



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-048

For business meeting on September 25, 2020

Title

Appellate Procedure: Date and Time of Filing for Electronically Submitted Documents

Agenda Item Type

Action Required

Effective Date

January 1, 2021

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 8.77

Date of Report

August 28, 2020

Recommended by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Contact

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Executive Summary

The Appellate Advisory Committee recommends amending the rule regarding confirmation of receipt and filing of electronically submitted documents to clarify the date and time of filing. Among other things, rule 8.77 of the California Rules of Court currently addresses the receipt date of submissions received electronically after the close of business but is silent as to when a received document is deemed filed. The committee proposes amending rule 8.77 to state that an electronic document that complies with filing requirements is deemed filed on the date and time it was received by the court.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council amend rule 8.77 of the California Rules of Court to clarify the date and time of filing for documents submitted electronically, effective January 1, 2021.

The text of the amended rule is attached at page 5.

Relevant Previous Council Action

Rules 8.70 to 8.79, the appellate e-filing rules, were adopted effective July 1, 2010. Some provisions have been amended and renumbered since that time. Effective January 1, 2017, rule 8.77 was renumbered and amended to state the requirements for a court to give notice to the filer when a document is received by the court and when a document is accepted or rejected for filing.

Analysis/Rationale

Electronic filing allows for submission of documents at any time, even after a clerk's office is closed. Regardless of the date and time a document is submitted and received, however, the clerk's office needs time to confirm that the document complies with filing requirements. Such review by the clerk's office must be prompt, but it is not instantaneous for an electronically submitted document. Moreover, when a document is submitted after court business hours, the document will not be reviewed by the clerk's office before the next business day.

Under rule 8.77(a)(1), an electronically submitted document is initially "received" by the court, and a confirmation of receipt is generated. Rule 8.77(c) instructs that if a document is received after 11:59 p.m., it is considered received on the next court day.¹ Once a court clerk confirms that the document complies with filing requirements, a confirmation of "filing" indicating the date and time of filing is generated under rule 8.77(a)(2). However, rule 8.77 does not specify when the document is deemed filed.²

The California Lawyers Association, Committee on Appellate Courts, Litigation Section, suggested that the committee consider clarifying rule 8.77 to resolve any ambiguity about when an electronic document is filed. A member of the association reported that appellate courts have been determining the date and time of filing in different ways. Some courts deem compliant documents filed on the day they were received, but other courts deem them filed on the day the clerk approves the document for filing.

A practitioner reported electronically submitting a writ petition for filing in an appellate district on Day 1 at 5:30 p.m. A court clerk reviewed the materials on Day 2 and determined that the filing requirements had been satisfied. The clerk filed the document on Day 2 even though it was

¹ "A document that is received electronically by the court after 11:59 p.m. is deemed to have been received on the next court day." (Cal. Rules of Court, rule 8.77(c).)

² Some California appellate courts also address this topic by local rule. The local rules for the Courts of Appeal, First and Fifth Appellate Districts, state: "Filing documents electronically does not alter any filing deadlines. In order to be timely filed on the day they are due, all electronic transmissions of documents must be completed (i.e., received completely by the Clerk of the Court) prior to midnight." (Ct. App., First Dist. and Fifth Dist., Local Rules, rules 12(f) and 8(g), respectively, Electronic Filing.) Additionally, the Third Appellate District provides: "Electronic filing does not alter any filing deadlines. An electronic filing not completely received by the court by 11:59 p.m. will be deemed to have been received on the next court day." (Ct. App., Third Dist., Local Rules, rule 5(j), Electronic Filing.) The local rules for the Second, Fourth, and Sixth Districts do not address the topic.

received by the court on Day 1. If the litigant's writ petition had been due on Day 1, it would have been untimely.

The amended rule would alleviate concerns of litigants and practitioners that their timely, compliant submissions may be deemed untimely solely because they were e-filed after a clerk's office's hours. The proposal is of particular importance when an appellate due date is jurisdictional (e.g., a statutory writ).

Policy implications

A uniform time-of-filing provision will assist with the consistent handling of electronically submitted documents and is consistent with California Rules of Court, rule 1.20, which states, "Unless otherwise provided, a document is deemed filed on the date it is received by the court clerk." (Cal. Rules of Court, rule 1.20.) Rule 8.77(a)(2) will now provide that an electronically submitted document that complies with filing requirements is deemed filed on the date and time it was received by the court as stated in the confirmation of receipt.

Comments

This proposal was circulated for public comment from April 10 to June 9, 2020, as part of the spring rules cycle. The committee received comments from five bar associations and courts, including the Superior Court of San Diego County and the Superior Court of Orange County, Family Law Division. One court commenter answered the questions posed in the proposal and indicated that the proposal appropriately addressed the stated purpose; three commenters agreed with the proposal; and one commenter agreed with the proposal if modified. The committee considered all comments; the primary issue raised is discussed below.

Receipt by the court versus submission to the electronic filing service provider

The proposed rule circulated using the date and time of receipt by a court of an electronic submission from an electronic filing service provider (EFSP) as the date and time of filing. Under current practice, a document to be filed electronically reaches an appellate court through an EFSP. Although courts generally receive e-filers' submissions from the EFSP almost instantaneously, the committee recognized the possibility that transmission delays could occur. For example, an e-filer might submit a document just before midnight, but the court might not receive the document from the EFSP until after midnight because of a transmission delay between the EFSP and the court. Given the possibility of delay, the committee considered two alternatives to using the date and time of receipt as the date and time of filing: (1) using the date and time of submission to the EFSP as the date and time of filing, or (2) imposing an after-hours deadline (such as 11:45 p.m.) for submission of documents to an EFSP to make it more likely that a court will receive a submission before midnight.

With possible transmission delays in mind, the invitation to comment asked commenters to document any transmission delays between (1) the date and time of submission to an EFSP, and (2) the date and time of receipt by a court. Only one commenter, the San Diego Bar Association, Appellate Practice Section, addressed the potential for delays. The commenter canvassed its members but did not document any of its members' experiences with transmission delays using

TrueFiling. Instead, the commenter urged the committee to use the date and time of submission by the e-filer to the EFSP as the date and time of filing—one of the two alternatives considered—based on the EFSP’s User Guide publication showing an example from 2013. The committee is not persuaded to change the proposal as suggested without additional information. Absent real-world examples of transmission delays, the committee understands that transmission is almost instantaneous, and recommends using receipt by the court, over receipt by the EFSP, as proposed. The committee notes that the rule also allows an e-filer to file a motion to accept a document as timely filed if a deadline is not met because of delayed delivery. (Cal. Rules of Court, rule 8.77(d).) If the committee becomes aware of delays that cause deadlines to be impacted, the committee will reconsider the issue in a future rulemaking cycle.

A chart with the full text of the comments received and the committee’s responses is attached at pages 6–10.

Alternatives considered

The committee considered no action but determined that the experience of litigants and practitioners warrants the change proposed. As discussed above, the committee considered using the date and time of submission to the EFSP as the date and time of filing. The committee also considered imposing an after-hours deadline (such as 11:45 p.m.) for submission of documents to an EFSP to make it more likely that a court will receive a submission before midnight.

Fiscal and Operational Impacts

The committee anticipates no significant fiscal or operational impacts and no costs of implementation other than informing courts and litigants of the new rule amendments.

Attachments and Links

1. Cal. Rules of Court, rule 8.77, at page 5
2. Chart of comments, at pages 6–10

Rule 8.77 of the California Rules of Court is amended, effective January 1, 2021, to read:

Rule 8.77. Actions by court on receipt of ~~electronic filing~~ electronically submitted document; date and time of filing

(a) Confirmation of receipt and filing of document

(1) *Confirmation of receipt*

When the court receives an electronically submitted document, the court must arrange to promptly send the electronic filer confirmation of the court's receipt of the document, indicating the date and time of receipt by the court. ~~A document is considered received at the date and time the confirmation of receipt is created.~~

(2) *Filing*

If the electronically submitted document received by the court complies with filing requirements, the document is deemed filed on the date and time it was received by the court as stated in the confirmation of receipt.

~~(2)~~(3) *Confirmation of filing*

~~If the document received by the court under (1) complies with filing requirements,~~
When the court files an electronically submitted document, the court must arrange to promptly send the electronic filer confirmation that the document has been filed. The filing confirmation must indicate the date and time of filing as specified in the confirmation of receipt, and ~~is proof that the document was filed on the date and at the time specified.~~ The filing confirmation must also specify:

(A) Any transaction number associated with the filing; and

(B) The titles of the documents as filed by the court.

~~(3) (4)– (4) (5)~~ * * *

~~(b)–(e)~~ * * *

SPR20-04

Appellate Procedure: Date and Time of Filing for Electronically Submitted Documents (Amend Cal. Rules of Court, rule 8.77)

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

	Commenter	Position	Comment	Committee Response
1.	California Lawyers Association Committee on Appellate Courts, Litigation Section By Saul Bercovitch Director of Governmental Affairs Leah Spero, Chair Sacramento	A	The Committee supports the proposal to amend rule 8.77 to state that an electronic document that complies with filing requirements is deemed filed on the date the document was received by the court. This proposal recognizes the importance of establishing a uniform practice among the Courts of Appeal in filing electronically submitted documents, and in providing practitioners with certainty as to when their electronically submitted documents will be deemed filed by the courts.	The committee thanks the commenter and notes its support for the proposal.
2.	Orange County Bar Association By Scott B. Garner, President	A	No specific comment provided.	The committee notes the commenter's support for the proposal.
3.	San Diego Bar Association Appellate Practice Section By Helen Izra, Chair	AM	<p>The Appellate Practice Section of the San Diego County Bar Association ("APS") appreciates the opportunity to review and comment on the proposed amendments SPR20-04 to the California Rules of Court that relate to the filing date for electronically filed documents. After canvassing our membership and forming a subcommittee to discuss the proposed changes, we respectfully submit the following comments.</p> <p>The APS urges that a document be deemed filed on the date and time a party submitted it to an Electronic Filing Service Provider ("EFSP"). Currently, the proposed amendment would change rule 8.77 to state that "an electronic document that complies with filing requirements is deemed filed on the date and time it was received by the court." Invitation to Comment SPR20-04 p. 1, at <</p>	<p>The committee thanks the commenter and notes its support for the proposal if modified.</p> <p>The committees appreciate the commenter's concerns relating to a possible delay between a filer's submission to an Electronic Filing Service Provider ("EFSP") and the EFSP's transmission of that submission to the court. Despite the example set out in the TrueFiling User Manual, which is a 2015 publication that reflects a 2013 example, the committee understands that the transmission between the two is virtually</p>

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

SPR20-04

Appellate Procedure: Date and Time of Filing for Electronically Submitted Documents (Amend Cal. Rules of Court, rule 8.77)

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

	Commenter	Position	Comment	Committee Response
			<p>https://www.courts.ca.gov/documents/spr20-04.pdf> Problems may arise, however, if there is a delay between when the filer submits to the EFSP and when the EFSP submits to the court.</p> <p>The EFSP utilized by most California courts, TrueFiling, often imposes a delay between when the filer submits to the system and when the system transmits the document to the court. For example, the TrueFiling User Manual shows an example of the Filing Detail in a hypothetical case. That Filing Detail indicates that the system received a filing at 8:07 p.m. That document was conditionally accepted by TrueFiling at 8:19 p.m. It was not until 8:27 p.m. that the system reflects “Payment received. Filing officially accepted and filed.” (TrueFiling User Guide, Release 1.0.36 p. 90, at <http://www.truefiling.com/documentation/UserGuide.pdf>)</p> <p>A problem, therefore, could arise if a filer submits to an EFSP close to midnight. For example, if that filer submits to the EFSP at 11:30 p.m. on May 20, 2020 but the EFSP does not submit to the court until 12:01 am on May 21, 2020, the court will deem that document filed on May 21, 2020. If the filer had a deadline of May 20, 2020, the document would be late even though the filer submitted it to the EFSP before the deadline.</p>	<p>instantaneous. If delays like those described in the example are occurring in practice, the committee is not aware of them. However, if e-filers do experience any issues like the one described in the comment, the committee is interested in hearing about them and with that information, the committee would consider further revisions to the rule’s language in a future rulemaking cycle.</p> <p>The committee is especially interested in hearing from any e-filers who experience delays of this duration, and any issues with deadlines being impacted.</p>

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

SPR20-04

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

	Commenter	Position	Comment	Committee Response
			Due to the problems caused by this delay, the APS therefore recommends that the proposed rule 8.77, subdivision (a)(1) instead read as follows: “When the court receives an electronically submitted document, the court must arrange to promptly send the electronic filer confirmation of the court’s receipt of the document, indicating the date and time of receipt by the court. A document is considered received at the date and time the filer submitted it to the Electronic Filing Service Provider.”	The committee will reconsider in a future rulemaking cycle the proposed language if users bring examples of transmission delays in practice.
4.	Superior Court of Orange County Family Law Division	NI	No comments on this proposal as a whole. Request for Specific Comments Does the Proposal appropriately address the stated purpose? Yes The proposed rule uses the court’s receipt date and time as the date and time of filing because transmission from the electronic filing service provider to the court is generally instantaneous. Would it be more appropriate, however, to use the date and time of submission to the EFSP as the date and time of filing? Or would another alternative prove more workable? If an alternative is appropriate, describe the alternative and explain why it would be preferable to the instant proposal.	The committee thanks the commenter for the responses to the questions posed in the Invitation to Comment. No further response required.

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

SPR20-04

Appellate Procedure: Date and Time of Filing for Electronically Submitted Documents (Amend Cal. Rules of Court, rule 8.77)

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	Commenter	Position	Comment	Committee Response
			<p>The proposed rule is appropriate, since transmission is instantaneous for most filings. There have been a few instances where the submission gets stuck, but it's rare. For those that do get delayed, once the issue is resolved, the court is able to retrieve the original date and time of submission.</p> <p>Can you document one or more transmission delays between (1) the date and time of submission to an EFSP, and (2) the date and time of receipt by a court? If so, would an after-hours submission deadline adequately address such a transmission delay, and if so, what would the deadline be?</p> <p>Yes, but it doesn't happen often.</p> <p>Would the proposal provide cost savings? If so, please quantify.</p> <p>No foreseeable savings or costs to implement.</p> <p>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 CMS's, or modifying CMS's?</p> <p>In Orange County, appeals are not handled via eFiling. Implementing this as a new process would require a revision of procedures and minimal training hours.</p>	<p>The committee thanks the commenter for this information.</p> <p>No further response required.</p> <p>No further response required.</p> <p>The committee thanks the commenter for the input, but notes that this rule applies to the appellate courts, not the superior courts.</p>

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

SPR20-04

Appellate Procedure: Date and Time of Filing for Electronically Submitted Documents (Amend Cal. Rules of Court, rule 8.77)

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

	Commenter	Position	Comment	Committee Response
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes How well would this proposal work in courts of different sizes? For those courts that process appeals via eFiling this should work well for courts of any size.	No further response required. No further response required.
5.	Superior Court of San Diego County By Mike Roddy Court Executive Officer	A	No specific comment provided.	The committee notes the commenter's support for the proposal.

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