause confusion as to what is required. The Appellate Practice Section understands that if a filer otherwise complies with the formatting rules for electronic documents, particularly those requiring filings to be in portable document format (PDF), the filing should be free of viruses given current technology. The rule as written leaves it unclear whether filing in this format is a sufficient reasonable step and, if not, what additional steps a filer must take. The Appellate Practice Section suggests that proposed Rule 8.72(b)(1) be rewritten to state that “Each electronic filer must: (1) Comply with all electronic filing requirements in these rules and not intentionally file any document containing computer code, including viruses, that might be harmful to the court’s electronic filing system and to other users of that system.”</p> <p>Rule 8.74 Rule 8.74(a): The title to proposed Rule 8.74(a) is “Format requirements applicable to all electronic documents.” Consequently, this rule would apply not only to the briefs, applications, motions, etc. that have been prepared for original filing in the appellate court but also to all documents in an appendix, attachment, or exhibit that were first filed</p>	<p>state requirement to this provision. Based on this comment, however, the committees have recommended adding an advisory committee comment to clarify that more is required than not intentionally harming the court or other users, and that one reasonable step would be to use a commercial virus scanning program.</p> <p>The committees agree with the commenter that, as drafted and circulated for comment, the proposed amendments to rule 8.74 unintentionally encompassed documents that are not prepared for electronic filing in the first instance in the reviewing court. Based on this and other comments, the committees have made changes to the proposal, and have included an advisory</p>

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			<p>in some other forum. Proposed Rule 8.74(a) includes font, spacing, margin, and alignment requirements. Thus, as written, all documents filed in another forum from which an appeal might be taken would have to be in the format set by Rule 8.74(a) when originally filed or would be precluded from the record on appeal. The problem could be resolved by changing the title of Rule 8.74(a) to “Format requirements for all briefs, applications, motions, or other documents prepared for original filing in appellate court.”</p> <p>Rule 8.74(a)(3): The last sentence of proposed Rule 8.74(a)(3) states, “All bookmarks must be set to retain the reader’s selected zoom setting.” This requirement is not likely to be understood by all users, especially those without experience with electronic filing. Also, at least for filers using current Adobe Acrobat to generate pdf documents, this requirement imposes a significant burden on the filer. Current Adobe Acrobat by default sets zoom as “custom” and does not seem to allow this setting to be changed other than by manually changing the zoom setting for each bookmark to “inherit zoom.” Because this setting is buried several layers down in Adobe Acrobat, not only must the user change the setting for each bookmark, each such change requires a number of “clicks” to accomplish the change.</p>	<p>committee comment to make this requirement clearer.</p> <p>The committees appreciate the commenter’s input on this proposal. The committees support the courts’ publishing instructions on how to comply with the bookmarking requirement.</p>

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			<p>The Judicial Council, which it is believed has more sway than individual attorneys with pdf software vendors, should on its own or in conjunction with local and statewide bar associations approach pdf software vendors, explain the issue, and request that the vendors change their software to allow the equivalent of “inherit zoom” either to be the default setting or to be easily changed to this setting at one time for all bookmarks rather than having to be changed bookmark-by-bookmark. Second, at least until such change has been made by the applicable software vendors, the rule should be written as permissive rather than as mandatory, such as “To maximize the readability of filings on electronic readers, bookmarks in the pdf software used by the filer should be set so that the screen retrieved by use of the bookmark maintains the zoom setting being used by the reader of the document.”</p> <p>Rule 8.74(a)(4): See comment to proposed Rule 8.74(b)(7) below.</p> <p>Rule 8.74(a)(6): Consistent with the comments below to proposed Rule 8.74(a)(13), and given the 25mb size limitation in proposed rule 8.74(a)(5), this rule should be rewritten to delete the reference to Power Point and to photographs and color components as follows: “Audio or video files must be manually filed. Audio files must be filed in .wav or mp3 format. Video files must be filed in .avi or .mp4 format.”</p>	<p>The committees appreciate the commenter’s input on this proposal. The committees acknowledge the suggestion concerning software vendors and will forward it to appropriate Judicial Council staff for consideration. The committees have decided that the benefits of the bookmarking requirement outweigh the burden on electronic filers, and decline to make the proposal’s bookmarking view voluntary.</p> <p>See response below.</p> <p>Based on this and other comments, the committees have modified this provision and the color component provision.</p>

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			<p>Rule 8.74(a)(7): The proposed rule would require all electronically filed documents to use a “proportionally spaced serif face” font. The only example given of an acceptable font is “Century Schoolbook,” and the only example given of a prohibited font is “Times New Roman.” The purpose of this rule seems to be to require a font most easily readable on electronic readers. A problem with mandating any particular font or fonts is that the names of fonts may differ among word processing programs. It also may be difficult for filers to determine whether any particular font is a proportionally spaced serif face font. The proposed rule as drafted might create further confusion because Times New Roman, the font the rule specifically disallows, is itself a proportionally spaced serif face font. The most-preferred font or fonts also may differ from court to court. This rule could be improved by permitting a court to provide by local rule a list of fonts acceptable to that court but not required by that court. With this change, any filer could file using Century Schoolbook in any court, but a filer also could file using other acceptable fonts that may be preferred by a particular court. Because the other fonts would be permitted but not required, allowing courts to provide a list of preferred fonts by local rule would not undermine the purpose of the proposed changes to provide statewide uniform rules.</p>	<p>Based on this and other comments, the committees have deleted the proposal’s prohibition on the use of Times New Roman, but the committees have preserved the rule’s preference for Century Schoolbook, which is considered to be one of the most readable fonts. The committees have chosen to favor uniformity over the existing patchwork of local rules, which make practice in the appellate courts more complicated than is necessary.</p>

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			<p>Rule 8.74(a)(12): This rule may cause some confusion as written. Because “hyperlink” is not defined, some users may not know what it means. Additionally, a filing could contain hyperlinks not only to legal citations but also to an appendix/record. The rule seems to be directed only at hyperlinks to legal citations, however, leaving it unclear whether the courts encourage hyperlinks to the appendix/record, as well. This should be clarified.</p> <p>Also, it has been the experience of some members of the Appellate Practice Section that commercially available software, such as that provided by Lexis or West, can be problematic, which may discourage users from providing hyperlinks if not required by the courts. If done correctly, hyperlinks would be to the benefit of the court and the parties. The Appellate Practice Section suggests that, apart from the proposed rules revisions, the Judicial Council approach vendors of hyperlink software to determine whether such software could be written and purchased by the courts to be applied by to electronic filings after they are filed in pdf rather than before they are filed by parties. If this is possible, then the courts could ensure that all documents to be read by the courts are hyperlinked. Whether such software could be incorporated into current court budgets, or whether there would need to be a per document fee imposed on filers, could be</p>	<p>Based on this and other comments, the committees have clarified the provision relating to hyperlinks. Because hyperlinks are encouraged but not required, the committees chose not to draft a definition for a reasonably well-known term. The committees support the courts’ publishing instructions on how to create hyperlinks.</p> <p>The committees acknowledge the suggestion concerning vendors of hyperlink software and will forward it to appropriate Judicial Council staff for consideration.</p>

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			<p>determined once the cost of any such software is known.</p> <p>Rule 8.74(a)(13): The Appellate Section of the San Diego County Bar Association supports the goal of establishing consistency with respect to electronic filing in all Appellate Districts. However, we have a concern with the prohibition against the electronic filing of any documents containing color expressed in the proposed Rule 8.74, subd. (a)(6) and (a)(13). The Executive Summary for SPR19-07 expresses that the purpose of these rules is to ease the burden on filers. We believe that requiring manual filing of any color documents in fact increases the burden on any filing party and increases the burden on the Courts in organizing their case files. In contrast, the ability to electronically file color documents, exhibits, etc., benefits all parties, including the Courts, by providing clarity and emphasis where it is necessary.</p> <p>This prohibition is especially problematic in the context of proposed Rule 8.74, subd. (b), which requires exhibits not to be filed as individual documents but rather as “volumes no larger than 25 megabytes.” The segregation and manual submission of color exhibits impacts the organization and order of any appendix or exhibit list. The same concern applies to the extent the filer is required to submit its brief manually. Moreover, if the purpose of this rule is to limit the size of files by</p>	<p>Based on this and other comments, the committees have confirmed that ACCMS allows for the filing of color components, and have removed the special filing requirements for documents with color components. Under the modified provisions, manual filing would be required when a filing with a color component exceeds the file-size requirements or in other limited circumstances under the rule.</p>

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			<p>limiting the color content, that concern is already addressed by the size limit articulated in proposed Rule 8.74, subd. (a)(5).</p> <p>At present, it appears that only the Third Appellate District restricts filers’ ability to electronically file color documents. (Local Rule 5, subd. (e)(7).) The Appellate Practice Section respectfully requests that the Judicial Council consider that the remainder of Appellate Districts have no such restriction and that imposing such a restriction on filers in all Districts creates an undue burden on the filers, as well as the Courts, as it negatively impacts the efficiency and economy associated with organizing and maintaining the manual and electronic portions of appellate case files. The proposed rules thus should not bar electronic filing of color documents within the 25 mb restriction but should allow the Third Appellate District to have a local rule barring color filing until such time as that District is able to accept color in electronically filed documents.</p> <p>Rule 8.74(b): As written, proposed Rule 8.74(b) seems to impose on all documents within its scope (including appendices under Rule 8.74(b)(3), trial transcripts under 8.74(b)(5), and trial exhibits under Rule 8.74(b)(6)) all the requirements of proposed Rule 8.74(a). Although some subparts of Rule 8.74(a) (such as (1)-(7)) could be applied to documents such as appendices, transcripts, and exhibits, other subparts (such as (8)-(11)) would not</p>	<p>No response required.</p> <p>The committees thank the commenter for this input. Based on this comment and others, the committees have modified the proposal to clarify the requirements of rule 8.74, and to eliminate the cross-references between rule 8.74 and rules 8.40 and 8.204(b). The proposal now would amend subdivision (b) of rule 8.204 to apply only to documents filed in paper form, and to add the</p>

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			<p>seem to apply to these documents other than the extent to which cover pages and tables or indices are prepared for them for use in the appellate courts. See comment above to the proposed title of Rule 8.74(a). The following language should be added at the beginning of the text of each of proposed Rule 8.74(b)(3) and (5): “Except for cover pages, tables, or indices prepared for an appellate court, . . .” In addition, for each of 8.74(b)(3) and (5), the phrase “must comply with this rule” should be changed to “must comply with parts (a)(1) through (a)(7) of this rule . . .” If the title to proposed Rule 8.74(a) is changed as suggested above, there may not need to be any changes to proposed Rule 8.74(b)(6).</p> <p>Rule 8.74(b)(7): The proposed rules and California Rules of Court, rules 8.45, 8.46 and 8.47, do not provide clear instructions regarding the method for separate electronic submittal of confidential or sealed records. In order to provide clarity and uniformity, and to lessen the burden on Court Staff in answering inquiries pertaining to confidential and sealed filings, the method of electronic submittal should be specified, or if such method is set forth on the Truefiling webpage a reference to where that information can be found should be included. In addition, the rules should provide filers with a more concrete description of what language/references should be included on an omission page.</p>	<p>relevant provisions of rules 8.40(c) and 8.204(b) to rule 8.74.</p> <p>The suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain the suggestion for future consideration. The committees thank the commenter for this input. To the extent the commenter seeks additional guidance, the proposal includes an advisory committee comment that gives examples of descriptions for an omission page.</p>

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			<p>Rule 8.204 No comment. Rule 8.252 No comment.</p>	
14.	Superior Court of Los Angeles County	A	<p>Does the proposal appropriately address the stated purpose? Yes, this is an attempt to provide consistency in the way electronic documents are filed in reviewing courts.</p> <p>Are there terms that need further reference or definition, such as the words “omission page” or file-type references like “.mp3” or “hyperlink”? Yes, it would be beneficial to litigants to have a glossary description of terms available through hyperlink in the rule or as an attachment to assist in clarifying technical terms.</p> <p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <p>Would the proposal provide cost savings? If so, please quantify. No, the cost savings for filing electronically have or will be realized through other court initiatives. This proposal addresses consistent formats for filing electronic documents.</p> <ul style="list-style-type: none"> • 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>Implementation requirements include training for</p>	<p>The committees appreciate the commenter’s input on this question.</p> <p>The committees appreciate the commenter’s input on this question. Because hyperlinks are encouraged but not required, the committees have chosen not to define this reasonably well-known term. The committees support courts’ publishing instructions on how to create hyperlinks.</p> <p>The committees appreciate the commenter’s input on this question.</p> <p>The committees appreciate the commenter’s input on this question.</p>

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			<p>staff (1-2 hours) and possible modification to the case management system(s) to ensure that the required filing elements of the rule are contained in the documents accepted.</p> <ul style="list-style-type: none"> • Would 3 months from Judicial Council–approval of this proposal until its effective date provide sufficient time for implementation? Yes, three months is sufficient contingent upon the programming updates to the Case Management Systems being completed. 	<p>The committees appreciate the commenter’s input on this question.</p>
15.	<p>Superior Court of San Diego County by Mike Roddy, Executive Officer</p>	NI	<ul style="list-style-type: none"> • Does the proposal appropriately address the stated purpose? Yes. • Are there terms that need further reference or definition, such as the words “omission page” or file-type references like “.mp3” or “hyperlink”? No. • Would the proposal provide cost savings? If so, please quantify. Yes. It would save the costs of printing copies for the parties. The exact costs are unknown. • 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? Implementation requirements for court would be: Training for staff at the COC I, II, III & Lead positions. The expected number of hours are unknown; however, it should be very minimal 	<p>The committees appreciate the commenter’s input on this question.</p> <p>The committees appreciate the commenter’s input on this question.</p> <p>The committees appreciate the commenter’s input on this question.</p> <p>The committees appreciate the commenter’s input on this question.</p>

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			<p>training for staff. Possible need to adopt procedures for non-compliance.</p> <ul style="list-style-type: none"> • Would 3 months from Judicial Council–approval of this proposal until its effective date provide sufficient time for implementation? Yes. <p>No additional comments.</p>	<p>The committees appreciate the commenter’s input on this question.</p>
16.	E-filing working group staff of the Supreme Court	NI	<p>Comments regarding Proposed Appellate Court E-Filing Rules, SPR19-07</p> <p>1) Rule 8.74(a)(1), requirement to “convert” paper documents: The description of the proposed rule states, “To ensure text searchability, the proposal requires a filer to ‘convert’ a paper document to electronic form, <i>rather than scanning a printed document.</i>” (Italics added) Although the proposed rule itself does not explicitly exclude scanning the document, assuming that is the intent, there are documents, e.g., some exhibits submitted in support of a habeas corpus petition, that are not amenable to being “converted” by a means other than scanning the document. These exhibits often include handwritten documents such as letters, forms with extensive handwriting, photographs, charts, diagrams, etc. It is unclear how such documents could be practicably converted by a means other than scanning, a scanned image of the document typically is sufficient for the purposes for which the document has been filed, and it is more efficient to have these documents part of the electronic volume of exhibits rather than, e.g.,</p>	<p>The committees thank the commenter for this input. Based on this comment and others, the committees have modified the proposed amendments to rule 8.74 to address PDF conversion and scanning of paper-only documents. The committees also have proposed adding an advisory committee comment on this provision addressing the types of documents mentioned by the commenter.</p>

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			<p>having them separately filed as a paper document. It may, therefore, be beneficial to have an exception in the rule for such documents. Possible language could be as follows:</p> <p>If an electronic filer must file a document that the electronic filer possesses only in paper format, the electronic filer must convert the document to an electronic document by a means that complies with this rule. <u>Use of a scanned image of a paper document is not a permitted means of conversion unless the document cannot practicably be converted into a text-searchable file, for example, if the document is entirely or substantially handwritten, a photograph, or a graphic such as a chart or diagram that is not primarily text-based.</u> The printing of an electronic document must not. . . .</p> <p>2) Rule 8.74(b)(7), additional requirements for sealed and confidential records: The language of the proposed rule could be revised to be more consistent with the terminology in the rules addressing sealed and confidential records. In addition, the proposed rule appears focused on the procedure for full-page redactions of documents. Typically, parties must submit and, upon ruling by the court, are permitted to file redacted and unredacted versions of the document at issue. In order to maintain the same page numbering in the two versions of the document, there should be an</p>	<p>Based on this comment and others, the committees have modified the provision concerning sealed and confidential documents.</p>

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			<p>“omission page” for each page that has been redacted, not merely a single page representing a range of pages. A suggested revision in clean and redline versions follows.</p> <p>Proposed Rule 8.74(b)(7) as revised: <i>Sealed and confidential records:</i> Under rule 8.45(c)(1), electronic records that are sealed or confidential must be filed separately from publicly filed records. If one or more pages are omitted from a publicly filed record and filed separately as a sealed or confidential record, an omission page or pages must be inserted in the publicly filed record at the location of the omitted page or pages. The omission page(s) must provide a title for the page(s) omitted that does not disclose the substance of the page(s). The omission page(s) must be paginated consecutively with the rest of the publicly filed record, must be bookmarked, and must be listed in any indexes included in the publicly filed record. The PDF counter for the omission page(s) must match the page number(s) of the omission page(s). Separately filed sealed or confidential records must comply with this rule and rules 8.45, 8.46, and 8.47.</p> <p><i>Sealed and confidential records:</i> Under rule 8.45(c)(1), electronic records that are <u>sealed or confidential</u> or under seal must be filed separately from publicly filed records. If one or more pages are omitted from a source document <u>publicly filed record</u> and filed separately as a sealed or confidential</p>	<p>The committees appreciate the suggested changes submitted by the e-filing working group staff, and have recommended adopting most of them.</p>

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	Commenter	Position	Comment	Committees Responses
			<p>record, an omission page or pages must be inserted in the source document publicly filed record at the location of the omitted page or pages. The omission page(s) must identify provide a title for the type of page(s) omitted; that does not disclose the substance of the page(s). The omission page(s) must be paginated consecutively with the rest of the source document, it publicly filed record, must be bookmarked, and it must be listed in any indexes included in the source document publicly filed record. The PDF counter for the omission page(s) must match the page number(s) of the omission page(s). Separately filed sealed or confidential or sealed records must comply with this rule and rules 8.45, 8.46, and 8.47.</p> <p>3) Rule 8.78(a)(2)(B), consent to electronic service: The proposed rules do not revise this rule. However, the equivalent rule in the trial court rules, Rule 2.251(b)(1)(B), was recently revised to be in compliance with newly enacted section 1010.6 of the Code of Civil Procedure, which, at least in the trial courts, no longer permits use of the act of electronic filing to serve as consent. Rather, affirmative consent is required. (See Report to the Judicial Council for September 21, 2018 Meeting, Item 18-141, pp. 3 & 9, available at https://jcc.legistar.com/View.ashx?M=F&ID=6612001&GUID=E5CF50DA-2B58-487A-BBC3-A77A1A2ABAE3) Must or should rule 8.78(a)(2)(B) be similarly revised?</p>	<p>The suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will consider this suggestion during the next rules cycle.</p>

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

SPR19-07**Appellate Procedure: Uniform Formatting Rules for Electronic Documents****(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

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

	Commenter	Position	Comment	Committees Responses
17.	Kristin Traicoff Law Office of Kristin Traicoff Sacramento	NI	As an appellate practitioner, I believe proposed rule 8.74(a)(3) should be amended where it states: "Each electronic document must include..." It should, instead, provide that certain electronic documents are exempted from the bookmarking requirement -- such exemptions might include requests for extensions of time, service copies of supplemental records requests made to the trial court under Rule 8.340(b), and other short motions that do not contain the subsections that this rule appears to contemplate (for instance, a request that the Court of Appeal transmit a sealed record to counsel, a Motion to Augment the Record, etc). Perhaps this could be effectuated by amending the proposed rule text to provide that bookmarking is required for each electronic document that exceeds a certain number of pages. The purpose of my proposal is to save appellate counsel the undue burden of adding bookmarks to documents where, realistically, the court is unlikely to find the bookmarks useful or rely on them in any way.	The committees thank the commenter for providing input on this proposal. The proposal's bookmarking requirements apply to documents with certain components. The bookmarking requirements are intended to aid readers of all electronic documents. The committees appreciate that creating bookmarks will require additional time, but the utility of bookmarks for readers justifies any burden on filers imposed by this requirement.
18.	Norm Vance Berkeley	NI	The ban on Times New Roman in proposed rule 8.74(a)(8) is silly. The rule requires use of a "proportionally spaced serif font." Times New Roman is exactly that. It is perhaps the best known and most widely used example of such a font. I realize that certain courts in the state do not appear to like it. I, for one, do. I find it very readable. Is this really a necessary rule?	The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the proposal's prohibition on Times New Roman.

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