



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-161

For business meeting on September 25, 2020

Title

Appellate Procedure: Consent to Electronic Service

Agenda Item Type

Action Required

Effective Date

January 1, 2021

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 8.25, 8.72, and 8.78; revise form APP-009-INFO

Date of Report

August 28, 2020

Recommended by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Contact

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Executive Summary

To clarify the procedures for electronic service, or e-service, in the Supreme Court and the Courts of Appeal, the Appellate Advisory Committee recommends amending certain service and e-filing rules and revising an information sheet. Rules 8.25, 8.72, and 8.78 of the California Rules of Court would be amended, and form APP-009-INFO would be revised, to reflect the procedures for e-service in these reviewing courts, and to distinguish appellate procedure under these rules in light of recent amendments to the Code of Civil Procedure that address e-service in the trial courts.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Amend rule 8.25 of the California Rules of Court to reflect actual practice for delivery of electronic proofs of service, and amend the accompanying advisory committee comment to clarify e-service consent procedure in the Supreme Court and Courts of Appeal;

2. Amend rule 8.72 to confirm that furnishing an email address does not necessarily mean that a party has authorized e-service because a party may opt out of e-service under rule 8.78(a)(2)(B);
3. Amend rule 8.78 and its accompanying advisory committee comment to reflect existing appellate practice concerning agreement to e-service through an electronic filing service provider (EFSP), and to exempt courts from the e-service rules applicable to parties; and
4. Revise form APP-009-INFO to clarify that Code of Civil Procedure section 1010.6(a)(2)(A)(ii) addresses e-service in the trial courts, or superior courts, including their appellate divisions, and that rule 8.78 addresses e-service in the Courts of Appeal, and to reflect the option of using an EFSP to e-serve a document.

The text of the amended rules and the revised form is attached at pages 8–13.

Relevant Previous Council Action

Rule 8.25, adopted as rule 40.1, addresses service, filing, and filing fees. There are no relevant previous amendments to the rule.

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 8.72 was revised to state additional responsibilities of the court. At the same time, rule 8.78 was renumbered from rule 8.71, and amended to (1) allow a party who files a document electronically to indicate the party's preference to be served paper copies, by filing a notice with the court and serving it on the other parties; (2) apply the rule to nonparties who agree to or otherwise are required to accept electronic service or to electronically serve documents; (3) provide that a proof of electronic service need not state that the person making service is not a party; and (4) delete the requirement that a proof of electronic service state the time of service.

Analysis/Rationale

Effective January 1, 2018, the Legislature amended Code of Civil Procedure section 1010.6 to authorize electronic service only on persons who have expressly consented to receive electronic service in that specific action in the trial court.¹ The trial court and appellate court rules had allowed the act of electronically filing alone to evidence consent to receive electronic service, but the 2018 amendments to section 1010.6 eliminated this option for trial courts. As amended, subdivision (a)(2)(A)(ii) states:

For cases filed on or after January 1, 2019, if a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of the document is not authorized unless a party or other person has expressly consented to receive electronic service in that specific action or the court has

¹ All further unspecified statutory references are to the Code of Civil Procedure.

ordered electronic service on a represented party or other represented person under subdivision (c) or (d). Express consent to electronic service may be accomplished either by (I) serving a notice on all the parties and filing the notice with the court, or (II) manifesting affirmative consent through electronic means with the court or the court's electronic filing service provider, and concurrently providing the party's electronic address with that consent for the purpose of receiving electronic service. The act of electronic filing shall not be construed as express consent.

(Code Civ. Proc., § 1010.6(a)(2)(A)(ii).)

Subdivision (e) directs the Judicial Council to “adopt uniform rules for electronic filing and service of documents *in the trial courts of the state*, which shall include statewide policies on vendor contracts, privacy, and access to public records, and rules relating to the integrity of electronic service.” (§ 1010.6(e) (emphasis added).) There are no provisions in section 1010.6 that expressly speak to appellate court proceedings or to the adoption of rules for electronic service in the appellate courts.²

It appears that the 2018 amendments to section 1010.6 only apply to the trial courts, not to the appellate courts, and that because section 1010.6 and its legislative history are silent about e-service in the appellate courts, the existing procedures in the Supreme Court and the Courts of Appeal do not need to change. To clarify the procedures in these reviewing courts, the committee therefore proposes amending rules 8.25, 8.72, and 8.78 and revising form APP-009-INFO to affirm that express consent to electronic service is not required from every party in each specific appellate proceeding.

The committee recommends making the following clarifying changes to the rules:

Proof of service

Rule 8.25 establishes general requirements relating to serving and filing documents in reviewing courts, including requirements relating to proof of service. Currently, however, this rule does not reflect that a proof of service may be generated by an EFSP. This amendment clarifies that, if a document is to be served electronically by the EFSP, a proof of service need not be attached to the document presented for filing because one will be generated by the EFSP.

Responsibilities of e-filers

Rule 8.72 presently requires e-filers to furnish an email address at which they agree to accept service. The proposal acknowledges that furnishing an email address does not necessarily mean a party has authorized e-service because a party may opt out of e-service under rule 8.78(a)(2)(B).

² References herein to “appellate courts” and “reviewing courts” do not include the appellate divisions of the superior courts.

Electronic service

The proposal amends rule 8.78(a)(2)(B) to reflect existing appellate practice. Although the rule has long provided that the act of electronically filing any document with the court is deemed to show a party's agreement to e-service, the actual practice has been to rely on a party's registration with the court's EFSP and concurrent provision of an email address—prerequisites to electronically filing any document with the court—as a basis for showing agreement to e-service. This proposed change maintains the status quo with respect to e-filing and e-service in the Supreme Court and the Courts of Appeal, and more accurately reflects how parties authorize e-service in these courts.

The proposal also amends the advisory committee comments to rules 8.25 and 8.78, and revises form APP-009-INFO, to clarify that e-service consent procedures in the Supreme Court and the Courts of Appeal are governed by these appellate rules, not section 1010.6(a)(2)(A)(ii).

Finally, the proposal exempts courts from the e-service rules applicable to parties, reflecting that courts send notifications and transmit documents rather than serving documents on parties. No changes are proposed with respect to e-service on courts.

Policy implications

In the appellate courts, e-filing and e-service are cost effective and convenient options for most individuals. With access to the internet, individuals may participate in appellate proceedings even if they do not have access to transportation or a permanent mailing address. E-filing and e-service eliminate the need and associated costs of paper, printers, copiers and fax machines, and obviate barriers like having to take paper documents to a post office or other courier to effect service and to a courthouse for filing.

Although e-filing and e-service are conveniences for most, it has been reported that they could disadvantage others, including those in rural and low-income households who do not have regular or reliable internet access. The committee acknowledges that internet access is not universally available in California, and it is committed to providing equal access to courts. The e-filing and e-service rules exempt self-represented litigants from the requirement to file documents electronically (Cal. Rules of Court, rule 8.71(a)), and include an option allowing individuals to choose to be served paper copies at a specified address (Cal. Rules of Court, rule 8.78(a)(2)(B)). This proposal makes no changes to these options and, in the committee's view, does not impose any additional burdens on self-represented litigants or individuals without consistent access to the internet.

Experience and other practicalities support maintaining existing appellate procedures, despite recent changes to the procedures in the trial courts. E-filing and e-service in the appellate courts and the trial courts are in different stages of implementation. The Judicial Council first adopted rules for e-filing and e-service in the appellate courts in 2010 as a pilot project in the Court of Appeal, Second Appellate District, and then in 2012 for all appellate courts. Last year, the Appellate Advisory Committee proposed instituting mandatory e-filing with statewide formatting requirements (subject to certain exceptions), effective January 1, 2020, which the

council approved. Consistent with mandatory e-filing in the appellate courts, the appellate rules treat e-filing as agreement to receive e-service unless a party opts out of e-service. (Cal. Rules of Court, rule 8.78(a)(2)(B).) As for the trial courts, e-filing was authorized in 2012, when the Legislature enacted Assembly Bill 2073 (Stats. 2012, ch. 320). A pilot project on mandatory e-filing in the Superior Court of Orange County from 2013 was a success;³ as of 2019, 29 of the 58 superior courts provide e-filing and e-service to the public.⁴ Although the trial courts are making commendable progress in implementing e-filing, it nevertheless remains true that while all appellate courts uniformly rely on e-filing and e-service, only half of the trial courts have standardized the practice.

Comments

The proposed amendments were circulated for public comment as part of the spring 2020 comment cycle. Five commenters—three professional bar associations, one superior court, and one publisher—submitted comments on this proposal. Two commenters agreed with the proposal, and two agreed with the proposal only if modified. One commenter did not indicate a position but suggested language changes to rule 8.25. The committee has modified its proposal to address a suggestion concerning proof of service.

A court-rules publisher that provides information to firms practicing in California urged retaining the phrase “by any method permitted by the Code of Civil Procedure” in rule 8.25(a)(1), suggesting that its removal could cause confusion about how service may be accomplished. The committee recommends removing this phrase because it is too broad. (As one example, section 1017 provides for service by telegraph, which is not a permissible method of service in these reviewing courts.) Both the accompanying advisory committee comment and *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) provide guidance on how to serve documents in these courts.

The publisher also suggested revising the advisory committee comment to state expressly that section 1010.6(a)(2)(A)(ii)’s consent requirement is inapplicable in matters before the Supreme Court and Courts of Appeal. The committee concluded that the proposed new language for the advisory committee comments to rules 8.25 and 8.78 adequately explains that the appellate e-filing rules—not the title 2 trial court rules, which are derived from section 1010.6(a)(2)(A)(ii)—govern electronic service consent procedures in the Supreme Court and Courts of Appeal.

The Appellate Practice Section of the San Diego Bar Association agreed with the proposal, but suggested language for rule 8.25(a)(2) to more accurately reflect how e-service works if a party uses an EFSP to serve electronically a document. If an e-filer chooses to use the EFSP’s e-servicing option, the EFSP serves the document on selected recipients, and a proof of service is

³ See Judicial Council of Cal., *Report on the Superior Court of Orange County’s Mandatory E-Filing Pilot Project* (Sept. 30, 2014), www.courts.ca.gov/documents/lr-SC-of-Orange-e-file-pilot-proj.pdf.

⁴ See Judicial Council of Cal., *Report to the Legislature: State Trial Court Electronic Filing and Document Service Accessibility Compliance* (Dec. 23, 2019), <https://jcc.legistar.com/View.ashx?M=F&ID=7977274&GUID=AE037AC0-DC91-496B-83D9-CDCDE8D0674A>.

automatically generated. The e-filer does not physically attach a proof of service to the document presented for filing, as the rule currently provides. To bring the general proof-of-service provision into conformity with current practice, the committee recommends a minor change that was not circulated for public comment. The change codifies existing practice, as noted by the commenter, by adding alternative language to subdivision (a)(2), “or, if using an electronic filing service provider’s automatic electronic document service, the party may have the electronic filing service provider generate a proof of service.”

A chart with the full text of the comments received and the committee’s responses is attached at pages 14–20.

Alternatives considered

The committee considered proposing rules that would implement section 1010.6’s express consent requirements in the appellate courts. The committee concluded that such a significant change in procedure was not supported for at least three reasons. First, the Legislature did not address the appellate courts when it amended section 1010.6. Second, case filings might be delayed due to unexpected service requirements where the parties have been relying on e-service in the appellate courts for several years. Third, there could be substantial costs associated with directing the courts’ EFSPs to develop an opt-in option at case initiation.

The committee concluded that e-filing and e-service have proved to be successful in the appellate courts, and that their benefits outweigh any potential disadvantages. The committee also is not aware of any compelling reasons to adopt the trial courts’ practice at this time. The committee, therefore, proposes clarifying and maintaining existing appellate procedures for e-service.

The committee also considered leaving the appellate rules and information sheet unchanged at this time. Considering the trial courts’ e-service procedures, however, the committee was concerned that preexisting references to the Code of Civil Procedure in the appellate rules and information sheet could cause confusion for practitioners and litigants. The committee also recognized that the appellate rules did not fully reflect current practice and wanted the rules to be clearer about when e-service is authorized in the Supreme Court and the Courts of Appeal.

Fiscal and Operational Impacts

Implementation of this proposal should not have significant fiscal or operational impacts. This proposal is intended to create efficiencies and to assist parties and courts in understanding the existing appellate procedures. Unlike the alternative of implementing section 1010.6(a)(2)(A)(ii), which could burden the courts and litigants with additional requirements relating to e-service, no costs of implementation are anticipated other than informing courts and litigants of the new rule amendments and form revisions.

Attachments and Links

1. Cal. Rules of Court, rules 8.25, 8.72, and 8.78, at pages 8–10
2. Form APP-009-INFO, at pages 11–13

3. Chart of comments, at pages 14–20
4. Link A: Code Civ. Proc., § 1010.6,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1010.6.&lawCode=CCP

Rules 8.25, 8.72, and 8.78 of the California Rules of Court are amended, effective January 1, 2021, to read:

Rule 8.25. Service, filing, and filing fees

(a) Service

(1) Before filing any document, a party must serve, ~~by any method permitted by the Code of Civil Procedure,~~ one copy of the document on the attorney for each party separately represented, on each unrepresented party, and on any other person or entity when required by statute or rule.

(2) The party must attach to the document presented for filing a proof of service showing service on each person or entity required to be served under (1), or, if using an electronic filing service provider's automatic electronic document service, the party may have the electronic filing service provider generate a proof of service. The proof must name each party represented by each attorney served.

(b)–(c) * * *

Advisory Committee Comment

Subdivision (a). ~~Subdivision (a)(1) requires service “by any method permitted by the Code of Civil Procedure.” The reference is to the several permissible methods of service provided in Code of Civil Procedure sections 1010.6–1020~~ 1013a describe generally permissible methods of service. Information Sheet for Proof of Service (Court of Appeal) (form APP-009-INFO) provides additional information about how to serve documents and how to provide proof of service. In the Supreme Court and the Courts of Appeal, registration with the court's electronic filing service provider is deemed to show agreement to accept service electronically at the email address provided, unless a party affirmatively opts out of electronic service under rule 8.78(a)(2)(B). This procedure differs from the procedure for electronic service in the superior courts, including their appellate divisions. See rules 2.250–2.261.

* * *

Rule 8.72. Responsibilities of court and electronic filer

(a) * * *

(b) Responsibilities of electronic filer

Each electronic filer must:

- (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;
- (2) Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept ~~service~~ receipt and filing confirmations under rule 8.77 and, if applicable, at which the electronic filer agrees to receive electronic service; and
- (3) Immediately provide the court and all parties with any change to the electronic filer's electronic service address.

Rule 8.78. Electronic service

(a) Authorization for electronic service; exceptions

- (1) A document may be electronically served under these rules:
 - (A) If electronic service is provided for by law or court order; or
 - (B) If the recipient agrees to accept-electronic services as provided by these rules and the document is otherwise authorized to be served by mail, express mail, overnight delivery, or fax transmission.
- (2) A party indicates that the party agrees to accept electronic service by:
 - (A) Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party agrees to accept service; or
 - (B) ~~Electronically filing any document with the court~~ Registering with the court's electronic filing service provider and providing the party's electronic service address. The act of electronic filing shall be Registration with the court's electronic filing service provider is 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)~~ provided, 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.
- (3) A document may be electronically served on a nonparty if the nonparty consents to electronic service or electronic service is otherwise provided for

1 by law or court order. All provisions of this rule that apply or relate to a party
2 also apply to any nonparty who has agreed to or is otherwise required by law
3 or court order to accept electronic service or to electronically serve
4 documents.

5
6 **(b)–(f) * * ***

7
8 **(g) Electronic service delivery by court and electronic service or on court**

9
10 (1) The court may ~~electronically serve~~ deliver any notice, order, opinion, or other
11 document issued by the court ~~in the same manner that parties may serve~~
12 ~~documents~~ by electronic service means.

13
14 (2) * * *

15
16 **Advisory Committee Comment**

17
18 In the Supreme Court and the Courts of Appeal, registration with the court’s electronic filing
19 service provider is deemed to show agreement to accept service electronically at the email
20 address provided, unless a party affirmatively opts out of electronic service under rule
21 8.78(a)(2)(B). This procedure differs from the procedure for electronic service in the superior
22 courts, including their appellate divisions. See rules 2.250–2.261.

INFORMATION SHEET FOR PROOF OF SERVICE (COURT OF APPEAL)

GENERAL INFORMATION ABOUT SERVICE AND PROOF OF SERVICE

This information sheet provides instructions for completing *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E). This information sheet is not part of the proof of service and does not need to be copied, served, or filed.

Rule 8.25 of the California Rules of Court provides that before filing any document in the Court of Appeal, a party must serve one copy of the document on the attorney for each party separately represented, on each unrepresented party, and on any other person or entity when required by statute or rule. Other rules specifically require that certain documents be served, including the notice of appeal and notice designating the record on appeal in civil appeals and briefs in both civil and criminal appeals.

To "serve" a document on a person means to have that document delivered to the person. The general requirements concerning service are set out in Code of Civil Procedure sections 1010.6–1013a. Section 1010.6(a)(2)(A)(ii) addresses electronic service in the trial courts, or superior courts, including their appellate divisions. Rule 8.78 of the California Rules of Court addresses electronic service in any case in the Court of Appeal. There are three main ways to serve documents: (1) by mail, (2) by personal delivery, or (3) by electronic service. Regardless of what method of service is used, the Code of Civil Procedure provides that a document in a court case can only be served by a person who is over 18 years of age. Service by mail or personal delivery must be by someone who is not a party in the case; electronic service may be performed directly by a party. Electronic service may be by (1) electronic transmission, transmitting a document to the electronic service address of a person; or by (2) electronic notification, sending a message to the electronic service address specifying the exact name of the document served and providing a hyperlink at which the served document may be viewed and downloaded.

If you are a party to the case and wish to serve documents by mail or personal delivery, you must therefore have someone else who is over 18 and who is not a party to the case serve any documents in your case. You will need to give the person doing the serving (the server) the names and addresses of all those who must be served. You will also need to give the server one copy of each document that needs to be served for each person or entity that is being served.

If you are serving documents electronically, you can do this yourself or have another person over 18 do it for you. The person doing the serving (the server) will need the names and electronic service addresses of all those who must be served, and the document to be served in a form that allows it to be electronically transmitted or made available by hyperlink.

Rule 8.25 also requires the party filing a document in the court to attach to the document presented for filing a proof of service showing the required service, or if using an electronic filing service provider's automatic electronic document service, the party may have the electronic filing service provider generate a proof of service. *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) may be used to provide proof of service in any proceeding in the Court of Appeal. The server should follow the instructions below for completing the *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E). If another person is serving the documents for you—as is required if the document will be served by mail or personal delivery—tell the server to give you the original form when it is completed. You will need to attach this original proof of service to the document you are filing.

INSTRUCTIONS FOR THE SERVER (THE PERSON WHO IS SERVING THE DOCUMENTS) IF SERVING BY MAIL OR PERSONAL DELIVERY

If you are serving a document for a party in a court case, it is your responsibility to prepare the proof of service. You can use *Proof of Service (Court of Appeal)* (form APP-009) to prepare this proof of service in any case in the Court of Appeal. The proof of service should be printed or typed. If you have internet access, a fillable version of form APP-009 is available at www.courts.ca.gov/forms. You can fill out most of the form before you serve the document, but you should sign and date the form only after you have finished serving the document.

Complete the top section of *Proof of Service (Court of Appeal)* (form APP-009) as follows:

1. *First box, left side:* Check whether the document is being served by mail or by personal delivery.
2. *Third box, left side:* Print the name of the case in which the document is being filed, the Court of Appeal case number, and the superior court case number. Use the same case name and numbers as are on the top of the document that you are serving.
3. *Box, top of form, right side:* Leave this box blank for the court's use.

Complete items 1–3 as follows:

1. You are stating that you are over the age of 18 and that you are not a party to this action.
2. Check one of the boxes and provide your home or business address.
3. Fill in the name of the document that you are serving.
 - a. If you are serving the document by mail, check the box in item 3a and BEFORE YOU SEAL AND MAIL THE ENVELOPE, fill in the following information:
 - (1) Check the box in item 3a(1)(a) if you will personally deposit the document with the U.S. Postal Service such as at a U.S. Postal Service Office or U.S. Postal Service mailbox. Check the box in item 3a(1)(b) if you will put the document in the mail at your place of business.
 - (2) Provide the date the documents are being mailed.
 - (3) Provide the name and address of each person to whom you are mailing the document. If you need more space to list additional names and addresses, check the box after item 3a(3)(c) and attach a page listing them. At the top of the page, write "APP-009, Item 3a."
 - (4) You are stating that you live or work in the county in which the document is being mailed. Provide the city and state from which the document is being mailed.

Once you have finished filling out these parts of the form, make one copy of *Proof of Service (Court of Appeal)* (form APP-009) with this information filled in for each person you are serving by mail and put this copy in the envelope with the document you are serving. Seal the envelope and mail the document as you have indicated on the proof of service.

- b. If you personally delivered the document, check the box in item 3b. For a party represented by an attorney, delivery needs to be made by giving the document directly to the party's attorney or by leaving the document in an envelope or package clearly labeled to identify the attorney being served with a receptionist at the attorney's office or an individual in charge of the office. For a party who is not represented by an attorney, delivery needs to be made by giving the document directly to the party or by leaving the document at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening. Under item 3b, for each person to whom you delivered the document, you need to provide:
 - (1) The name of the person;
 - (2) The address at which you delivered the document;
 - (3) The date on which you delivered the document; and
 - (4) The time at which you delivered the document.

If you need more space to list additional names, addresses, and delivery dates and times, check the box under item 3b and attach a page listing this information. At the top of the page, write "APP-009, Item 3b."

Continued on the reverse

At the bottom of the form, print your name, sign the form, and fill in the date on which you signed the form. **By signing, you are stating under penalty of perjury that all the information you have provided on *Proof of Service (Court of Appeal)* is true and correct.**

Give the original completed *Proof of Service* to the party for whom you served the document.

INSTRUCTIONS FOR THE SERVER (THE PERSON WHO IS SERVING THE DOCUMENTS) IF SERVING ELECTRONICALLY

If you are serving a document for a party in a court case, it is your responsibility to prepare the proof of service. If you are serving a document electronically (and you are not using an electronic filing service provider's automatic electronic document service), you can use *Proof of Electronic Service (Court of Appeal)* (form APP-009E) to prepare this proof of service in any case in the Court of Appeal. The proof of service should be printed or typed. A fillable version of form APP-009E is available at www.courts.ca.gov/forms. You can fill out most of the form before you serve the document, but you should sign and date the form only after you have finished serving the document.

Complete the top section of *Proof of Electronic Service (Court of Appeal)* (form APP-009E) as follows:

1. *Third box, left side:* Print the name of the case in which the document is being filed, the Court of Appeal case number, and the superior court case number. Use the same case name and numbers as are on the top of the document that you are serving.
2. *Box, top of form, right side:* Leave this box blank for the court's use.

Complete items 1–4 as follows:

1. You are stating that you are at least 18 years of age.
2. a. Check one of the boxes and provide your home or business address.
b. Provide your electronic service address. This is the email address at which you have agreed to accept electronic service.
3. Fill in the names of the documents that you are serving.
4. Fill in the information for the person to whom you are sending the document. If you are serving more than one person, check the box after item 4c and attach a page listing the persons served, with the electronic service address and date and time of service for each person served. At the top of the page, write "APP-009E, Item 4."
 - a. Provide the name of the person being served. If the person being served is an attorney, also fill in the name or names of the parties represented.
 - b. Provide the electronic service address of the person to whom you are sending the document.
 - c. Provide the date on which you transmitted the document.

After you have filled in the information in items 1–4, create an electronic copy of the *Proof of Electronic Service (Court of Appeal)* (form APP-009E). Transmit the filled-in form with the document you are serving to each person served.

At the bottom of the form, print your name, sign the form, and fill in the date on which you signed the form. **By signing, you are stating under penalty of perjury that all the information you have provided on *Proof of Electronic Service (Court of Appeal)* is true and correct.**

If you are not the party for whom the documents are served, give the original completed *Proof of Service* to the party for whom you served the document.

SPR20-03

Appellate Procedure: Consent to Electronic Service (Amend Cal. Rules of Court, rule 8.25, 8.72, and 8.78; revise form APP-009-INFO)

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

	Commenter	Position	Comment	Committee Response
1.	Aderant CompuLaw By Miri K. Wakuta Rules Attorney Culver City	NI	<p>Aderant CompuLaw respectfully submits the following comments to the proposed amendments set forth in SPR 20-03. We are concerned that the proposed amendment to CRC 8.25 is too broad for the stated purpose and may raise confusion as to the general applicability of CCP 1010.6 to appellate cases.</p> <p>Invitation to Comment SPR20-03 points out that the e-service consent procedure set forth in CCP 1010.6(a)(2)(A)(ii) does not apply to appellate court proceedings since subdivision (e) only directs the adoption of uniform rules for “electronic filing and service of documents in the trial courts of the state.” (SPR 20-03, 2.) The Committee states that the purpose of the proposed amendments is to clarify e-service consent procedures in the Supreme Court and the Courts of Appeal.</p> <p>Removing the phrase, “by any method permitted by the Code of Civil Procedure,” from Rule 8.25(a)(1) seems unnecessary. Despite differing e-service consent procedures, it would remain accurate that a party may serve a document “by any method permitted by the Code of Civil Procedure.” Even the proposed amendment to CRC 8.25 Advisory Committee Comment states, “Code of Civil Procedure sections 1010.6, 1013a describe generally permissible methods of service.” The need for clarification is not with the permissible method of service but with the inapplicability of CCP</p>	<p>The committee thanks the commenter for this input.</p> <p>No further response required.</p> <p>The committee recommends removing the phrase, “by any method permitted by the Code of Civil Procedure,” because it is too broad. For example, section 1017 provides for service by telegraph, which is not a permissible method of service in these reviewing courts. The accompanying advisory committee comment and related information sheet (form APP-009-INFO) advise that Code of Civil Procedure sections 1010.6–1013a describe generally permissible methods of service.</p>

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

SPR20-03

Appellate Procedure: Consent to Electronic Service (Amend Cal. Rules of Court, rule 8.25, 8.72, and 8.78; revise form APP-009-INFO)

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	Commenter	Position	Comment	Committee Response
			<p>1010.6(a)(2)(A)(ii) in the Supreme Court and the Courts of Appeal.</p> <p>We recommend the language of Rule 8.25 not be amended. Rather, the Advisory Committee Comment should specifically comment to the inapplicability of CCP 1010.6(a)(2)(A)(ii). We suggest the Advisory Committee Comment to CRC 8.25 be revised to include the following statement: “The express consent requirement set forth in CCP 1010.6(a)(2)(A)(ii) for electronic service does not apply to matters before the Supreme Court and Courts of Appeal. Rather, CRC 8.78(a)(2) governs electronic service consent procedures in the Supreme Court and Courts of Appeal.”</p> <p>Aderant CompuLaw is a software-based court rules publisher providing deadline information to many firms practicing before the California Supreme Court and Courts of Appeal. We expect this issue to be important to our users. Thank you for your consideration of these comments.</p>	<p>The committee declines to make these changes. With respect to rule 8.25(a), see discussion above. With respect to the advisory committee comment, the language in the proposal makes clear that rule 8.78, not California Code of Civil Procedure section 1010.6(a)(2)(A)(ii), governs electronic service consent procedures in the Supreme Court and Courts of Appeal. The language also includes (1) a reference to the existing opt-out provision in the appellate e-filing rules, and (2) a reference to the rules in title 2, trial court rules, that do not apply in these reviewing courts.</p> <p>No further response required.</p>
2.	California Lawyers Association Committee on Appellate Courts, Litigation Section By Saul Bercovitch Director of Governmental Affairs, Leah Spero, Chair Sacramento	AM	The Committee on Appellate Courts supports this proposal so long as parties are given notice at the time they register with the court’s electronic filing service provider (EFSP) that by registering and providing an electronic service address, they consent to electronic service for all purposes during their case, including service by the court and the opposing party, unless they opt out.	The committee notes the commenter’s support for the proposal if modified. As discussed in the committee response below, the requested modification is beyond the scope of this rules proposal. However, although notice is not furnished by the EFSP at the time of registration as suggested by the commenter, rule 8.78 and the advisory committee comments to rule 8.25 and 8.78 notify parties of their consent by registration

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	Commenter	Position	Comment	Committee Response
			<p>The Committee on Appellate Courts is mindful that digital inclusion is still a work in progress in California. We celebrate the appellate courts' transition to e-filing and eservice, but we do not want the resulting convenience to some to disadvantage others, including those in rural and low-income households. As the Advisory Committee and the Judicial Council are already aware, many Californians do not have household internet access (or have only a cellphone, or an extremely slow connection). Although they may be able to access WiFi for a limited time at a public location, or use their cellphone data plan, to successfully register with an EFSP and initiate an appeal, they will be seriously disadvantaged if, by doing so, they inadvertently relinquish paper/mail service of notice and filings if they do not have regular, reliable internet access.</p> <p>Only a third of rural California households have internet access, compared to 78% of urban households, according to an EdSource analysis of California Public Utilities Commission data in December 2019. (EdSource, Disconnected: Internet Stops Once School Ends for Many Rural California Students, available at <https://edsource.org/2019/disconnected-internet-stops-once-school-ends-for-manyrural-california-students/620825>.) The Public Policy Institute of California has noted:</p>	<p>with the court's EFSP and the option to opt-out affirmatively under rule 8.78(a)(2)(B).</p> <p>The committee appreciates the commenter supplying this information about access to the internet.</p> <p>No further response required.</p>

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		<p>“Though most demographic groups have seen significant increases in broadband subscriptions at home, gaps persist for low-income, less educated, rural, African American, and Latino households. Between 54% and 67% of these households had broadband subscriptions in 2017, compared to 74% for all households. Among low income households without broadband, 53% cited lack of interest and 25% cited affordability as key barriers. Notably, these households were more likely to rely on cellphones to access the internet.” (California’s Digital Divide, available at https://www.ppic.org/publication/californias-digital-divide/.)</p> <p>It is also a practical reality that many households are sharing a single device with children who are engaged in distance schoolwork during the COVID-19 pandemic, fire evacuations, and other periodic disruptions. In those households, inadvertent relinquishment of paper/mail service carries privacy and parenting implications. (See EdSource, More California Students Are Online, But Digital Divide Runs Deep with Distance Learning, available at https://edsource.org/2020/more-california-students-areonline-but-digital-divide-runs-deep-with-distance-learning/630456; see also California Emerging Technology Fund, Annual Report, available at http://www.cetfund.org/progress/annualsurvey >.)</p>	No further response required.

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			Thus, we recommend that a clear, plain-language advisory regarding the practical implications of registration, and the opt out alternative, should be required to be prominently displayed by EFSPs at the time of registration.	The committee appreciates this suggestion and shares the commenter's focus on providing equal access to the courts. The committee also acknowledges that internet access is not universally available in California. For this and other reasons, the existing appellate rules include an opt-out provision. Making changes to EFSPs' systems is beyond the scope of this rules proposal, but the committee will convey the recommendation to staff who work with these providers.
3.	Orange County Bar Association By Scott B. Garner, President Newport Beach	A	No specific comment provided.	The committee notes the commenter's support for the proposal.
4.	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 SPR20-03 to the California Rules of Court that relate to electronic service of documents. After canvassing our membership and forming a subcommittee to discuss the proposed changes, we respectfully submit the following comments.</p> <p>The APS supports the changes proposed by SPR20-03 but suggests that the Council further amend the rules to reflect better how electronic service works with Electronic Filing Service Providers ("EFSP"). As worded, rule 8.25, subdivision (a)(2) states that "[t]he party must attach to the document presented for filing a proof of service." EFSPs, however, can</p>	<p>The committee thanks the commenter and notes its support for the proposal if modified.</p> <p>The committee appreciates the commenter supplying this information about current e-filing practices and has modified the proposal accordingly.</p>

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			<p>automatically generate a proof of service when a filer utilizes the service for electronic filing and service. Such a proof of service is therefore not attached to the actual document that the filer submits but is rather generated by the EFSP itself. For example, the TrueFiling system, which most California appellate courts utilize, says this about how the system generates a proof of service: “Auto-Servicing: Through auto-servicing you can choose to automatically e-serve filings and send a system-generated Proof of Service filing to the Court. When auto servicing is indicated, you no longer need to file a Proof of Service for the filing – one will be automatically created when you submit a filing to the Court.” (TrueFiling User Guide, Release 1.0.36 p. 85, at <http://www.truefiling.com/documentation/UserGuide.pdf>). Such a system generated proof of service is therefore not attached to the document that the filer filed.</p> <p>The APS therefore proposes that the Judicial Council further amend rule 8.25, subdivision (a)(2) to add language such as “[t]he party must attach to the document presented for filing a proof of service or, if filing electronically, the party may have the Electronic Filing Service Provider generate a proof of service.” Such language would better reflect how the EFSP system works and also allow filers to take advantage of the EFSP’s full functionality.</p>	<p>The committee agrees and has revised the language of rule 8.25(a)(2) to bring the proof of service provision into conformity with current e-filing practices, which includes automatic electronic service and generation of a proof of service by the EFSP.</p>

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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.

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