



Judicial Council of California

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File #: 16-168 **Version:** 1

Type: Rules Proposal **Status:** Passed

File created: 8/23/2016 **In control:** Judicial Council

On agenda: 10/28/2016 **Final action:** 10/28/2016

Title: Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (Action Required)

Sponsors:

Indexes:

Code sections:

Attachments: 1. 20161028-16-168

Date	Ver.	Action By	Action	Result
10/28/2016	1	Judicial Council	approved	Pass

Title

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (Action Required)

Summary

The Information Technology Advisory Committee and the Appellate Advisory Committee propose changes to the appellate rules to reflect the e-filing practices used by the appellate courts. These changes will eliminate conflicts between appellate court local rules and the rules of court, and ensure consistency in the e-filing practices of the Courts of Appeal where such consistency is desirable.

Recommendation

The Information Technology Advisory Committee (ITAC) and the Appellate Advisory Committee (AAC) recommend that the Judicial Council, effective January 1, 2017:

1. Revise rule 8.70 to eliminate outdated references to e-filing “projects” in the appellate courts.
2. Reorganize the appellate e-filing rules so that the rules pertaining to e-filing come first, followed by the e-service rules.
3. Renumber rule 8.71 as rule 8.78 and revise it to apply only to e-service, with e-filing covered under new rule 8.71. (A detailed description of proposed renumbered rule 8.78 is given below.)
4. Create new rule 8.71, implementing mandatory e-filing in the appellate courts; exempting self-represented parties from mandatory e-filing unless they agreed to e-file, by e-filing a document or otherwise; exempting trial courts from e-filing unless they agreed to e-file; and requiring appellate courts to have procedures for parties to ask to be excused from e-filing upon a showing of undue hardship or significant prejudice.
5. Delete rule 8.72, which specifies which documents may be filed electronically, with some of its provisions moved into new rule 8.71.
6. Renumber rule 8.73 as rule 8.79 and revise it to apply only to orders for e-service. (A detailed description of proposed renumbered rule 8.79 is given below.)
7. Renumber rule 8.74 as rule 8.72 and revise it to reflect that e-filing is proposed to be mandatory.
8. Renumber rule 8.75 as rule 8.73 and add a provision stating that, whenever possible, a court should

include in its contract with an electronic filing service provider a requirement that the provider agree to waive any fee to be charged to a party upon a court order for waiver.

9. Renumber rule 8.76 as rule 8.74, add a requirement that a court's required electronic filing format be text-searchable while maintaining original document formatting, and add a standard for pagination of e-filed documents.
10. Renumber rule 8.77 as rule 8.75.
11. Renumber rule 8.78 as rule 8.76.
12. Renumber rule 8.79 as rule 8.77, add language requiring the court to "arrange for" confirmation of filing to an electronic filer, delete the requirement that such a notice include notice of any fees assessed for the filing, and revise the provision regarding delayed delivery of a filing due to technical problems with the court's electronic filing system, allowing a filer who misses a deadline to file late and move to have the document accepted as timely filed.
13. Revise rule 8.78, renumbered from existing rule 8.71, (1) so a party who files a document electronically will be able, by filing a notice with the court and serving it on the other parties, to indicate that the party prefers to be served paper copies; (2) to apply the rule to nonparties who agree to or otherwise are required to accept electronic service or to electronically serve documents; (3) to state that a proof of electronic service need not state that the person making service is not a party; and (4) to delete the requirement that a proof of electronic service state time of service.
14. Revise rule 8.79, renumbered from existing rule 8.73, to apply only to orders for electronic service, to distinguish between orders to electronically serve other parties and orders for a party to accept electronic service, and to delete the subdivision which prohibited the court from ordering a party to electronically file or serve documents if the party objected to paying the electronic filing service provider fee.
15. Revise rule 8.204 to require that briefs be consecutively paginated with Arabic numerals, with the cover page as page 1, and allowing the number to be suppressed from the cover page, and to require that briefs submitted in paper form be submitted unbound unless otherwise provided by local rule or court order.