



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

*Item No.: 21-146*

For business meeting on: October 1, 2021

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**Title**

Judicial Branch Technology: Electronic Filing and Electronic Service in Criminal Cases

**Agenda Item Type**

Action Required

**Effective Date**

January 1, 2022

**Rules, Forms, Standards, or Statutes Affected**

Amend Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259

**Date of Report**

August 31, 2021

**Recommended by**

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

**Contact**

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### Executive Summary

The Information Technology Advisory Committee recommends the Judicial Council amend rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259 of the California Rules of Court, effective January 1, 2022. The purpose of the amendments is to meet Penal Code section 690.5's requirement that the Judicial Council adopt rules for the electronic filing and service of documents in criminal cases in the trial courts.

### Recommendation

The Information Technology Advisory Committee (ITAC) recommends the Judicial Council amend rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259 of the California Rules of Court effective January 1, 2022.

The text of the amended rules is attached at pages 9–12.



## Relevant Previous Council Action

In 2017, the Judicial Council sponsored legislation to add section 690.5 to the Penal Code to provide express authority for “permissive filing and service of documents” electronically in criminal proceedings. Penal Code section 690.5 became law effective January 1, 2018.

## Analysis/Rationale

The proposal would add references to Penal Code section 690.5 to the electronic filing and electronic service rules of the California Rules of Court to bring criminal cases within the scope of those rules. The proposal complies with Penal Code section 690.5’s requirement that the Judicial Council make rules for the electronic filing and electronic service of documents in criminal cases. In addition, Penal Code section 690.5 states:

Subdivisions (a) and (b) of Section 1010.6 of the Code of Civil Procedure,<sup>1</sup> pertaining to the permissive filing and service of documents, are applicable to criminal actions, except as otherwise provided in Section 959.1 or any other provision of this code.

This provision is not clear on its face whether “permissive” modifies “filing” only or also modifies “service,” but the history of the Judicial Council’s sponsorship of the legislation shows “permissive” was meant to modify both terms and permissive service was synonymous with service by consent. This language was intended to ensure that courts could not *require* electronic filing and electronic service in criminal matters. As the Judicial Council report recommending the council sponsor Penal Code section 690.5 explains:

Because some county justice partners may not have sufficient resources to undertake electronic filing and service in criminal cases, new Penal Code section 690.5 will incorporate *only the permissive provisions* of section 1010.6 into the Penal Code. Under this proposal, courts will not be authorized to require mandatory electronic filing and service in criminal actions. Rather, for those courts with the resources to implement electronic filing and service in criminal matters, this proposal will provide them with express authority to do so, provided the parties *consent* to electronic filing and service.<sup>2</sup>

At the time Penal Code section 690.5 became law, courts were the only ones that could require electronic service. However, on September 18, 2020, Senate Bill 1146 was enacted into law to allow a party to require another party represented by counsel to accept electronic service. (Stats. 2020, ch. 112, § 2; Code Civ. Proc., § 1010.6(e).) The

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<sup>1</sup> This code section authorizes electronic filing and electronic service in civil cases.

<sup>2</sup> Judicial Council of Cal., Advisory Com. Rep., *Judicial Council–Sponsored Legislation: Applying the Electronic Filing and Service Provisions of Code of Civ. Proc., § 1010.6(a) and (b) to Criminal Actions* (Oct. 28, 2016), p. 3 (italics added). The report may be viewed at <https://jcc.legistar.com/View.ashx?M=F&ID=4815159&GUID=80D76D4B-5A18-4048-8B97-346AEBCF1D45>



Legislature did not change Penal Code section 690.5, however, which continued to apply only to “permissive” electronic service, which, as noted previously, requires consent.

### ***Recommended amendments***

The following amendments are included in the proposal:

- **Rule 2.251(a):** This provision generally authorizes electronic service and states that service may be made electronically under Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds a reference to Penal Code section 690.5 and specifies that electronic service in criminal cases requires consent.
- **Rule 2.251(c)(1)–(2):** These provisions govern electronic service required by local rule or court order. The amendments specify that courts may only require electronic service in civil actions because mandatory electronic filing and electronic service are not applicable in criminal actions under Penal Code section 690.5.
- **Rule 2.251(k):** This provision authorizes a court to serve documents electronically under Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds a reference to Penal Code section 690.5.
- **Rule 2.252(a):** This provision generally authorizes electronic filing as provided under Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds a reference to Penal Code section 690.5.
- **Rule 2.253(a):** This provision specifically authorizes courts to permit electronic filing by local rule subject to the conditions in Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds a reference to Penal Code section 690.5.
- **Rule 2.255(h):** This is a new provision that prohibits electronic filing service providers (EFSPs) and electronic filing managers (EFMs) from charging service fees when an electronic filer is a prosecutor, an indigent defendant, or court appointed counsel for an indigent defendant. These service fees are charged by the service provider and are not filing fees. The rule uses “prosecutor” rather than listing specific agencies to encompass any agency serving in that role. The rule also defines “indigent defendant.” The rationale for this new subpart is discussed below.
- **Rule 2.258:** This rule governs the payment of filing fees. The amendment specifies the rule applies to civil actions as criminal cases do not have filing fees.
- **Rule 2.259(e):** This rule provides for issuance of an electronic summons. The amendment adds new provisions authorizing the court to issue an electronic summons pursuant to Penal Code sections 813, 816a, 1390, and 1391. Service of the summons would need to be made as prescribed elsewhere by law.



### *Service charges*

Rule 2.255(a) authorizes courts to contract with electronic filing service providers (EFSPs) to maintain an electronic filing system for the court. Rule 2.255(a) also authorizes courts to contract with electronic filing managers (EFMs) to act as an intermediary between the court and EFSPs. If a court contracts with an EFSP, rule 2.255(b) states the contract may allow the EFSP to charge to charge electronic filers a reasonable fee, in addition to the filing fee, for the service. Rule 2.255 only minimally addresses contracts with EFMs and requires only that such contracts comply with the requirements of Code of Civil Procedures section 1010.6. (Cal. Rules of Court, rule 2.255(b)(3).) EFMs do not typically charge service fees directly to electronic filers unless the EFM is acting both as an EFSP and EFM, but EFMs may charge service fees to EFSPs that in turn pass such fees onto electronic filers. While filing fees may not be charged in criminal cases, the service fees charged by EFMs and EFSPs are not filing fees. There is nothing in the law currently prohibiting EFMs and EFSPs from charging service fees for the services that EFMs and EFSPs provide. Penal Code section 690.5 authorizes only permissive electronic filing, rather than mandatory electronic filing. This means courts are authorized to make local rules permitting—but not requiring—electronic filing in criminal cases. As such, a filer in a criminal case cannot be required to electronically file and so can avoid any service fees charged by service providers for electronic filing by simply not using the service and filing on paper.

Nonetheless, some filers may be willing to pay for the convenience of such a service fee. Paying a service provider a service fee to deliver electronic filings to court is akin to paying a court runner to deliver paper filings to a court. Like using a court runner, using electronic filing provides significant convenience for filers who need not visit the courthouse to submit a filing. Electronic filing also has the additional benefit of an 11:59:59 p.m. deadline statewide whereas paper filing deadlines will vary depending on the hours the clerk's office or drop box is available to accept filings. (Code Civ. Proc., § 1010.6(b)(3); Pen. Code, § 690.5(a) [applying Code Civ. Proc., § 1010.6(b) to criminal cases].) In addition to benefits to filers, electronic filing reduces the amount of physical paper that courts must handle and process.

The recommendation prohibits service providers from charging service fees to prosecutors, indigent defendants, and court appointed counsel for an indigent defendant. The provision regarding indigent filers and their counsel complies with the provision at Code of Civil Procedure 1010.6(b)(6) that requires service providers to waive any service fees for a filer who has been granted a waiver of court fees.<sup>3</sup> This approach is also consistent with the Judicial

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<sup>3</sup> Because there are no filing fees in criminal cases, waivers of court fees are not applicable. However, such waivers are used in the context of civil electronic filing to waive not just filing fees, but also EFM and EFSP service fees. (Code Civ. Proc., 1010.6(b)(6).) The committee determined the equivalent to granting a fee waiver in a criminal case would be a determination of indigency for purposes of appointing counsel.



Council’s approach when it secured electronic filing master agreements with service providers. The master agreements provide for “no fee” filing for indigent filers and government entities.<sup>4</sup>

### **Policy Implications**

As discussed above, to the extent this proposal would prohibit charging service fees to prosecutors and indigent parties, it is in line with the Judicial Council’s actions on electronic filing in civil actions and, in part, with statute. Because the rest of this proposal is to amend current rules so that they conform to law, there are no direct policy implications.

The committee notes that this proposal is in accord with the council’s strategic goal of promoting the digital court. Currently, based on survey data from spring 2021, 33 courts accept electronic filing. What types of cases courts accept for electronic filing is a local decision made by the courts (Code Civ. Proc., § 1010.6(b)–(d)), but these rules should facilitate courts acceptance of electronic filing in criminal cases.

The committee is continuing to review rules and procedures impacting electronic filing in California. The committee formed an ad hoc working group, the E-filing Workstream, to review and make recommendations on both technical and procedural aspects of electronic filing. The E-filing Workstream is projected to have recommendations to ITAC finalized by December 2021. The committee is cognizant that rules may need to be reconsidered and possibly new or amended legislation proposed following that review and as electronic filing becomes more widely available across case types. As a result, ITAC may be presenting more recommendations on electronic filing in criminal cases to the council in the near future.

### **Comments**

Before the proposal circulated for public comment, ITAC sought feedback from the Criminal Law Advisory Committee (CLAC). That committee raised concerns that service fees would likely bar most public defender and district attorney offices from opting into electronic filing and would be a hardship for indigent defendants. CLAC recommended no service charges be permitted for filings in criminal actions, at least for prosecutors and all defendants and their counsel. While ITAC agreed with the concerns CLAC raised about prosecutors, public defenders, and indigent defendants, it did not agree that service providers should be unable to charge nonindigent defendants for optional services. ITAC also had concerns that service providers may not provide the services in criminal cases if service fees were prohibited across the board. ITAC circulated the proposal to prohibit service fees for prosecutors, indigent defendants, and counsel for indigent defendants. The committee sought specific comments on the service fee issue.

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<sup>4</sup> See Judicial Council of Cal., “E-Filing Services for the Superior Courts of California, RFP #BAP-2017-01-PC,” <https://www.courts.ca.gov/35604.htm>, (document titled “RFP Revision 2” contains the key provisions) (as of July 8, 2021).



The proposal was circulated April 15, 2021 through May 27, 2021. Six commenters responded to the invitation to comment. One commenter did not indicate a position and five supported the proposed amendments though four recommended modifications.

In response to the request for comments about service fees, three commenters recommended no service fees be permitted though only two provided substantive comments on the topic. Both were concerned with fairness, with the Orange County Bar Association noting that there are “no limits on the fees which an electronic filing service provider may charge the non-indigent defendant. It should be of concern that such providers will attempt to offset the expense of not charging prosecutors and indigents by higher fees for non-indigents.”

ITAC discussed this issue at length. The committee discussed whether *all* defendants should be exempt from service fees. The committee determined that while an indigent defendant would not have the ability to pay, a nonindigent defendant would not have this barrier. In addition, because Penal Code section 690.5 limits electronic filing to permissive electronic filing, nonindigent defendants would still have the option to file in paper. While there are no limits to the service fees a service provider can charge for permissive electronic filing, if a service provider sets service fees beyond what is acceptable to filers, the filers will either not electronically file or select another service provider.

With respect to counsel for indigent defendants, the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee suggested the proposal would be clearer if the rule specified “court appointed” counsel for indigent defendants. In considering this comment, ITAC noted that there can be instances where a defendant who qualifies as indigent may nonetheless have a well-funded defense with ability to pay the service fees. ITAC agreed with the comment and revised the language to specify that only court appointed counsel for an indigent defendant is exempt from service fees.

The committee noted in discussions that its approach is consistent not only with Code of Civil Procedure 1010.6, which prohibits the charging of service fees to indigent parties granted fee waivers, but also with the approach the Judicial Council took with the statewide electronic filing program master agreements, which prohibit fees for both governmental and indigent filers. It is also consistent with state policies on reducing fines and fees consistent with a defendant’s ability to pay. (Gov. Code, §§ 68645-68645.7.)

The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee suggested expanding the scope of the rule to exempt all government entities and not just prosecuting entities. While ITAC ultimately agreed this is something it should consider, expanding the scope of government entities was not something the committee addressed in the invitation to comment. As such, the committee decided to keep the proposal limited to prosecutors but will consider amending the rule in the future to expand its scope.



The invitation to comment also requested specific comments on some additional points, directed to service providers and to attorneys, but outside the comments addressed above that no charge should be applied to any defendant, these requests were not addressed.

### **Alternatives considered**

Because Penal Code section 690.5 requires the Judicial Council to make rules, no alternative to rulemaking was considered. As discussed above, ITAC considered the alternative of recommending that service fees be prohibited for all filers in criminal cases, but concluded, for the reasons discussed above, that it was appropriate to waive the fee only for prosecutors, indigent parties, and court appointed counsel for indigent parties.

### **Fiscal and Operational Impacts**

Commenters from two courts and the Joint Rules Subcommittee of the Court Executives Advisory Committee and Trial Court Presiding Judges Advisory Committee commented on fiscal and operational impacts. All commented more on the impact of the statutes that allow for electronic filing, or electronic filing in criminal cases, rather than on the impact of the recommended rule amendments.

One court staff commenter noted that courts not currently participating in electronic filing would need to develop new processes and procedures for electronic filings in criminal cases, including substantial training and making changes to the case management system. Courts that already accept electronic filing might need to make smaller changes to the case management system and provide staff training. This commenter also expected savings to be insignificant because as there will be a potential for fewer electronic filings to occur for criminal cases. Another court commented that electronic filing could provide a cost savings since electronic filings would require less processing time, but that startup costs to implement electronic filing would be necessary. Costs would include staff time to develop a system and provide staff training on the system.

The Joint Rules Subcommittee noted that updates to processes, technology, and training would be needed. Also, if almost all parties moved to electronic filing, the filing process would be more streamlined and save staff resources, but otherwise a blend of paper and electronic filing is staff intensive. Finally, courts that do not have electronic filing for criminal cases would need to develop local rules for local procedures.

While those comments address the cost and operational impact of electronic filing and electronic filing in criminal cases, those impacts are a result of Code of Civil Procedure section 1010.6 and Penal Code section 690.5. The goal of these rules is to facilitate courts in meeting the requirements of those rules.



## **Attachments and Links**

1. Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259, at pages 9–12.
2. Chart of comments, at pages 13–25.
3. Link A: Pen. Code, § 690.5,  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=690.5&lawCode=PEN](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=690.5&lawCode=PEN)
4. Link B: Code Civ. Proc., § 1010.6,  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=1010.6](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=1010.6)



Rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259 of the California Rules of Court are amended, effective January 1, 2022, to read:

**Rule 2.251. Electronic service**

**(a) Authorization for electronic service**

When a document may be served by mail, express mail, overnight delivery, or fax transmission, the document may be served electronically under Code of Civil Procedure section 1010.6, Penal Code section 690.5, and the rules in this chapter. For purposes of electronic service made pursuant to Penal Code section 690.5, express consent to electronic service is required.

**(b) \* \* \***

**(c) Electronic service required by local rule or court order**

(1) A court may require parties to serve documents electronically in specified civil actions by local rule or court order, as provided in Code of Civil Procedure section 1010.6 and the rules in this chapter.

(2) A court may require other persons to serve documents electronically in specified civil actions by local rule, as provided in Code of Civil Procedure section 1010.6 and the rules in this chapter.

(3)–(4) \* \* \*

**(d)–(j) \* \* \***

**(k) Electronic service by or on court**

(1) The court may electronically serve documents as provided in Code of Civil Procedure section 1010.6, Penal Code section 690.5, and the rules in this chapter.

(2) A document may be electronically served on a court if the court consents to electronic service or electronic service is otherwise provided for by law or court order. A court indicates that it agrees to accept electronic service by:

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

(B) Adopting a local rule stating that the court accepts electronic service. The rule must indicate where to obtain the electronic service address at which the court agrees to accept service.



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**Subdivision (c).** The subdivision is applicable only to civil actions as defined in rule 1.6. Penal Code section 690.5 excludes mandatory electronic service in criminal cases.

## Rule 2.252. General rules on electronic filing of documents

A court may provide for electronic filing of documents in actions and proceedings as provided under Code of Civil Procedure section 1010.6, Penal Code section 690.5, and the rules in this chapter.

**Rule 2.253. Permissive electronic filing, mandatory electronic filing, and electronic filing by court order**

A court may permit parties by local rule to file documents electronically in any types of cases, subject to the conditions in Code of Civil Procedure section 1010.6, Penal Code section 690.5, and the rules in this chapter.

## **Rule 2.255. Contracts with electronic filing service providers and electronic filing managers**

**(a)–(g) \* \* \***



1 **(h) Fees for electronic filing services not chargeable in some criminal actions**

2  
3 **(1) Electronic filing service providers and electronic filing managers may not**  
4 **charge a service fee when an electronic filer files a document in a criminal**  
5 **action when the electronic filer is a prosecutor, an indigent defendant, or**  
6 **court appointed counsel for an indigent defendant.**

7  
8 **(2) For purposes of this subdivision, “indigent defendant” means a defendant**  
9 **who the court has determined is not financially able to employ counsel**  
10 **pursuant to Penal Code section 987. Pending the court’s determination,**  
11 **“indigent defendant” also means a defendant the public defender is**  
12 **representing pursuant to Government Code section 27707.**

13  
14 **Rule 2.258. Payment of filing fees in civil actions**

15  
16 **(a) Use of credit cards and other methods**

17  
18 A court may permit the use of credit cards, debit cards, electronic fund transfers, or  
19 debit accounts for the payment of civil filing fees associated with electronic filing,  
20 as provided in Government Code section 6159, rule 10.820, and other applicable  
21 law. A court may also authorize other methods of payment.

22  
23 **(b) \* \* \***

24  
25 **Rule 2.259. Actions by court on receipt of electronic filing**

26  
27 **(a)–(d) \* \* \***

28  
29 **(e) Issuance of electronic summons**

30  
31 **(1) The court may issue an electronic summons in the following circumstances:**

32  
33 **(A) On the electronic filing of a complaint, a petition, or another document**  
34 **that must be served with a summons in a civil action, the court may**  
35 **transmit a summons electronically to the electronic filer in accordance**  
36 **with this subdivision and Code of Civil Procedure section 1010.6.**

37  
38 **(B) On the electronic filing of an accusatory pleading against a corporation,**  
39 **the court may transmit a summons electronically to the prosecutor in**  
40 **accordance with this subdivision and Penal Code sections 690.5, 1390,**  
41 **and 1391.**



1            (C) When a summons is issued in lieu of an arrest warrant, the court may  
2            transmit the summons electronically to the prosecutor or person  
3            authorized to serve the summons in accordance with this subdivision  
4            and Penal Code sections 690.5, 813, and 816a.  
5

6            (2) The electronically transmitted summons must contain an image of the court's  
7            seal and the assigned case number.  
8

9            (3) Personal service of the printed form of a summons transmitted electronically  
10           to the electronic filer has the same legal effect as personal service of a copy  
11           of an original summons.  
12



## SPR21-16

### Rules: Electronic Filing and Service in Criminal Cases (Amend Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259)

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

	Commenter	Position	Comment	Committee Response
1.	Amitabho Chattopadhyay San Francisco, CA	AM	<p>It would be unconscionable to charge working people accused of crimes these fees, but not taxpayer-funded entities with salaried staff. Prosecutors would be the most obvious income source for any criminal e-filing service provider, and the most able to pay. The best possible alternative would be to simply require e-filing companies to provide e-filing services free of charge in criminal cases.</p> <p>The rules could also set a temporary cap on e-filing fee increases in certain types of cases to ensure that fee increases to offset this added cost do not affect particularly sensitive areas, such as unlawful detainers and family law.</p>	<p>The committee appreciates the concern raised and has considered the matter. The committee decided to keep the proposal as-is and not prohibit service providers from charging service fees for electronic filing to non-indigent defendants. The committee does not agree that prosecutors are an obvious income source as resources available will vary in different localities. Because Penal Code section 690.5 applies only the permissive, not mandatory, electronic filing provisions of Code of Civil Procedure section 1010.6, non-indigent defendants cannot be required to use electronic filing. The committee expects the market will constrain service fees to an appropriate level or non-indigent filers will not use the service.</p> <p>The approach that the committee has taken is consistent with the Judicial Council's approach in statewide electronic filing master agreements, which exempt governmental and indigent filers from paying service fees.</p> <p>The recommendation on service fees charged for certain civil cases is outside the scope of the proposal, but something the committee may consider in the future.</p>
2.	Randy Montejano Courtroom Operations Supervisor Superior Court of Orange County	NI	<p>In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:</p> <ul style="list-style-type: none"><li>• Does the proposal appropriately address the stated purpose?</li></ul>	<p>The committee appreciates the comments.</p>

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



## SPR21-16

### Rules: Electronic Filing and Service in Criminal Cases (Amend Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259)

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

	Commenter	Position	Comment	Committee Response
			<p>Yes, the proposal appropriately addresses the need to meet Penal Code section 690.5's requirement that the Judicial Council adopt rules for the electronic filing and service of documents in criminal cases in the trial courts.</p> <ul style="list-style-type: none"><li>• The proposed amendments would prohibit EFSPs and EFMs from charging for electronic filing services in criminal cases when an electronic filer is a prosecutor, indigent defendant, or counsel for an indigent defendant.</li><li>• Is this exemption from service charges appropriate?</li></ul> <p>Yes, exemption from service charges is appropriate when the electronic filer is a prosecutor, indigent defendant, or counsel for an indigent defendant. No service charge for prosecutor also makes sense, as there should not be a price point for prosecutors to file as that could sway/impact filing quantities. Waiving the service charge for indigent defendant or counsel for an indigent defendant also seems appropriate as those parties are in situations where applying a service charge can impact their right to access to the courts without regard to their economic means.</p> <ul style="list-style-type: none"><li>• For EFSPs and EFMs: would you be willing to offer electronic filing in criminal cases with this limitation?</li></ul>	<p>The committee agrees that exempting prosecutors, indigent defendants, and counsel for indigent defendants is appropriate.</p>

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



## SPR21-16

### Rules: Electronic Filing and Service in Criminal Cases (Amend Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259)

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	Commenter	Position	Comment	Committee Response
			<p>This is a question for EFSPs and EFMs, I cannot answer. Also, our court currently does not use EFSPs or EFMs to support Criminal filings.</p> <ul style="list-style-type: none"><li>• For prosecutors, defense attorneys representing indigent defendants, and those representing the interests of indigent, pro per defendants: would a service provider's fee prevent the use of electronic filing?</li></ul> <p>From the court perspective, we could reasonably assume that a service provider's fee would prevent the use of electronic filing. But, if these types of electronic filers (prosecutors, indigent defendants, or counsel for an indigent defendants) are exempt from a service provider's fee, then we don't see any hindrance in the usage of EFSPs or EFMs.</p> <ul style="list-style-type: none"><li>• For defense attorneys representing non-indigent defendants, would a service provider's fee prevent the use of electronic filing?</li></ul> <p>Similar to the above, from the court perspective, it seems that it would likely prevent the use of electronic filing, since the service provider's fee would apply to these electronic filers (defense attorneys representing non-indigent defendants). There are currently no criminal electronic filings, and if a service provider's fee is instituted for criminal filings, then pursuing an electronic filing would be more expensive than</p>	<p>No response required.</p> <p>The committee agrees that a service fee could be a hindrance to prosecutors, indigent defendants, and counsel for indigent defendants and that exempting such filers from paying service fees would remove that hindrance.</p> <p>The committee does not agree that service fees will prevent the use of electronic filing for attorneys representing non-indigent defendants through it may dissuade the use of electronic filing if paper filing is more cost effective for the filer.</p>

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



## SPR21-16

### Rules: Electronic Filing and Service in Criminal Cases (Amend Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259)

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

	Commenter	Position	Comment	Committee Response
			<p>filing on paper. It would be more cost effective to file in person/on paper.</p> <ul style="list-style-type: none"><li>• Should there be no service charges for the electronic filing in criminal cases?</li></ul> <p>Based on the responses above if there is a service charge for electronic filings for criminal cases, that may deter the use of EFSPs or EFMs to support criminal filings. If service charges will be placed for defense attorney representing non-indigent defendants, then expect to see little use in EFSPs or EFMs to support criminal filings.</p> <p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <ul style="list-style-type: none"><li>• Would the proposal provide cost savings? If so, please quantify.</li></ul> <p>Our court currently does not participate in electronic filings for criminal cases and therefore would not see any cost savings. For courts who participate in electronic filings for criminal cases, any potential cost savings would be offset by the fact that service fees would only be applicable to certain electronic filers (prosecutors, indigent defendants, or counsel for an indigent defendants). If cost savings are present, it would likely be insignificant as there will be a potential for less electronic filings to occur for criminal cases.</p>	<p>The committee understands these points. Authorization for electronic filing in criminal is relatively new it may take some time to see how it develops in practice and whether EFSPs and EFMs will support it.</p> <p>The committee appreciates the comments on costs and implementation requirements that would be needed to accepted criminal electronic filings. The committee will include some of this information in its report to the Judicial Council.</p>

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



## SPR21-16

### Rules: Electronic Filing and Service in Criminal Cases (Amend Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259)

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	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none"><li>• 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?</li></ul> <p>For courts like ours who do not participate in electronic filings the training would be extensive for there would have to be new processes and procedures surrounding these types of filings. The court would also need to work alongside the EFSPs and EFMs to determine how the application of a service fee or not would be communicated with the e-filer. This would include changes to the CMS and possibly new docket codes. For courts in which electronic filings are already in place, the level of effort to implement this proposal might be smaller and encompass training for staff and slight CMS changes surrounding the current EFSP/EFM communications/exchanges.</p> <ul style="list-style-type: none"><li>• How well would this proposal work in courts of different sizes?</li></ul> <p>This proposal would work well for courts who already use electronic filings for criminal cases and/or courts smaller in size. For larger courts, the potential is that there may be a larger amount of filings, which can impact workload.</p>	

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## SPR21-16

### Rules: Electronic Filing and Service in Criminal Cases (Amend Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259)

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	Commenter	Position	Comment	Committee Response
3.	Orange County Bar Association by Larisa M. Dinsmoor President	AM	<p>Rule 2.255(h) is a new proposal which prohibits electronic filing service providers and electronic filing managers from charging a service fee when an electronic filer files a document in a criminal action when the electronic filer is a prosecutor, an indigent defendant, or counsel for an indigent defendant. It should be noted that the service fees of (h) are not filing fees charged by the court. This rule should be extended to include non-indigent defendants which would include non-indigent pro pers and non-indigents represented by private counsel out of fairness.</p> <p>The rule as proposed has no limits on the fees which an electronic filing service provider may charge the non-indigent defendant. It should be of concern that such providers will attempt to offset the expense of not charging prosecutors and indigents by higher fees for non-indigents. Access to the court should not be more burdensome on a defendant simply because they are not an indigent within the definition of Penal Code 987.</p> <p>Notwithstanding the suggested inclusion of non-indigent defendants in Rule 2.255(h), the proposal appropriately addresses the stated purpose.</p>	See the response to the issue addressed in comment 1.
4.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	<ul style="list-style-type: none"><li>• Does the proposal appropriately address the stated purpose?</li></ul> <p>Yes.</p>	The committee appreciates the court's comments.

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			<ul style="list-style-type: none"><li>• The proposed amendments would prohibit EFSPs and EFMs from charging for electronic filing services in criminal cases when an electronic filer is a prosecutor, indigent defendant, or counsel for an indigent defendant. Is this exemption from service charges appropriate? Should there be no service charges for the electronic filing in criminal cases?</li></ul> <p>Yes and yes.</p> <ul style="list-style-type: none"><li>• Would the proposal provide costs savings? If so, please quantify.</li></ul> <p>Yes. If the court had a case management system that allowed for electronic filing, there would be long-term savings because it would require less processing time by court staff and overall savings in salaries. However, it should be noted that creating such a case management system would require initial time by staff to create, implement, and train, so the upstart costs would increase spending.</p> <ul style="list-style-type: none"><li>• 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.</li></ul> <p>It would require the court's Information Technology team to develop a case management</p>	<p>See the response to the issue of whether any service fees should be charged addressed in comment 1.</p> <p>The committee appreciates the feedback concerning cost savings and that there would be initial costs to update the case management system, but a reduction in costs for processing filings once such a thing was implemented. The committee will include this information in the report to the Judicial Council.</p> <p>The committee will include the information on implementation requirements and will include it in the report to the Judicial Council.</p>

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			<p>system. In addition, the legal team would need to be involved, along with court operational staff. It is difficult to quantify, but developing such a system would take several months to develop. Once developed, business office staff and courtroom clerks would need to be trained.</p> <ul style="list-style-type: none"> <li>• How well would this proposal work in courts of different sizes?</li> </ul> <p>Depending on the size of the courts, the capabilities to develop such a system may differ. In addition, the time needed to implement will vary by court size. Cost savings would also vary proportionally based on size. In addition, whether or not such a system would be used may also depend on the resources available to justice partners in particular counties and some may not have the resources to develop a process for electronic filing.</p>	
5.	<p>Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)</p> <p>by the TCPJAC/CEAC Joint Rules Subcommittee (JRS)</p>	AM	<p>The JRS notes that the proposal is required to conform to a change of law.</p> <p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> <li>• Impact on existing automated systems -- Fee structure and consent requirements may require modification to existing case management systems (and possibly EFSP contracts).</li> <li>• Requires development of local rules and/or forms.</li> </ul>	<p>The committee appreciates this feedback on impacts to local courts and will include the information in the report to the Judicial Council.</p> <p>The committee agrees case management systems may need to be updated for criminal filing in criminal cases. See comment below on consent, which is applicable in electronic service rather than electronic filing.</p> <p>The committee agrees. Consistent with Penal Code section 690.5(a) and Code of Civil</p>

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		<p>-- Local rules/forms will likely need to be developed or amended to clarify county-specific efilng procedures.</p> <ul style="list-style-type: none"> <li>• Results in additional training, which requires the commitment of staff time and court resources.</li> </ul> <p>-- Additional staff training will be needed to implement the financial-, notice- and consent-related changes.</p> <ul style="list-style-type: none"> <li>• Impact on local or statewide justice partners.</li> </ul> <p>--Local justice partners may be impacted by any changes that differ from current local court filing operations.</p> <p><b>Suggested modification(s):</b></p> <ul style="list-style-type: none"> <li>• Need clarification as to whether consent and notice requirements can be governed by local rule.</li> </ul> <p><b>Specific Comments:</b></p> <p><b>Does the proposal address the stated purpose?</b></p> <ul style="list-style-type: none"> <li>• Yes.</li> </ul>	<p>Procedure section 1010.6(b), courts would need to adopt local rules for permissive electronic filing of criminal documents.</p> <p>The committee appreciates this feedback on impacts to local courts and will include the information in the report to the Judicial Council.</p> <p>Consent and notice requirements apply to electronic service and are governed by statutes and statewide rules of court. Penal Code section 690.5(a) applies subdivisions (a) and (b) of Code of Civil Procedure section 1010.6 “pertaining to the <i>permissive</i> filing and service of documents.” (Italics added.) It is not clear on its face whether “permissive” modifies “service” in addition to “filing,” but it is evident in the Judicial Council’s history of the legislation that permissive modifies both and permissive in the service context is synonymous with consent. Code of Civil Procedure section 1010.6(a)(2)(A)(ii) requires express consent and notice to be served on all parties unless electronic service is required. But electronic service cannot be required in criminal cases as Penal Code section 690.5 applies only to “permissive” electronic service. This is addressed</p>

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			<p><b>Is the e-filing charge exemption appropriate?</b></p> <ul style="list-style-type: none"> <li>• Yes. Potentially consider amending language to refer to exemptions for “prosecutor, an indigent defendant, or <i>court appointed</i> counsel for an indigent defendant.” Suggested addition of “court appointed” would clarify that those attorneys who are retained would not be exempt and would need to pay the filing fees.</li> </ul> <p><b>Should there be no service charge for e-filing in criminal cases?</b></p> <ul style="list-style-type: none"> <li>• This seems to be a policy question. One alternative would be to present an opportunity for retained counsel to request fee waivers.</li> <li>• Also, query whether filing fees should be waived for all government entities (e.g., County Counsel in <i>Pitchess</i> motions).</li> </ul>	<p>in the council report and the proposed amendment to rule 2.251(a) of the California Rules of Court. Rule 2.251(b) provides additional detail including how a person can consent by electronic means.</p> <p>The committee considered this recommendation and agrees that adding “court appointed” is clearer to keep the rule focused on those for whom payment of service fees would present an obstacle to electronic filing.</p> <p>The committee agrees this could be an option.</p> <p>The committee considered the broader government filer issue raised in this comment. The statewide electronic filing master agreements (used or being implemented in 4 courts) exempt government filers so a broader scope beyond the prosecutor would be consistent with that. However, when developing the proposal, the committee did not see a need to expand the scope beyond prosecutors not address expanding the scope of government entities in the invitation to comment. Rather than re-circulate the proposal for further comment on this issue, the committee decided to keep the proposal limited to prosecutors at this time but will consider amending it in the future to expand the scope if needed.</p>

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			<p><b>Would the proposal provide cost savings for courts?</b></p> <ul style="list-style-type: none"> <li>• Potential costs savings for courts depends on (1) the existing efilng opportunities, and (2) costs associated with implementing the new consent-related requirements. If almost all parties moved to efilng, the filing process would be streamlined and would likely save staffing resources. (The blend of in person and efilng is very staff intensive.)</li> </ul> <p><b>What would be the implementation requirements for the courts?</b></p> <ul style="list-style-type: none"> <li>• Developing a notice and consent procedure to efilng and service would be the most intensive implementation requirement for the courts that would require development of related business processes, technological modifications, and court, attorney, and party training.</li> <li>• The opportunity to develop local rules concerning notice and consent would facilitate implementation of the proposed rules.</li> </ul> <p><b>How well would the proposal work for courts of different sizes?</b></p>	<p>The committee appreciates this feedback on implementation requirements and will include the information in the report to the Judicial Council. The need for training, updated processes, and updated technology is consistent with other commenters.</p> <p>Note, the legal requirements to permit electronic filing in criminal cases are not different than in civil cases. Both would be authorized by local rule if a court chose to permit electronic filing. If a court creates a local rule permitting electronic filing in certain case types then the party may choose to electronically file. “Notice and consent” are applicable to electronic service rather the electronic filing (see committee comment on electronic service on the prior two pages). The court would not have authority to develop a rule that presumed consent by parties for electronic service because local rules would not be consistent with the consent provisions of Civil Procedure section 1010.6, which requires express consent be indicated in specific ways and in a “specific action” rather than for all purposes. (§ 1010.6(a)(2)(A)(ii))</p>

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			<ul style="list-style-type: none"> <li>• Developing a case-by-case consent system would be challenging for different sized courts, depending on their available resources.</li> <li>• Question: Would courts enacting local rules to streamline the process be able to develop a rule that presumed consent but provided an opt-out option?</li> </ul>	See response above. Presumed consent is not permitted under the statutory provisions.
6.	Kailin Wang San Francisco, CA	A	<p>I absolutely agree with this proposal, but would add that this new feature should also be available to Pro Per litigants and well as fee-waived for litigants that qualify. This is especially for voluminous and complex cases this could make a world of different and significantly speed up the court process for almost everyone. Other possible options are Tru-filing for all Superior Courts. I find that system is most reliable and affordable compared to let's say "File and Serve" (San Francisco Superior Ct.), which can be costly as it charges \$7 for filing, \$8 for service, and another \$10 to ensure the opposing party get it, which runs \$25 per filing on top of \$60 to file a request or order which can up very quickly, especially if the clerk reflects the filing for errors and you have to re-file several times and be charged each time to get it correct.</p> <p>These days personal proof of service is a luxury to file and serve can run up to \$500 each time, and the courts requirement of 3 to 4 copies is ridiculous and overwhelmingly a waste of our environment as well as takes up unnecessary space in our courts.</p>	<p>The committee appreciates the comments and support of the proposal. The committee notes that under Penal Code section 690.5 and the amended rules do apply to self-represented parties in criminal actions, and service charges would not be charged to them if the court has determined they are indigent. However local courts can determine what types of cases and matters they will for electronic filing. Where courts accept electronic filings from self-represented parties in civil cases, service charges are not applied to parties who have been granted fee waivers.</p> <p>Self-represented parties may accept electronic service under Penal Code section 690.5 so long as they expressly consent to such service.</p> <p>The committee has established a working group to examine statewide electronic filing including opportunities to expand electronic filing. However, the committee is unlikely to mandate use of a particular service provider, particularly as part of a statewide rule of court.</p>

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			<p>Another benefit from offering this feature for all is in the COA they mandate bookmarks, page numbers but when you file a PDF to trial court the e-filing system could erase all those book marks, that does not happen with Trufile.</p> <p>Inevitably I think either a vendor that has a drive of the parties documents, or a Dropbox feature where litigants can upload their trial exhibits, increase use of Screen Sharing can also greatly benefit the back log of cases due to COVID-19, this move to Electronic everything will only increase efficiency of the Court.</p> <p>The comment is for SPR21-16. I am referring to the proposed , Penal Code section 690.5, as the "new feature. " While file and serve is used by the San Francisco Criminal Court for attorneys only, it should be available for indigent Pro Per's as well. There is a Fee-Waiver option available in E-serve websites for litigants in San Mateo and Santa Clara, but not in San Francisco on File and Serve which is the only E-service used for the Criminal Court as of right now. While some indigent litigants would prefer filing by paper, most if not all believe that electronic filing is far more cost effective, the printing costs for 3 or 4 copies needed in the Criminal Courts alone is cost prohibitive, vs. the \$7 for File and Serve to the Court only, but additional \$8 for service to all the parties. And public defenders should not be charged for this type of filing.</p>	<p>Code of Civil Procedure section 1010.6 authorizes courts to permit electronic filing by local rule but does not require courts to make electronic filing available to all filers. Availability of electronic filing as an option will depend on local resources and needs.</p> <p>Under the amended rules, public defenders would not have to pay EFSP service fees for electronic filing. See proposed rule 2.255(h).</p>

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