

EXHIBIT 1

West's Annotated California Codes
California Rules of Court
Title 2. Trial Court Rules
Division 3. Filing and Service
Chapter 2. Filing and Service by Electronic Means

Cal.Rules of Court, T. 2, D. 3, Ch. 2, Refs & Annos
Currentness

Editors' Notes

GENERAL NOTES

2006 Main Volume

<Chapter 2, effective Jan. 1, 2007, was adopted June 30, 2006 as part of the reorganization of the California Rules of Court.>

Cal. Rules of Court, T. 2, D. 3, Ch. 2, Refs & Annos, CA ST TR COURT T. 2, D. 3, Ch. 2, Refs & Annos
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Chapter 2. Filing and Service by Electronic Means (Refs & Annos)

Cal. Rules of Court, Rule 2.250
Formerly cited as CA ST TRIAL CT Rule 2050

Rule 2.250. Construction and definitions

Currentness

(a) Construction of rules

The rules in this chapter must be construed to authorize and permit filing and service by electronic means to the extent feasible.

(b) Definitions

As used in this chapter, unless the context otherwise requires:

(1) A “document” is a pleading, a paper, a declaration, an exhibit, or another filing submitted by a party or by an agent of a party on the party's behalf. A document may be in paper or electronic form.

(2) “Electronic service” is service of a document on a party or other person by either electronic transmission or electronic notification. Electronic service may be performed directly by a party, by an agent of a party including the party's attorney, through an electronic filing service provider, or by a court.

(3) “Electronic transmission” means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.

(4) “Electronic notification” means the notification of a party or other person that a document is served by sending an electronic message to the electronic service address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served and providing a hyperlink at which the served document can be viewed and downloaded.

(5) “Electronic service address” of a party means the electronic address at or through which the party has authorized electronic service.

(6) An “electronic filer” is a party filing a document in electronic form directly with the court, by an agent, or through an electronic filing service provider.

(7) "Electronic filing" is the electronic transmission to a court of a document in electronic form. For the purposes of this chapter, this definition concerns the activity of filing and does not include the processing and review of the document, and its entry into the court records, which are necessary for the document to be officially filed.

(8) An "electronic filing service provider" is a person or entity that receives an electronic filing from a party for retransmission to the court or for electronic service on other parties, or both. In submission of filings, the electronic filing service provider does so on behalf of the electronic filer and not as an agent of the court.

(9) "Regular filing hours" are the hours during which a court accepts documents for filing at its filing counter.

(10) "Close of business" is 5 p.m. or any other time on a court day at which the court stops accepting documents for filing at its filing counter, whichever is earlier. The court must provide notice of its close-of-business time electronically. The court may give this notice in any additional manner it deems appropriate.

Credits

(Formerly Rule 2050, adopted, eff. Jan. 1, 2003. As amended, eff. Jan. 1, 2006. Renumbered Rule 2.250 and amended, eff. Jan. 1, 2007. As amended, eff. Jan. 1, 2008; Jan. 1, 2011; July 1, 2013.)

Editors' Notes

ADVISORY COMMITTEE COMMENT

The definition of "electronic service" has been amended to provide that a party may effectuate service not only by the electronic transmission of a document, but also by providing electronic notification of where a document served electronically may be located and downloaded. This amendment is intended to modify the rules on electronic service to expressly authorize electronic notification as a legally effective alternative means of service to electronic transmission. This rules amendment is consistent with the amendment of Code of Civil Procedure section 1010.6, effective January 1, 2011, to authorize service by electronic notification. (See Stats. 2010, ch. 156 (Sen. Bill 1274).) The amendments change the law on electronic service as understood by the appellate court in *Insyst, Ltd. v. Applied Materials, Inc.* (2009) 170 Cal.App.4th 1129, which interpreted the rules as authorizing electronic transmission as the only effective means of electronic service.

Cal. Rules of Court, Rule 2.250, CA ST TR COURT Rule 2.250
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Cal. Rules of Court, Rule 2.251

Formerly cited as CA ST TRIAL CT Rule 2060; CA ST TR COURT Rule 2.260

Rule 2.251. Electronic service

Currentness

(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 and the rules in this chapter.

(b) Electronic service by consent of the parties

(1) Electronic service may be established by consent of the parties in an action. 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. The act of electronic filing is evidence that the party agrees to accept service at the electronic service address the party has furnished to the court under rule 2.256(a)(4). This subparagraph (B) does not apply to self-represented parties; they must affirmatively consent to electronic service under subparagraph (A).

(2) A party that has consented to electronic service under (1) and has used an electronic filing service provider to serve and file documents in a case consents to service on that electronic filing service provider as the designated agent for service for the party in the case, until such time as the party designates a different agent for service.

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

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

(2) Except when personal service is otherwise required by statute or rule, a party that is required to file documents electronically in an action must also serve documents and accept service of documents electronically from all other parties, unless:

(A) The court orders otherwise, or

(B) The action includes parties that are not required to file or serve documents electronically, including self-represented parties; those parties are to be served by non-electronic methods unless they affirmatively consent to electronic service.

(3) Each party that is required to serve and accept service of documents electronically must provide all other parties in the action with its electronic service address and must promptly notify all other parties and the court of any changes under (f).

(d) Maintenance of electronic service lists

A court that permits or requires electronic filing in a case must maintain and make available electronically to the parties an electronic service list that contains the parties' current electronic service addresses, as provided by the parties that have filed electronically in the case.

(e) Service by the parties

(1) Notwithstanding (d), parties are responsible for electronic service on all other parties in the case. A party may serve documents electronically directly, by an agent, or through a designated electronic filing service provider.

(2) A document may not be electronically served on a nonparty unless the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order.

(f) Change of electronic service address

(1) A party whose electronic service address changes while the action or proceeding is pending must promptly file a notice of change of address electronically with the court and must serve this notice electronically on all other parties.

(2) A party's election to contract with an electronic filing service provider to electronically file and serve documents or to receive electronic service of documents on the party's behalf does not relieve the party of its duties under (1).

(3) An electronic service address is presumed valid for a party if the party files electronic documents with the court from that address and has not filed and served notice that the address is no longer valid.

(g) Reliability and integrity of documents served by electronic notification

A party that serves a document by means of electronic notification must:

(1) Ensure that the documents served can be viewed and downloaded using the hyperlink provided;

(2) Preserve the document served without any change, alteration, or modification from the time the document is posted until the time the hyperlink is terminated; and

(3) Maintain the hyperlink until either:

(A) All parties in the case have settled or the case has ended and the time for appeals has expired; or

(B) If the party is no longer in the case, the party has provided notice to all other parties that it is no longer in the case and that they have 60 days to download any documents, and 60 days have passed after the notice was given.

(h) When service is complete

(1) Electronic service of a document is complete at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent. If an electronic filing service provider is used for service, the service is complete at the time that the electronic filing service provider electronically transmits the document or sends electronic notification of service.

(2) If a document is served electronically, any period of notice, or any right or duty to act or respond within a specified period or on a date certain after service of the document, is extended by two court days, unless otherwise provided by a statute or a rule.

(3) The extension under (2) does not extend the time for filing:

(A) A notice of intent to move for a new trial;

(B) A notice of intent to move to vacate the judgment under Code of Civil Procedure section 663a; or

(C) A notice of appeal.

(4) Service that occurs after the close of business is deemed to have occurred on the next court day.

(i) Proof of service

(1) Proof of electronic service may be by any of the methods provided in Code of Civil Procedure section 1013a, except that the proof of service must state:

(A) The electronic service address of the person making the service, in addition to that person's residence or business address;

(B) The date and time of the electronic service, instead of the date and place of deposit in the mail;

(C) The name and electronic service address of the person served, in place of that person's name and address as shown on the envelope; and

(D) That the document was served electronically in place of the statement that the envelope was sealed and deposited in the mail with postage fully prepaid.

(2) Proof of electronic service may be in electronic form and may be filed electronically with the court.

(3) Under rule 3.1300(c), proof of service of the moving papers must be filed at least five court days before the hearing.

(4) The party filing the proof of electronic service must maintain the printed form of the document bearing the declarant's original signature and must make the document available for inspection and copying on the request of the court or any party to the action or proceeding in which it is filed, in the manner provided in rule 2.257(a).

(j) Electronic service by court

The court may electronically serve any notice, order, judgment, or other document issued by the court in the same manner that parties may serve documents by electronic service.

Credits

(Formerly Rule 2060, adopted, eff. Jan. 1, 2003. Renumbered Rule 2.260 and amended, eff. Jan. 1, 2007. As amended, eff. Jan. 1, 2008; Jan. 1, 2009; July 1, 2009; Jan. 1, 2010. Renumbered Rule 2.251 and amended, eff. Jan. 1, 2011. As amended, eff. July 1, 2013.)

Editors' Notes

OFFICIAL FORMS

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Cal. Rules of Court, Rule 2.252
Formerly cited as CA ST TRIAL CT Rule 2052

Rule 2.252. General rules on electronic filing of documents

Currentness

(a) In general

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

(b) Direct and indirect electronic filing

Except as otherwise provided by law, a court may provide for the electronic filing of documents directly with the court, indirectly through one or more approved electronic filing service providers, or through a combination of direct and indirect means.

(c) Effect of document filed electronically

(1) A document that the court or a party files electronically under the rules in this chapter has the same legal effect as a document in paper form.

(2) Filing a document electronically does not alter any filing deadline.

(d) Filing in paper form

When it is not feasible for a party to convert a document to electronic form by scanning, imaging, or another means, a court may allow that party to file the document in paper form.

(e) Original documents

In a proceeding that requires the filing of an original document, an electronic filer may file an electronic copy of a document if the original document is then filed with the court within 10 calendar days.

(f) Application for waiver of court fees and costs

The court may permit electronic filing of an application for waiver of court fees and costs in any proceeding in which the court accepts electronic filings.

(g) Orders and judgments

The court may electronically file any notice, order, minute order, judgment, or other document prepared by the court.

(h) Proposed orders

Proposed orders may be filed and submitted electronically as provided in rule 3.1312.

Credits

(Formerly Rule 2052, adopted, eff. Jan. 1, 2003. Renumbered Rule 2.252 and amended, eff. Jan. 1, 2007. As amended, eff. Jan. 1, 2011; July 1, 2013.)

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Cal. Rules of Court, Rule 2.253
Formerly cited as CA ST TRIAL CT Rule 2053

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

Currentness

(a) Permissive electronic filing

A court may permit parties by local rule to file documents electronically in any types of cases, directly or through approved electronic service providers, subject to the conditions in Code of Civil Procedure section 1010.6 and the rules in this chapter.

(b) Mandatory electronic filing

A court may require parties by local rule to electronically file documents in civil actions directly with the court, or directly with the court and through one or more approved electronic filing service providers, or through more than one approved electronic filing service provider, subject to the conditions in Code of Civil Procedure section 1010.6, the rules in this chapter, and the following conditions:

(1) The court must specify the types or categories of civil actions in which parties are required to file and serve documents electronically. The court may designate any of the following as eligible for mandatory electronic filing and service:

- (A) All civil cases;
- (B) All civil cases of a specific category, such as unlimited or limited civil cases;
- (C) All civil cases of a specific case type, including but not limited to, contract, collections, personal injury, or employment;
- (D) All civil cases assigned to a judge for all purposes;
- (E) All civil cases assigned to a specific department, courtroom or courthouse;
- (F) Any class actions, consolidated actions, or group of actions, coordinated actions, or actions that are complex under rule 3.403; or

(G) Any combination of the cases described in subparagraphs (A) to (F), inclusive.

(2) Self-represented parties are exempt from any mandatory electronic filing and service requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6.

(3) In civil cases involving both represented and self-represented parties, represented parties may be required to file and serve documents electronically; however, in these cases, each self-represented party is to file, serve, and be served with documents by non-electronic means unless the self-represented party affirmatively agrees otherwise.

(4) A party that is required to file and serve documents electronically must be excused from the requirements if the party shows undue hardship or significant prejudice. A court requiring the electronic filing and service of documents must have a process for parties, including represented parties, to apply for relief and a procedure for parties excused from filing documents electronically to file them by conventional means.

(5) Any fees charged by the court shall be for no more than the cost actually incurred by the court in providing for the electronic filing and service of the documents. Any fees charged by an electronic filing service provider shall be reasonable.

(6) Any fees for electronic filing charged by the court or by an electronic filing service provider must be waived when deemed appropriate by the court, including providing a waiver of the fees for any party that has received a fee waiver.

(7) Any document required to be electronically filed with the court under this subdivision that is received electronically after the close of business on any day is deemed to have been filed on the next court day, unless by local rule the court provides that any document required to be electronically filed with the court under this subdivision that is received electronically before midnight on a court day is deemed to have been filed on that court day, and any document received electronically after midnight is deemed filed on the next court day. This paragraph concerns only the effective date of filing. Any document that is received electronically must be processed and satisfy all other legal filing requirements to be filed as an official court record.

(8) A court that adopts a mandatory electronic filing program under this subdivision must report semiannually to the Judicial Council on the operation and effectiveness of the court's program.

(c) Electronic filing and service required by court order

(1) The court may, on the motion of any party or on its own motion, provided that the order would not cause undue hardship or significant prejudice to any party, order all parties in any class action, a consolidated action, a group of actions, a coordinated action, or an action that is complex under rule 3.403 to:

(A) Serve all documents electronically, except when personal service is required by statute or rule;

(B) File all documents electronically; or

(C) Serve and file all documents electronically, except when personal service is required by statute or rule.

(2) If the court proposes to make any order under (1) on its own motion, the court must mail notice to the parties. Any party may serve and file an opposition within 10 days after notice is mailed or such later time as the court may specify.

(3) If the court has previously ordered parties in a case to electronically serve or file documents and a new party is added that the court determines should also be ordered to do so under (1), the court may follow the notice procedures under (2) or may order the party to electronically serve or file documents and in its order state that the new party may object within 10 days after service of the order or by such later time as the court may specify.

(4) The court's order may also provide that:

(A) Documents previously filed in paper form may be resubmitted in electronic form; and

(B) When the court sends confirmation of filing to all parties, receipt of the confirmation constitutes service of the filing if the filed document is available electronically.

Credits

(Formerly Rule 2053, adopted, eff. Jan. 1, 2003. Renumbered Rule 2.253 and amended, eff. Jan. 1, 2007. As amended, eff. Jan. 1, 2008; Jan. 1, 2011; July 1, 2013.)

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ADVISORY COMMITTEE COMMENT

Subdivision (b)(1). This subdivision allows courts to institute mandatory electronic filing and service in any type of civil case for which the court determines that mandatory electronic filing is appropriate. The scope of this authorization is meant to be broad. It will enable courts to implement mandatory electronic filing in a flexible yet expansive manner. However, in initiating mandatory electronic filing, courts should take into account the fact that some civil case types may be easier and more cost-effective to implement at the outset while other types may require special procedures or other considerations (such as the need to preserve the confidentiality of filed records) that may make them less appropriate for inclusion in initial mandatory e-filing efforts.

Subdivision (b)(2). Although this rule exempts self-represented parties from any mandatory electronic filing and service requirements, these parties are encouraged to participate voluntarily in electronic filing and service. To the extent feasible, courts and other entities should assist self-represented parties to electronically file and serve documents.

Rule 2.253. Permissive electronic filing, mandatory..., CA ST TR COURT...

Subdivision (c). Court-ordered electronic filing and service under this subdivision are not subject to the provisions in (b) and Code of Civil Procedure section 1010.6 requiring that, where mandatory electronic filing and service are established by local rule, the court and the parties must have access to more than one electronic filing service provider.

Cal. Rules of Court, Rule 2.253, CA ST TR COURT Rule 2.253
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Cal. Rules of Court, Rule 2.254
Formerly cited as CA ST TRIAL CT Rule 2054

Rule 2.254. Responsibilities of court

Currentness

(a) Publication of electronic filing requirements

Each court that permits or mandates electronic filing must publish, in both electronic and print formats, the court's electronic filing requirements.

(b) Problems with electronic filing

If the court is aware of a problem that impedes or precludes electronic filing during the court's regular filing hours, it must promptly take reasonable steps to provide notice of the problem.

(c) Public access to electronically filed documents

Except as provided in rules 2.250-2.259 and 2.500-2.506, an electronically filed document is a public document at the time it is filed unless it is sealed under rule 2.551(b) or made confidential by law.

Credits

(Formerly Rule 2054, adopted, eff. Jan. 1, 2003. Renumbered Rule 2.254 and amended, eff. Jan. 1, 2007. As amended, eff. Jan. 1, 2011; July 1, 2013.)

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Cal. Rules of Court, Rule 2.255
Formerly cited as CA ST TRIAL CT Rule 2055

Rule 2.255. Contracts with electronic filing service providers

Currentness

(a) Right to contract

- (1) A court may contract with one or more electronic filing service providers to furnish and maintain an electronic filing system for the court.
- (2) If the court contracts with an electronic filing service provider, it may require electronic filers to transmit the documents to the provider.
- (3) If the court contracts with an electronic service provider or the court has an in-house system, the provider or system must accept filing from other electronic filing service providers to the extent the provider or system is compatible with them.

(b) Provisions of contract

The court's contract with an electronic filing service provider may allow the provider to charge electronic filers a reasonable fee in addition to the court's filing fee. The contract may also allow the electronic filing service provider to make other reasonable requirements for use of the electronic filing system.

(c) Transmission of filing to court

An electronic filing service provider must promptly transmit any electronic filing, and any applicable filing fee to the court.

(d) Confirmation of receipt and filing of document

- (1) An electronic filing service provider must promptly send to an electronic filer its confirmation of the receipt of any document that the filer has transmitted to the provider for filing with the court.
- (2) The electronic filing service provider must send its confirmation to the filer's electronic service address and must indicate the date and time of receipt, in accordance with rule 2.259(a).

(3) After reviewing the documents, the court must promptly transmit to the electronic filing service provider and the electronic filer the court's confirmation of filing or notice of rejection of filing, in accordance with rule 2.259.

(e) Ownership of information

All contracts between the court and electronic filing service providers must acknowledge that the court is the owner of the contents of the filing system and has the exclusive right to control the system's use.

Credits

(Formerly Rule 2055, adopted, eff. Jan. 1, 2003. Renumbered Rule 2.255 and amended, eff. Jan. 1, 2007. As amended, eff. Jan. 1, 2011.)

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Cal.Rules of Court, Rule 2.256
Formerly cited as CA ST TRIAL CT Rule 2056

Rule 2.256. Responsibilities of electronic filer

Currentness

(a) Conditions of filing

Each electronic filer must:

- (1) Comply with any court requirements designed to ensure the integrity of electronic filing and to protect sensitive personal information;
- (2) Furnish information the court requires for case processing;
- (3) 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;
- (4) Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept service;
- (5) Immediately provide the court and all parties with any change to the electronic filer's electronic service address; and
- (6) If the electronic filer uses an electronic filing service provider, provide the electronic filing service provider with the electronic address at which the filer is to be sent all documents and immediately notify the electronic filing service provider of any change in that address.

(b) Format of documents to be filed electronically

A document that is filed electronically with the court must be in a format specified by the court unless it cannot be created in that format. The format adopted by a court must meet the following requirements:

- (1) The software for creating and reading documents must be in the public domain or generally available at a reasonable cost.

(2) The printing of documents must not result in the loss of document text, format, or appearance.

If a document is filed electronically under the rules in this chapter and cannot be formatted to be consistent with a formatting rule elsewhere in the California Rules of Court, the rules in this chapter prevail.

Credits

(Formerly Rule 2056, adopted, eff. Jan. 1, 2003. As amended, eff. Jan. 1, 2006. Renumbered Rule 2.256 and amended, eff. Jan. 1, 2007. As amended, eff. Jan. 1, 2008; Jan. 1, 2010; Jan. 1, 2011; July 1, 2013.)

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Cal. Rules of Court, Rule 2.257
Formerly cited as CA ST TRIAL CT Rule 2057

Rule 2.257. Requirements for signatures on documents

Currentness

(a) Documents signed under penalty of perjury

When a document to be filed electronically provides for a signature under penalty of perjury, the following applies:

- (1) The document is deemed signed by the declarant if, before filing, the declarant has signed a printed form of the document.
- (2) By electronically filing the document, the electronic filer certifies that (1) has been complied with and that the original, signed document is available for inspection and copying at the request of the court or any other party.
- (3) At any time after the document is filed, any other party may serve a demand for production of the original signed document. The demand must be served on all other parties but need not be filed with the court.
- (4) Within five days of service of the demand under (3), the party on whom the demand is made must make the original signed document available for inspection and copying by all other parties.
- (5) At any time after the document is filed, the court may order the filing party to produce the original signed document in court for inspection and copying by the court. The order must specify the date, time, and place for the production and must be served on all parties.

(b) Documents not signed under penalty of perjury

If a document does not require a signature under penalty of perjury, the document is deemed signed by the party if the document is filed electronically.

(c) Documents requiring signatures of opposing parties

When a document to be filed electronically, such as a stipulation, requires the signatures of opposing parties, the following procedure applies:

(1) The party filing the document must obtain the signatures of all parties on a printed form of the document.

(2) The party filing the document must maintain the original, signed document and must make it available for inspection and copying as provided in (a)(2). The court and any other party may demand production of the original signed document in the manner provided in (a)(3)-(5).

(3) By electronically filing the document, the electronic filer indicates that all parties have signed the document and that the filer has the signed original in his or her possession.

(d) Digital signature

A party is not required to use a digital signature on an electronically filed document.

(e) Judicial signatures

If a document requires a signature by a court or a judicial officer, the document may be electronically signed in any manner permitted by law.

Credits

(Formerly Rule 2057, adopted, eff. Jan. 1, 2003. Renumbered Rule 2.257 and amended, eff. Jan. 1, 2007. As amended, eff. Jan. 1, 2008.)

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Cal.Rules of Court, Rule 2.258
Formerly cited as CA ST TRIAL CT Rule 2058

Rule 2.258. Payment of filing fees

Currentness

(a) Use of credit cards and other methods

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

(b) Fee waivers

Eligible persons may seek a waiver of court fees and costs, as provided in Government Code sections 68630-68641, rule 2.252(f), and division 2 of title 3 of these rules.

Credits

(Formerly Rule 2058, adopted, eff. Jan. 1, 2003. Renumbered Rule 2.258 and amended, eff. Jan. 1, 2007. As amended, eff. Jan. 1, 2010; July 1, 2013.)

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West's Annotated California Codes
California Rules of Court (Refs & Annos)
Title 2. Trial Court Rules (Refs & Annos)
Division 3. Filing and Service (Refs & Annos)
Chapter 2. Filing and Service by Electronic Means (Refs & Annos)

Cal. Rules of Court, Rule 2.259
Formerly cited as CA ST TRIAL CT Rule 2059

Rule 2.259. Actions by court on receipt of electronic filing

Currentness

(a) Confirmation of receipt and filing of document

(1) Confirmation of receipt

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

(2) Confirmation of filing

If the document received by the court under (1) complies with filing requirements and all required filing fees have been paid, the court must promptly send the electronic filer confirmation that the document has been filed. The filing confirmation must indicate the date and time of filing and is proof that the document was filed on the date and at the time specified. The filing confirmation must also specify:

- (A) Any transaction number associated with the filing;
- (B) The titles of the documents as filed by the court; and
- (C) The fees assessed for the filing.

(3) Transmission of confirmations

The court must send receipt and filing confirmation to the electronic filer at the electronic service address the filer furnished to the court under rule 2.256(a)(4). The court must maintain a record of all receipt and filing confirmations.

(4) Filer responsible for verification

In the absence of the court's confirmation of receipt and filing, there is no presumption that the court received and filed the document. The electronic filer is responsible for verifying that the court received and filed any document that the electronic filer submitted to the court electronically.

(b) Notice of rejection of document for filing

If the clerk does not file a document because it does not comply with applicable filing requirements or because the required filing fee has not been paid, the court must promptly send notice of the rejection of the document for filing to the electronic filer. The notice must state the reasons that the document was rejected for filing.

(c) Document received after close of business

A document that is received electronically by the court after the close of business is deemed to have been received on the next court day, unless the court has provided by local rule, with respect to documents filed under the mandatory electronic filing provisions in rule 2.253(b)(7), that documents received electronically before midnight on a court day are deemed to have been filed on that court day, and documents received electronically after midnight are deemed filed on the next court day. This provision concerns only the effective date of filing. Any document that is electronically filed must be processed and satisfy all other legal filing requirements to be filed as an official court record.

(d) Delayed delivery

If a technical problem with a court's electronic filing system prevents the court from accepting an electronic filing during its regular filing hours on a particular court day, and the electronic filer demonstrates that he or she attempted to electronically file the document on that day, the court must deem the document as filed on that day. This subdivision does not apply to the filing of a complaint or any other initial pleading in an action or proceeding.

(e) Endorsement

(1) The court's endorsement of a document electronically filed must contain the following: "Electronically filed by Superior Court of California, County of _____, on _____ (date)," followed by the name of the court clerk.

(2) The endorsement required under (1) has the same force and effect as a manually affixed endorsement stamp with the signature and initials of the court clerk.

(3) A complaint or another initial pleading in an action or proceeding that is filed and endorsed electronically may be printed and served on the defendant or respondent in the same manner as if it had been filed in paper form.

(f) Issuance of electronic summons

(1) On the electronic filing of a complaint, a petition, or another document that must be served with a summons, the court may transmit a summons electronically to the electronic filer.

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

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

Credits

(Formerly Rule 2059, adopted, eff. Jan. 1, 2003. Renumbered Rule 2.259 and amended, eff. Jan. 1, 2007. As amended, eff. Jan. 1, 2008; Jan. 1, 2011; July 1, 2013.)

Cal. Rules of Court, Rule 2.259, CA ST TR COURT Rule 2.259

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Division 3. Filing and Service (Refs & Annos)

Chapter 2. Filing and Service by Electronic Means (Refs & Annos)

Cal. Rules of Court, Rule 2.260
Formerly cited as CA ST TRIAL CT Rule 2060

Rule 2.260. Renumbered Rule 2.251 and amended, eff. Jan. 1, 2011

Currentness

Cal. Rules of Court, Rule 2.260, CA ST TR COURT Rule 2.260
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Chapter 2. Filing and Service by Electronic Means (Refs & Annos)

Cal. Rules of Court, Rule 2.261
Formerly cited as CA ST TRIAL CT Rule 2061

Rule 2.261. Authorization for courts to continue modifying
forms for the purpose of electronic filing and forms generation

Currentness

Courts that participated in pilot projects for electronic filing and forms generation under former rule 981.5 are authorized to continue to modify Judicial Council forms for the purpose of accepting electronic filing or providing electronic generation of court documents provided that the modification of the forms is consistent with the rules in this chapter.

Credits

(Formerly Rule 2061, adopted, eff. July 1, 2004. Renumbered Rule 2.261 and amended, eff. Jan. 1, 2007.)

Cal. Rules of Court, Rule 2.261, CA ST TR COURT Rule 2.261
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EXHIBIT 2



Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 28, 2013

Title

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service in Civil Cases

Agenda Item Type

Action Required

Effective Date

July 1, 2013

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 2.250–2.254, 2.256, 2.258, and 2.259; and approve forms EFS-007 and EFS-008

Date of Report

June 21, 2013

Recommended by

Court Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Contact

Patrick O'Donnell, 415-865-7665
patrick.o'donnell@jud.ca.gov

Civil and Small Claims Advisory Committee

Hon. Dennis M. Perluss, Chair

Executive Summary

To implement Assembly Bill 2073, the Court Technology Advisory Committee and the Civil and Small Claims Advisory Committee recommend amending the California Rules of Court to allow superior courts by local rule to require parties to electronically file and serve documents in civil cases, subject to conditions provided by statute and in the rules. The committees also recommend the approval of two new optional Judicial Council forms to be used by parties to request exemptions from mandatory electronic filing and service and by courts to rule on those requests.

Recommendation

The Court Technology and the Civil and Small Claims Advisory Committees recommend that the Judicial Council, effective July 1, 2013:

1. Amend Cal. Rules of Court, rules 2.250–2.254, 2.256, 2.258, and 2.259 to provide for mandatory electronic filing and service; and
2. Approve optional *Request for Exemption From Mandatory Electronic Filing and Service* (form EFS-007) and *Order of Exemption From Mandatory Electronic Filing and Service* (form EFS-008).

The text of the amended rules is attached at pages 44–53. Copies of forms EFS-007 and EFS-008 are attached at pages 54–55.¹

Previous Council Action

The Judicial Council previously adopted rules on electronic filing and service in the superior courts. These rules—located in the California Rules of Court, rules 2.250–2.261—principally concern electronic filing and service by the consent of the parties in civil cases. The rules previously adopted also address court-ordered electronic filing and service in class actions, consolidated actions, groups of actions, coordinated actions, and complex cases (collectively “complex civil cases”). But no rules have been adopted concerning mandatory e-filing and e-service in ordinary civil cases.

Rationale for Recommendation

The enactment of Assembly Bill 2073 (Silva; Stats. 2012, ch. 320) has changed the legal framework for electronic filing and service.² The legislation amended Code of Civil Procedure section 1010.6 to authorize a mandatory electronic filing pilot project in the Superior Court of Orange County and to require the Judicial Council to adopt uniform rules to permit mandatory electronic filing and service of documents in specified civil actions on or before July 1, 2014.

The Court Technology and the Civil and Small Claims Advisory Committees, with the assistance of the AB 2073 Mandatory E-Filing Working Group,³ have developed proposed amendments to the California Rules of Court to provide uniform, statewide rules on mandatory electronic filing

¹ In addition, Guidelines for Reports on Mandatory Electronic Filing and Service, approved by the Judicial Council Technology Committee, are attached at page 56.

² The text of AB 2073 is available at: www.leginfo.ca.gov/pub/11-12/bill/asm/ab_2051-2100/ab_2073_bill_20120914_chaptered.pdf.

³ The members of the working group are Justice Terence L. Bruiniers (Chair), Judge James E. Herman (Vice-Chair), Saul Bercovitch, Judge Thomas James Borris, Judge Daniel J. Buckley, Judge Robert B. Freedman, Tom Griffin, Judge Curtis E. A. Karnow, Paul R. Kiesel, Suzanne Martindale, Edith Matthai, Judge Robert J. Moss, Judge Gary Nadler, Snorri Ogata, Judge Alan G. Perkins, Judge Glen M. Reiser, Court Executive Officer Michael M. Roddy, Julie Rogado, Becky Stilling, and William T. Tanner.

and service in the trial courts. The Judicial Council's adoption of the statewide rules for mandatory electronic filing and service for civil actions will enable any superior court, by local rule, to require parties to electronically file and serve documents, subject to certain requirements and conditions in the statute and statewide rules. Under the statewide rules, mandatory electronic filing and service would be permissive for the superior courts— it would be left to each court to determine whether and how to institute such filing and service—but mandatory for litigants subject to the rules adopted by the courts.

Because of the benefits to courts and the public of having mandatory electronic filing and service, the committees recommend that the Judicial Council adopt the amended rules effective July 1, 2013, so that other courts in addition to the Superior Court of Orange County may promptly institute mandatory electronic filing and service in civil cases. The proposal also includes some amendments to the general rules on electronic filing and service to improve them and make them clearer. And it recommends that two new optional Judicial Council forms be approved to implement the rules on mandatory electronic filing and service.

Proposed rules and forms

New rule provisions on mandatory electronic filing and service

The main new rule provisions concerning mandatory electronic filing are in amended rule 2.253. That rule, which currently relates only to electronic filing by court order in complex civil cases, would be expanded and renamed “Permissive electronic filing, mandatory electronic filing, and electronic filing by court order.”

A new subdivision (a) on permissive electronic filing would be added at the beginning of the rule to clarify that a court by local rule may allow parties to voluntarily file documents electronically “in any types of cases.” The key new provisions concerning mandatory electronic filing for ordinary civil cases would be located in subdivision (b), titled “Mandatory electronic filing.”

Authorization for mandatory electronic filing.

The threshold issue addressed in new subdivision (b) of rule 2.253 is to provide an express authorization for trial courts to institute electronic filing. This provision states: “A court may require parties by local rule to electronically file documents in civil actions . . . subject to the conditions in Code of Civil Procedure section 1010.6, the rules in this chapter,” and certain conditions specified in rule 2.253.⁴ (Amended rule 2.253(b).)

⁴ Code of Civil Procedure section 1010.6 contains various conditions that apply generally to electronic filing and service and others that apply specifically to mandatory e-filing and service. Also, under AB 2073, amended Code of Civil Procedure section 1010.6(f) provides that the Judicial Council shall adopt uniform rules that shall include statewide policies on, among other things, unrepresented parties, parties with fee waivers, hardships, and reasonable exceptions to electronic filing. Thus, certain conditions are specified in the statute and others are to be provided by rule. (See amended Code Civ. Proc., § 1010.6(g)(2).)

Scope of mandatory e-filing: Exemption of self-represented parties.

One of the most important issues concerning the new provisions on mandatory electronic filing is whether self-represented parties should be subject to mandatory e-filing or should be exempt. Such an exemption is permitted under AB 2073: the legislation states that the mandatory e-filing rules adopted by the council shall include statewide policies on hardships and “reasonable exceptions to electronic filing.” (Assem. Bill 2073; amended Code Civ. Proc., § 1010.6(f).) The issue is basically whether the uniform rules should provide that self-represented parties (1) may be required by local rule to file and serve documents electronically, with the opportunity to “opt out,” or (2) should be exempt from any requirements to file and serve documents electronically but should be given the opportunity to “opt in.”

This question was discussed extensively in the public comments, which are described later in the report. Based on consideration of all the comments, the committees recommend that amended rule 2.253(b)(2) provide:

Self-represented parties are exempt from any mandatory electronic filing and service requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6.

At the same time, to reflect the policy favoring voluntary e-filing by self-represented persons, the committees recommend adding an Advisory Committee Comment to rule 2.253 stating:

Although this rule exempts self-represented parties from any mandatory electronic filing and service requirements, these parties are encouraged to participate voluntarily in electronic filing and service. To the extent feasible, courts and other entities should assist self-represented parties to electronically file and serve documents.

Scope of mandatory e-filing: Issue of mixed cases if-represented parties are excluded.

Assuming that the rules are amended to exempt self-represented parties from mandatory e-filing, a related issue arises regarding whether to authorize mandatory e-filing in mixed cases in which both attorneys and self-represented litigants are involved. Limiting mandatory e-filing to only those cases in which *all* parties were represented by attorneys would have important consequences. It would significantly limit the impact of mandatory e-filing—for example, excluding the possibility of requiring e-filing in many collections and unlawful detainer cases.

The amended rules on mandatory e-filing address this issue. Specifically, the committees recommend authorizing mandatory electronic filing and service for attorneys in civil cases that also involve self-represented litigants, but specifying that the electronic filing and service requirements apply only to the represented parties in these cases. Self-represented parties in mixed cases would file and serve documents and be served by conventional means unless they affirmatively agree otherwise. Thus, the committees recommend providing in rule 2.253(b)(3):

In civil cases involving both represented and self-represented parties, represented parties may be required to file and serve documents electronically; however, in these mixed cases, each self-represented party is to file, serve, and be served with documents by non-electronic means unless the self-represented party affirmatively agrees otherwise.

Procedures for “opting out” based on hardship.

Even if self-represented persons are exempted from mandatory e-filing, the e-filing statute requires that a hardship exception “not limited to . . . unrepresented parties” be included in the rules. (Code Civ. Proc., § 1010.6(d)(1)(C) and (g)(2).) Thus, the uniform rules need to include such a provision regardless of whether self-represented parties are exempt from mandatory e-filing. The rules on mandatory electronic filing and service that were circulated for comment included a provision relating to requests for a hardship exception:

A party that is required to file documents electronically must be excused from the requirements if the party shows undue hardship or significant prejudice. A court requiring the electronic filing of documents must have a process for parties, including represented parties, to apply for relief and a procedure for parties excused from filing documents electronically to file them by conventional means.

The committees recommend that this provision be included as rule 2.253(b)(4) of the rules on electronic filing and service.

Because the “opt out” procedure for represented parties does not need to be as precisely drawn as it would be if it had applied to self-represented parties, the committees do not recommend the adoption of a detailed procedure at this time. Rule 2.253(b)(4) appears sufficient to address the situation of represented parties that need to ask to be excused from e-filing. The particular procedures to be used to “opt out” may be left to courts to determine locally consistent with the law. In the future, based on experience with mandatory e-filing and e-service, advisory committees could further develop the statewide rules on the procedures for “opting out” of mandatory electronic filing if that appears necessary or desirable.

Scope of mandatory e-filing: Types and categories of civil cases.

Another issue addressed in subdivision (b) of rule 2.253 is what types and categories of cases are appropriate for mandatory e-filing. The new legislation, AB 2073, gives the Judicial Council broad leeway on this matter. It provides that the council “shall, on or before July 1, 2014, adopt uniform rules to permit the mandatory electronic filing and service of documents for *specified civil actions* in the trial courts of the state.” (See Assem. Bill 2073 [amended Code Civ. Proc., § 1010.6(f)] (italics added).) Except for identifying the actions as civil, the statute does not state what the specified actions are.

The committees discussed various alternatives, including the exclusion of certain types of cases such as juvenile cases. They concluded that the range of types of civil cases in which a court might require parties to file documents electronically should be very broad. Thus, the rule

enumerates numerous kinds of civil cases that are eligible for mandatory e-filing: it would be left to each court to specify the types or categories of civil actions in which parties are required to file documents electronically in that court. (See amended rule 2.253(b)(1).) Under this approach, the trial courts will have the flexibility to determine which types or categories of civil cases are subject to mandatory e-filing. The courts will be able to implement electronic filing in a practical, incremental way depending on the needs and resources of the courts and the public that they serve.

Effective date of electronic filing: To be determined by “close of business” or midnight on filing day.

Another issue that the rules must address is what should be the effective date of electronically filed documents. This issue is complicated. There are currently two inconsistent provisions on this matter in the statute on electronic filing: a general provision for documents that are filed electronically by consent of the parties or by court order and a different one for documents that are filed under Orange County’s mandatory electronic filing pilot project.

Code of Civil Procedure section 1010.6(b)(3), applicable to electronic filing generally, provides:

Any document that is electronically filed with the court after the close of business on any day shall be deemed to have been filed on the next court day.⁵ “Close of business,” as used in this paragraph, shall mean 5 p.m. or the time at which the court would not accept filing at the court’s filing counter, whichever is earlier.

On the other hand, section 1010.6(d)(1)(D), applicable to the mandatory e-filing pilot project in Orange County, provides, in part:

A court that elects to require electronic filing pursuant to this subdivision may permit documents to be filed until 12 a.m. of the day after the court date that the filing is due, and the filing shall be considered timely. However, if same day service of a document is required, the document shall be electronically filed by 5 p.m. on the court day that the filing is due.

AB 2073 leaves open the issue of what standard should be adopted for mandatory e-filing under the new uniform rules but keeps in place the current standard—that is, an electronic filing is effective on the next court day if filed after the “close of business”—for cases where e-filing is by consent of the parties or by court order.

In the long term, it appears best to have a single standard for all types of electronic filing, whether voluntary or mandatory. But at this time, the question to be resolved is: What standard

⁵ The current rules of court contain a similar, though not identical, provision. (See rule 2.259(c):“A document that is received electronically by the court after the close of business is deemed to have been received on the next court day.”)

should be recommended for mandatory electronic filing in civil cases under the rules: (1) the same “close of business” standard that is used for voluntary electronic filing, or (2) a new standard that would allow electronic filings before midnight to be counted on the day they are electronically filed rather than the next court day?

As discussed further below, the commentators were quite divided over this question. The committees recommend that the rules of court on mandatory electronic filing provide for the “close of business” standard but give individual courts the option of adopting instead the “file until midnight” standard by local rule.⁶ This flexibility will allow for experimentation and the collection of information about courts’ experiences with mandatory electronic filing, which are some of the purposes of AB 2073. The committees also recommend that courts that establish mandatory e-filing programs be required to report to the Judicial Council on their experiences, including their experiences with different effective times of filing.⁷ This feedback will provide a basis for evaluating different practices and procedures and for making future recommendations, including recommendations about what should be the effective time of electronic filing.

Other electronic filing issues.

The same paragraph in AB 2073 that has new language about the time for electronically filing documents contains a provision about ex parte applications: “. . . Ex parte documents shall be electronically filed on the same date and within the same time period as would be required for the filing of a hard copy of the ex parte documents at the clerk’s window in the participating county.” (See Code Civ. Proc., § 1010.6(d)(1)(D).) It appears unnecessary to add such a provision in the statewide rules. Under the rules, the same deadlines that apply to conventionally filed documents also apply to electronically filed documents. (See current rule 2.252(f) (“Filing a document electronically does not alter any filing deadline.”)⁸ Because ex parte applications must follow this general rule, there is no reason to single out ex parte applications for attention in the rules. If a particular document must be filed by a certain time of day, that document needs to be filed by that time—whether it is filed electronically or on paper.

To the extent that there may be some uncertainty about the basic rule that the same deadlines apply for electronically filed documents as for conventionally filed documents, this issue is addressed in the amended rules by relocating the provision in current rule 2.252(f) to be more prominent. (See amended rule 2.252(c)(2).) This approach to clarifying the law appears

⁶ Amended rules 2.253(b)(7) and 2.259(c) have been revised to allow for this option.

⁷ To accomplish this, a new subparagraph (8) would be added to rule 2.253(b) stating:

A court that adopts a mandatory electronic filing program under this subdivision must report semiannually to the Judicial Council on the operation and effectiveness of the court’s program.

A set of guidelines has been developed to assist courts in preparing and submitting reports under this provision.

⁸ The federal courts follow the same general rule. See U.S. District Court, Northern District of California, Order No. 45, VI.D (“Filing documents does not alter any filing deadlines”).

preferable to having a particular rule or statutory provision applicable only to ex parte applications.

New rule provisions on mandatory electronic service.

AB 2073 requires the Judicial Council to “adopt uniform rules to permit the mandatory electronic filing *and service* of documents for specified civil actions in the trial courts of the state.” (See Assem. Bill 2073 [amended Code Civ. Proc., § 1010.6(f)](italics added).) Hence, this proposal includes certain rule changes relating to the electronic service as well as the electronic filing of documents. Clarification of the rules on electronic service is especially important for self-represented litigants but affects everyone who serves documents electronically.

Several specific changes to rule 2.251—on electronic service—are included in the proposed rules. Some of these changes are technical: they are designed to eliminate ambiguities on how electronic service will operate in a court that mandates electronic filing under the new rules. However, some of the proposed changes are more substantive.

First, the current rule on electronic service by consent of the parties provides that a party can consent either (1) by serving notice on all parties that the party accepts electronic service and filing, or (2) by electronically filing any document with the court. (See amended rule 2.251(b)(1)(A)–(B).) Based on the comments, the committees recommend changing this rule so that electronically filing will not be deemed consent for self-represented parties; they must affirmatively consent to electronic service. The reason for this change is that, as the commentators persuasively argued, electronic filing and service need to be treated separately for self-represented parties. Many self-represented parties, who might be able to receive assistance with electronic filing from self-help centers and legal aid organizations, might not be able to electronically serve or receive service of documents—for example, because they have no computer. Thus, it is unreasonable to assume that e-filing by self-represented parties constitutes consent to e-service. Furthermore, this presumption may actually discourage these parties from seeking assistance with e-filing because the filing would result in their being compelled to accept e-service which they are unable to do.

Second, a new subdivision (c), entitled “Electronic service required by local rule or court order,” would be added to rule 2.251. To clarify the impact of AB 2073, it would state that “[a] court may require parties to serve documents electronically in specified actions by local rule or court order, as provided in Code of Civil Procedure section 1010.6 and the rules in the chapter” on electronic service and filing. (See amended Cal. Rules of Court, rule 2.251(c)(1).) In addition, the new subdivision would include a provision establishing a default service procedure for cases involving mandatory electronic filing. It would provide that, except when personal service is otherwise required by statute or rule, a party that is required to file documents electronically in an action must also serve documents and accept service of documents electronically from all other parties, unless (1) the court orders otherwise, or (2) the action includes parties that are not required to file or serve documents electronically, including self-represented parties; those parties are to be served by nonelectronic methods unless they consent to electronic service. (See

amended rule 2.251(c)(2).) Finally, another new provision would be added in subdivision (c) that would state that “[e]ach party that is required to serve and accept service of documents electronically must provide all other parties in the action with its electronic service address and must promptly notify all other parties and the court of any changes.” (See amended rule 2.251(c)(3).)

A final electronic service question relates to the issue discussed previously about when an electronic filing is effective. The rules on electronic service currently provide that “[s]ervice that occurs after the close of business is deemed to have occurred on the next court day.” (See current rule 2.251(f)(4).) The committees do not recommend changing this rule at the present time. However, if the statute and rules on the effective date of electronic filing are changed in the future to provide for the “file until midnight” standard, the statute and rules on service might also be amended to provide that service that occurs before midnight on a court day is deemed to have occurred on that day.

Fees and fee waivers.

AB 2073 enumerates certain conditions and specifies various matters that are to be included in the uniform rules to be adopted on mandatory electronic filing and service, including statewide policies on parties with fee waivers. (See Assem. Bill 2073 [amended Code Civ. Proc., § 1010.6(f)].) To implement the new statutory provisions, the following paragraphs would be included in rule 2.253(b):

- (5) Any fees charged by the court shall be for no more than the cost actually incurred by the court in providing for the electronic filing and service of the documents. Any fees charged by an electronic filing service provider shall be reasonable.
- (6) Any fees for electronic filing charged by the court or by an electronic filing service provider must be waived when deemed appropriate by the court, including providing a waiver of the fees for any party that has received a fee waiver.

Because provisions similar to these are included in the statute, their inclusion in the rules may not be strictly necessary; however, AB 2073 contemplates that there will be rules relating to fees and fee waivers in the new rules on mandatory electronic filing and service. Also, including these specific provisions in the rules offer advantages. First, these key provisions would be in the rules along with the other significant provisions relating to mandatory electronic filing. All the principal conditions and requirements relating to such filings would be together in one place in the rules. Second, the general rules on electronic filing and service already contain other provisions regarding fees and fee waivers. (See current rules 2.252(c), 2.255(b) and 2.258.) Thus, for the sake of comparison and clarity, including specific provisions on fees and fee waivers in the rule on mandatory electronic filing would be useful.

Other rule changes

In addition to the rule changes described above, the committees recommend other rule changes that may be useful to improve and promote the electronic filing and service of documents and to clarify the processes of electronic filing and service.

Filing through EFSPs or directly.

The current e-filing rules and statute are not as clear as they should be that electronic filing can be done through an electronic filing service provider (EFSP) or directly into the court, if the court has that capacity.⁹ This clarification is important because some trial courts may want to institute mandatory direct e-filing under the new uniform rules. Thus, it is useful to clarify in the rules that e-filing is permissible by *both* direct and indirect means—and that a court can mandate electronic filing by either means.

To effectuate this purpose, in the draft rules, rule 2.252 would be renamed “General rules on electronic filing of documents,” and a new subdivision (b), “Direct and indirect electronic filing,” would be added to the rule. The new subdivision would state that, except as otherwise provided by law, a court may provide for the electronic filing of documents directly with the court, indirectly through one or more approved electronic filing service providers, or through a combination of direct and indirect means.

The main rule on mandatory electronic filing, rule 2.253, would also be amended to state in new subdivision (b) that “[a] court may require parties by local rule to electronically file documents in civil actions directly with the court, or directly with the court and through one or more approved electronic filing service providers, or through more than one approved electronic filing service provider.”¹⁰

Notification of EFSPs.

A problem has been identified is that parties filing and serving documents through electronic filing service providers sometimes fail to notify the EFSPs of changes in their contact information. This problem was noted as arising particularly often with self-represented parties who may use an EFSP for filing electronically on a one-time basis, but after initially filing electronically fail to keep the EFSP informed about how to contact them. No rule currently

⁹ AB 2073 contains language concerning the pilot project that assumes that direct e-filing is an option. One of the conditions specified in the statutory amendments for having a mandatory e-filing program is: “The court and the parties shall have access either to more than one electronic filing service provider capable of electronically filing documents with the court, *or to electronic filing access directly through the court.*” (Assem. Bill 2070; amended Code Civ. Proc. 1010.6(d)(1)(B)(italics added).)

¹⁰ In the case of mandatory e-filing, the option for a court to provide for e-filing exclusively through a single electronic service provider appears to be precluded by AB 2073, which requires that parties have access to more than one provider capable of electronically filing documents with the court. (See amended Code Civ. Proc., § 1010.6(d)(1)(B)). To change this requirement for cases involving mandatory e-filing may require additional legislation.

expressly addresses this issue. To fill this gap, rule 2.256, on the responsibilities of the electronic filer, would be amended to add a new paragraph (a)(6) stating that the electronic filer must:

If the electronic filer uses an electronic filing service provider, provide the electronic filing service provider with the electronic address at which the filer is to be sent all documents and immediately notify the electronic filing service provider of any change in that address.

Because this provision would apply to all electronic filers, it is placed in rule 2.256 on the duties of electronic filers rather than in a separate rule for self-represented parties. To the extent the failure to provide contact information is a special problem for self-represented parties, the duty to provide updated information may be highlighted in instructions and information provided to self-represented parties by courts, self-help-centers, EFSPs, and others.

Filing in paper form.

Another issue concerns situations under which it is appropriate for electronic filers to file certain documents in paper form rather than electronically. Current rule 2.253(c) provides: “When it is not feasible for a party to convert a document to electronic form by scanning, imaging, or another means, a court may allow that party to . . . file the document in paper form”

Because of its present location, this provision appears to apply only to documents filed by court order in complex civil cases. This provision should in fact apply to all electronic filings; so, in the amended rules, it has been relocated to rule 2.252, “General rules on electronic filing of documents,” as subdivision (d), “Filing in paper form.”

Definition of “electronic filing.”

A final rule issue that warrants clarification is the definition of “electronic filing” in rule 2.250(b)(7). It is currently defined as “the electronic transmission to a court of a document in electronic form.” To distinguish this definition from other meanings of “filing,” it would be useful to add: “For the purposes of this chapter, this definition concerns the activity of filing and does not include the processing and review of the document and its entry into the court records, which are necessary for the document to be officially filed.” Similar clarifications have been added to rules 2.253(b)(7) and 2.259(c).

These clarifications should make the meaning of the term “electronic filing” clearer when it is used throughout the chapter. For example, when it is used to specify the effective date of a filing, the time of transmission—not of processing or the completion of processing—is determinative. California law recognizes that the process for filing documents may sometimes not be completed until a day or more after the documents are received by the court and, to protect filers, provides for this contingency by prescribing that the date of receipt shall be deemed the date of filing. (See Cal. Rules of Court, rule 1.20(a): “Unless otherwise provided, a document is deemed filed on the date it is received by the court clerk.”) Like rule 1.20(a), the proposed clarification of the definition of “electronic filing” in the rules on electronic filing is intended to protect the rights of filers—in this case electronic filers. The rule changes clarify that, for purposes of the effective

date of filing, the date of receipt applies, even if the filing process is not completed until a later date.

New Forms for Requesting and Ruling on Exemptions

To assist in implementing the new law—and in particular to help parties requesting exemptions from mandatory electronic filing and service and courts issuing orders on these requests—two new optional Judicial Council forms have been developed:¹¹

- *Request for Exemption From Mandatory Electronic Filing and Service* (form EFS-007)
- *Order of Exemption From Mandatory Electronic Filing and Service* (form EFS-008)

If all self-represented parties were subject to mandatory e-filing and had to opt out, these forms would have been of much greater impact: virtually every self-represented party seeking to be excused from mandatory e-filing and e-service would have had to use the forms. However, assuming self-represented parties are exempt, the forms will be used only by represented parties. The forms would still be useful to those parties and the courts. Based on the public comments discussed below, the forms have been modified to be clearer and more effective. The committees recommend that the Judicial Council approve these forms for optional use.

Comments, Alternatives Considered, and Policy Implications

The proposed rules and forms were circulated for public comment between December 14, 2012 and January 25, 2013. Forty-two commentators submitted or joined in 33 comments. The commentators included legal aid and disability rights organizations, consumer groups, State Bar committees, attorneys, electronic filing service providers, legal publishers, press organizations, and seven superior courts. Comments were also provided by the California Judges Association, the California Commission on Access to Justice, and the Task Force on Self-Represented Litigants.

The comments, presented in the attached comment chart,¹² were extensive. They addressed a wide range of issues, including whether self-represented litigants should be excluded from mandatory e-filing and whether electronic filings should be effective at the “close of business” on the day of filing or should be allowed to be filed until midnight. To make the comments easier to understand, they have been divided by topic into 302 separate comments—organized into three broad categories that have been used in the comment chart:

- General comments (comments 1–33)

¹¹ These forms are based on a local application and order form developed by the mandatory e-filing pilot court, the Superior Court of Orange County.

¹² The comment chart is attached at pages 57–289.

- Comments on particular issues (comments 34–92)
- Comments in response to the request for specific comments in the invitation to comment (comments 93–302)

This report reviews the comments by summarizing the main rules and forms proposals that were circulated, the specific comments received on each of them, and the committees' responses to these comments.

Comments on new rule provisions on mandatory electronic filing and service

The main new rule provisions concerning mandatory electronic filing are in amended rule 2.253. The rule would be expanded and renamed “Permissive electronic filing, mandatory electronic filing, and electronic filing by court order,” and a new subdivision (a) on permissive electronic filing would be added at the beginning of the rule stating that a court by local rule may allow parties to voluntarily file documents electronically “in any types of cases.” No comments were received on these changes.

Authorization for mandatory electronic filing.

The key new provisions concerning mandatory electronic filing for ordinary civil cases are in subdivision (b) of rule 2.253, which has been titled “Mandatory electronic filing.” This subdivision provides an express authorization for trial courts to institute electronic filing: “A court may require parties by local rule to electronically file documents in civil actions” Thus, new subdivision (b) directly implements AB 2073 by authorizing courts to establish mandatory electronic filing and service by local rule.

In general, the commentators supported the overall project to establish mandatory e-filing for civil cases in California. (See comment 1 (“Great move”).) The only commentator who objected directly to the rules on mandatory e-filing and e-service was an attorney. He complained that requiring a person or an attorney to file documents electronically, and to pay a fee to an electronic filing service provider, constitute improper limitations on the person’s right to access justice. He proposed that the rules state that a court may encourage—not require—parties to serve and file documents electronically. (See comment 10.) The committees disagreed with these comments and suggestions. Changing the rules to encourage but not require electronic filing would be inconsistent with the intent and language of the Assembly Bill 2073, which this rules proposal implements.

Another commentator stated: “Our rule for electronic filing has always been ‘Don’t make it mandatory, make it irresistible.’” (Comment 118.) To the extent this is an objection to establishing mandatory e-filing the committees disagreed with it; on the other hand, making e-filing “irresistible” is certainly a worthy goal.

The California Judges Association supported the mandatory e-filing rules. It commented that e-filing should be authorized in all civil cases with two caveats—one of which was that mandatory e-filing “should not be made mandatory unless and until the court has the technological capacity

sufficient to implement it.” (Comment 4.) The committees agreed with this caveat but did not think it is necessary to expressly provide a requirement for technological capacity in the rules. Courts can be relied on not to embark on mandatory e-filing until they have an effective system available.

Scope of mandatory e-filing: Self-represented parties.

A crucial issue in establishing the rules on mandatory e-filing is whether self-represented parties should be subject to it but be allowed to “opt out,” or should be exempt but be allowed to “opt in” to electronic filing. Commentators were specifically asked to address whether self-represented parties should be excluded from mandatory e-filing and numerous comments were submitted on this issue. (See comments 40–52 and 116–135.)

Approximately three-fourths of the commentators recommended excluding self-represented litigants entirely from the mandatory electronic filing and service rules. These included many legal aid organizations, three state bar committees, the California Judges Association, the California Commission on Access to Justice, and the Task Force on Self-Represented Litigants. These commentators also often expressed the position that self-represented litigants should be allowed to voluntarily opt in to electronic filing and service.

Support for including self-represented litigants in mandatory e-filing and e-service came from superior courts, the Trial Court Presiding Judges and Court Executives Advisory Committees (TCPJ/CEAC) Joint Rules Committee, and a few attorneys. The Superior Courts of Orange County, Riverside, Sacramento, and San Bernardino Counties opposed a general exemption for self-represented litigants. (See comments 129, 130, 131, and 132.) However, the San Diego Superior Court supported exempting them. (See comment 133.) The Los Angeles Superior Court took the position that “[a] court should be allowed to exempt self represented litigants from family and small claims cases, but not in general civil cases. The rules should provide some flexibility so that an individual court can decide whether exemptions should occur in certain case types If only one rule must apply, then self-represented litigants should be exempt.” (Comment 128.) The TCPJ/CEAC Joint Rules Committee took the position: “Allow each trial court to determine by case type whether it is mandatory for self-represented litigants to file electronically or whether they may file by conventional means. Where mandatory, the self-represented litigant must request permission to opt out of the requirement based on undue hardship or significant prejudice.” (See comment 50)

Those who supported an exemption for all self-represented litigant presented extensive arguments and information in support of their position. (See, for example, comments 44–49, 116–117, and 121–127.) These commentators were concerned that mandatory e-filing would pose a significant barrier to access to justice for many self-represented litigants. They pointed out that many such individuals have no access to computers or the internet.¹³ Even if equipped with necessary technology, many self-represented litigants lack the computer literacy necessary to file

¹³ For information about the extent of computer and internet access, see comments 49, 51, 116, 117, and 124.

documents with the courts. These commentators thought that mandatory e-filing would be particularly problematic in many of the types of cases—such as family law and domestic violence cases—in which self-represented litigants are extensively involved. A number of commentators also pointed out that e-filing and e-service could be especially challenging for individuals with low-incomes (and no credit cards), persons with limited English proficiency, persons with disabilities, and the elderly.¹⁴ Particularly in the present fiscal crisis, legal aid organizations and self-help centers lack sufficient resources to assist all self-represented persons to file and serve documents electronically. If instead of providing a general exemption for self-represented parties courts needed to excuse self-represented litigants on an individual basis, this would be costly and burdensome for both the litigants and the courts. Providing the alternative that self-represented litigants are exempt from e-filing, but may voluntarily opt in, would be more efficient and would enable those who can file electronically to benefit from the process. Courts, to the extent they have the ability and resources to do so, could promote e-filing by assisting self-represented persons to e-file.

Those who opposed an exemption for self-represented litigants provided arguments in support of that position. (See, for example, comments 42 and 129.) They contend that a blanket exemption would reduce the benefits of e-filing and that the impact of mandatory e-filing on self-represented litigants is small. An attorney commented that e-filing and e-service provide “significant cost and time savings which self-represented parties should enjoy. They should definitely not be automatically excluded.” (Comment 42.) The Superior Court of Orange County, where the mandatory e-filing pilot project started in January 2013, stated: “By initially treating [self-represented litigants] like all other litigants, we will encourage all parties to file from the comfort of their home, office, or through an assistance group such as self-help or legal aid, and enable the court to benefit from the financial efficiencies generated by mandatory e-filing. Simple electronic and over-the-counter procedures will be available to address the needs of the small minority of litigants who are unable to file electronically.” (Comment 129.)¹⁵ The Riverside Superior Court commented: “If a blanket exemption existed, [self-represented litigants] would be relieved of e-filing with no apparent justification for the exemption.” (Comment 130.)

The committees reviewed the comments. They thought that the majority of the commentators provided good, detailed reasons why it would not be prudent to require self-represented parties to file documents electronically at this time. Thus, the committees recommend that, for the present, self-represented litigants be exempt from mandatory e-filing and service. (See amended rule 2.253(b)(2).) Also, the committees strongly support voluntary e-filing and e-service by self-represented parties, to the extent this is feasible. Although self-represented parties should not be required to “opt out” of mandatory electronic filing and service, they should be encouraged and

¹⁴ See, for example, comments 9 (Attachment B), 12 (Attachment C), 51, 87, 89, 91, 122, and 124.

¹⁵ The court observed that in its first eight days of mandatory e-filing, there were “over 22,000 civil e-filings and only one hundred and ten requests for e-filing exemptions, indicating that the large majority of litigants are both capable and willing to electronically file their documents.” (Comment 129.)

assisted to “opt in” if possible. The committees thought that this policy should be reflected in the rules; thus, they recommend including a statement of this policy in the Advisory Committee Comment to rule 2.253.

The committees’ recommendations to exclude self-represented parties from mandatory e-filing—yet strongly encourage voluntary e-filing—are consistent with *Advancing Access to Justice Through Technology: Guiding Principles for California Judicial Branch Initiatives* (“*Guiding Principles*”) adopted by the Judicial Council in August 2012.¹⁶ The *Guiding Principles* recognize, “Because so many cases now involve self-represented parties, technology must be implemented in ways that benefit those with or without legal representation so that all parties have equal access to the courts.” (*Guiding Principles*, at page 6.) The *Guiding Principles* also indicate: “recent trial court projects demonstrate that e-filing will evolve and expand in functionality and use, including service for self-represented litigants. Likewise adoption of and trust in e-filing will also grow and expand....As it does, courts must continue to ensure fair and equal electronic access to all parties, including self-represented litigants.” (*Id.*)

The committees’ recommendations are also consistent with the approach to e-filing recommended in a 2013 report by the Electronic Filing and Access to Justice Best Practices Project. The project report states: “E-filing projects should, from day one, plan for and include the self-represented as a core constituency.” But the report cautions: “While moving to mandatory e-filing for the represented on a speedy basis is appropriate, moving to mandatory e-filing for the self-represented should await a sign-off process that ensures full accessibility for all.” (*Principles and Best Practices for Access-Friendly Court Electronic Filing* (Legal Services Corporation, 2013), at page 31.)

Issue of mixed cases if self-represented parties are excluded.

Assuming that the rules that are adopted this year exclude self-represented parties from mandatory e-filing requirements, there is a related issue whether the rules should authorize mandatory e-filing in mixed cases in which both attorneys and self-represented parties are involved. (See proposed rule 2.253(b)(3).) If mandatory e-filing were limited to only those cases in which *all* parties were represented by attorneys, it might significantly limit the impact of mandatory e-filing.

To address this matter, the committees recommend including in rule 2.253 a provision that authorizes mandatory electronic filing and service for attorneys in civil cases that also involve self-represented litigants, but also specifies that the electronic filing and service requirements apply only to the represented parties in these cases. Self-represented parties in mixed cases would file and serve documents and would be served by conventional means unless they affirmatively agree otherwise. (See amended rule 2.253(b)(3).) Commentators either supported or did not object to this proposal. (See comments 41 and 45.) The committees recommend that

¹⁶ See www.courts.ca.gov/documents/jc-20120831-itemA.pdf.

the proposed provision about mixed cases be included in the final version of amended rule 2.253(b)(3). Including it will enhance the benefits of e-filing while appropriately protecting self-represented parties.

Procedures for “opting out” based on hardship.

The rules on mandatory electronic filing and service that were circulated for comment included a provision relating to requests for a hardship exception.¹⁷ The proposed provision in amended rule 2.253(b)(4) states:

A party that is required to file documents electronically must be excused from the requirements if the party can show hardship or significant prejudice. A court requiring the electronic filing of documents must have a process for parties, including represented parties, to apply for relief and a procedure for parties excused from filing documents electronically to file them by conventional means.

A few observations should be made about this. First, this new provision—or something like it—is required by AB 2073. Even if self-represented persons are exempt from mandatory e-filing, the electronic filing statute requires that a hardship exception “not limited to . . . unrepresented parties” be included in the rules. (Code Civ. Proc., § 1010.6(d)(1)(C) and (g)(2).)

Second, the circulated version of the rule provides minimal guidance on the procedures for requesting a hardship exemption. Basically, rule just tracks the statutory requirements for providing a hardship exemption. As discussed previously, the committees recommend that self-represented parties be exempt from mandatory electronic filing and service. If so, this significantly affects the procedures required for seeking to “opt out” from mandatory electronic filing and service: they would apply only to *represented* parties. In that case, the rules on requesting exemptions do not need to be so detailed; the simple version of rule 2.253(b)(4) on “opt out” procedures that was circulated for comment is likely to be sufficient.

To obtain public comments on the issues raised by the hardship/opt out procedures, the invitation to comment posed five specific questions.¹⁸ Comments were received on all these questions. (See comments 136–198.)

¹⁷ Compare the procedures already in current rule 2.253(a) for complex cases and rule 8.73 for appellate cases.

¹⁸ The five questions asked were:

- Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request for an exemption may be made *ex parte* or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?
- Should the rules specify to whom a request for exemption shall be made (e.g., the presiding judge or the presiding judges’ designee) or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?

1. More detailed procedures.

On the issue of whether there should be more detailed procedures for requesting an exemption and for filing documents by conventional means, there were three principal responses: (1) some commentators thought there should be more detailed procedures, (2) some commentators thought the procedures should be left to local rules, and (3) a commentator thought it is too soon to make specific recommendations. (See comments 136–146.)

Among those who thought that there should be more detailed procedures for requesting hardship exemptions, the most common recommendation was for the rules to provide for procedures permitting applications for exemptions to be made without a hearing—similar to the fee waiver request process. (See comments 137, 139, 140, and 143.) Thus, the Los Angeles Center for Law and Poverty suggested the following specific procedures for requesting hardship exemptions:

- The proposed form EFS-007 can be submitted ex-parte without a hearing, by parties with attorneys requesting hardship exemption or by low-income or self-represented litigants who have previously opted in to e-filing and/or e-service. However, a hearing may be held if a judicial officer requires additional information.
- Form EFS-007 should not be required for low-income and self-represented litigants who file hard copy documents in the clerk’s office (meaning the litigant is exempted and does not need to file a document to opt-out).
- Like a fee waiver request, the matter should be decided expeditiously within a certain time (10 days) or deemed granted.
- If ultimately granted, the documents should be deemed filed as of the date they were originally presented to the court.
- If denied, the litigant should be able to request a hearing set within a reasonable time;
- If the litigant attempted to file in hard copy concurrent with a request for exemption, no default should be taken against the litigant.
- Further, if the rules require “opt-out” rather than “opt-in,” self-represented parties should be exempted from the requirement for the first year to afford time for widespread outreach and education, with self-represented parties being encouraged to participate in e-filing for that first year.

(See comment 140.)

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- Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?
 - Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something even simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?
 - Should the clerk’s office be able to grant such requests and no appearance or hearing be required unless the request is denied?

The Superior Court of Orange County also thought that some statewide guidelines or procedures would be useful. It specifically recommended that:

- The request for exemption can be submitted ex parte.
- A hearing is not required on the request, unless the judicial officer requires additional information.
- The court can grant the clerk's office the authority to grant the request if the party meets certain basic criteria (e.g., there is a previous granted fee waiver on file, the party is submitting a fee waiver application and indicates receipt of government assistance or income below the poverty level, or the party does not have access to a computer).
- Documents submitted with the request should be filed the day of the application is received to preclude missing statutory deadlines or defaults.

(See comment 143.)

The IOLTA-Funded California Disability Advocacy Organizations stated that, if the rules provide for an opt-out process, the process must be:

- Compliant with federal and state disability civil rights law requirements.
- Coordinated and aligned with the existing provision of rule 1.100.
- Clearly and sufficiently detailed as to all aspects of the process (including eligibility requirements; timelines and mechanisms for submitting requests and issuance of decisions; identification of initial screeners authorized to rule on exemption requests; and identification of oversight process for review of initial decisions).
- Clearly memorialized, widely distributed and easily available in multiple accessible formats relevant to people with disabilities.

(See comments 9 and 83; Attachment B, page 11.)

Other commentators mentioned additional procedural features that should be included in the statewide rules. The Santa Clara Superior Court commented that the timing for submitting and processing requests should be consistent, as well as the forms used by applicants. (Comment 146.) A majority of the members of the State Bar of California's Committee on Administration of Justice (CAJ) thought that the application procedures should be part of the statewide uniform rules. CAJ expressed particular concern about the failure of the rules to address compliance with the mandatory service and filing requirements during the time between the filing of a request and the time that a ruling on that request for an exemption, and it recommended the adoption of a stopgap mechanism to address this problem. (Comment 141.)

Four commentators did not support statewide rules providing more detailed procedures or guidelines; instead they recommended leaving the application process to local rules. (See

comments 138, 142, 144, and 145.) One commentator thought that it was premature to recommend more detailed procedures. (See comment 137.)

The committees considered these comments. Assuming self-represented parties are exempted entirely from mandatory electronic filing and service for the reasons stated previously, the committees do not recommend the adoption of more detailed statewide rules on the procedures for “opting out” at this time. Amended rule 2.253(b)(4) appears sufficient to address the situation of *represented* parties that need ask to be excused from e-filing. The particular procedures to be used to “opt out” may be left to courts to determine locally consistent with the law.¹⁹ Courts instituting mandatory e-filing should consider the public comments about the more detailed procedures in adopting their local procedures. In the future, based on local experiences, advisory committees could further develop the statewide rules on the procedures for “opting out” of mandatory electronic filing if that appears necessary or desirable.

2. Specification to whom the hardship request should be made.

The invitation to comment asked for specific comments on whether the rules of court should specify to whom a request for a hardship exemption shall be made or should require local rules to specify to whom the request shall be made. Eleven comments were received on this particular question. (See comments 147–157.) Half of the commentators indicated that this matter should be left to local rules. Those who thought that the specification was needed generally indicated that the request, at least in the first instance, should be made to the clerk’s office, which would have the ability to grant requests. A few commentators also reiterated their position that self-represented litigants should be excluded entirely from mandatory e-filing and e-service and, if so, would not need to make requests.

The committees, which support exempting self-represented parties altogether, do not think that the proposed rules on mandatory e-filing need to be modified to expressly address to whom requests for exemptions must be made.

3. Exemption from mandatory electronic service.

Comments were specifically invited on whether a party should be able to request exemption from electronic service. Thirteen comments were received on this question. (See comments 158–170.) Most supported some sort of exemption.

A number of commentators recommended that self-represented litigants should be excluded entirely from mandatory e-service just like mandatory e-filing. For example, one stated that “self-represented parties should be automatically exempted from mandatory e-filing and receipt of e-service, but allowed to opt in”; it commented further that “tying e-filing and e-service together will greatly increase the requests for exemptions.” (Comment 162.) Another stated that

¹⁹ As commentators noted, local rules providing opt-out procedures would need to be consistent not only with Code of Civil Procedure section 1010.6(d)(1)(C) and (g)(2) and rule 2.253(b)(4) but also with the statutes and rules on accommodations for persons with disabilities.

“the automatic inclusion of e-service would be a hardship for those parties who do not have regular access to internet-capable electronic devices.” (Comment 163.)

Some of these commentators indicated that the burden of mandatory e-service and electronic receipt of service may be even higher for self-represented litigants than e-filing. “Low-income and self-represented litigants who were able to access assistance with document preparation through a self-help center or legal services agency may be able to receive one-time assistance in e-filing, but no one provider can assist litigants with free, daily access to electronic devices with internet and scanner or PDF conversion software. Thus, even if parties must e-file or can opt in to do so, they should be able to request exemption from mandatory receipt of e-service.” (Comment 163.)

The Superior Court of Orange County, which had objected to excluding self-represented litigants entirely from mandatory electronic filing and service, takes the position that parties should be able to request exemptions from both electronic filing and service—or from either separately. Recognizing that parties who may be assisted to file documents electronically by legal aid organizations or self-help centers may not have the ability to serve or receive service of documents electronically, the court states that a procedure must be in place to excuse self-represented litigants from e-service even if they are able to e-file; hence, it recommends adding a new subdivision to rule 2.251 (on e-service) to provide for hardship exemption from electronic service requirements. (Comment 167.) Other commentators have similarly indicated that, if mandatory e-filing and e-service apply to self-represented parties, there should be a simple “opt out” procedure applying to e-service as well as e-filing. (Comments 164 and 165.)

Still others have taken the position that the rules should be stricter. An attorney commented that parties should be able to be exempt from electronic service only if they lack a computer with internet connections. (Comment 161.) A court commented that, if a party is bound by electronic filing, the party should also be bound by electronic service. (Comment 166.) Another court commented that the exemptions should be “all or nothing”: parties should either fully opt in or fully opt out—it would be administratively burdensome to exempt portions of the program. (Comments 170.)

The committees agreed that self-represented parties should be exempt from mandatory electronic service as well as mandatory electronic filing. Self-represented parties, however, should be able to voluntarily agree to accept electronic service by affirmatively consenting to do so. For represented parties, the proposed rules and forms on mandatory electronic filing and service should remain basically as proposed: they would allow represented parties to request to be excused from both mandatory electronic filing and service—or from either separately.

4. Simplified rules for self-represented litigants to opt out.

The invitation to comment asked whether the same procedures that are proposed to be used for hardship requests generally should also apply to self-represented persons—or whether some simplified procedures should be available for such litigants. Sixteen comments were received on

this question. (See comments 171–186.) Assuming the committees’ recommendation to exempt self-represented litigants entirely from mandatory electronic filing service is adopted, the opt-out procedures would apply only to represented parties. In that case, the question whether there should be simplified procedures for self-represented parties would not need to be addressed. (See comment 184.) On the other hand, if self-represented litigants are not exempted generally, then the issue would need to be decided. In that situation, the commentators were somewhat divided on whether special procedures for exemptions should apply.

Some thought that the hardship exemption procedures should also apply to self-represented litigants. (See, for example, comments 172, 174, 182, and 185.) The Superior Court of Santa Clara County thought this would ensure consistency. (Comment 185.) The Superior Court of Orange County commented: “The same procedures for hardship requests, developed by the individual trial courts, should continue to apply to self-represented persons. Any proposed rule should have the same essential elements as outlined above, while leaving the discretion for processing the requests in the purview of the local trial courts.” (Comment 182; see also comment 143.)

Other commentators thought that the request process for self-represented litigants should be simpler, probably using procedures similar to those used in applying for a fee waiver. (See, for example, comments 175, 179 and 180.) The Superior Court of Los Angeles County commented: “A simple request should apply to self-represented litigants. The critical criteria should be whether the litigant has access to a computer with Internet access.” (Comment 181.) The Superior Court of Riverside County commented: “Each court should be allowed to decide what it would like to do to make hardship requests easy. Again, self-represented should not be associated with hardship. These are two distinct situations.” (Comment 183.)

In the end, assuming that the Judicial Council agrees with the committees’ recommendation for a general exemption for self-represented litigants from mandatory electronic filing and service, there will be no need to develop a set of simplified procedures for self-represented parties to use to “opt out”: the exclusion will be automatic.

5. Should the clerk’s office be given authority to grant requests for exemption.

The invitation to comment solicited comments on the specific question whether the clerk’s office should be able to grant requests for exemptions and no appearance or hearing be required unless the request is denied. Twelve comments were received on this question. (See comments 187–198.)

The commentators generally supported giving the clerk’s office the authority to grant exemptions. The California Commission on Access to Justice added that: “The decision whether to allow self-represented parties to opt out of e-filing should be ministerial rather than discretionary.” (Comment 187.) The California Family Law Facilitators’ Association cautioned that “the clerk’s office should be able to grant such requests but very specific rules about who would qualify and who would not qualify would need to be developed. Otherwise each clerk

would have discretion based upon whim to determine who would be exempt and who would not be exempt.” (Comment 188).

Regarding the exemption process, a commentator remarked: “A process similar to the ones developed for fee waiver requests should be developed, with accompanying rules and forms. In those cases, the litigant receives their fee waiver and is only required to appear for a hearing in the event their request for fee waiver is denied.” (Comment 191.) Another commentator stated that “the clerk’s office should be able to grant a request for an exemption, but . . . a judicial officer should be required to consider a request before it is denied.” (Comment 192.)

Finally, a court stated: “The decision on how to process these should be left to the discretion of the trial court, but the same options provided in Gov. Code Section 68632 et seq. [on fee waivers] should be made available in this context as well. It is unlikely any court would require an appearance or hearing, but there is no need to prohibit them.” (Comment 195.) Another court stated: “The individual court should make this decision by local rule.” (Comment 194.)

In light of the committees’ recommendation that self-represented parties be exempted altogether from mandatory e-filing and service, they did not regard the question of whether clerk’s offices should be authorized to grant exemptions to be a matter that needs to be included in the statewide rules on mandatory electronic filing. Courts instituting mandatory e-filing should consider the comments on the issue in adopting their local procedures. If further experience indicates that statewide rules need to be developed on this subject, this issue might be considered by the committees in the future.

Scope of mandatory e-filing: Types and categories of civil cases.

The next issue considered regarding rule 2.253 is about what types and categories of cases are appropriate for mandatory e-filing. Under the rules that were circulated, the range of types of civil cases in which a court might require parties to file documents electronically was very broad. Amended rule 2.253 lists numerous kinds of civil cases that would be eligible for mandatory e-filing: each court would be left to specify the types or categories of civil actions in which parties are required to file documents electronically in that court. (See amended rule 2.253(b)(1).) The only types of civil cases that would have been excluded under the proposed rules were juvenile cases.

Comments were specifically invited on whether the proposed scope was appropriate, whether the scope should be narrowed to exclude any other types or categories of civil cases, or whether it should be expanded to authorize mandatory e-filing even in juvenile cases. A number of commentators responded to these questions. (See comments 38–39 and 102–115.) Most of the commentators supported the broad scope and flexibility of subdivision (b)(1), which leaves it to the superior courts to determine which types or categories of civil cases are subject to mandatory e-filing in those courts. However, differences of opinion arose on the issue of whether juvenile and certain other types of cases should be included.

The TCPJ/CEAC Joint Rules Committee requested that “juvenile cases not be excluded outright.” (Comments 39 and 115.) On the other hand, a legal aid organization and a State Bar committee commented that “[t]he rule should not be expanded to include juvenile cases.” (Comments 105 and 107.) The Superior Courts of Los Angeles and San Bernardino Counties also supported excluding juvenile cases. (Comments 108 and 112.)

There was also a difference of opinion as to whether small claims cases should be excluded or included. The State Bar Committee on Administration of Justice recommended that “small claims cases *not* be included in the mandatory e-filing and e-service rules,” although it recognized that there could be substantial benefit to *permitting* at least the filing of pleadings in small claims cases through electronic means. (Comment 38.) On the other hand, the Superior Court of Sacramento County recommended that small claims cases be specifically added to the types of cases for which mandatory e-filing may be mandated. (Comment 111.)²⁰

Some commentators recommended excluding family law cases from the rules. (See comments 102, 106, and 107.) These commentators were particularly concerned because a large portion of parties in these cases are self-represented. If mandatory e-filing were to apply only to family law cases in which all parties are represented, their concern might be substantially less. The Superior Court of San Bernardino County stated: “[W]e feel the proposed scope of the rules is adequate and appropriate: including family law and excluding juvenile cases. Family Law represents a large and challenging set of cases within the trial courts and all measures which could assist in the effective and efficient resolution of these cases should be available.” (Comment 112.)

Finally, some commentators recommended excluding additional types or categories of cases besides juvenile and family law cases from the rules on mandatory e-filing and e-service. These included cases involving domestic violence restraining orders, civil harassment restraining orders, probate guardianships, probate and mental health, and unlawful detainers. (See comments 105, 106, and 107.) The commentators argued that the case for excluding types or categories of cases is particularly strong if self-represented litigants are not generally excluded from mandatory e-filing and e-service. (See comments 102 and 107.)

The committees reviewed and discussed the comments. They recommend, first, that the rules provide for a broad, flexible, and inclusive approach that would allow each court implementing mandatory e-filing and e-service to determine the specific types of civil cases for which to mandatory electronic filing and service would be appropriate in that court. To that end, the proposed definition of “civil case” that was circulated—that would have excluded juvenile cases from the definition of “civil”—would be eliminated. Thus, courts would be authorized to institute mandatory e-filing and service for any type of civil case, including juvenile dependency cases, for which the court determines that mandatory e-filing is appropriate.

²⁰ If the mandatory e-filing rules that are adopted exempt self-represented parties, mandatory e-filing would not be permissible in small claims cases because all parties in these cases are self-represented.

At the same time, as a prudential matter, the committees recommend that an Advisory Committee Comment be added to rule 2.253 noting that, in initiating mandatory electronic filing, courts should take into account the fact that some civil case types may be easier and more cost-effective to implement at the outset while other types may involve special procedures or other considerations (such as the need to preserve the confidentiality of filed records) that may make them less appropriate for inclusion in initial mandatory e-filing efforts.

The committees noted that many of the commentators' arguments for excluding specific case types—such as family law and other cases mentioned above—were substantially based on concerns that self-represented parties would have difficulty in implementing e-filing and e-service in these types of cases. But because self-represented parties would be exempt entirely under the committees' recommendations and only represented parties would be required to file and serve documents electronically, these concerns should largely be eliminated. In addition, as a practical matter, courts are unlikely to be instituting mandatory e-filing in these more challenging types of cases until after they have acquired experience with more conventional types of civil cases. Even if a court eventually includes such cases in mandatory e-filing, electronic filing would apply only where parties are represented; and, in those situations, attorneys would have an opportunity to request to be excused from mandatory e-filing on a showing of undue hardship or significant prejudice. (See Code Civ. Proc., § 1010.6(d)(1)(C) and rule 2.253(b)(4).)

Fees and fee waivers.

The rule on mandatory electronic filing includes paragraphs on fees and fee waivers. (See rule 2.253(b)(5)–(6).) Comments were invited from the public and the courts about the fee and fee waiver provisions—and specifically whether any other provisions should be added. Fifteen comments were received on these matters. (See comments 226–240.)

Several legal aid organizations agreed with including the language in proposed rule 2.253(b) permitting courts to charge only actual costs and requiring reasonable fees to be charged by electronic filing service providers. (See comments 229, 230, 232, 233 and 240.) Other legal aid organizations expressed similar views. One also expressed a concern that there were no proposed provisions concerning the review, judicial or otherwise, to determine reasonability; it suggested that rules should be developed regarding fees charged by EFSPs. It stated: “Fees charged by EFSPs may be prohibitive to many of the underserved, especially if e-filing is made opt-out rather than opt-in.” (Comment 231.) Another legal aid organization was concerned that, without guidelines, e-filing fees might increase, effectively barring the door for many low-income litigants. The California Commission on Access to Justice commented: “The process for handling fee waivers is not outlined in detail and may require further study.” (Comment 226.)

On the other hand, most trial courts thought the proposed rules on fees of fee waivers were sufficient; they did not think that any more rules were needed. (See comments 235, 236, 238, and 239.) To the extent rules were needed, the courts thought that they could be developed locally. (See comments 236 and 237.)

The committees recommend the adoption of the provisions on fees and fee waivers that were circulated. If experience shows that additional, more detailed rules or guidelines about these matters are needed, they can be developed in the future.

Effective date of electronic filing: Determined by “close of business” or midnight on filing day.

An important issue that needs to be addressed in the rules is what should be the effective date of mandatorily e-filed documents. As previously indicated, there are two different and inconsistent provisions on this question in the statute on electronic filing: a general provision for documents that are filed electronically by consent of the parties or by court order and a different one for documents that are filed under the Superior Court of Orange County’s mandatory electronic filing pilot project. AB 2073 leaves open the issue of what standard should be adopted for mandatory e-filing under the new uniform statewide rules but keeps in place the current standard—that is, an electronic filing is effective on the next court day if filed after the “close of business”—for cases where e-filing is by consent or by court order.

The invitation to comment observed that, in the long-term, a single standard for all types of electronic filing, whether voluntary or mandatory, seems best. But at this time, the question that must be resolved is: what standard should be recommended for mandatory electronic filing under the new rules? The invitation presented three options: (1) adopt the “close of business” standard for all electronically filed cases; (2) allow same-day filing until midnight in mandatory e-filing cases; or (3) make filing effective at the time of transmission. For the purposes of discussion and public comment, the rules that were circulated provided for all three options described above—the “close of business,” the “file until midnight,” and the “time of transmission” approaches. The proposed rules also provided for the option that, if either the “file until midnight” or the “time of transmission” approach were recommended, its adoption might be postponed until conforming legislation can be enacted. Comments were specifically invited on the issues relating to when electronic filings under the mandatory e-filing rules should be effective.²¹

Forty-two comments were received on these issues. (See comments 53–59 and 241–276.) The commentators divided on the question of the effective time of filing. A majority favored adopting the “close of business” standard for mandatory e-filing as well as for voluntary e-filing.

²¹ Specifically, the Invitation to Comment asked:

- How should the effective time of electronic filing and service be determined?
- Should the “close of business,” the “file until midnight,” or the “time of transmission” standard—or some other standard—be adopted for determining the effective date of electronic filings?
- Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?
- If the “file until midnight” standard is to be adopted, should it be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making this standard applicable to both voluntary and mandatory e-filing?

A minority supported the “file until midnight” standard. Only one commentator expressed support for the “time of transmission” standard.

Several legal aid organizations supported the “close of business” standard. (See comments 248, 252, and 253.) “This is to ensure fairness to those who do not have the resources to e-file and must do so before the close of business and not give an unfair advantage to those who do have the resources to e-file and may do so before midnight.” (Comment 252.) One legal aid organization supported the “file until midnight” standard. It explained that this standard would create greater access for clients who come in after the close of business, as well as to evening clinics, to be able to e-file their documents—which is particularly important for litigants who need to file answers in unlawful detainer cases. (Comment 251.) Another legal aid organization stated that e-filing should be effective on transmission. It stated: “This is important to ensure that documents are considered to be timely filed in the event of delays by either the e-filing vendor or the court clerks.” (Comment 53.) Finally, one aid organization suggested postponing the adoption of the standard until more information is available from the implementation of the Orange County pilot project. (Comment 268.)

The majority of the trial courts submitting comments supported the “close of business” standard. (See comments 56, 57, 255, 258, and 259.) The Superior Court of Los Angeles County, in support of the “close of business” standard, commented that “adopting this standard would provide for a consistent standard for all filings regardless of the process by which they are received.” (Comment 255.) The Superior Court of San Diego County commented that, “[w]ith the severe staffing shortages, allowing filing until midnight would backlog items for processing by court staff the next business day and this would make it more difficult to process emergency requests in a timely manner. It would also create inconsistency in the code related to when documents must be filed, which would be unmanageable for court personnel. Our court also believes that this makes it fair for all litigants because some, like self-represented parties, may not have access to e-filing, which would put them on an unequal playing field.” (Comment 258.) The Santa Clara County Superior Court supported the “close of business” standard because it “provides equal access to justice and ensures consistency at a specific court without imposing a particular time on all courts.” (Comment 259.)

Two courts supported the “file until midnight” standard. The Superior Court of Orange County stated: “There should be a uniform statewide rule permitting the ‘file until midnight’ option.... This will be a significant benefit to the attorneys who will have more time to draft their pleadings, and very little hardship to the local courts.” (Comment 246.) The Superior Court of Riverside County stated: “File until midnight has most appeal because all courts across the state do not close at the same time. This is also a tangible benefit of e-filing for the filers but may put a burden on the court.” (Comment 257.)

Attorney organizations were divided on the issue of timing, although their members tended to favor the midnight filing standard. (See comments 54, 55, and 254.) Approximately two-thirds of the State Bar’s Committee on the Administration of Justice (CAJ) favored the “file until

midnight” standard, with a minority supporting the “close of business” standard. The CAJ majority believed that a midnight deadline will “increase access to the courts, decrease confusion among litigants, and advance the goal of encouraging e-filing.” The CAJ minority believed that the “close of business” standard “provides an even playing field, in which all litigants will have the same filing time, and no one would have the advantage of additional hours in which to prepare and file pleadings.” (Comment 54.) The State Bar’s Litigation Section favored the midnight standard stating that it is “practical, consistent with e-filing rules in California appellate courts and in federal courts, and avoids uncertainties caused by inconsistent and changing closing times of filing windows.” (Comments 55.) Finally, the State Bar’s Standing Committee on the Delivery of Legal Services (SCDLS) reached no consensus on the timing issue. SCDLS saw benefits and drawbacks to both approaches. However, no member of SCDLS was in favor of the “close of business standard” as currently defined in Code of Civil Procedure section 1010.6(b)(3) because it allows for wide variations of filing times—which continue to change—dependent on different courts and different days of the week. (Comment 254.)

Other entities submitted comments on the issue of the effective time of filings. The California Judges Association supported the “close of business” standard. (Comment 269.) The Task Force on Self-Represented Litigants also recommended retaining the “close of business” rule stating: “Allowing until midnight for electronic filers would be unfair to the other side that is not e-filing or does not have access to a computer after work hours.” (Comment 58.) Likewise, the TCPJ/CEAC Joint Rules Committee recommended that “the effective time be the same time as required by the court for any other method of filing.” (Comment 59.)

Two individuals submitted comments supporting the current “close of business” standard. An EFSP and publisher stated “midnight filings in electronic filings can and will cause general confusion amongst the entire filing population. . . . If for example, a county has required electronic filing for all civil cases, optional electronic filing for Probate, and no electronic filing for Family Law cases, how do you expect a law firm staff to deal with two different filing times each day?” (Comment 242.) Another legal publisher commented that “[e]xtending the deadline to midnight cannot be necessary, and I cannot see how it could benefit anyone, particularly the attorneys and staff force to work so late.” Although this commentator opposed the “file until midnight” standard, she also thought that the current “close of business” standard should be changed to provide for a uniform 5:00 p.m. deadline for electronic filing and service. (Comment 250.)²²

The invitation to comment specifically asked questions about uniformity and, if the “close of business” standard is not retained, about the timing of introducing any alternative standard. The commentators generally supported the adoption of a uniform standard for both voluntary and

²² A legal aid organization also recommended the adoption of a standard 5:00 p.m. deadline for electronic filings. (See comment 253.) Adopting this standard would require a legislative change because “close of business” is defined in the statute to mean “5 p.m. or the time at which the court would not accept filing at the court’s counter, whichever is earlier.” (Code Civ. Proc., §1010.6(b)(3)(emphasis added).)

mandatory e-filing. (See comments 260–267.) The California Judges Association pointed out that one advantage of adopting the close of business standard is that it avoids the problems that would otherwise arise if the “file until midnight” approach is pursued. (Comment 269.) If the current “close of business” approach in Code of Civil Procedure section 1010.6(b)(3) and rule 2.259(c) were retained and made applicable by rule to all types of electronic filings, it would be fairly simple to provide in the uniform rules on mandatory electronic filing that this “close of business” standard applies to all electronically filed cases.²³ On the other hand, if an alternative standard is preferred, the process for implementing that approach would be more complicated. The “file until midnight” standard could be made applicable by rule to all mandatory electronic filing, but to make the “file until midnight” standard applicable to cases involving voluntary e-filing would require legislation.

The committees considered the comments. They recognized that courts, legal aid groups, and bar organizations are divided and that their members have varying positions on the question of the effective timing of electronic filings. The committees concluded that more experience and information would be beneficial. Hence, they recommend that the rules of court on mandatory electronic filing provide for the “close of business” standard but allow individual courts the option of adopting instead the “file until midnight” standard by local rule. Proposed rules 2.253(b)(7) and 2.259(c) have been revised to allow for this option. The committees also recommend that courts that establish mandatory e-filing programs be required to report to the Judicial Council on their experiences, including their experiences with different effective times of filing. These reports will provide a basis for evaluating different practices and procedures and for making future recommendations about electronic filing and service.

Electronic service.

AB 2073 requires the Judicial Council to “adopt uniform rules to permit the mandatory filing *and service* of documents for specified civil actions in the trial courts of the state.” (See Assem. Bill 2073 [amended Code Civ. Proc., § 1010.6(f)](italics added).) Thus, the proposal includes rule changes relating to the electronic service as well as the electronic filing of documents. (See amended rule 2.251.) Clarification of the rules on electronic service is especially important for self-represented litigants but affects everyone who serves documents electronically.

Although the commentators did not object specifically to the proposed new provisions in the rules about electronic service, several legal aid organizations raised related issues and made suggestions concerning electronic service, particularly as it applies to self-represented litigants. (See comments 60–63.) Some commentators indicated that it would be useful to permit self-represented persons to get assistance in electronically filing documents without that constituting

²³ As mentioned above, some commentators have suggested that even if this standard were to be adopted, there may be good reasons to revise the current version “close of business” standard. The standard as presently defined in the statute and rules is subject to wide actual variation because of the different times when courts’ filing counters close. However, if the “close of business” standard is going to be changed (for example, to a standard time of 4 p.m. or 5 p.m.), such a change would require legislation as well as rule amendments.

consent to electronic service. “Self-represented litigants who choose to e-file should not be required to accept future service by email.” (Comment 63.) Other commentators stated: “[E]-filing and e-service should be separate and distinct processes, and self-represented litigants should be exempt from both, but be allowed to opt-in to one or the other.” (Comment 61.) “[T]he ability of a self-represented litigant to use e-filing may not be consistent throughout a case. A litigant may be able to accomplish e-filing at one point in the case, and not at another. A self-represented litigant would then need a process by which to ‘opt out’ even after initially e-filing.” (Comment 63.) To implement these ideas, the commentators suggested that separate procedures and forms be available for electronic filing and service. (See comments 60–63.)

The committees agreed with the commentators that it is important to distinguish between electronic filing and electronic service. Specifically, the rules should enable self-represented parties to get assistance with electronically filing documents without such filing necessarily requiring the self-represented parties to serve and be served electronically. Such provisions would help not only the self-represented parties to file electronically but also the courts to receive more filings electronically. These provisions would also protect self-represented parties who cannot serve documents electronically (for example, because they do not have a computer) or do not want to receive such service because of the nature of the case (for example, in a proceeding involving violence, harassment or abuse).

The proposed rules on mandatory electronic service already recognized the distinction between filing and service, to a significant extent. For example, amended rule 2.251(c) states that, as a general rule, a party that is required to file documents electronically in an action must also serve documents and accept service of documents electronically from all other parties. However, the rule also provides for an exception: new subparagraphs (c)(2)(A) and (B) provide that this general rule does not apply if the court orders otherwise or if “[t]he action includes parties that are not required to file or serve documents electronically, including self-represented parties.” The provision continues: “those parties are to be served by non-electronic methods unless they affirmatively consent to electronic service.” The committees have added “affirmatively” before consent to clarify this further.

The rules as circulated, however, did not include similar provisions in rule 2.251(b) on service by consent, which currently states that a party indicates that it agrees to accept electronic service by “[e]lectronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service by the court at the electronic service address the party furnished under rule 2.256(a)(4).” (See current rule 2.251(a)(2); proposed amended rule 2.251(b).) This means, in effect, that if a self-represented party voluntarily files a document in a case, perhaps with the assistance of a self-help center or legal aid organization, the party is agreeing to accept electronic service in that case. Based on the comments, the committees recommend that the rule provision that presumes that electronic filing constitutes consent to electronic service be modified to state that the provision does not apply to self-represented parties. Specifically, they recommend that rule 2.251 be amended to include a statement that the provision that a party consents to electronic service by electronically filing a document “does not

apply to self-represented parties; they must affirmatively consent to electronic service....” (See amended rule 2.251(b)(1)(B).)

Regarding forms, the committees note that a form already exists for the purpose of enabling parties to affirmatively consent to electronic service. (See *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005). They also note that the *Substitution of Attorney— Civil* (form MC-050) can be used, in cases where there has been limited scope representation, for a party to indicate that it has become self-represented and to provide the party’s physical address for service by mail. Based on experience, forms can be revised or added in the future if that is necessary for self-represented parties to be able to opt in and out of electronic service.

Comments on other rule changes

Filing through EFSPs or directly with the court (rule 2.252(b)).

The current e-filing rules and statute are not as clear as they should be that electronic filing can be done through an electronic filing service provider (EFSP) or directly into the court, if the court provides that capacity. To effectuate this purpose, under the proposal that was circulated, rule 2.252 would be renamed “General rules on electronic filing of documents,” and a new subdivision (b), “Direct and indirect electronic filing,” would be added to the rule. The new subdivision states that, except as otherwise provided by law, a court may provide for the electronic filing of documents directly through the court, through one or more approved electronic service providers, or through a combination of direct and indirect means.

The State Bar’s Litigation Section recommended modifying the text of proposed rule 2.252(b) to read:

“Except as otherwise provided by law, a court may provide for the electronic filing of documents directly ~~through~~ with the court, indirectly through one or more approved electronic filing service providers, or”

(See comment 65.) The Litigation Section also suggested that the reference in rule 2.252(b) to electronic filing through “a combination of direct and indirect means” was unclear. It suggested that this phrase be modified to state more clearly what is meant.

The committees agreed that the text of rule 2.252(b) should be modified and have made the changes suggested. However, the phrase “a combination of direct and indirect means” seems clear enough and has been left unchanged.

Number of EFSPs (rule 2.253(b)).

The invitation to comment proposed amending rule 2.253, the main rule on mandatory electronic filing, to state in new subdivision (b) that “[a] court may require parties by local rule to electronically file documents in civil actions directly through the court, or directly through the

court and through one or more approved electronic service providers, or through more than one approved electronic service provider.”²⁴

A commentator stated: “We note that the legislation requires that TWO OR MORE EFSP’s be available to accept electronic filing for the court. It also appears that the court itself could be an EFSP and would therefore be counted as well. However, the rule as proposed does not reflect the ‘two or more’ requirement. It should.” (Comment 35.) The committees did not think that the text of rule 2.253(b) needs to be changed. The commentator appears to have misconstrued the language of AB 2073. Under that bill, electronic filing is subject to certain conditions, including “The court and all parties shall have access either to *more than one* electronic filing service provider capable of electronically filing documents with the court, or to electronic filing access directly through the court . . .” (Code Civ. Proc., §1010.6(d)(1)(B)(italics added); see also Code Civ. Proc., §1010.6(g)(2).) Thus, the proposed rule language is accurate and the reference to “two or more EFSPs” is not required.

The committees did think, however, that the statutory provisions on the required number of vendors may warrant review and reconsideration in the future. The statutory language is not as clear as it might be. Also, members were concerned that some courts—especially smaller courts—might not be able to obtain more than one electronic filing service provider or to provide services directly. Thus, they might be precluded under the statute from instituting mandatory electronic filing in ordinary civil cases.

Notification of EFSPs (rule 2.256(a)(6)).

Parties filing and serving documents through electronic filing service providers sometimes fail to notify the EFSPs of changes in their contact information. This problem arises particularly often with self-represented litigants who use an EFSP (including legal aid organizations that perform this service) to file electronically on a one-time basis, but after initially filing electronically fail to keep the EFSP informed about how to contact them. To address this problem, rule 2.256 would be amended to add a new paragraph (a)(6) stating that the electronic filer must:

If the electronic filer uses an electronic filing service provider, provide the electronic filing service provider with the electronic address at which the filer is to be sent all documents and immediately notify the electronic filing service provider of any change in that address.

One comment was received on this new provision. Legal Service of Northern California (LSNC) stated: “LSNC believes there should be an addition to proposed rule 2.256(a)(6) about the requirement to report changes in email addresses. The rule should require courts to provide pro

²⁴ Based on the previous comment on rule 2.252(b) (comment 65) and the response, similar changes have been made to rule 2.253(b)—namely, the word “through” has been replaced by “with” and the word “filing” has been placed after “electronic” and before “service provider” each time the term is used.

per litigants with information about when changes need to be reported and how that change can be reported. Pro per e-filers need to be informed of the requirement and how to change an email address in writing. Including the requirement to report email address changes in court rules is insufficient because pro per litigants are not informed about the existence of the court rules.” (Comment 66.)

The committees think that the proposed provision about notification should be included in rule 2.253(b)(6) but not that it is necessary to add a specific requirement that courts provide information to self-represented persons that they must notify EFSPs of changes in their addresses and how to do so. Courts are not the only source of this information. The information can be provided to self-represented parties by various entities (including EFSPs, legal aid organizations, and self-help centers) and in a variety of ways (including notices, information sheets, website information, and in person). Thus, it seems best to provide for flexibility regarding how the information about the requirement to notify EFPS about changes in a party’s address is to be given to self-represented parties.

Filing in paper form.

Current rule 2.253(c) provides: “When it is not feasible for a party to convert a document to electronic form by scanning, imaging, or another means, a court may allow that party to . . . file the document in paper form.” Because of its present location, this subdivision appears to apply only to documents filed by court order in complex civil cases. However, this provision should apply to all electronic filings; hence, in the amended rules, it has been relocated to rule 2.252, “General rules on electronic filing of documents,” as subdivision (d), “Filing in paper form.”

There were no comments on the proposed relocation of the rule provision. The committees recommend that the rule be relocated as proposed.

Paper courtesy copies.

A court recommended that the rules provide that courts may require paper courtesy copies be provided in any proceedings that are going to be held within one day of the electronic filing because, depending on the press of business, an electronic filing might take that long to be processed and available on the court’s case management system. (Comment 92.) The committees do not recommend adding a specific provision on courtesy copies to the rules at this time. The committees may consider in the future whether this proposal, or something like it on courtesy copies, should be included in the rules.

“Electronic filing.”

When the present rules proposal was being developed, an issue that appeared to warrant clarification was the definition of “electronic filing” in rule 2.250(b)(7). It is currently defined as “the electronic transmission to a court of a document in electronic form.” To distinguish this definition from other meanings of “filing,” the circulated proposal recommended adding: “For the purposes of this chapter, this definition concerns the activity of filing and does not include the processing and review of the document and its entry into the court records, which are

necessary for a document to be officially filed.” Similar clarifications would be added to rules 2.253(b)(7) and 2.259(c). These additions to the rules make the meaning of the term “electronic filing” clearer when it is used throughout the chapter.

This proposal received extensive comments from the Press Group.²⁵ (See comments 18 and 64, and attachment D to the comment chart.) The Press Group’s remarks state: “The proposed rule changes include an ostensibly minor revision that could be used to work a fundamental change in access to court records—a change not contemplated or authorized by Assembly Bill 2073. Namely, the proposed rules would create a new category of court records: those that have been ‘officially filed,’ as opposed to ‘filed’ for all other purposes.”

The comment continues: “At best, the proposed changes are confusing without serving any meaningful function. However, based on past statements by court administrators, it appears the true purpose of introducing the concept of an ‘officially filed’ document into the Rules of Court is to provide administrators with justification for denying public access to records that have been ‘filed,’ under the long-understood meaning of that term, until *after* they have been ‘officially filed,’ an event that, under the proposed rules, would not occur until after ‘the processing and review of the document’ by court staff, whenever that might be. Proposed Rule 2.250(b)(7) (emph. added).”

“The proposed rule changes would thus give court administrators unbridled discretion to delay press and public access to fundamentally public records until administrators decide such access is appropriate—even if it is days or weeks after the “filed” date.” (Comment chart, Attachment D, page 1.)

Thus, the Press Group objects to the specific proposed rule changes on the grounds that they are supposedly intended to delay access to court records. It also objects to the adoption of the mandatory e-filing rules on the grounds that these rules should not be adopted until the Orange County pilot project has been completed. (Comment chart, Attachment D, page 2.)

The comments are based on a misunderstanding of the purposes and processes of mandatory electronic filing, and of electronic filing as a whole. Due to the severe fiscal restraints on the courts, clerks’ offices are encountering difficulties and delays in processing paper filings. As a result, some members of the Press Group may be encountering difficulties in getting quick access to filed documents. This is doubtless the source of the frustrations expressed in the Press Group’s comments. Yet far from being a means to delay access, electronic filing will enable courts to process filings more quickly and thus make them more accessible.

²⁵ The Press Group consists of the California Newspaper Publishers Association, the First Amendment Coalition, California Aware, and Courthouse News Service. Three additional organizations have joined in the comments by the Press Groups: Bay Area News Group, The Press Democratic Media Company, and Los Angeles Times Communications, LLC.

Even in the best of times, it takes time for the clerks to review papers presented for filing—to determine, for example if fees have been paid or the papers contain any sealed or statutorily confidential information that requires special processing. Although the courts would generally prefer, if possible, to be able to file complaints on the same day that they are submitted and make the filed complaints available to the public, to do so is sometimes simply not possible—especially in the current drastic fiscal circumstances under which courts have been compelled to lay off employees, close courtrooms, and cutback on services. But with the introduction of e-filing and its expansion under mandatory e-filing, courts will be able to more quickly process case filings—and thereby make them available sooner to the public.

The Press Group’s comments are also inconsistent with the law on court records. A “court record” is defined under California law as a record that has been *filed*—i.e., put in a file or its equivalent.²⁶ Also, the law provides that electronic court records shall be made *reasonably* accessible to the public.²⁷ The law, however, does not require courts to provide immediate public access to all documents as soon as they are received by the court, even though they have not yet been filed—i.e., not yet become court records. California law recognizes that documents may sometimes not be filed until a day or more after they are received by the court and, to protect filers, provides for this contingency by prescribing that the date of receipt shall be deemed the date of filing. (See rule 1.20(a): “Unless otherwise provided, a document is deemed filed on the date it is received by the court clerk.”)

Like rule 1.20(a), the proposed clarification of the definition of “electronic filing” in this rule proposal is intended to protect the rights of filers—in this case electronic filers. The rule changes would clarify that, for purposes of the effective date of filing, the date of receipt applies, even if the filing process is not completed until a later date. Although such a provision is likely to be of less importance in the e-filing context than the paper filing context because most electronic

²⁶ See California Government Code section 68151(a):

“Court record” shall consist of the following:

- (1) All filed papers and documents in the case folder, but if no case folder is created by the court, all filed papers and documents that would have been in the case folder if one had been created.
- (2) Administrative records filed in an action or proceeding, depositions, transcripts, including preliminary hearing transcripts, and recordings of electronically recorded proceedings filed, lodged, or maintained in connection with the case, unless disposed of earlier in the case pursuant to law.
- (3) Other records listed under subdivision (j) of Section 68152.

²⁷ See California Government Code section 68150(l):

Unless access is otherwise restricted by law, court records created, maintained, preserved, or reproduced under subdivisions (a) and (c) shall be made *reasonably* accessible to all members of the public for viewing and duplication as the paper records would have been accessible. Unless access is otherwise restricted by law, court records maintained in electronic form shall be viewable at the court, regardless of whether they are also accessible remotely. Reasonable provision shall be made for duplicating the records at cost. Cost shall consist of all costs associated with duplicating the records as determined by the court.

(Emphasis added.)

filings will be completed quite quickly, if not instantaneously, it still has a valuable part to play in protecting the rights of litigants and should be included in the e-filing rules.

The committees concluded that adding the proposed provisions to rules 2.250(b)(7), 2.253(b)(7), and 2.259(c) would clarify the rules on electronic filing and would assist in protecting the rights of persons who file documents electronically. Hence, they recommend that these provisions be included in the amendments.

“Time of transmission.”

Current rule 2.251(f)(1) provides that “[e]lectronic service of a document is complete at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent.” There is some ambiguity in the application of this rule. If an electronic filing service provider is used, is the “time of transmission” the time of transmission by the filer to the EFSP or the time of transmission by the EFSP to the served party? Presumably, it is the latter. The invitation to comment asked whether this issue should be clarified in the rules. One commentator agreed that the “time of transmission” should be clarified, although no specific language was proposed. (See comment 54.) The committees recommend clarifying the rule at this time.²⁸

Court-ordered electronic filing (rule 2.253(c)).

Amended rule 2.253(c)(currently rule 2.253(a)) provides that a court “may, on the motion of any party or on its own motion, provided that the order would not cause undue hardship or significant prejudice to any party, order all parties in any class action, a consolidated action, a group of actions, a coordinated action, or an action that is complex under rule 3.403” to file and serve documents electronically. Two comments were received on this existing rule provision.

First, a legal aid organization commented: “Consolidated family law, domestic violence, probate and housing actions should be exempted from Rule 2.253 (c), given the extraordinary number of SRLs, and the regular (proposed) rules regarding opt-ins to e-filing and service should apply.”

(See comment 81.) Second, the Superior court of San Diego County stated: “Rule 2.253 provides in subsection (b) that a court must have at least two electronic service providers, if it does not offer e-filing directly, in order to have mandatory e-filing; however, the current version of the rule allows mandatory e-filing by court order ‘in any class action, a consolidated action, a group of actions, a coordinated action, or an action that is complex under rule 3.403...’ and there is no requirement for having two electronic service providers. Because some courts have court

²⁸ To address this issue, rule 2.251(f)(1) [proposed amended rule 2.251(h)(1)] would be revised to include the underlined language:

Electronic service of a document is complete at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent. If an electronic filing service provider is used for service, the service is complete at the time that the electronic filing service provider electronically transmits the document or sends electronic notification of service.

ordered electronic filing and currently have only one provider, the rule should provide that in those cases the court can order ‘e-filing through the court directly or through an electronic service provider.’ If this were not clarified, our court would potentially need to discontinue e-filing in these court ordered cases until it gets a second electronic service provider and then restart the process once the second provider is brought on board. This would be unduly burdensome to the court and the parties in these cases since our court has found that the process of getting an electronic service provider set up with our court takes in excess of a year to complete. The cost and staffing levels required to complete such a process create significant barriers at this time due to reduced funding.” (Comment 82.)

The committees did not think that rule 2.253(c) needs to be changed; the provisions on court-ordered filing and service in complex cases have been working effectively for years. However, to address the concern of the Superior Court of San Diego County, the committees recommend adding an explanatory Advisory Committee Comment stating that court-ordered electronic filing and service under subdivision (c) are different from mandatory electronic filing and service established by local rule under subdivision (b) and Code of Civil Procedure section 1010.6: court-ordered electronic filing, unlike mandatory e-filing by local rule, does not require more than one electronic filing service provider.

Limited scope and pro bono representation.

A number of commentators submitted comments on limited scope representation and pro bono representation. (See comments 74–80, and 88.)

Limited scope representation. Some commentators recommended that the rules specifically recognize and provide for limited scope representation, and the fact that some represented parties will become self-represented in the course of litigation. Thus, a legal aid organization suggested that, if a represented party who has consented to e-service becomes unrepresented, the party should be exempted from e-filing and e-service, unless the party opt-ins or becomes represented again. Judicial Council forms, such as forms EFS-007 and EFS-008, and the substitution of attorney forms, should be usable for this purpose. The rules should provide for the assessment of exemptions as part of the substitution of attorney process. In the court’s order granting a substitution, the self-represented party could be directed to file an exemption request with the clerk’s office within 5 days of the order’s date. Low- and moderate-income litigants in family law should not be required to request permission to be exempt from e-filing and e-service each time they hire a limited scope attorney. The commentator also suggested that the Limited Scope Representation forms should be modified to reflect whom to serve and how to serve a party. (Comment 76.) The State Bar’s Standing Committee on the Delivery of Legal Services made similar recommendations. (Comment 79.) The Task Force on Self-Represented Litigants also made a recommendation on this issue—namely, that the e-filing rules set out a process by which a litigant who becomes self-represented during a case is automatically excluded from mandatory e-filing unless that person opts in. (Comment 80.)

As discussed above, the committees are recommending that self-represented parties be exempt entirely from electronic filing and service. If this is done, it should largely take care of most of the commentators' concerns about limited scope representation. Parties who will no longer be represented will not have to request an exemption from mandatory e-filing or e-service. To notify other parties, they can use *Substitution of Attorney—Civil* (form MC-050), which has places on the form for parties to indicate that they are self-represented and to provide the street address where they can be served. To better assist self-represented persons who will no longer be assisted by an attorney who was electronically filing and serving documents in the case, the advisory committees may, in the future, consider reviewing the substitution of attorney form and other forms to determine if they should be revised.

Pro bono representation. Commentators also recommended that parties represented pro bono and by legal service attorneys should be allowed to opt out or qualify for a waiver of the cost of filing. Without such an option, the commentators believed that the added expenses and costs may prevent or curtail pro bono attorneys' ability and willingness to represent clients. (See comments 74, 75, 77, and 78.) One commentator specifically suggested that either the court should provide a free way to e-file documents or require electronic filing service providers to allow for no-fee transmissions for litigants represented by legal service programs or pro bono attorneys working with legal services programs. (Comment 78.)

These suggestions are generally beyond the scope of the present proposal. While parties who are eligible for a fee waiver are entitled to request a waiver of their electronic filing fees under the current statute and rule, fee waivers for pro bono attorneys who are representing persons who are not eligible for fee waivers may require a change in the law.²⁹ Meanwhile, there may be some other ways to address the commentators' concerns. For example, legal aid organizations that become electronic filing service providers might be able to assist pro bono attorneys to electronically file documents free of charge. Also, courts' contracts with private EFSPs might provide some relief in this area.

Access for persons with disabilities.

Several organizations provided specific comments about how new technological advances, including e-filing and the mandatory e-filing proposal considered here, may impact persons with disabilities. (See comments 9 and 83 (Attachment B), 84, 87, and 91.) The organizations submitting these comments often joined in support of the comments by other legal aid organizations on mandatory e-filing and service. (See comment chart, Attachment B, page 2 (also noting that "people with disabilities are...disproportionately eligible for California legal aid, and disproportionately likely to be among low-income and disadvantaged parties that

²⁹ However, Code of Civil Procedure section 1010.6, as amended by AB 2073, may give courts some discretion in this area because the statute provides that fees charged by electronic filing service providers "shall be reasonable and shall be waived when deemed appropriate by the court, including, *but not limited to*, for any party who has received a fee waiver." (Code Civ. Proc. §1010.6((d)(1)(B)(emphasis added).)

comprise the bulk of self-represented litigants”). However, the focus of these separate comments was on disability access issues.

The commentators agreed that technological advances—including the availability of e-filing and e-service—can be beneficial to many attorneys and litigants; and technological advances can also be beneficial for people with disabilities. However, unless designed and implemented with attention to a wide range of needs, new technologies can also create new barriers to access. (See Attachment B, page 2.) Among the recommendations made by these commentators were the following:

- Need to explicitly recognize statutory disability rights mandates (Comment chart, Attachment B and comment 91)
- Need to coordinate and align e-filing rules with California Rules of Court, rule 1.100 (Comment chart, Attachment B, and comments 84 and 91)
- Need to include check boxes on forms for disability accommodations (Comment chart, Attachment B, and comment 84)
- Need to ensure confidentiality of disability-related information (Comment chart, Attachment B, and comment 84)
- Need to recognize that there are physical and policy access implications, as well as technology implications, for users who rely on shared public computers (Comment chart, Attachment B, and comment 84)
- Need to decouple e-filing and e-service (Comment chart, Attachment B)
- Strong recommendation against a mandatory “opt out” requirement, but if that is pursued, need for the procedure to satisfy various conditions (Comment chart, Attachment B)
- Need for appropriate exemptions process (Comment chart, Attachment B)
- Need for technology access advisory resources in connection with the development of the rules on mandatory e-filing and e-service, including
 - Soliciting specific public comment on disability access issues
 - Retaining and consulting experts with technical knowledge of disability access issues
 - Directing courts implementing the rules to retain and consult experts with technical knowledge of disability issues
 - Inviting participation of users with disabilities in technical system design and testing (Comment chart, Attachment B)
- Need for ongoing feedback mechanisms (Comment chart, Attachment B)
- Need to address special issues for persons with limited English proficiency (LEP), including translating materials and forms and providing bilingual staff to assist LEP litigants or access to interpretive services (Comments 87 and 89)

These comments are well-taken. As the commentators observed, the self-represented population includes many persons with disabilities, low-incomes, and limited English proficiency. Electronic filing and service may pose challenges for many of these persons.

The committees have several responses to these comments. First, they recommend that electronic filing and service not be made mandatory for self-represented persons at this time. These persons should continue to have the ability to file and serve documents by conventional means. For them, electronic filing and e-service would be strictly voluntary. Second, as some of the commentators noted, technology can be of substantial assistance to self-represented persons, including those with disabilities. Thus, self-represented parties should definitely be given the opportunity to “opt in” to e-filing and e-service to the extent that is feasible. Third, self-help centers and legal aid organizations have an important role to play in assisting disabled persons obtain access to justice, using modern technology when it can be of benefit. Fourth, courts implementing e-filing should ensure that, as e-filing is implemented and expands, it is developed in a manner that addresses the needs and situations of persons with disabilities, low-income individuals, and persons with limited English proficiency. See *Advancing Access to Justice Through Technology: Guiding Principles for California Judicial Branch Initiatives* (Judicial Council, August 2012.)

Comments on the New Forms for Requesting and Ruling on Exemptions

Two new Judicial Council forms for use by persons requesting an exemption were circulated for comment:

- *Request for Exemption From Mandatory Electronic Filing and Service* (form EFS-007)
- *Order of Exemption From Mandatory Electronic Filing and Service* (form EFS-008).

Comments were specifically invited on these on what other Judicial Council forms, if any, should be adopted to implement the new mandatory e-filing legislation and rules.³⁰

Twenty-seven comments were received on the questions about the forms. (See comments 199–225.) The commentators made specific suggestions to improve the two proposed forms, EFS-007 and EFS-008. Many of these suggestions were technical or stylistic, i.e., to clarify the caption, to strike or relocate the proof of service, and to add instructions for persons requesting exemptions. Some were more practical and substantive—for example, to add a drop-down list of reasons for requesting exemptions and to clarify that forms EFS-007 and 008 could be used to request changes in status during the pendency of an action. (See comments 137 and 204.) Commentators were divided on the question whether the forms should be mandatory or optional. (See comments 211–219.)

³⁰ The questions asked in the Invitation to Comment about forms were:

- Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?
- Should these forms be made mandatory rather than optional?
- Are any other forms needed to implement the rules on mandatory e-filing?

In addition, the IOLTA-Funded California Disability Funded Advocacy Organization submitted comments on the forms. They stated that (1) there should be separate forms for e-filing and e-service, (2) the forms should include specific check boxes for disability accommodations, (3) the forms should be fillable, and (4) the forms should be compatible with specific access considerations enumerated in their letter. (See comment chart, Attachment B, pages 13–15.)

Finally, some commentators did not think that any additional forms besides EFS-007 and EFS-008 were necessary; others did—and provided lists of the forms that they thought should be developed. The additional forms suggested by commentators included information sheets on electronic filing and service, requests for hearings, notices of hearings, and orders after hearing. (See comments 202, 204, and 222.) A court also commented: “Trial courts should be allowed to develop additional forms they deem appropriate to implement mandatory e-filing.” (Comment 224.)

The committees thought that, if self-represented parties are exempt from mandatory e-filing, the forms for requesting exemptions and for issuing orders on the requests would not be so crucial. Nonetheless, it would still be useful to have the forms available for represented parties to use to ask to be excused from mandatory electronic filing, electronic service, or both. The forms would also be useful for courts instituting mandatory electronic filing. Thus the committees recommend approval of the two proposed forms, as optional forms. Also based on the comments, the committees recommend some specific modifications to the two proposed forms that were circulated, as discussed in the comment chart. Finally, the committees recognized that some additional forms may need to be developed in the future to implement electronic filing and service, especially for self-represented parties.

Comments on timing

Timing of the adoption of the rules and forms.

The adoption of rules on mandatory electronic filing and service is required by statute; AB 2073 provides that the Judicial Council shall adopt such rules. However, the legislation is flexible as to timing; it simply requires the rules to be adopted on *or before* July 1, 2014. To realize the efficiencies and savings from mandatory e-filing, the invitation to comment indicated that an effective date of July 1, 2013 is being recommended for the rules. Comments were expressly invited on the question of timing.

A majority of the commentators supported the proposed effective date of July 1, 2013. (See comments 294, 295, 296, 297, and 298.) The Superior Court of Orange County commented: “Most courts will not be able to implement immediately, but those that are capable should be allowed to do so immediately to maximize savings and improve/maintain service to the public.” (Comment 294.) The TCPJ/CEAC Joint Rules committee stated that July 1, 2013 effective date appears to be feasible. (Comment 298.) Some commentators, however, did suggest postponing action on the rules. The Los Angeles County Superior Court stated that the “proposal goes too

far, too soon. Statewide rules, which will tie the hands of individual courts, are being implemented before the pilot projects of Orange County and other courts provide the necessary experiences and insight into the best decisions on the issue raised by this proposal. . . . We should wait until 2014 to implement any rules.” (Comment 23; see also comment 279.) The State Bar’s Litigation Section also suggested waiting until after the Orange County pilot program has been evaluated before adopting the proposed new rules. (Comment 293.) The Press Group commented that it would be precipitous to adopt mandatory e-filing rules before going through the pilot program. (Comment Chart, Attachment D, page 2.)

A legal aid organization submitted an alternative view on the issue of timing. It recommended “that the Judicial Council encourage a phasing in of mandatory e-filing throughout the state, allowing only a certain number of courts per year. This rolling out would allow courts to learn from each other and learn how to structure support for self-represented litigants who may choose to opt-in.” (Comment 36.)

The committees considered the comments and recommend that the proposed rules and forms be adopted effective July 1, 2013, as proposed. Absent the rules, only the Superior Court of Orange County is authorized to establish mandatory electronic filing in civil cases. The prompt adoption of the proposed rules will enable other courts to realize the benefits of electronic filing in the near future. In the present fiscal situation, this is highly desirable. The committees think that the proposed rules provide an effective basis for instituting mandatory electronic filing and service; the rules will enable courts to initiate mandatory electronic filing in a pragmatic, flexible manner. In addition, they recommend continuing to collect information about the experience of the trial courts that introduce mandatory electronic filing. Based on the courts’ collective experiences, such further changes in the rules, forms, and statute as may be necessary or desirable can be made in the future.

Implementation Requirements, Costs, and Operational Impacts

The approach to mandatory e-filing in AB 2073 and the rules implementing it are permissive for the courts. The decisions whether to institute mandatory e-filing and, if so, in what types and categories of civil cases, are left entirely to the discretion of the courts. Each court that decides to institute mandatory electronic filing will need to identify the fiscal and operational impacts for it, as well as the benefits that it may receive. (Comment 292; see also comments 288–291.) In the end, the authorization for courts to mandate e-filing in civil actions should result in a significant increase in the number of cases that are filed electronically. As a result, courts should realize many benefits from e-filing, including greater efficiency and lower costs to file process court records.

Attachments

1. California Rules of Court, rules 2.250–2.254, 2.256, 2.258, and 2.259, at pages 44–53
2. *Request for Exemption from Mandatory Electronic Filing and Service* (form (EFS-007), at page 54
3. *Order of Exemption from Mandatory Electronic Filing and Service* (form EFS-008), at page 55
4. Guidelines for Reports on Mandatory Electronic Filing and Service, at page 56
5. Comment chart, at pages 57–289
6. Attachments A, B, C, and D to comment chart

Rules 2.250–2.254, 2.256, 2.258, and 2.259 of the California Rules of Court would be amended, effective July 1, 2013, to read:

1 **Rule 2.250. Construction and definitions**

2
3 (a) * * *

4
5 (b) **Definitions**

6
7 As used in this chapter, unless the context otherwise requires:

8
9 (1)–(6) * * *

10
11 (7) “Electronic filing” is the electronic transmission to a court of a document in
12 electronic form. For the purposes of this chapter, this definition concerns the
13 activity of filing and does not include the processing and review of the
14 document and its entry into the court records, which are necessary for the
15 document to be officially filed.

16
17 (8)–(10) * * *

18
19 **Rule 2.251. Electronic service**

20
21 (a) **Consent to Authorization for electronic service**

22
23 (1) When a document may be served by mail, express mail, overnight delivery,
24 or fax transmission, ~~electronic service of the document may be served~~
25 electronically under is permitted when authorized by Code of Civil Procedure
26 section 1010.6 and these rules in this chapter.

27
28 (b) **Electronic service by consent of the parties**

29
30 ~~(2)~~(1) Electronic service may be established by consent of the parties in an action.

31 A party indicates that the party agrees to accept electronic service by:

32
33 (A) Serving a notice on all parties that the party accepts electronic service
34 and filing the notice with the court. The notice must include the
35 electronic service address at which the party agrees to accept service; or

36
37 (B) Electronically filing any document with the court. The act of electronic
38 filing is evidence that the party agrees to accept service at the electronic
39 service address the party has furnished to the court under rule
40 2.256(a)(4). This subparagraph (B) does not apply to self-represented
41 parties; they must affirmatively consent to electronic service under
42 subparagraph (A).

1 (3)(2) A party that has consented to electronic service under ~~(2)~~(1) and has used an
2 electronic filing service provider to serve and file documents in a case
3 consents to service on that electronic filing service provider as the designated
4 agent for service for the party in the case, until such time as the party
5 designates a different agent for service.

6
7 **(c) Electronic service required by local rule or court order**

8
9 (1) A court may require parties to serve documents electronically in specified
10 actions by local rule or court order, as provided in Code of Civil Procedure
11 section 1010.6 and the rules in this chapter.

12
13 (2) Except when personal service is otherwise required by statute or rule, a party
14 that is required to file documents electronically in an action must also serve
15 documents and accept service of documents electronically from all other
16 parties, unless:

17
18 (A) The court orders otherwise, or

19
20 (B) The action includes parties that are not required to file or serve
21 documents electronically, including self-represented parties; those
22 parties are to be served by non-electronic methods unless they
23 affirmatively consent to electronic service.

24
25 (3) Each party that is required to serve and accept service of documents
26 electronically must provide all other parties in the action with its electronic
27 service address and must promptly notify all other parties and the court of
28 any changes under (f).

29
30 **(b)(d) Maintenance of electronic service lists**

31
32 A court that ~~orders or~~ permits or requires electronic filing in a case must maintain
33 and make available electronically to the parties an electronic service list that
34 contains the parties' current electronic service addresses, as provided by the parties
35 that have filed electronically in the case.

36
37 **(e)(e) Service by the parties**

38
39 (1) Notwithstanding ~~(b)(d)~~, parties are responsible for electronic service on all
40 other parties in the case. A party may serve documents electronically directly,
41 by an agent, or through a designated electronic filing service provider.
42

- 1 (2) A document may not be electronically served on a nonparty unless the
2 nonparty consents to electronic service or electronic service is otherwise
3 provided for by law or court order.
4

5 **~~(d)~~(f) Change of electronic service address**

- 6
7 (1)–(3) * * *
8

9 **~~(e)~~(g) Reliability and integrity of documents served by electronic notification**

10
11 A party that serves a document by means of electronic notification must:

- 12
13 (1)–(3) * * *
14

15 **~~(f)~~(h) When service is complete**

- 16
17 (1) Electronic service of a document is complete at the time of the electronic
18 transmission of the document or at the time that the electronic notification of
19 service of the document is sent. If an electronic filing service provider is used
20 for service, the service is complete at the time that the electronic filing
21 service provider electronically transmits the document or sends electronic
22 notification of service.
23

- 24 (2)–(4) * * *
25

26 **~~(g)~~(i) Proof of service**

- 27
28 (1)–(4) * * *
29

30 **~~(h)~~(j) Electronic service by court**

31
32 The court may electronically serve any notice, order, judgment, or other document
33 issued by the court in the same manner that parties may serve documents by
34 electronic service.
35

36
37 **Rule 2.252. ~~Documents that may be filed electronically~~ General rules on electronic**
38 **filing of documents**

39
40 **(a) In general**

41
42 A court may ~~permit~~ provide for electronic filing of ~~a documents~~ in any actions ~~or~~
43 and proceedings as provided under Code of Civil Procedure section 1010.6 and the

1 rules in this chapter unless the rules in this chapter or other legal authority
2 expressly prohibit electronic filing.

3
4 **(b) Direct and indirect electronic filing**

5
6 Except as otherwise provided by law, a court may provide for the electronic filing
7 of documents directly with the court, indirectly through one or more approved
8 electronic filing service providers, or through a combination of direct and indirect
9 means.

10
11 **(c) Effect of document filed electronically**

12
13 (1) A document that the court or a party files electronically under the rules in this
14 chapter has the same legal effect as a document in paper form.

15
16 (2) Filing a document electronically does not alter any filing deadline.

17
18 **(d) Filing in paper form**

19
20 When it is not feasible for a party to convert a document to electronic form by
21 scanning, imaging, or another means, a court may allow that party to file the
22 document in paper form.

23
24 **(b)(e) Original documents**

25
26 In a proceeding that requires the filing of an original document, an electronic filer
27 may file an electronic copy of a document if the original document is then filed
28 with the court within 10 calendar days.

29
30 **(e)(f) Application for waiver of court fees and costs**

31
32 The court may permit electronic filing of an application for waiver of court fees and
33 costs in any proceeding in which the court accepts electronic filings.

34
35 **(d)(g) Orders and judgments**

36
37 The court may electronically file any notice, order, minute order, judgment, or
38 other document prepared by the court.

39
40 **(e)(h) Proposed orders**

41
42 Proposed orders may be filed and submitted electronically as provided in rule
43 3.1312.

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~~(f) Effect of document filed electronically~~

- ~~(1) A document that the court or a party files electronically under the rules in this chapter has the same legal effect as a document in paper form.~~
- ~~(2) Filing a document electronically does not alter any filing deadline.~~

Rule 2.253. Permissive electronic filing, mandatory electronic filing, and electronic filing by court order requiring electronic service or filing

(a) Permissive electronic filing

A court may permit parties by local rule to file documents electronically in any types of cases, directly or through approved electronic service providers, subject to the conditions in Code of Civil Procedure section 1010.6 and the rules in this chapter.

(b) Mandatory electronic filing

A court may require parties by local rule to electronically file documents in civil actions directly with the court, or directly with the court and through one or more approved electronic filing service providers, or through more than one approved electronic filing service provider, subject to the conditions in Code of Civil Procedure section 1010.6, the rules in this chapter, and the following conditions:

- (1) The court must specify the types or categories of civil actions in which parties are required to file and serve documents electronically. The court may designate any of the following as eligible for mandatory electronic filing and service:
 - (A) All civil cases;
 - (B) All civil cases of a specific category, such as unlimited or limited civil cases;
 - (C) All civil cases of a specific case type, including but not limited to, contract, collections, personal injury, or employment;
 - (D) All civil cases assigned to a judge for all purposes;

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- (E) All civil cases assigned to a specific department, courtroom or courthouse;
 - (F) Any class actions, consolidated actions, or group of actions, coordinated actions, or actions that are complex under rule 3.403; or
 - (G) Any combination of the cases described in subparagraphs (A) to (F), inclusive.
- (2) Self-represented parties are exempt from any mandatory electronic filing and service requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6.
- (3) In civil cases involving both represented and self-represented parties, represented parties may be required to file and serve documents electronically; however, in these cases, each self-represented party is to file, serve, and be served with documents by non-electronic means unless the self-represented party affirmatively agrees otherwise.
- (4) A party that is required to file and serve documents electronically must be excused from the requirements if the party shows undue hardship or significant prejudice. A court requiring the electronic filing and service of documents must have a process for parties, including represented parties, to apply for relief and a procedure for parties excused from filing documents electronically to file them by conventional means.
- (5) Any fees charged by the court shall be for no more than the cost actually incurred by the court in providing for the electronic filing and service of the documents. Any fees charged by an electronic filing service provider shall be reasonable.
- (6) Any fees for electronic filing charged by the court or by an electronic filing service provider must be waived when deemed appropriate by the court, including providing a waiver of the fees for any party that has received a fee waiver.
- (7) Any document required to be electronically filed with the court under this subdivision that is received electronically after the close of business on any day is deemed to have been filed on the next court day, unless by local rule the court provides that any document required to be electronically filed with the court under this subdivision that is received electronically before midnight on a court day is deemed to have been filed on that court day, and any document received electronically after midnight is deemed filed on the

1 next court day. This paragraph concerns only the effective date of filing. Any
2 document that is received electronically must be processed and satisfy all
3 other legal filing requirements to be filed as an official court record.
4

- 5 (8) A court that adopts a mandatory electronic filing program under this
6 subdivision must report semiannually to the Judicial Council on the operation
7 and effectiveness of the court's program.
8

9 **(a)(c) Electronic filing and service required by court order**
10

- 11 (1) The court may, on the motion of any party or on its own motion, provided
12 that the order would not cause undue hardship or significant prejudice to any
13 party, order all parties in any class action, a consolidated action, a group of
14 actions, a coordinated action, or an action that is complex under rule 3.403 to:

15
16 (A) Serve all documents electronically, except when personal service is
17 required by statute or rule;

18 (B) File all documents electronically; or

19 (C) Serve and file all documents electronically, except when personal
20 service is required by statute or rule.
21

- 22
23
24 (2) If the court proposes to make any order under (1) on its own motion, the
25 court must mail notice to the parties. Any party may serve and file an
26 opposition within 10 days after notice is mailed or such later time as the court
27 may specify.
28

- 29 (3) If the court has previously ordered parties in a case to electronically serve or
30 file documents and a new party is added that the court determines should also
31 be ordered to do so under (1), the court may follow the notice procedures
32 under (2) or may order the party to electronically serve or file documents and
33 in its order state that the new party may object within 10 days after service of
34 the order or by such later time as the court may specify.
35

36 **(b) Additional provisions of order**

- 37 (4) The court's order may also provide that:
38

39 ~~(1)~~(A) Documents previously filed in paper form may be resubmitted in
40 electronic form; and
41

1 If the court is aware of a problem that impedes or precludes electronic filing during
2 the court's regular filing hours, it must promptly take reasonable steps to provide
3 notice of the problem.
4

5 **(c) Public access to electronically filed documents**
6

7 Except as provided in rules 2.250–2.259 and 2.500–2.506, an electronically filed
8 document is a public document at the time it is filed unless it is sealed under rule
9 2.551(b) or made confidential by law.
10

11
12 **Rule 2.256. Responsibilities of electronic filer**
13

14 **(a) Conditions of filing**
15

16 Each electronic filer must:
17

- 18 (1) Comply with any court requirements designed to ensure the integrity of
19 electronic filing and to protect sensitive personal information;
20
- 21 (2) Furnish information the court requires for case processing;
22
- 23 (3) Take all reasonable steps to ensure that the filing does not contain computer
24 code, including viruses, that might be harmful to the court's electronic filing
25 system and to other users of that system;
26
- 27 (4) Furnish one or more electronic service addresses, in the manner specified by
28 the court, at which the electronic filer agrees to accept service; ~~and~~
29
- 30 (5) Immediately provide the court and all parties with any change to the
31 electronic filer's electronic service address; and
32
- 33 (6) If the electronic filer uses an electronic filing service provider, provide the
34 electronic filing service provider with the electronic address at which the filer
35 is to be sent all documents and immediately notify the electronic filing
36 service provider of any change in that address.
37

38 **(b) Format of documents to be filed electronically**
39

40 A document that is filed electronically with the court must be in a format specified
41 by the court unless it cannot be created in that format. The format adopted by a
42 court must meet the following requirements:
43

1 (1) The software for creating and reading documents must be in the public
2 domain or generally available at a reasonable cost.

3
4 (2) The printing of documents must not result in the loss of document text,
5 format, or appearance.

6
7 If a document is filed electronically under the rules in this chapter and cannot be
8 formatted to be consistent with a formatting rule elsewhere in the California Rules
9 of Court, the rules in this chapter prevail.

10
11 **Rule 2.258. Payment of filing fees**

12
13 **(a) Use of credit cards and other methods**

14
15 A court may permit the use of credit cards, debit cards, electronic fund transfers, or
16 debit accounts for the payment of filing fees associated with electronic filing, as
17 provided in Government Code section 6159, rule 10.820, and other applicable law.
18 A court may also authorize other methods of payment.

19
20 **(b) Fee waivers**

21
22 Eligible persons may seek a waiver of court fees and costs, as provided in
23 Government Code sections 68630–68641, rule 2.252(e)(f), and division 2 of title 3
24 of these rules.

25
26
27 **Rule 2.259. Actions by court on receipt of electronic filing**

28
29 **(a)–(b) * * ***

30
31 **(c) Document received after close of business**

32
33 A document that is received electronically by the court after the close of business is
34 deemed to have been received on the next court day, unless the court has provided
35 by local rule, with respect to documents filed under the mandatory electronic filing
36 provisions in rule 2.253(b)(7), that documents received electronically before
37 midnight on a court day are deemed to have been filed on that court day, and
38 documents received electronically after midnight are deemed filed on the next court
39 day. This provision concerns only the effective date of filing. Any document that is
40 electronically filed must be processed and satisfy all other legal filing requirements
41 to be filed as an official court record.

42
43 **(d)–(f) * * ***

ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	CASE NUMBER:
REQUEST FOR EXEMPTION FROM MANDATORY ELECTRONIC FILING AND SERVICE	

1. I, (name of applicant): _____, request to be exempt from the requirements for electronic
 filing service in this case because it would cause undue hardship or significant prejudice for the following reasons:

a. I do not readily have access to a computer with Internet access.

b. Other (please specify): _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

 (TYPE OR PRINT NAME)

 (SIGNATURE OF DECLARANT)

ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	CASE NUMBER:
ORDER OF EXEMPTION FROM ELECTRONIC FILING AND SERVICE	

The court has reviewed the request for exemption and makes the following orders:

1. The court **grants** the request for exemption. The applicant may:
 - file serve all documents in this case in paper form.
2. The court **denies** the request for exemption for the following reason: _____

3. The court needs more information to decide whether to grant the application request. The applicant must appear in court on the date below:

Name and address of court if different from above:

Hearing Date	Date: _____ Time: _____ Dept.: _____ Room: _____	_____ _____ _____
-------------------------	---	-------------------------

Date: _____

JUDICIAL OFFICER

Clerk's Certificate of Service

I certify that I am not a party to this action and (check one):

- A certificate of mailing is attached.
- I handed a copy of this order to the applicant listed above, at the court, on the date below.
- This order was mailed first class, postage paid, to the applicant at the address listed above,
from (city): _____, California on the date below.

Date: _____

By: _____
DEPUTY CLERK

Guidelines for Reports on Mandatory Electronic Filing and Service

Introduction

Pursuant to Assembly Bill 2073, the Judicial Council has adopted uniform statewide rules on mandatory electronic filing and service. Courts that establish mandatory electronic filing and service programs must provide semiannual reports to the Judicial Council. (See Cal. Rules of Court, rule 2.253(b)(8).) The purpose of the reports is to enable the council to evaluate the mandatory electronic filing programs and improve electronic filing and service in the courts. These guidelines are intended to assist the courts in preparing and submitting their reports.

Time of Submission

Reports are due semiannually and should be submitted by July 1 and January 1 of each year.

Place of Submission

The reports should be submitted by e-mail to the Judicial Council's Technology Committee at: mefs@jud.ca.gov

Contents of reports

The reports should contain, at a minimum, the following information:

- A description of the court's electronic filing and service programs, including both mandatory and voluntary programs;
- A description of all categories and types civil cases that the court requires to be filed electronically;
- The number of cases in each category or type filed electronically rather than in paper each month under the court's mandatory and voluntary electronic filing programs;
- The number of requests for exemption from mandatory e-filing submitted each month and their disposition;
- Whether the court uses the "close of business" standard or the "file until midnight" standard for determining the effective date of filings, and a description of the court's and users' experience with the standard or standards used by the court;
- Estimated time to process documents filed electronically as opposed to paper filings;
- Estimated costs of establishing and maintaining the court's mandatory electronic filing program, and estimated savings from the program;
- The identities of the electronic filing service providers used by the court;
- The nature and amount of any fees charged by electronic filing service providers or by the court for electronically filing documents;
- A description of the services that the court and any local legal aid or other organizations are providing to assist self-represented parties to file and serve documents electronically;
- Any other information that is relevant to evaluating the mandatory electronic filing and service programs in the court; and
- Any recommendations for improving electronic filing and service in the state courts.

The reports should attached copies of all local rules and forms adopted by the court to implement mandatory electronic filing and service.

Approved by the Technology Committee of the Judicial Council of California effective July 1, 2013.

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
General Comments, List of All Commentators, and Overall Positions on the Proposals			
1. American LegalNet By: Erez Bustan CEO	A	Great move by state and the county all for it and its working great for all parties.	The commentator's support is noted.
2. California Commission on Access to Justice By: Hon. Ronald B. Robie Chair	NI	The Commission on Access to Justice has the following comments in response to the Invitation to Comment on <i>Mandatory E-Filing: Uniform Rules To Implement Assembly Bill 2073</i> . (See the commentator's specific comments 116, 158, 187, 226 and 276 below.)	(See responses to specific comments below.)
3. California Family Law Facilitator's Association By: Melanie Snider Vice President	AM	The California Family Law Facilitator's Association is pleased to submit the following comments regarding mandatory e-filing and service as they apply to the self help litigants who frequently access our services. (See the commentator's specific comments 83, 102, 117, 136, 147, 159, 171, 188, 199, 211-220, 227, 241, 148, 260, 268 and 277 below.)	(See responses to specific comments below.)
4. California Judges Association By: Jordan Posamentier, Esq. Legislative Counsel	N/I	CJA supports the shift toward e-filing where appropriate, given the continuing budget and staffing shortages facing the courts. Mandatory e-filing should be authorized in all civil cases but with two caveats: (1) E-filing should not be made mandatory unless and until the court has the technological capacity sufficient to implement it, and (2) Self-represented litigants should be exempt from mandatory e-filing requirements.	

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

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
5. Consumers Union By: Suzanne Martindale Staff Attorney	N/I	(See specific comments 34, 40 and 269 below.) Consumers Union, the policy and advocacy arm of <i>Consumer Reports</i> ®, appreciates the opportunity to comment on the Judicial Council's proposed uniform rules to implement AB 2073. The comments below focus on the key issue of whether self-represented litigants should be subject to e-filing requirements, with an "opt-out" mechanism for hardship cases, or be exempted with an "opt-in" mechanism for those who want to file documents electronically.	(See responses to specific comments below.)
6. Martin Dean Essential Publishers LLC	AM	(See specific comment 41 below.) (See specific comments 35, 103, 118, 137, 148, 160, 172, 189, 200, 212, 221, 228, 242, 249, 261, 270 and 278 below.)	(See responses to specific comments below.)
7. Family Violence Law Center By: Rebecca Bauen Executive Director Oakland	N/I	I am writing on behalf of Family Violence Law Center to provide public comment to the Judicial Council as it considers the recommendations of the Mandatory E-filing Working Group. We disagree with the proposed changes. (See comments by Legal Aid Association of California (LAAC) [similar]. The complete comments by LAAC are attached as Attachment A to this chart.)	(See responses to specific comments by LAAC below.)
8. Julie A. Goren, Attorney	N/I	(See specific comments 42, 94, 104, 120, 138,	(See responses to specific comments below.)

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Commentator	Position	Comment	Committees' Response
Lawdable Press		149, 161, 173, 174 and 250 below.)	
<p>9. IOLTA-Funded California Disability Advocacy Organizations</p> <ul style="list-style-type: none"> • Disability Rights California • Disability Rights Education for Defense Fund • Disability Rights Legal Center • The Legal Aid Society – Employment Law Center 	N/I	<p>On behalf of the undersigned California-based, IOLTA-funded non-profit disability rights advocacy organizations, we applaud the Court Technology and Civil and Small Claims Advisory Committees' efforts to craft an appropriate uniform rule to address issues related to electronic filing and electronic service in the state's trial courts. We appreciate this opportunity to offer the attached insights and recommendations in response to the Invitation to Comment ("Invitation").</p> <p>(The IOLTA-Funded Disability Advocacy Organizations' complete comments are attached to this chart as Attachment B.)</p>	(See responses to comment 83 below.)
<p>10. Stew Jenkins, Attorney San Luis Obispo</p>	N	<p>....</p> <p>The Judicial Council, being a representative arm of an independent branch of the Judiciary, should refrain from adopting a rule infringing guaranteed rights of people, whether lawyers or nonlawyers, petitioning the courts for redress of grievances by defending liberty, property the pursuit of safety, happiness or privacy through application of due process and equal protections of the law. Article I, Sections 1 & 7.</p> <p>After instituting the right to petition for redress of grievances in subdivision (a) of Article I, § 3, the people of this state imposed a precondition on restricting access to the courts</p>	<p>In enacting Assembly Bill 2073, the Legislature determined that providing for mandatory electronic filing and service was in the public interest. Furthermore, the bill includes a specific requirement that the Judicial Council "shall, on or before July 1, 2014, adopt uniform rules to permit mandatory electronic filing and service of documents for specified civil actions in the trial courts of the state" (Code Civ. Proc. § 1010.6(f).) Thus, the legislation explicitly requires that rules of the kind recommended be adopted by the Judicial Council.</p> <p>The commentator misinterprets the meaning of "access" as used in the constitutional provisions</p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>in § 3, subdivision (2) requiring that “A statute, court rule, or other authority ... shall be broadly construed if it furthers the people’s right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that <u>limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.</u>”</p> <p>Clearly a mandatory rule which bars a person, or an attorney, from filing pleadings and exhibits, unless those <i>documents</i> are translated into an electronic format constitutes a limitation on the right to access the courts. Requiring a person or an attorney to pay an extra fee to a private electronic service provider, or requiring a person or an attorney to purchase some favored commercial software provider that will interface with the court’s electronic filing system, all constitute limitations on the person’s right to access justice. Requiring a person or an attorney to pay to maintain bandwidth and electronic storage capacity that will allow an unlimited sized and digital density of document transmission (service) imposes a limit on access to the courts.</p> <p>No findings required by Article 1, §3, subdivision (2) appear in either AB 2073, or in the proposed rules amendments to CRC 2.250, 2.251, 2.253, 2.254, 2.256, 2.258 or 2.259. And no rational finding could be made that requiring</p>	<p>referred to. These provisions concern “the right of access to information concerning the conduct of the people’s business,” such as the meetings of public bodies and the writings of public officials. (See Cal. Const. Art. I, § 3(b)(1) & (5).) The type of “access” involved in filing papers with the courts is a different kind of access than that addressed in the constitutional provisions. In any event, the committees disagree that the rules, as proposed for adoption, will limit access to persons filing with the courts. The rules will in fact improve most filers’ ability to file documents quickly and efficiently. To the extent mandatory e-filing and service would impose undue burdens on any particular groups or individuals, the rules provide for appropriate exceptions, safeguards and protections for those groups and individuals.</p> <p>The rules are consistent with the statute on electronic filing and service that expressly authorizes courts to use electronic filing service providers and provides protections for the members of the public, particularly indigent persons. The statute states, among other things: “Any fees charged by an electronic filing service provider shall be reasonable and shall be waived when deemed appropriate by the court, including, but not limited to, for any party who has received a fee waiver.” (Code Civ. Proc. § 1010.6(d)(1)(B).)</p> <p>As indicated above, the access that is the subject of Art. I, § 3 (i.e., access to public records and to meetings of public bodies) is not involved here;</p>

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Commentator	Position	Comment	Committees' Response
		<p>filing of documents and exhibits electronically serves any critical governmental interest by limiting filing to electronic means.</p> <p>The goals of the legislation, and of the proposed rule, is to reduce cost of storage and adopt and fund rules providing for uniform electronic viewing of the public records in civil case files; so a goal of making documents more accessible to the public who may be interested in the proceedings of private and public parties litigating matters does not appear to be an interest protected by limiting who can participate in litigation before the courts.</p> <p>THREE SIMPLE SUGGESTIONS to save the proposed rules:</p> <p>ONE: Proposed: Rule 2.251</p> <p>(c) (1) A Court may <u>require</u> <u>encourage</u> parties to serve documents electronically in specific actions by local rule or court order, as provided in Code of Civil Procedure section 1010.6 and the rules of this chapter.</p> <p>(c) (2) Except when personal service is otherwise required by statute or rule, [A] party that is required to file documents electronically in an action must also serve documents and accept service of documents electronically from all other parties, unless:</p> <p>TWO: Proposed Rule 2.252</p> <p>Subprovision (a) should remain permissive, in</p>	<p>hence, the requirement for findings in section 3(b)(2) do not apply. If the requirements had applied, findings could certainly be made that the statute and rules on electronic filing and service serve a valid public interest.</p> <p>This suggestion is inconsistent with AB 2073, which requires the Judicial Council to adopt rules on mandatory electronic filing and service.</p> <p>This suggestion is inconsistent with AB 2073, which requires the Judicial Council to adopt rules on mandatory electronic filing and service.</p>
		<p>Making this subdivision only permissive would be</p>	

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Commentator	Position	Comment	Committees' Response
		<p>place of the words “provide for” in the first phrase. To provide inducement, and recognize that the court is seeking to reduce its own processing costs, the judicial council should consider a uniform reduction in any filing fees for documents filed electronically equating with the savings the court will received in storage/processing costs.</p> <p>Subprovision (b) needs to mandate an open court by requiring any court providing for electronic filing to accept direct filing by electronic means, without additional charges above those that would be charged to file hard copy documents across the Clerk’s counter.</p> <p>Omitted provision: There is no process which imposes by rule a uniform mechanism that will provide a party filing electronically with a “file stamp” or other conformation that the document has actually been “filed” with the court.</p> <p>THREE: Proposed Rule 2.253</p> <p>Subprovisions (a) – again, clarification that a court permitting electronic filing must provide for direct filing without the need for an electronic service provider at no charge additional to over the counter filing lest the rule infringe public access to the court.</p> <p>Subprovision (b) – Mandatory electronic filing can only be saved from constitutional infirmity in this proposed rule if subprovisions (b) (2) – (4) are collapsed and replaced with an opt out</p>	<p>inconsistent with AB 2073, which requires the Judicial Council to adopt rules on mandatory electronic filing and service.</p> <p>Reducing filing fees would require additional legislation, which is beyond the scope of this rule proposal implementing AB 2073.</p> <p>Requiring courts to accept direct filings in civil cases, and to do so without any additional charges, is economically unfeasible. The statute and rules on electronic filing are reasonable in recognizing that electronic filing service providers may be relied on to assist with the electronic filing of documents and may charge a reasonable fee, subject to fee waivers.</p> <p>Rule 2.259 provides that courts must provide electronic filers with a confirmation of filing of a document. Many courts return a file stamped copy to the filer, although that is not expressly provided for in the rules.</p> <p>As discussed above, it is not feasible to require that all courts to accept direct filings, without use of electronic filing service providers and at no additional cost. The rules, which provide relief for persons with fee waivers and for persons who can demonstrate they are eligible for an exemption from mandatory e-filing, do not infringe on public access.</p> <p>The committees do not agree with the proposed</p>

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Commentator	Position	Comment	Committees' Response
		<p>provision such as a new subdivision (b) (2) reading substantially as follows: "Any party may opt-out of requirements for electronic filing by serving (by personal or mail delivery) on the other parties, and filing with the court, a declaration that the party is opting out of electronic service and filing. No reason need be given. Parties that do not opt-out may file pleadings and documents electronically with the court, but shall serve any party opting out of electronic service and filing by mail, personal delivery, or by facsimile transmission as provided by law." Obviously the proposed Request for Exemption (form EFS-007) would need revision, and the proposed Order of Exemption (form EFS-008) would not be needed (saving the court and clerk processing time.)</p> <p>Subprovision (b) (5) permits an additional fee for the required electronic filing not charged for over the counter paper filing. This barrier to access can be removed by requiring that the electronic filing fee be without charge, or actually by providing a discount on the filing fee that recognizes the savings in processing which the court will reap through electronic filing.</p> <p>In closing, let me observe that dependency on written paper pleadings in our judicial system dates back to well before the time of Henry II of England <i>during the 1100s</i>. Those helping our judiciary incorporate new technological</p>	<p>revisions to the rules and forms. The changes are not practical or legally necessary, and they are inconsistent with AB 2073.</p> <p>This provision concerning the fee is consistent with the e-filing statute, which like the rule also provides for waiver of the fee. (See Code Civ. Proc. § 1010.6(d)(1)(B).)</p> <p>Continuing to rely on paper filings as the "one method" for conducting court business is neither feasible nor desirable in the twenty-first century. Documents today are created and, for the most part, stored electronically. It is important to move</p>

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Commentator	Position	Comment	Committees' Response
		<p>methods should be praised; but seeking to harness those new technologies should not inadvertently set up barriers to people and attorneys accessing the courts through the one method that has well served us for a millennium. For the whole history of our judicial system, filing a written paper document, and handing a copy of it to the other party or other attorneys in a proceeding as notice, has been a hallmark of due process.</p> <p>The rule should permit and encourage evolution in pleadings and service procedures; not mandate extinction of paper pleadings and service prior to the public and courts having a full opportunity over through usage to see whether pitfalls will result from use (by those choosing the usage) of virtual electronic methods for notice and pleading.</p>	<p>from paper to electronic means of conducting business, including the business of the courts, for many reasons—including increased public access to the courts, ease and speed of business, greater efficiencies, and reduced costs. This transition can be done in a manner that takes into account the situations and needs of the diverse populations that use the courts.</p>
<p>11. Legal Aid Association of California By: Salena Copeland Directing Attorney</p>	<p>N/I</p>	<p>I am writing on behalf of the Legal Aid Association of California (LAAC) to provide public comment to the Judicial Council as it considers the recommendations of the Mandatory E-filing Working Group.</p> <p>Thank you for taking the time to consider the effects of mandatory e-filing on California's civil litigants. The AB 2073 Mandatory E-Filing Working Group took its charge seriously and has weighed many of the benefits and vulnerabilities of a mandatory e-filing requirement.</p>	

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>I am the Directing Attorney of LAAC. Founded in 1984, LAAC is a non-profit organization created for the purpose of ensuring the effective delivery of legal services to low-income and underserved people and families throughout California. LAAC is the statewide membership organization for almost 100 legal services nonprofits in the state.</p> <p>The attorneys at our member programs represent low-income clients in matters in California's civil courts. These civil cases frequently involve critically important access to life's basic necessities, such as food, safe and affordable housing, freedom from violence, health care, employment, economic self-sufficiency, and access to the legal system.</p> <p>These low-income Californians are court users who rely on the civil court system to protect and enforce their rights in ways that are critically important to these individuals, their families, and ultimately to our society as a whole. If not for our member organizations, most, if not all, of these represented court users would be self-represented litigants. Our member organizations also work closely with their local courts through partnerships with Self-Help Centers and Offices of the Family Law Facilitator. Without fully accessible courts, including the local Self-Help Centers and Family Law Facilitators, our members' clients and self-represented litigants would be unable to safeguard rights that many Californians take for granted. Based on this</p>	

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Commentator	Position	Comment	Committees' Response
<p>12. Legal Aid Foundation of Los Angeles By: JoAnn H. Lee Directing Attorney</p>	<p>N/I</p>	<p>larger context of the importance of access to the courts, LAAC provides the following comments to the working group's specific questions in the Request for Specific Comments and with additional thoughts. (See LAAC's specific comments 36, 43, 74, 84, 121, 175 and 230 below. LAAC's complete comments are attached to this chart as Attachment A.)</p>	<p>(See responses to LAAC's specific comments below.)</p>
		<p>On behalf of the Legal Aid Foundation of Los Angeles (LAFILA), we provide these comments to the Judicial Council as it considers the implementation of rules on mandatory electronic filing and electronic service in the trial courts. Thank you for taking the time to consider the effects of these proposed rules on California's civil litigants. We would like to recognize the public comments offered by the Legal Aid Association of California (LAAC); State Bar of California Standing Committee on the Delivery of Legal Services (SCDLS); California Commission on Access to Justice; and various other legal services and advocacy groups addressing the general impact of this rule, issues related to fee waivers, limited scope representation, disability access and other concerns facing legal services-eligible Californians. We note our agreement with the insights and recommendations offered in those comments and urge the Judicial Council's close attention to them.</p>	

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Commentator	Position	Comment	Committees' Response
		<p>LAFLA comments here separately to focus on language access issues within the scope of our experiences and expertise with limited-English proficient (LEP) litigants and communities. Through our six community offices, court-based clinics and self-help centers, multi-lingual hotlines, and community-based clinics, LAFLA provides free direct legal services to over 14,000 people annually and assists an additional 55,000 become more knowledgeable about their legal rights. Submitted via electronic mail to invitations@jud.ca.gov</p> <p>(See commentator's specific comments 44, 61, 75 and 87 below. The Foundation's complete comments are attached to this chart as Attachment C.)</p>	<p>(See responses to specific comments below.)</p>
13.	Legal Aid Society of Orange County	<p>(See specific comments 85, 122, 139, 150, 162, 176, 190, 201, 213, 151 and 262 below.)</p>	<p>(See responses to specific comments below.)</p>
14.	Legal Services of Northern California By: Stephen Goldberg Senior Attorney	<p>This letter contains the comments of Legal Services of Northern California (LSNC) on the proposed court rules on mandatory e-filing. LSNC is the federally funded legal services program for 23 Northern California counties. LSNC strongly supports the comments of other organizations that e-filing should not be mandatory for in pro per litigants. LSNC also strongly supports the comments of the Legal Aid Foundation of Los Angeles about access for limited English proficient litigants and the comments of the Disability Rights Education</p>	

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Commentator	Position	Comment	Committees' Response
15. Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney	N/I	<p>and Defense Fund about access for litigants with disabilities. In addition to those comments, LSNC adds the following: (See specific comments 45, 53, 66, 67, 71, 86, 123 and 140 below.)</p> <p>I am writing on behalf of the Los Angeles Center for Law and Justice (LACLJ) to provide public comment to the Judicial Council as it considers the implementation of rules on mandatory electronic filing and electronic service in the trial courts. Thank you for taking the time to consider the effects of these proposed rules on California's civil litigants.</p> <p>We would like to recognize the simultaneously submitted public comments being offered by the State Bar of California Standing Committee on the Delivery of Legal Services (of which I am a member); Legal Aid Association of California; California Commission on Access to Justice; and various other legal services community and advocacy groups addressing the general impact of e-filing and e-service, including issues related to fee waivers, limited scope representation, disability access and other concerns facing legal services-eligible Californians. We note our agreement with the insights and recommendations offered in those comments and urge the Judicial Council's close attention to them.</p> <p>We write here to focus on low-income and</p>	(See responses to specific comments below.)

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		<p>self-represented litigants' access issues within the scope of our experiences and expertise. Our agency provides free family law and housing law services to high need populations, including both court representation and advice to self-represented litigants. LACLJ focuses on serving very low-income families with children; 92% of clients live below 100% of the federal poverty line (which is a family of four earning less than \$23,050 per year). Many are victims of domestic violence, limited English proficient (LEP), immigrants, and individuals with very low levels of literacy. More than 80% of LACLJ clients are female, and 90% are Latino. More than half of LACLJ's clients have not graduated from high school; of these, half have less than an eighth grade education. LACLJ clients already face significant barriers to filing, service and participation in litigation; we are very concerned that required e-filing, e-service and the receipt of e-service will pose insurmountable barriers to low-income and self-represented litigants. In light of these concerns, I am writing today with comments regarding specific questions set forth in the Invitation to Comment, as well as additional thoughts.</p> <p>(See specific comments 76, 81, 88, 95, 105, 124, 151, 163, 177, 191, 202, 231, 243 and 252 below.)</p>	<p>(See responses to specific comments below.)</p>
16. National Housing Law Project By: Renee Williams Executive Director	N/I	I am writing on behalf of the National Housing Law Project to provide public comment to the Judicial Council as it considers the	

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

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Commentator	Position	Comment	Committees' Response
17. OneJustice By: Linda S. Kim Deputy Director	N/I	<p>implementation of rules on mandatory electronic filing and electronic service in the trial courts. Thank you for taking the time to consider the effects of these proposed rules on California's civil litigants.</p> <p>(See specific comments by Legal Aid Foundation of Los Angeles (LAFLA) [similar]. LAFLA's complete comments are attached to this chart as Attachment C.)</p> <p>I am writing on behalf of OneJustice to provide public comment to the Judicial Council as it considers the recommendations of the Mandatory E-Filing Working Group.</p> <p>Thank you for taking the time to consider the effects of mandatory e-filing on California's civil litigants. The AB2073 Mandatory E-Filing Working Group took its charge seriously and has weighed many of the benefits and vulnerabilities of a mandatory e-filing requirement.</p> <p>OneJustice's mission is to resolve legal problems by removing barriers to justice. OneJustice is the critical link between life-saving affordable legal services and people in need. Our state's most vulnerable poor, persons with disabilities, senior citizens, limited English-speakers, women, single-parent families and at-risk children face significant barriers to justice. Without proper representation and advocacy they endure innumerable assaults and</p>	(See responses to specific comments by LAFLA.)

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Commentator	Position	Comment	Committees' Response
18. Press Groups By: Holm, Roberts & Owen LLP, Rachel Matteo-Boehm, Attorney	N/I	<p>affronts to dignity. This advocacy requires accessible and fully-functioning court systems, so we took great interest in the proposal on Mandatory E-Filing.</p> <p>(See specific comments 125 and 178 and comments by Legal Aid Association of California (LAAC) [similar].)</p> <p>On behalf of the California Newspaper Publishers Association, the First Amendment Coalition, Californians Aware, and Courthouse News Service (the "Press Groups"), we make this submission in response to the invitation for comments on "Mandatory E-Filing: Uniform Rules To Implement Assembly Bill 2073."</p> <p>[Note: The following additional organizations have joined in the comments by The Press Groups: Bay Area News Group, The Press Democratic Media Company and Los Angeles Times Communications, LLC.]</p> <p>(See specific comment 64 on definition of electronic filing below. The Press Groups' complete comments are attached to this chart as Attachment D.)</p>	(See responses to comments 125 and 178, and to comments by LAAC.)
19. Public Law Center By: Elizabeth Gonzalez Lead Attorney	AM	<p>Thank you for taking the time to consider the effects of mandatory e-filing on California's civil litigants. The Advisory Committees and the AB2073 Mandatory E-Filing Working Group took its charge seriously and has weighed many of the benefits and vulnerabilities of a</p>	(See response to comment 64 below.)

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		<p>mandatory e-filing requirement</p> <p>The Public Law Center is a qualified legal services program providing access to justice for low income Orange County residents. Through volunteers and staff, the Public Law Center provides free civil legal services, including counseling, individual representation, community education, and strategic litigation and advocacy to challenge societal injustices. In 2011, PLC worked with nearly 1,200 volunteer lawyers, paralegals and law students from throughout the county who volunteered their time and expertise to assist over 18,000 low-income children, adults and seniors.</p> <p>Because the Public Law Center is located in Orange County, we are uniquely situated to comment on the statewide implementation of mandatory e-filing.</p> <p>We are writing today with answers to the working group's specific questions in the Request for Specific Comments and with additional thoughts.</p> <p>(See comments 78, 90, 105, 129 and 254 and comments by Legal Aid Association of California (LAAC) [similar].)</p> <p>....</p> <p>We are also aware that the Legal Aid Foundation of Los Angeles and others plan to</p>	<p>(See responses to specific comments and to comments by LAAC.)</p>

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Commentator	Position	Comment	Committees' Response
		<p>submit a comment addressing concerns with e-filing and litigants with limited English proficiency. We would like to reiterate that mandatory e-filing for self-represented litigants means a large number of people with limited English may face an additional hurdle to accessing justice in California.</p> <p>Since Public Law Center is located in Orange County, currently the only county with mandatory e-filing in civil cases, we are already seeing changes being made to the process to provide better access to the courts for self-represented parties. The lessons being learned in Orange County will be very useful as mandatory e-filing and e-service spreads to other counties across the state.</p> <p>.....</p>	
<p>20. State Bar of California, Committee on Administration of Justice By: Saul Bercovitch Legislative Counsel</p>	<p>N/I</p>	<p>The State Bar of California's Committee on Administration of Justice (CAJ) has reviewed and analyzed the Judicial Council's Invitation to Comment, and appreciates the opportunity to submit these comments.</p> <p>CAJ supports the proposal, subject to the following general comments and responses to the requests for specific comments.</p> <p>The Invitation to Comment raises a series of questions concerning an opt-out process, which are set out below along with CAJ's responses.</p>	

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Commentator	Position	Comment	Committees' Response
21. State Bar of California, Litigation Section By: Saul Bercovitch	N/I	<p>(See specific comments 38, 47, 54, 68, 141, 164, 179, 193 and 203 below.)</p> <p>....</p> <p>This position is only that of the State Bar of California's Committee on Administration of Justice. This position has not been adopted by the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.</p> <p>The Rules and Legislation Committee of the State Bar of California's Litigation Section has reviewed the Invitation to Comment on Mandatory E-Filing (W13-05) and appreciates the opportunity to submit these comments.</p> <p>(See specific comments 37, 48, 55, 65, 72 and 293 below.)</p> <p>....</p> <p>This position is only that of the State Bar of California's Litigation Section. This position has not been adopted by the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.</p>	(See responses to specific comments below.)
22. State Bar of California, Standing	AM	(See specific comments 79, 91, 107, 127, 152,	(See responses to specific comments below.)

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Commentator	Position	Comment	Committees' Response
<p>Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim</p>		<p>165, 180, 204, 214, 222, 234, 244 and 254 below.) This position is only that of the State Bar of California's Standing Committee on the Delivery of Legal Services. This position has not been adopted by the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.</p>	
<p>23. Superior Court of Los Angeles County</p>	<p>N</p>	<p>The proposal goes too far, too soon. Statewide rules, which will tie the hands of individual courts, are being implemented before the pilot projects of Orange County and other courts provide the necessary experiences and insight into the best decisions on the issues raised by this proposal. We should wait until 2014 to implement any rules. Wait until the pilot projects reveal how the rules impact self-represented litigants, hardship guidelines, fee waivers, definition of "close of business," etc.</p>	<p>The committees disagreed with this suggestion to postpone action on the rules until 2014. The proposed rules are an important and timely step towards expanding electronic filing and service in California. The rules do not go too far: they are reasonable and practical; they draw upon the state trial courts' experiences with electronic filing, including the experience so far of the Superior Court of Orange County with mandatory e-filing. Based on information received from the pilot project, further improvements and adjustments, of course, may be made to the rules in the future. But to enable other courts to begin implementing mandatory e-filing promptly and realize the benefits, the proposed rules should not be delayed.</p> <p>(See responses to specific comments below.)</p>
		<p>(See also specific comments 96, 108, 128, 142, 153, 166, 181, 194, 205, 225, 235, 245, 255, 263, 271 and 279 below.)</p>	

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Commentator	Position	Comment	Committees' Response
24. Superior Court of Orange County By: Jeff Wertheimer General Counsel	A	The comments below only address the merits of mandatory e-filing for civil cases. There are a number of issues unique to probate, family law, juvenile, etc. that caution against expanding into these areas until considerable more effort is put into studying the impact mandatory e-filing will have on these constituencies. (See specific comments 97, 109, 129, 143, 154, 167, 182, 195, 206, 216, 236, 256, 264, 272, 283, 288, 294 and 299 below.)	(See responses to specific comments below.)
25. Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer	AM	(See specific comments 98, 110, 130, 144, 155, 168, 183, 196, 207, 217, 223, 237, 246, 257, 269, 273, 280, 284, 289, 295 and 300 below.)	(See responses to specific comments below.)
26. Superior Court of Sacramento County By: William Yee Research Attorney	AM	Agree with proposal if modified as indicated below. (See specific comments 52, 56, 73, 81, 111, 131 and 285 below.)	(See responses to the specific comments below.)
27. Superior Court of San Bernardino County By: Stephen Nash Court Executive Officer	N/I	Thank you for the opportunity to review the draft Uniform Rules on E-Filing to Implement Assembly Rule 2073. We would first like to commend the Court Technology Advisory and Civil and Small Claims Advisory Committees for their expeditious development of these draft rules. At this time of great budget challenges for the courts, it is imperative to move forward with the implementation of efficiencies, such as mandatory e-filing. We greatly appreciate the	The court's support for the rules as efficiency measures and for the early adoption of the rules is noted.

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28. Superior Court of San Diego County By: Michael M. Roddy Chief Executive Officer	AM	<p>work of the committees in bringing this effort forward well ahead of the statutory deadline. We would offer some specific comments on the recommendations following the outline provided in the request for comments:</p> <p>(See specific comments 59, 70, 99, 112, 132, 208, 286, 296 and 300 below.)</p>	(See responses to specific comments below.)
29. Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer	N/I	<p>The Superior Court of California, County of Santa Clara respectfully submits the following feedback on the proposed "Mandatory E-Filing: Uniform Rules To Implement Assembly Bill 2073". The proposal was also discussed with trial courts who are participating in the e-filing workstream sponsored by the Technology Committee's Judicial Branch Technology Initiatives Working Group. Courts from the following counties participate in the e-filing workstream: Alameda, Amador, Orange, Riverside, San Bernardino, San Mateo, and Santa Clara.</p> <p>Although the feedback contained in this memo represents the opinions of Santa Clara, we have noted areas where our feedback is consistent with the participants of the e-filing workstream.</p>	(See responses to specific comments below.)

(See responses to specific comments below.)

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Commentator	Position	Comment	Committees' Response
30. Task Force on Self-Represented Litigants By: Hon. Kathleen O'Leary Presiding Justice, Fourth District Court of Appeal	AM	The Task Force on Self-Represented Litigants thanks the Court Technology Advisory Committee for the excellent work they have done on the issue of e-filing and their serious consideration of the impact on self-represented litigants. (See specific comments 49, 58, 63, 80 and 291 below.)	(See responses to specific comments below.)
31. Trial Court Presiding Judges and Court Executives Advisory Committees (TCPJAC/CEAC) Joint Rules Committee	AM	The TCPJAC/CEAC Joint Rules Working Group (JRWG) agrees with the proposed changes if modified. (See specific comments 39, 50, 60, 115, 292 and 298 below.)	(See responses to specific comments below.)
32. Western Center on Law and Poverty By: Mona Tawatao Senior Litigator	AM	I submit these comments on behalf of the Western Center on Law & Poverty (WCLP) to the Judicial Council as it considers the recommendations of the Mandatory E-filing Working Group. Thank you for taking the time to consider the effects of mandatory e-filing on California's civil litigants. We appreciate that the AB 2073 Mandatory E-Filing Working Group took its charge seriously and has weighed many of the benefits and costs of a mandatory e-filing requirement.	

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Commentator	Position	Comment	Committees' Response
		<p>WCLP advocates on behalf of low-income Californians through litigation and legislative and policy advocacy in the areas of housing, health care and public benefits. Ensuring that our state's lower-income residents have equal access to the courts is also a high priority for our organization.</p> <p>I submit the following answers to the working group's specific questions in the Request for Specific Comments along with some additional thoughts.</p> <p>(See specific comments by Legal Aid Association of California (LAAC) [similar]).</p>	(See responses to specific comments by LAAC.)
33. Yuba Sutter Legal Center for Seniors By: Susan Townsend Directing Attorney	N/I	<p>I am writing on behalf of the Yuba Sutter Legal Center for Seniors. This office provides free legal services to seniors in Yuba and Sutter Counties as small claims assistance to Yuba County small claims litigants.</p> <p>I wish to comment on the recommendations of the Mandatory E-filing Working Group.</p> <p>(See specific comment 51 below.)</p>	(See responses to specific comment below.)
Authorization for mandatory electronic filing (rule 2.253(b))			
34. California Judges Association By: Jordan Posamentier, Esq. Legislative Counsel	N/I	CJA supports the shift toward e-filing where appropriate, given the continuing budget and staffing shortages facing the courts. Mandatory e-filing should be authorized in all civil cases but with two caveats: (1) E-filing should not be	The committees note the CJA's support for mandatory electronic filing and agreed with the caveats presented by the CJA.

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35. Martin Dean Essential Publishers LLC		<p>made mandatory unless and until the court has the technological capacity sufficient to implement it. . . .</p> <p>Requirements for Mandatory Electronic Filing – Number of EFSP's required:</p> <p>We note that the legislation requires that TWO OR MORE EFSP's be available to accept electronic filings for the court. It also appears that the court itself could be an EFSP and would therefore be counted as well. However, the rule as proposed does not reflect the "two or more" requirement. It should.</p>	<p>Under AB 2073, electronic filing is subject to certain conditions, including "The court and all parties shall have access either to more than one electronically filing service provider capable of to electronic filing access directly through the court . . ." (Code Civ. Proc., §1010.6(d)(1)(B); see also Code Civ. Proc., §1010.6((g)(2).) The language in the proposed rules is consistent with the statutory language.</p>
36. Legal Aid Association of California By: Salena Copeland Directing Attorney		<p>Phase in Courts Requiring Mandatory E-filing</p> <p>L.A.A.C recommends that the Judicial Council encourage a phasing in of mandatory e-filing throughout the state, allowing only a certain number of courts per year. This rolling out would allow courts to learn from each other and learn how to structure support for self-represented litigants who may choose to opt-in.</p>	<p>It is not necessary to establish a requirement that only a certain number of courts can implement mandatory e-filing each year. As a practical matter, mandatory e-filing will be phased in gradually around the state as courts acquire the capacity to introduce it. Courts acquiring the capacity to institute mandatory e-filing later will be able to learn from the experience of those who acquire it earlier, including how to structure support for self-represented litigants who opt in.</p>
37. State Bar of California, Litigation Section By: Saul Bercovitch		<p>Mandatory Electronic Filing and Service</p> <p>Rule 2.253 covers both mandatory electronic filing and electronic service, but the headings, subheadings, and text of rule 2.253 do not</p>	<p>For clarity, "and service" has been added to rule 2.253, though rule 2.251 is the main rule on electronic service and includes more specific</p>

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Commentator	Position	Comment	Committees' Response
		<p>consistently so state. We note that the definition of “electronic filing” in rule 2.250(b) does not encompass electronic service. The committee suggests modifying rule 2.253 to state explicitly that some of its provisions cover both mandatory e-filing and e-service:</p> <p>“Rule 2.253. Permissive electronic filing, mandatory electronic filing and <u>service</u>, and electronic filing and <u>service</u> by court order</p> <p>“(a) Permissive electronic filing</p> <p>...</p> <p>“(b) Mandatory electronic filing and <u>service</u></p> <p>“A court by <u>local rule</u> may require parties by local rule to electronically file documents in civil actions directly through <u>with</u> the court, or directly through the court and through one or more approved electronic service providers, or through more than one approved electronic service provider, and <u>may require</u> parties to <u>electronically serve documents in civil actions</u>, subject to the conditions in Code of Civil Procedure section 1010.6, the rules in this chapter, and the following conditions:</p> <p>...</p> <p>“(c) Electronic filing and service</p>	<p>provisions on mandatory electronic service. (See rule 2.251(c).)</p>

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<p>38. State Bar of California, Committee on Administration of Justice By: Saul Bercovitch Legislative Counsel</p>		<p>required by court order?</p> <p>Scope of the Proposed Rules</p> <p>Juvenile Cases</p> <p>CAJ concurs with the view that the e-filing and e-service rules should be broadly implemented, subject to leaving discretion at the individual court level to exclude certain types of cases. With the exception of small claims cases, discussed in the following section, there appears to be little reason to exclude certain types of cases from the mandatory rules. If certain cases (such as family law cases) were exempt from the rules, practitioners who handle both such cases and other types of cases would have to practice under two sets of rules in the same court—mandatory e-filing and e-service for certain cases, but no such filing and service for others.</p> <p>Juvenile cases are the only category of cases the proposed rules would exclude. Members of CAJ have no particular expertise in juvenile cases, and express no views on that exemption, either pro or con.</p> <p>Small Claims Cases</p> <p>CAJ recommends that small claims cases <i>not</i> be included in the mandatory e-filing and e-service</p>	<p>The committees agreed that the rules should be broadly implemented and, to authorized the broadest possible range of civil cases, have eliminated the proposed exclusion of juvenile cases.</p> <p>While the rules on mandatory e-filing and e-service do not expressly exclude small claims</p>

Scope of mandatory e-filing: Types and categories of civil cases (rule 2.253(b)) (See also comments on Question 2 below)

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Commentator	Position	Comment	Committees' Response
		<p>rules. First, as the Invitation to Comment notes, such cases typically involve only self-represented parties, for whom mandatory e-filing and e-service may be more problematic. Second, there are relatively few pleadings in small claims court cases, and at least the initial claim will need to be personally served on the defendant. Thus, the benefits of electronic filing and service in such cases are minimal.</p> <p>While CAJ recommends not including small claims court cases in mandatory electronic filing and service rules, CAJ notes that there could be substantial benefit to permitting at least the filing of pleadings in such cases through electronic means. The Orange County Superior Court pilot project allows the filing of the initial claim and answer electronically. See http://www.occourts.org/directory/small-claims/efiling.html.</p>	<p>cases, they would exempt self-represented parties and so, in effect, make e-filing and e-service optional for small claims parties who are always self-represented. As the CAJ notes, there may be substantial benefits for small claims parties to file electronically. So courts should institute means to encourage small claims parties to voluntarily file documents electronically, if feasible. To promote such filing, under the rules, electronic filing for small claims and other self-represented parties litigants would not be deemed consent to electronic service. Legal aid and self-help centers should be able to assist these parties to file documents electronically even if the parties do not have the ability later to electronically serve and receive service of documents.</p>
39. TCPJAC/CEAC Joint Rules Working Group		<p>Regarding the scope of the proposal, the JRWG requests that juvenile cases not be excluded outright.</p>	<p>The mandatory electronic filing and service rules have been revised to not exclude juvenile cases. An Advisory Committee comment has been added to rule 2.253 stating that the rule "allows courts to institute mandatory electronic filing and service in any type of civil case for which the court determines that mandatory electronic filing is appropriate." The comment also states, however, that, "in initiating mandatory electronic filing, courts should take into account the fact that some civil case types may be easier and more cost-effective to implement at the outset while other types may involve special procedures or other</p>

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Commentator	Position	Comment	Committees' Response
<p>Scope of mandatory e-filing: Exclusion or inclusion of self-represented parties (rule 2.253(b)) (See also comments on Question 3 below)</p>			
<p>40. California Judges Association By: Jordan Posamentier, Esq. Legislative Counsel</p>	<p>N/I</p>	<p>CJA supports the shift toward e-filing where appropriate, given the continuing budget and staffing shortages facing the courts. Mandatory e-filing should be authorized in all civil cases but with two caveats: . . . (2) Self-represented litigants should be exempt from mandatory e-filing requirements.</p>	<p>The committees note the CJA's support for mandatory electronic filing and agreed that self-represented litigants should be exempted from such filing requirements.</p>
<p>41. Consumers Union By: Suzanne Martindale Staff Attorney</p>		<p>We strongly believe that if self-represented litigants are to be subject to e-filing requirements at all, they should be protected by an "opt-in" system that exempts them from e-filing requirements unless they provide affirmative consent. At the same time, we would otherwise support requiring e-filing (with an "opt-out" exemption for hardship cases) for represented parties. This will strike the right balance between promoting the use of e-filing and ensuring access to justice and the courts for individuals from vulnerable populations that may find e-filing burdensome and difficult.</p> <p>AB 2073 authorizes California courts to amend their local rules to mandate e-filing for almost all types of civil cases. As a result, two common</p>	<p>The committees agreed with the commentator and recommend that self-represented parties be exempt from e-filing requirements unless they affirmatively consent. Also, to implement AB 2073, the committees agreed that it is appropriate to require represented parties to file electronically in specified civil cases (with an opt-out exemption available based on hardship). Like the commentator, the committees think this approach strikes the right balance.</p>

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Commentator	Position	Comment	Committees' Response
		<p>types of civil cases – unlawful detainer and debt collection – will be subject to mandatory e-filing. Defendants in these cases often find themselves at an inherent disadvantage when confronted with litigation. These individuals face severe economic distress: consumers are struggling with debts in the case of debt collection suits, and tenants in eviction cases are often sued over non-payment of rent. In light of such financial constraints, they are much less likely to have access to legal representation. If they do at all, they may only receive limited-scope assistance from legal aid or legal services organizations that can help prepare court documents but do not have the resources to act as attorneys of record in their clients' cases. Tenants in unlawful detainer actions have the added pressure of being subject to summary proceedings with short timelines: they must file responsive pleadings within five calendar days to avoid losing by default.</p> <p>Therefore we support "Option 1" for amending Rule 2.253(b)(2), which encourages but does not require e-filing for self-represented litigants. The "opt-in" protection would ensure that self-represented litigants are not unfairly disadvantaged due to lack of access to, or facility with, the technologies needed for e-filing. Although individuals in low-income communities are increasingly able to access the Internet, they are more likely to do so through a mobile phone as opposed to a computer; thus technological barriers still exist in those</p>	

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Commentator	Position	Comment	Committees' Response
		<p>populations. Furthermore, individuals who are elderly or disabled may find it more difficult to use e-filing for technological and/or cognitive reasons. These same populations may also find it hard even to apply for a hardship exemption in order to opt out of e-filing, since doing so creates an extra step in the litigation process that could take time and require assistance. An "opt-in" system would also ensure that legal aid and legal services organizations can continue to provide competent assistance to their clients despite typically limited resources. Legal aid and legal services organizations – often the only resource available for vulnerable populations in need of legal assistance – will indirectly bear the burden of these new requirements, and may not have the staff or equipment in some counties to handle a massive influx of cases where clients must e-file responsive pleadings or apply for hardship exemptions.</p> <p>In order to create a system that is internally consistent with respect to self-represented parties, we would also support conforming exemptions with an "opt-in" for electronic service and any other documents to be submitted to the court.</p> <p>However, we would not object to the proposed amendments to Rule 2.253(b)(3) requiring e-filing for represented parties in "mixed cases," where one of the parties is self-represented, so long as the self-represented</p>	<p>The committees agreed that electronic service for self-represented parties should also be on an "opt in" basis. (See rule 2.251(c).)</p> <p>The commentator's support for the provision in rule 2.253(b)(3) for "mixed cases" is noted. This provision has been retained in the final version of the rules recommended to the Judicial Council.</p>

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		<p>party is still served those documents by non-electronic means. Lawyers with the resources to represent litigants in court by and large have access to the technologies necessary for e-filing, as well as the requisite level of sophistication. In some cases, mandatory e-filing may pose a hardship even for them – but should that occur, the hardship exemption amendments proposed for Rule 2.253(b)(4) should be sufficient to preserve represented litigants' rights.</p> <p>In conclusion, we appreciate the courts' efforts to implement technological advances which, if well-tailored, can both reduce court costs and facilitate the administration of justice. In this crucial period of transition, however, and in light of the continuing barriers to equal justice that affect vulnerable communities, it is important that the new rules are flexible enough to meet the needs of those litigants who would be effectively barred from meaningful access to the courts by newer technologies. We look forward to working with the Judicial Council in these and future efforts to update and improve the civil court system.</p>	
42. Julie A. Goren, Attorney Lawdable Press		<p><u>Not exempting self-represented parties</u></p> <p>eFiling and eService presents significant cost and time savings which self-represented parties should enjoy. They should definitely not be automatically excluded. I believe that it is the responsibility of the EFSPs, not the court, to help the self-represented parties wind their way</p>	<p>Based on all the comments, the committees concluded that self-represented parties should be excluded from mandatory electronic filing as well as electronic service. At the same time, the voluntary participation of self-represented persons in electronic service and filing should be</p>

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		<p>through the EFSP's system. Each EFSP should be required to have a tutorial or webinar on their website, and no self-represented party should be able to request an exemption on grounds of undue hardship or prejudice until after they have watched that tutorial or webinar and at least tried, with the help of the EFSP, to get through the process. There will be a learning curve, but once they get it, their lives will be made much easier. On the other hand, I can see issues in multi-party cases with a self-represented party, where everyone is eServed except that one party. Different deadlines would apply to those different service methods, making things more difficult.</p>	<p>The more that electronic filing and service can be made accessible to self-represented, the better. Courts, self-help centers, legal aid organizations, and EFSPs can all play a party in promoting electronic filing and service.</p>
<p>43. Legal Aid Association of California By: Salena Copeland Directing Attorney</p>		<p>..... LAAC respectfully requests that the Judicial Council recognize the potential impact on the public and vulnerable Californians as the implementation of Mandatory E-Filing is analyzed.</p>	<p>The committees think that the final proposal submitted to the Judicial Council properly recognizes the potential impact of mandatory e-filing on the public and vulnerable Californians and includes proper safeguards and protections.</p>
<p>44. Legal Aid Foundation of Los Angeles By: JoAnn H. Lee Directing Attorney</p>		<p>Certain Populations Should Be Automatically Exempted, Not Forced to Opt Out We strongly support the comments of other organizations in recommending that self-represented litigants be automatically exempt, but be able to "opt-in" if they choose to electronically file documents. Self-represented litigants may not have access to computers and may have difficulty filing documents</p>	<p>The committees agreed with these comments. They recommend that self-represented parties be exempt from e-filing and e-service requirements but be able to affirmatively consent to electronic filing and service.</p>

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		<p>electronically. This is particularly true for litigants with limited-English proficiency, who are more likely than English-speaking litigants to be living in poverty and face more barriers to accessing the courts.</p> <p>Many self-represented litigants lack access to technology and even if such technology is provided by the courts or public access areas, those who are LEP will experience even more confusion attempting to navigate unfamiliar equipment and terminology. Litigants may have to learn how to use scanners, printers, modems, software to "save as" PDFs, etc., as well as compose and send private personal information via a public library or court terminal. LEP litigants are more likely to lack comprehension regarding how to send and confirm transmittal of an electronic document, which could greatly impede these litigants from having their cases fairly presented and heard.</p> <p>Forcing self-represented litigants to opt-out would be overly burdensome. In many immigrant communities, there is already a pervasive problem with many LEP self-represented litigants seeking assistance from unscrupulous notarios and brokers, who charge exorbitant fees to assist individuals with form preparation, which is usually very poor quality. Placing further burdens and barriers on the low-income LEP population would only create new opportunities for these notarios and brokers to take advantage of litigants facing desperate</p>	

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		<p>situations.</p> <p>If there is no exemption for all self-represented litigants, certain types of cases should be exempted, such as domestic violence restraining order proceedings, civil harassment restraining order proceedings, elder abuse cases, unlawful detainer proceedings, and all family law cases. These cases have an overwhelming number of self-represented litigants and critical issues at stake, including fundamental rights regarding the care of minor children and relief from abuse. The recent Elkins Family Law Task Force's Final Report and Recommendations, released in April 2010 by the Judicial Council of California Administrative Office of the Courts, found that in many communities, more than 75% of family law cases have at least one self-represented litigant. In many immigrant LEP communities, underreporting of domestic violence is a serious problem, and imposing additional requirements may serve as further impediments for victims seeking needed protection.</p> <p>Notice of the Exemption and Opt-In/Opt-Out Process Should be Made Clear</p> <p>If there is an exemption, the exemption and opt-in process should be made very clear so that self-represented litigants understand that it is not mandatory for them. This is especially important for LEP litigants. As detailed further below, we recommend that any notices and outreach regarding new court policies should be translated into the top five most widely spoken</p>	<p>In light of the proposed general exemption of self-represented parties, the committees do not recommend exempting certain types of cases. Self-represented parties in these types of cases may choose to file, serve, and be served by conventional means.</p> <p>The point is well-taken that it should be clear to self-represented parties that they are exempt from electronic filing and service requirements and that they may opt-in voluntarily. Courts instituting mandatory e-filing should make it explicit who is covered by the requirements and who are not—in their rules, on their websites, and in informational materials. Information and assistance on how to opt in should also be provided, to the extent feasible.</p>

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		<p>non-English languages in each county. Further, court staff who are bilingual or have access to interpretive services should be available to explain any new rules to LEP litigants.</p> <p>Further, if a self-represented litigant opt-in, there should be an opportunity to opt-out later if the litigant discovers that electronic filing or service of documents is not appropriate for that person. Accessing electronically served documents in public libraries, borrowed computers, smart phones, or dial-up internet all creates additional barriers to accessing court files and may lead to additional confusion. Any opt-in forms should offer two options when a litigant chooses to file a document electronically: an opt-in for the remainder of the case and an opt-in only for the one particular filing. This is important in cases where a litigant may learn of a required filing while in court and need to file that same day. The litigant may want to opt-in for that filing only, or may choose to opt-in later when she gains reliable access to the internet.</p> <p>Many low-income litigants also obtain attorneys for limited periods and often go in and out of being self-represented. This is very common with LEP litigants because they often cannot understand their court filings, cannot obtain qualified interpreters for their hearings, or access traditional legal services. As a result, they may hire an attorney for one hearing or limited scope, and then be self-represented</p>	<p>The committees will look further at this issue to determine what additional actions might be taken in the future to make the process of opting out clearer and easier to deal with, including possible revisions to forms.</p>

Substitution of Attorney - Civil (form MC-050)

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		<p>again. There must be a meaningful way for these litigants to opt-out easily if this occurs. For example, a represented party who has consented to e-filing and e-service but becomes unrepresented should be exempt from that point on unless they opt-in and/or become represented again.</p> <p>The <i>Substitution of Attorney - Civil</i> form should be modified to include an opt-out box to check, so that both the court and other parties are aware that the self-represented litigant is no longer subject to e-filing or e-service. If an LEP litigant, now self-represented, is unaware that she must e-file and receive e-service, there could be disastrous consequences in her legal case.</p>	<p>may be used for this purpose. On the form, a self-represented party can indicate that he or she is substituting in for an attorney and can provide the physical address where he or she is to be served.</p> <p>Because of the way in which the <i>Substitution of Attorney - Civil</i> form is currently organized, a party can already provide notice to the other parties of the physical address at which service is to be made, so changes (such as the proposed opt-out box) are not necessary. However, the committees may review this and other forms in the future for the purpose of determining whether they should be modified to be more user-friendly for persons opting out and opt in to e-filing and e-service.</p>
45. Legal Services of Northern California By: Stephen Goldberg Senior Attorney		<p>If the Judicial Council decides that e-filing will be mandatory for everyone, there must be an easy way for pro per litigants to opt-out of e-filing. There should not be a requirement for good cause or for a judicial order. These requirements would be an unnecessary barrier that many in pro per litigants could not maneuver, and it would unnecessarily take court time and resources to adjudicate opt-out requests.</p> <p>LSNC supports the proposal on page 8 of the Invitation to Comment that in mixed cases, represented parties be required to use e-filing</p>	<p>The committees are recommending that self-represented parties be exempt from mandatory electronic filing and service, so no simplified opt-out process for self-represented parties is necessary.</p> <p>The provision in rule 2.253(b)(3) relating to mixed cases has been retained.</p>

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46. National Housing Law Project By: Renee Williams Executive Director		while unrepresented parties not be required to use e-filing. The reasons that pro per litigants should not be required to use e-filing apply equally in cases where the opposing party is represented, and the e-filing rules for pro per litigants should not change only because the opposing party happens to be represented. In fact, the opt-in to e-filing can be even more important for pro per litigants in mixed cases because it will be easier for a represented opposing party to take advantage of an inability to access or properly navigate e-filing.	(See responses to comment 44 by LAFLA.)
47. State Bar of California, Committee on Administration of Justice By: Saul Bercovitch Legislative Counsel		<p>Application to Self-Represented Parties</p> <p>A. Opt-In vs. Opt-Out</p> <p>CAJ recommends that an opt-in approach for electronic service and filing be adopted for self-represented parties. Proposed rule 2.253(b)(2) provides: "Self-represented parties are exempt from any mandatory electronic filing requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6." CAJ recommends that this rule be adopted and that self-represented parties be exempt from having to mandatorily participate in electronic service and filing.</p> <p>CAJ believes that an opt-in approach for self-</p>	<p>A. Opt-In vs. Opt-Out</p> <p>The committees agreed that an opt-in approach to electronic filing and service should apply to self-represented parties.</p> <p>The proposed rules submitted to the Judicial council recommend that self-represented parties be exempt from participating in mandatory electronic filing and service.</p>

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		<p>represented parties will avoid confusion and an undue burden on the courts, likely to result if self-represented parties are required to opt out of electronic service and filing. An opt-in approach will continue to permit all self-represented parties to fully participate with their litigation and, at the same time, will allow those self-represented parties who have the resources and ability to electronically serve and file to take part in the benefits associated with electronic service and filing and the implementation of the proposed rules.</p> <p>Even though a computer and the Internet may be available to most people, they are not available to all. And while many people have access to the Internet, they may not have access to the necessary technology or know how to scan documents or engage in the other steps that may be required for electronic service and filing. The practical reality is that while not all self-represented parties are indigent or lacking access to the necessary technology, many are, and many are not as technologically sophisticated as lawyers representing parties in litigation.</p> <p>CAJ believes that imposing an <i>opt-out</i> on that portion of the population who – whether by choice or necessity – appear as self-represented parties would in effect (i) create an additional roadblock for this class of litigants; and (ii) impose another layer of burden on participation in the process, <i>i.e.</i>, obtaining an exemption. For</p>	

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		<p>these reasons, CAJ opposes mandatory participation for self-represented parties.</p> <p>B. Additional Suggestions</p> <p>1. <i>A comment should be added to proposed rule 2.253(b)(2)</i>. One alternative proposed in the Invitation to Comment is that the proposed option in rule include the bracketed text below, encouraging self-represented parties to participate voluntarily in the electronic filing and service methods:</p> <p>Proposed Rule: 2.253(b)(2): Self-represented parties are exempt from any mandatory electronic filing requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6. [However, self-represented parties are encouraged to participate voluntarily in electronic filing and service. Electronic filing is not a barrier or impediment to access; it can provide improved access for self-represented parties as well as represented parties. To the extent feasible, courts and other entities should assist self-represented parties to electronically file and serve documents.]</p> <p>CAJ believes that if the bracketed material is adopted, it should be inserted into a comment to the rule, not the rule itself, with the following deletions:</p> <p>[However, [S]elf-represented parties are</p>	<p>A. Additional Suggestions</p> <p>1. <i>A comment should be added to proposed rule 2.253(b)(2)</i>. The committees agreed that the bracketed text should be moved from the rule into an Advisory Committee Comment.</p>

The deleted text has been removed from the

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		<p>encouraged to participate voluntarily in electronic filing and service. Electronic filing is not a barrier or impediment to access; it can provide improved access for self-represented parties as well as represented parties. To the extent feasible, courts and other entities should assist self-represented parties to electronically file and serve documents.]</p> <p>2. <i>The rule should specifically reference electronic service.</i> Proposed rule 2.253(b)(2) provides: "Self-represented parties are exempt from any mandatory electronic filing requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6."</p> <p>To avoid confusion, the rule should be written to include an explicit reference that self-represented parties are also exempt from mandatory electronic service. A possible revision is:</p> <p>Self-represented parties are exempt from any mandatory electronic filing and service requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6.</p>	<p>2. <i>The rule should specifically reference electronic service.</i></p> <p>The committees agreed with this suggestion. Although the exclusion of self-represented parties from mandatory service requirements is also addressed in rule 2.251(c), including it in rule 2.253(b)(2) makes the scope of the exemption even clearer.</p>
48. State Bar of California, Litigation Section By: Saul Bercovitch		<p>The Rules and Legislation Committee agrees with the proposal to exempt self-represented parties from any mandatory e-filing or e-service requirement while permitting them to opt-in. The committee also approves the proposed optional language encouraging self-represented parties to opt-in.</p>	<p>The committees agreed with the proposed approach recommended by the State Bar's Litigation Section.</p>

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49. Task Force on Self-Represented Litigants By: Hon. Kathleen O'Leary Presiding Justice Fourth District Court of Appeal		<p>The committee suggests modifying rule 2.253(b)(2) to make it clear that self-represented parties are exempt from both mandatory e-filing and e-service (additions underscored):</p> <p>“Self-represented parties are exempt from any mandatory electronic filing or <u>electronic service</u> requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6. . . .”</p> <p>The Task Force on Self-Represented Litigants strongly recommends that self-represented litigants be exempt statewide from any mandatory e-filing requirement. The task force does not believe that an “opt-out” option is reasonable or practical for self-represented litigants, or for the court. Self-represented litigants should, however, be permitted to “opt-in” to e-filing.</p> <p>The task force objects to any portion of the rule that would allow each trial court to implement its own set of e-filing requirements for self-represented litigants. The task force believes a statewide rule setting out uniform statewide e-filing requirements for self-represented litigants is needed in order to avoid the confusion that would arise if each of California’s 58 trial courts chose different and potentially conflicting local e-filing rules for these litigants. Different service requirements might result, and the types of staff services that the court would have to</p>	<p>The committees agreed with this suggestion. Although the exclusion of self-represented parties from mandatory service requirements is also addressed in rule 2.251(c), including it in rule 2.253(b)(2) makes the scope of the exemption even clearer.</p> <p>The committees agreed with the Task Force that self-represented litigants should be exempt from mandatory e-filing requirements.</p> <p>The proposed rules would provide for a generally uniform approach to all mandatory electronic filing and service in the trial court, effective July 1, 2013, although there would be a limited exception relating to the effective time of filing. Because of the wide divergence of opinions among commentators and the limited information presently available on the issue of whether parties’ filings after the “close of business” should be deemed effective on the next court day or parties should be allowed to file documents electronically up until midnight on a court day,</p>

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		<p>make available to self-represented litigants would vary significantly. The task force supports the proposal for a pilot project in Orange County to help find practical solutions to this and to the concerns set out below. The task force also recommends that the Judicial Council incorporate an evaluation process at the end of the pilot project, so that lessons learned can be incorporated and reflected in a subsequent statewide e-filing rule.</p> <p>Barriers for Litigants. The task force believes that making e-filing mandatory for self-represented litigants poses a number of serious access barriers for the litigants by making the court process more difficult, especially in areas with high percentages of self-represented litigants such as family law, domestic violence, child support, unlawful detainer, small claims, probate, and limited civil.</p> <p>(a) Reliance on Legal Aid services to assist self-represented litigants with e-filing is not a realistic solution. Legal Aid services are not available in all locations and many do not handle family law matters. (California Commission on Access to Justice September 2010 Report - Improving Civil Justice in Rural California.) Additionally, Legal Aid services</p>	<p>the committees recommend permitting flexibility and experimentation on this issue. The rules on the effective time of electronic service would remain unchanged, however. In addition to the reports required on the pilot project in Orange County, the committees recommend requiring reports from other courts instituting mandatory e-filing and service for the purpose of evaluating and improving the processes of e-filing and e-service throughout the state.</p> <p>Barriers for Litigants. The committees agreed that requiring self-represented litigants to file and serve documents electronically may pose problems and recommend that self-represented parties be exempt.</p>

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		<p>have specific eligibility requirements, such as income and citizenship, which many self-represented litigants cannot meet. Even for community legal services not subject to federal funding requirements, restrictions exist related to income and the types of cases or parties served. All community legal services are currently vastly underfunded and unable to withstand this added demand.</p> <p>(b) Self-represented litigants should be able to receive the education and assistance they now receive at a court's self-help center and then file the paperwork at that same courthouse without having to go to a separate location, such as a community legal service, to get e-filing assistance</p> <p>(c) Not all self-represented litigants have access to personal computers and many public computers have time limits. Locations with public computer access may not be open during optimum times for self-represented litigants to make use of them for e-filing. Furthermore, many self-represented litigants do not have credit cards with which to pay fees.</p> <p>(d) Not all self-represented litigants are computer savvy. In a survey conducted of 310 self-help center litigants, 40% did not have a computer at home, only 44% felt very comfortable using a computer, and only 20% felt comfortable using a computer without help of staff. (SHARP Computer Use Survey -</p>	

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		<p>regional collaboration model self-help program –for Butte, Lake and Tehama courts). Although this study was limited to a rural area, when added to observational data, it strongly suggests that many who attempt to file and serve electronically will need technical assistance in addition to legal information.</p> <p>(e) Emergency situations are of particular concern. In domestic violence cases, a person seeking a restraining order, and who is not computer savvy would find that mandatory e-filing poses an additional barrier in an already traumatic situation. Even though no filing fee is charged to file a restraining order request, the requirement that this person go through a process to “opt out” of e-filing creates another barrier that must be overcome before he or she can even file their request. Someone who has recently been the victim of domestic violence should not have to face a procedure in which they must demonstrate grounds to be excused from e-filing – a procedure that may potentially require a court appearance. This additional burden could cause the litigant to abandon the effort to seek help from the court thereby remaining without court protection and possibly leaving a child in danger.</p> <p>(f) Making e-filing mandatory for self-represented litigants, then requiring them to “opt-out” creates the potential for significant additional time burden on all such litigants. For example, a self-represented litigant seeking to</p>	

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		<p>modify child support might file a Simplified Modification of Support and a Simplified Financial Form. If a fee waiver is needed, two additional forms are required plus a potential appearance at a hearing. If this person is also required to "opt-out" of e-filing, additional forms are needed as well as the potential for another hearing. If so, this litigant could be required to attend two hearings before their motion is ever heard. Furthermore, litigants are likely to have serious problems finding out what to do if their request to "opt-out" is denied.</p> <p>(g) Self-represented litigants should not be subject to the provisions of proposed rules 2.251 and 2.256 that require a litigant to accept service by e-mail if documents have been e-filed. Many self-represented litigants do not have personal email addresses. Litigants without access to computers or who for any reason do not use email, would find that receiving actual timely service is a serious problem. The need to find a public computer, establish an e-mail there, then return periodically to see if anything has been served does not seem to be a practical expectation. Furthermore, if a litigant is attempting to serve by e-mail only to find that the e-mail provided by the opposing party no longer works, the probability of finding a solution without staff assistance is low. The resulting confusion can cause significant notice issues for the court to resolve at the time set for hearing.</p>	

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50. TCPJAC/CEAC Joint Rules Committee TCPJAC/CEAC		<p>Further recommendation. The task force recommends that any language encouraging self-represented litigants to use e-filing in proposed rule 2.253 should be deleted and only included, if at all, in commentary. If any language encouraging self-represented litigants to e-file is included in the commentary, it should not include any statements that electronic filing is not a barrier or impediment to access or can provide improved access for self-represented parties. The task force does not agree that these statements are necessarily correct.</p> <p>Regarding an exemption from mandatory e-filing requirements for self-represented litigants, the JRWG recommends that the rules be modified to effectuate the following:</p> <p>a. Make mandatory e-filing applicable to self-represented litigants, while providing them with the ability to opt out of this requirement due to undue hardship or significant prejudice, and file by conventional means; or</p> <p>b. Allow each trial court to determine by case type whether it is mandatory for self-represented litigants to file electronically or whether they may file by conventional means. Where mandatory, the self-represented litigant must request permission to opt out of the requirement based on undue hardship or significant prejudice.</p>	<p>a. Based on consideration of all the comments, the committees recommend exempting self-represented litigants entirely from mandatory e-filing rather than requiring them to e-file with the ability to opt out.</p> <p>b. The committees recommend giving courts broad leeway to determine in what types of civil cases represented parties must file and serve documents electronically. But they do not recommend authorizing courts to mandate e-filing or e-service for self-represented parties; instead, self-represented parties should be encouraged and assisted to voluntarily e-file and e-serve</p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
<p>51. Yuba Sutter Legal Center for Seniors By: Susan Townsend Directing Attorney</p>		<p>I am the directing attorney of the Yuba Sutter Legal Center. We provide free legal services to the elderly in these two counties. Each year we directly assist about 250 seniors. Another 100 or so are given help through advice letters. We frequently turn clients away due to our caseload.</p> <p>The Legal Center is also the designated small claims advisory service for Yuba County. As small claims advisor, we review small claims forms, explain small claims procedures, service, etc.</p> <p>I have reviewed the recommendations. I urge you to seriously consider exempting self represented parties from the mandatory E-filing requirements.</p> <p>Most of the seniors I work with, and they range in age from early 60's to over 80, are simply not that computer savvy. The idea that everyone is electronically connected overlooks the fact that many of my clients do not have computers, let alone e-mail, Twitter, etc.</p> <p>While both public libraries here have computers, there several limitations to their use.</p> <p>First, the person has to have some basic computer literacy; many of our clients do not.</p> <p>Second, time on the library computers is</p>	<p>documents.</p> <p>The committees agreed and recommend exempting self-represented litigants from mandatory e-filing.</p>

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		<p>limited, usually must be reserved ahead of time, and there is no privacy. The library has a central printer which again is not private.</p> <p>Third, libraries here have reduced their hours and days of operation to accommodate reduced budgets.</p> <p>Fourth, and perhaps most important, is that many clients, both seniors and small claims, need help filling out the judicial council forms. They do not understand the legal terms; many of the small claims litigants are not only low income but also have limited education.</p> <p>I think that legal professionals, who deal with legal forms and terms daily, often fail to comprehend how difficult it is for a lay person to prepare legal documents and deal with the court system.</p> <p>When we cannot assist seniors, due to our caseload, or when we advise small claims litigants, we usually have to review the court forms to make sure they are filled out properly, etc. Printing out the forms, etc., so they can be reviewed just adds another step for the pro per litigant.</p> <p>With paper filings, we can review and often send them right down to the court to file. With electronic filing, they may have to go back on line and redo the forms and then file them. Since most will be limited to using the library</p>	

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Commentator	Position	Comment	Committees' Response
		<p>computers, they will have to reserve time again, etc.</p> <p>It is not clear how pro per clients would electronically file exhibits which may be needed. For instance, the local courts sometimes require proof, such as an award letter, that a litigant receives Medi-Cal prior to waiving fees.</p> <p>Is it going to be necessary for them to scan documents in order to attach them as exhibits? Again, this requires both computer access and computer literacy that many lack.</p> <p>I urge you to exempt pro per litigants from the mandatory electronic filing for now. When the courts have had more experience with electronic filing, it will be easier to adapt it to the needs of pro per litigants.</p>	
<p>Scope of Mandatory E-Filing: Hardship Exception (Rule 2.253(b) (See also comments on Questions 3, 4 and 7 below))</p>			
52.	Superior Court of Sacramento County By: William Yee Research Attorney	<p>Rule 2.253 On page 28, subsection [b](4), the word "must" should be replaced with "may." As proposed, the court "must" excuse a party from the requirements if they show a hardship; however, "hardship" has not been defined causing the paragraph to be vague. Exemptions should be determined by the court based on local criteria and procedures.</p>	<p>Rule 2.253 The committees did not agree that "must" should be changed to "may" in (b)(4). The statute on which the rule is based evidences a legislative intent that exemptions be made available to any party based on hardship or significant prejudice: "The court shall have a procedure for the filing of nonelectronic documents to prevent the program from causing undue hardship or significant prejudice to any party in an action" (Code</p>

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			Civ., Proc., § 1010.6(d)(1)(C). The commentator is correct that "hardship" is not defined—nor is "significant prejudice"; so it will be up to the court considering an application for exemption to determine how those standards are to be determined.
Effective date of electronic filing: to be determined by "close of business," midnight on filing day, or "time of transmission" (rule 2.253(c)(7), rule 2.259(c)) (See also comments on Questions 13 and 14 below)			
53. Legal Services of Northern California By: Stephen Goldberg Senior Attorney		<p>LSNC believes that e-filing should be effective on transmission. This is important to ensure that documents are considered to be timely filed in the event of delays by either the e-filing vendor or the court clerks.</p> <p>Documents should be deemed timely filed if they are transmitted by 11:59 p.m. on the day they are due. The ability to file at any time on the day a document is due is important for low wage workers who often work retail jobs with unconventional hours.</p>	Based on the other comments, the committees do not recommend making e-filing effective on transmission. Instead, they recommend that the rules of court on mandatory electronic filing provide for the "close of business" standard but give individual courts the option of adopting instead the "file until midnight" standard by local rule. This will permit experimentation and allow for more information to be collected on the issue of the effective time for the electronic filing of documents.
54. State Bar of California, Committee on Administration of Justice By: Saul Bercovitch Legislative Counsel		<p>Time-of-Day Deadline for Electronic Filing</p> <p>A Substantial Majority of CAJ's Members Recommend a Midnight Filing Deadline</p> <p>Approximately two-thirds of CAJ's members recommend that the Judicial Council adopt a midnight filing deadline for electronic filing. These members believe that a midnight deadline will increase access to the courts, decrease confusion among litigants, and advance the goal</p>	The divergent positions within this committee and among all the other commentators indicate that this is an area in which it may be premature to make a definitive decision. Based on all the comments, the committees recommend that, at this time, the rules of court on mandatory electronic filing should provide for the "close of business" standard but give individual courts the option of adopting instead the "file until

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Commentator	Position	Comment	Committees' Response
		<p>of encouraging e-filing.</p> <p>First, having a midnight deadline may increase access for working-class litigants. Some attorneys who provide direct services to working-class litigants have expressed their desire to have time to meet with their clients who cannot do so during work hours. Self-represented litigants who can and choose to e-file (assuming they are exempt from mandatory e-filing) could also benefit from being able to file documents after work. They will not have to take time off work to travel to and from the court, wait in line, and personally file those documents.</p> <p>Second, one of the goals behind this proposal is to promote the use of e-filing, which, among other things, could reduce court operating expenses and increase efficiency. Providing an advantage to those who file electronically may incentivize litigants to file electronically (i.e., encourage parties to opt in if there are exemptions, and minimize requests to opt out if parties are not covered by any exemption). Some members of CAJ believe the question should not be framed in terms of creating a potential "disadvantage" to those who do not or cannot file electronically. All parties who file electronically would be given more time, and those who do not or cannot will not be losing any rights they currently have today.</p> <p>Third, a number of solo practitioners and</p>	<p>midnight" standard by local rule. This will permit experimentation and allow for more information to be collected on the issue of the effective time for the electronic filing of documents.</p>

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		<p>attorneys from small firms disagree with the minority's contention below—that a midnight filing deadline will benefit large law firms. According to these practitioners, a midnight standard would actually help attorneys from small firms because they have to juggle numerous matters simultaneously. Thus, for example, while a solo or small firm practitioner is trying a case during the day, a midnight deadline for e-filing will allow that practitioner to work on and electronically file motions for other matters in the evening.</p> <p>Finally, federal courts have long used a midnight deadline with no known problems for the litigants (so far as CAJ is aware), and many practitioners are accustomed to that standard. Using a different standard could create confusion, especially if that standard is not uniformly applied across the state. The close-of-business deadline as defined in Code of Civil Procedure section 1010.6(b)(3), for example, currently requires litigants to file by 4:30 p.m. in one county (Los Angeles Superior Court), while litigants in an adjacent county must file by 4:00 p.m. (San Bernardino Superior Court). Other variations of that deadline exist, depending upon the county and the particular day of the week.</p> <p>A Minority of CAJ's Members Support a Close-of-Business Deadline</p> <p>A minority of CAJ's members favor a filing</p>	

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		<p>deadline at the close of business (or a specific time, such as 5:00 p.m.) for several reasons. Those who favor the “close of business” deadline, as currently defined in Code of Civil Procedure section 1010.6(b)(3), believe this deadline provides an even playing field in which all litigants will have the same filing time, and no one would have the advantage of additional hours in which to prepare and file pleadings. Permitting a later deadline for those who electronically file will probably give practitioners with abundant resources the upper hand, while self-represented litigants without access to computers or lacking in skills, like senior citizens and the underprivileged, would have less time than other litigants to prepare and file pleadings. Cf. Susan P. Crawford, <i>The New Digital Divide</i>, N.Y. TIMES, Dec. 4, 2011, at SR1 (“According to numbers released . . . by the Department of Commerce, a mere 4 out of every 10 households with annual household incomes below \$25,000 in 2010 reported having wired Internet access at home, compared with the vast majority — 93 percent — of households with incomes exceeding \$100,000.”).</p> <p>The minority also believes that no public policy reasons for e-filing weigh in favor of changing the existing close of business deadline. They believe there is no need to expand the time for filing simply because the technology makes it possible, and believe there is no hardship under the current rules. They further note that the e-filing program is designed to satisfy a number</p>	

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		<p>of issues, concerns, and pressures on the court, including cost concerns. None of these concerns include the need or desire to expand or to amend the time limitations on filing pleadings with the court.</p> <p>A number of CAJ's members expressed a concern that a midnight filing time would have a negative impact on law office staff members, who would be asked to remain at work until late hours. In addition, public entities and small law offices may not have the financial resources to keep staff that late at the office (e.g., to pay overtime), thus the extended filing cut-off would effectively expand the time allowed for filing documents for larger private law firms willing and able to extend their hours of operations.</p> <p>Some CAJ members with the minority view do not favor "close of business" as currently defined in Code of Civil Procedure section 1010.6(b)(3), but do favor 5:00 p.m. as a uniform statewide deadline for e-filing.</p>	<p>Need to Define Time of Transmission</p> <p>The committees agreed that the meaning of the "time of transmission" should be clearer in the rules. Hence, they recommended adding at the end of proposed rule 2.251(h)(1): "If an electronic filing service provider is used for service, the service is complete at the time that the electronic filing service provider electronically transmits the</p>

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Commentator	Position	Comment	Committees' Response
<p>55. State Bar of California, Litigation Section By: Saul Bercovitch</p>		<p>EFSP to the court or the time of transmission by the filer to the EFSP? This expression should probably be interpreted to mean the time of transmission by the EFSP to the court—not the time of the transmission by the filer to the EFSP, though this is not expressly stated anywhere in the rules or statute. Comments are invited on whether this issue needs to be addressed in the rules, and, if so, how.” CAJ agrees that “time of transmission” should be clarified and defined in the rules.</p> <p>Effective Time of Mandatory Electronic Filing and Electronic Service</p> <p>The committee prefers the midnight rule for mandatory electronic filing as stated in the second option for rule 2.253(b)(7). We believe that the midnight rule is practical, consistent with e-filing rules in California appellate courts and in federal courts, and avoids uncertainties caused by inconsistent and changing closing times of filings windows. We also agree with the corresponding change to rule 2.259(c).</p> <p>a. We suggest that language be added to rule 2.253(b)(7) to make it clear that the midnight filing rule does not excuse any party from any legal requirement to file or serve a document by a particular time of day, such as the following:</p> <p>“This provision does not excuse any party from any requirement imposed by law, court order, or</p>	<p>document or sends electronic notification of service.”</p>
		<p>The Litigation Section’s support for the “file until midnight” standard is duly noted, although a number of other commentators argued for the “close of business” standard. Based on all the comments, the committees recommend that, at this time, the rules of court on mandatory electronic filing should provide for the “close of business” standard but give individual courts the option of adopting instead the “file until midnight” standard by local rule. This will permit experimentation and allow for more information to be collected on the issue of the effective time for the electronic filing of documents. Rules 2.253(b)(7) and 2.259(c) have been revised to reflect this recommendation.</p>	

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		<p>stipulation to file or serve a document by a particular time of day.”</p> <p>Such language should alleviate the need to specifically address the time to e-file ex parte applications (as the statute currently does).</p> <p>b. In response to the question whether the standard as to the effective time of filing should be uniform for voluntary and mandatory e-filing, we believe that the answer is yes.</p> <p>c. The committee believes that the midnight rule should be adopted for mandatory e-filing effective July 1, 2013, despite the fact that the rule for mandatory e-filing would be inconsistent with the statutory “close of business” rule for permissive e-filing. We believe that the rule for permissive e-filing should be changed to the midnight rule and believe that the temporary lack of uniformity between the mandatory and permissive rules would be preferable to adopting a close of business rule for mandatory e-filing and later changing it.</p> <p>d. The committee agrees with the proposal to amend rule 2.251(h)(4) to state the midnight rule for electronic service so as to make the effective time for electronic service consistent with that for mandatory electronic filing. We understand that this would make the midnight effective time for electronic service (whether permissive or mandatory) different from the</p>	

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56. Superior Court of Sacramento County By: William Yee Research Attorney		<p>close of business effective time for permissive electronic filing, but we believe that such an inconsistency is tolerable until the statutory close of business rule for permissive electronic filing is changed.</p> <p>In terms of the effective time of electronic filing and service, . . . we recommend adopting the first version of the rule as follows:</p> <p>“(7) Any document that is electronically filed with transmitted to the court after the close of business on any day is deemed to have been filed on received by the court the next court day. This provision concerns only the effective date of filing; any document that is electronically filed must be processed and satisfy all other legal filing requirements to be filed as an official court record.”</p> <p>The “close of business” standard should be adopted for determining the effective date of electronic filings. We disagree with the proposed amendments to Rule 2.259 (c) and propose that the existing rule remain to clarify that a document that is received after the court closes is deemed to have been received the next court day.</p>	<p>The commentator’s support for the “close of business” standard is duly noted, although a number of other commentators argued for the “file until midnight” standard. Based on all the comments, the committees recommend that, at this time, the rules of court on mandatory electronic filing should provide for the “close of business” standard but give individual courts the option of adopting instead the “file until midnight” standard by local rule. This will permit experimentation and allow for more information to be collected on the issue of the effective time for the electronic filing of documents. Rules 2.253(b)(7) and 2.259(c) have been revised to reflect this recommendation.</p>
57. Superior Court of San Bernardino County By: Stephen Nash Court Executive Officer		<p>Effective Time of Electronic Filing and Service:</p> <ul style="list-style-type: none"> • We recommend the “Close of business as determined by the Court” standard be retained 	<p>Effective Time of Electronic Filing and Service:</p> <p>The commentator’s support for the “close of business” standard is duly noted, although a</p>

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		<p>for e-filing. While we concur that this is a somewhat dated standard, the fact that exemptions will be available and granted means that not all parties will be filing electronically. To maintain a fair and level playing field for all parties, a common standard must exist for filing deadlines.</p> <ul style="list-style-type: none"> We recommend the "Close of business" standard also be used for service to avoid any potential confusion, and for consistent application for all parties. 	<p>number of other commentators argued for the "file until midnight" standard. Based on all the comments, the committees recommend that, at this time, the rules of court on mandatory electronic filing should provide for the "close of business" standard but give individual courts the option of adopting instead the "file until midnight" standard by local rule. This will permit experimentation and allow for more information to be collected on the issue of the effective time for the electronic filing of documents. Rules 2.253(b)(7) and 2.259(c) have been revised to reflect this recommendation.</p> <p>The "close of business" standard for electronic service has been retained in the rules of court. (See amended rule 2.251(h)(4).)</p>
<p>58. Task Force on Self-Represented Litigants By: Hon. Kathleen O'Leary Presiding Justice Fourth District Court of Appeal</p>		<p>The "close of business" rule should continue. Allowing until midnight for electronic filers would be unfair to the other side that is not e-filing, or does not have access to a computer after work hours.</p>	<p>Based on all the comments, the committees recommend that, at this time, the rules of court on mandatory electronic filing should provide for the "close of business" standard but give individual courts the option of adopting instead the "file until midnight" standard by local rule. This will permit experimentation and allow for more information to be collected on the issue of the effective time for the electronic filing of documents.</p>
<p>59. TCPJAC/CEAC Joint Rules Committee TCPJAC/CEAC</p>		<p>Regarding the effective time of e-filing, the JRWG recommends that the effective time be by the same time as required by the court for any other method of filing.</p>	<p>Based on all the comments, the committees recommend that, at this time, the rules of court on mandatory electronic filing should provide for the "close of business" standard but give individual courts the option of adopting instead the "file until</p>

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<p>60. Legal Aid Association of California By: Salena Copeland Directing Attorney</p>		<p>E-Service Concerns As mentioned earlier, there must be an easy way for self-represented litigants to opt out of electronic service even after electronically filing early papers. Many self-represented litigants may have help filing out judicial council forms at a legal services limited scope clinic and may electronically file documents at that clinic. However, those litigants must be able to state in that process that they are not consenting to electronic service of all documents related to the case.</p> <p>If a litigant does not opt-in to e-filing or opts out of it, service cannot be electronically; it must be "manually," even if an email is provided. The opt-out form should allow a litigant to opt-out of everything.</p> <p>One suggestion is to change the opt-out form to have a #2, that allows the litigant to "opt-in" to certain things, such as only for filing or only for service or only for receipt of service, with an explanation for "receipt of service" that says "If I check this box, I understand that I must provide a valid email address, I must be able to check that email address regularly and I will not</p>	<p>midnight" standard by local rule. This will permit experimentation and allow for more information to be collected on the issue of the effective time for the electronic filing of documents.</p>
<p>Mandatory electronic service (rule 2.251(a), rule 2.251(f)(4)) (See also comments in Question 6 below)</p>			
<p>E-Service Concerns</p>			
<p>The committees agreed that electronic service should be treated separately from electronic filing. For self-represented parties, they recommend that the rules provide that these parties are exempt from mandatory electronic service and must affirmatively agree to serve or be served electronically. (See amended rules (c)(2)(B) and 2.253(b)(2).) Also, the rule that voluntary e-filing is deemed consent to e-service should not apply to self-represented parties. (See amended rule 2.251(b)(1)(B).) If self-represented parties are exempted from e-service, they will not have to opt out unless they have voluntarily opted in.</p> <p>Rather than changing the "opt out" form to also include "opt in" for electronic service, any party—including a self-represented party—who wants to voluntarily opt in to electronic service should use <i>Consent to Electronic Service and Notification of Electronic Service Address</i> (form EFS-005). In the future, the committees may consider whether additional forms or changes to</p>			

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Commentator	Position	Comment	Committees' Response
61. Legal Aid Foundation of Los Angeles By: JoAnn H. Lee Directing Attorney		<p>have additional time to respond to filings.”</p> <p>Electronic Filing vs. Electronic Service Separate forms and procedures should be available for e-filing and e-service. Self-represented LEP litigants who choose to e-file will likely have to obtain assistance preparing their paperwork and filing. Thus it may be possible for a self-represented LEP litigant to e-file as a one-time or occasional occurrence, but that litigant may not have ready access to an email account. Libraries have time-limited access to computers and litigants may not have computer or internet at home. These limitations will affect self-represented LEP litigants not only during the filing process, but during the service process. Even if they do have access to an email account, self-represented LEP litigants may not be able to understand what they are receiving or that they are being served documents in this manner. Therefore, e-filing and e-service should be separate and distinct processes, and self-represented litigants should be exempt from both, but be allowed to opt-in to one or the other.</p>	<p>current forms are needed to assist self-represented parties who want to serve and file documents electronically.</p> <p>Electronic Filing vs. Electronic Service The committees agreed that electronic service should be treated separately from electronic filing. For self-represented parties, they recommend that the rules provide that these parties are exempt from mandatory electronic service as well as from mandatory electronic filing, and must affirmatively agree to serve or be served electronically. (See amended rules (c)(2)(B) and 2.253(b)(2).) Also, the rule that voluntary e-filing is deemed consent to e-service should be amended to not apply to self-represented parties. (See amended rule 2.251(b)(1)(B).) If self-represented parties are exempted from e-service, they will not have to opt out unless they have voluntarily opted in. For the purpose of opting in to electronic service, they may use <i>Consent to Electronic Service and Notification of Electronic Service Address</i> (form EFS-005). To voluntarily e-file at a court that has such a program, self-represented parties should follow the procedures available at the court.</p>
62. National Housing Project By: Renee Williams Executive Director		<p>(See comment 61 by Legal Aid Foundation of Los Angeles.)</p>	<p>(See responses to comment 61 by LAFLA.)</p>
63. Task Force on Self-Represented Litigants By: Hon. Kathleen O'Leary		<p>Self-represented litigants who choose to e-file should not be required to accept future service by email. Furthermore, the ability of a self-</p>	<p>The committees agreed that the rule that voluntary e-filing is deemed consent to e-service should be amended to not apply to self-represented parties.</p>

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<p>Presiding Justice Fourth District Court of Appeal</p>		<p>represented litigant to use e-filing may not be consistent throughout a case. A litigant may be able to accomplish e-filing at one point in the case, and not at another. A self-represented litigant would then need a process by which to "opt-out" even after initially e-filing.</p>	<p>(See amended rule 2.251(b)(1)(B).) Thus, a self-represented party who initially files electronically would not need to opt out of electronic service unless they had affirmatively agreed to such service.</p>
<p>Definition of electronic filing (rule 2.250(b)(7), rule 2.253(b)(7), rule 2.259(c))</p>			
<p>64. Press Groups By: Holm, Roberts & Owen LLP Rachel Matteo-Boehm, Attorney</p>		<p>(See complete comments from Press Group and joinders to comments attached to this chart as Attachment D.)</p>	<p>The Press Group objects to the specific proposed rule changes on the grounds that they are supposedly intended to delay access to court records. It also objects to the adoption of the mandatory e-filing rules on the ground that these rules should not be adopted until the Orange County pilot project has been completed. (See comment chart, Attachment D, page 2.)</p> <p>These comments are based on a misunderstanding of the purposes and processes of mandatory e-filing, and of e-filing as a whole. Due to the severe fiscal restraints on the courts, clerk's offices are encountering difficulties and delays in processing paper filings. As a result, some members of the Press Group may be encountering difficulties in getting quick access to filed documents. This is doubtless the source of the frustrations expressed in the Press Group's comments. Yet far from being a means to delay access, e-filing will enable courts to process filings more quickly and thus make them more accessible.</p> <p>Even in the best of times, it takes time for the</p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
			<p>clerks to review papers presented for filing—to determine, for example if fees have been paid or the papers contain any sealed or statutorily confidential information that requires special processing. Although the courts would generally prefer, if possible, to be able to file complaints on the same day that they are submitted and make the filed complaints available to the public, to do so is sometimes simply not possible—especially in the current drastic fiscal circumstances under which courts have been compelled to lay off employees, close courtrooms, and cutback on services. But with the introduction of e-filing and its expansion under mandatory e-filing, courts will be able to more quickly process case filings—and thereby make them available sooner to the public.</p> <p>The Press Group's comments are also inconsistent with the law on court records. A "court record" is defined under California law as a record that has been <i>filed</i>— i.e., put in a file or its equivalent. (Gov. Code, § 681512(a).) Also, the law provides that electronic court records shall be made <i>reasonably</i> accessible to the public. (Government Code section 68150(f).) The law, however, does not require courts to provide immediate public access to all documents as soon as they are received by the court, even though they have not yet been filed— i.e., not yet become court records. California law recognizes that documents may sometimes not be filed until a day or more after they are received by the court and, to protect filers, provides for this contingency by prescribing that the date of receipt shall be deemed the date of</p>

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			<p>filing. (See Cal. Rules of Court, rule 1.20(a): "Unless otherwise provided, a document is deemed filed on the date it is received by the court clerk.")</p> <p>Like rule 1.20(a), the proposed clarification of the definition of "electronic filing" in this rule proposal is intended to protect the rights of filers—in this case electronic filers. The rule changes would clarify that, for purposes of the effective date of filing, the date of receipt applies, even if the filing process is not completed until a later date. Even though such a provision is likely to be of less importance in the e-filing context than the paper filing context because most electronic filings will be completed quite quickly, if not instantaneously, it still has a valuable part to play in protecting the rights of litigants and should be included in the e-filing rules.</p>
Direct and indirect electronic filing (rule 2.252(b))			
65. State Bar of California, Litigation Section By: Saul Bercovitch		<p>Means of Electronic Filing</p> <p>a. Rule 2.252(b) states that a court may allow electronic filing by three different means. The committee finds the terms "direct" and "indirect" useful to distinguish between filing <i>directly</i> with the court and <i>indirectly</i> through an approved electronic filing service provider, and suggests that the word "indirectly" be added to the second line. The word "indirectly" would serve as a useful referent so as to limit the meaning of the term "indirect means" in the</p>	<p>Means of Electronic Filing</p> <p>a. The committees agreed with the suggested changes to the language and have incorporated them into the rule.</p>

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		<p>final clause to indirectly through an approved electronic filing service provider, as distinguished from indirectly through some other means.</p> <p>We also note that “electronic filing service provider” is a defined term (rule 2.250(b)(8)) and suggest that “electronic service providers” in rule 2.252(b) should be changed to “electronic filing service providers.”</p> <p>Accordingly, the committee suggests modifying rule 2.252(b) as follows (additions underscored and deletions shown by strikethrough):</p> <p>“Except as otherwise provided by law, a court may provide for the electronic filing of documents directly through <u>with</u> the court, <u>indirectly</u> through one or more approved <u>electronic filing</u> service providers, or”</p> <p>b. The final clause of rule 2.252(b) refers to electronic filing through “a combination of direct and indirect means.” The committee finds this language somewhat unclear. The word “combination” seems to suggest that a particular document could be filed using both direct and indirect means, but we do not understand how this could be so. If something else is intended, such as to authorize courts to allow parties to choose whether to file documents directly with the court or indirectly through a service provider, rather than mandate a single means, or authorize courts to allow</p>	<p>b. The committees did not think that the language needs to be changed, particularly if the word “indirect” is added earlier in the sentence (as suggested in a). The “combination” refers to a combination of different means of electronic filing, such as directly with the court through a portal or indirectly through an EFSP.</p>

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		<p>parties to file some documents directly with the court and other documents indirectly through a service provider, then we suggest modifying rule 2.252(b) to more explicitly so state.</p> <p>....</p> <p>The first paragraph of rule 2.253(b) states that a court may allow electronic filing by three different means. Those three means roughly parallel the three options set forth in rule 2.252(b), so our comments above apply here as well. We believe that the language in the first paragraph of rule 2.253(b) describing the three options should closely parallel that in rule 2.252(b).</p>	<p>Changes to rule 2.253(b) similar to those in rule 2.252(b) have been made.</p>
Notification of EFSPs (rule 2.256(a)(6))			
66. Legal Services of Northern California By: Stephen Goldberg Senior Attorney		<p>LSNC believes there should be an addition to proposed rule 2.256(a)(6) about the requirement to report changes in email addresses. The rule should require courts to provide pro per litigants with information about when changes need to be reported and how that change can be reported. Pro per filers need to be informed of the requirement and how to change an email address in writing. Including the requirement to report email address changes in court rules is insufficient because pro per litigants are not informed about the existence of the court rules.</p>	<p>The committees did not think that it is necessary to add a requirement to the rule that courts provide notice to self-represented litigants about the need to report changes of address. This information can and should be available from many sources—self-help centers, legal aid organizations, printed information, and websites as well as courts.</p>
Fee and Fee Waivers (rule 2.253(b)) (See also comments on Question 12)			
67. Legal Services of Northern California		<p>The court rules need to be clear that any extra</p>	<p>To the extent there is ambiguity in the rule, it</p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
<p>By: Stephen Goldberg Senior Attorney</p>		<p>fees for eFiling are waivable on same terms as any other filing fees. Proposed rule 2.253(b)(6) does not do this because it states fees charged by an electronic filing service provider must be waived "when deemed appropriate by the court." This gives courts complete discretion when to waive the electronic filing service provider fees. The rule should require that electronic filing service provider fees be waived automatically when a fee waiver is granted using the same standard as any initial filing or first paper fee. This would prevent low income litigants from losing their day in court because of filing fees and would allow for consistency in how filing fees are waived.</p>	<p>derives from the statute which provides that fees "shall be waived when deemed appropriate by the court, including but not limited to, for any party who has received a fee waiver." (Code Civ. Proc. § 1010.6(d)(1)(B).) The qualifying language referring to "any party who has received a fee waiver" appears to mean that any such party should not be required to pay fees for electronic filing. But if the statute and rule language poses any problems in practice, clarifying legislation can be sought in the future.</p>
<p>68. State Bar of California, Committee on Administration of Justice By: Saul Bercovitch Legislative Counsel</p>		<p>CAJ's recommendations on the topic of fee waivers are limited because (i) as noted in Code of Civil Procedure section 1010.6(b)(6), sections 68630 to 68641 of the Government Code already contain provisions regarding applications for waivers of other types of court fees and costs, and (ii) the Judicial Council has already promulgated mandatory "FW" forms that implement the existing fee waiver provisions. CAJ does not believe it is necessary or would be prudent to create a new "shadow" set of fee waiver rules solely for the purpose of accommodating the new electronic filing and service provisions.</p> <p>The proposed language of rule 2.253(b) largely mirrors the statute. Nonetheless, CAJ agrees that there are advantages to including these</p>	<p>The committees agreed that fee waiver provisions in the proposed rules should not be changed.</p>

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Commentator	Position	Comment	Committees' Response
		<p>provisions in the rules. Doing so would place these provisions alongside other important rules relating to electronic filing.</p> <p>CAJ also recommends that the following additions to the rules be considered:</p> <p>1. Proposed paragraph 5 of rule 2.253(b) should use the alternate bracketed language, <i>i.e.</i>, “Any fees charged by the court shall be for no more than the cost actually incurred by the court in providing for the electronic filing and service of the documents” rather than “Any fees charged by the court shall be for no more than the actual cost of the electronic filing and service of the documents.” The bracketed language makes clear that the court cannot charge the parties for electronic filing fees that have been incurred by a person or entity other than the court.</p> <p>2. Because it may not always be the case that a party for whom electronic filing fees should be waived will have already been granted a fee waiver in the matter, the rule should elaborate on when fees for electronic filing may be waived. This could be as straightforward as a cross-reference to the Judicial Council’s fee waiver forms such as Form FW-001 and Form FW-001-INFO. Suggested language is: “An application to waive fees for electronic filing and service that are charged by the court or by an electronic filing service provider must be made in the manner specified in rule 3.51.”</p>	<p>1. The committees agreed and recommend this language.</p> <p>2. The committees did not think it is necessary to elaborate on how to request a fee waiver in this rule on mandatory e-filing.</p>

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		<p>3. A party who has applied for an electronic filing fee waiver may need to file documents before the court rules on his or her application. Accordingly, the rule should explain whether and how electronic filing fees will be accrued or imposed while an application for a fee waiver is pending. One potential rule, which CAJ favors, would be that the filing of an application to waive electronic filing fees is deemed granted unless denied by the court. This seems the most efficient approach because most fee waiver applications will be granted and because that is the approach already taken by the rules regarding fee waiver applications. Suggested language is: "An application to waive fees for electronic filing and service that are charged by the court or by an electronic filing service provider is deemed granted in the manner specified in rule 3.53."</p> <p>4. The Judicial Council forms associated with fee waiver applications (forms having the "FW" prefix) should be revised to reflect that fees associated with electronic filing may be waived. For example, Form FW-001-INFO (and the corresponding Spanish-language translation, FW-001-INFO S) could be amended by adding a bullet point in section 1 that reads: "Electronic filing and service of documents in superior court." If that amendment is made, then the same language should be added to the following forms:</p> <ul style="list-style-type: none"> • Form FW-003 (and the corresponding 	<p>3. The statutory procedures relating to requesting a fee waiver in connection with an electronic filing appear to cover this situation: "The court may permit a party or attorney to file an application for a waiver of court fees and costs, in lieu of requiring payment of the filing fee, as part of the process involving the electronic filing of a document." (Code Civ. Proc., § 1010.6((b)(6).) If based on experience additional rules are necessary on this subject, they can be developed in the future.</p> <p>4. The committees will look at the fee waiver forms in the future to determine whether they need to be revised.</p>

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		<p>Spanish-language translation, FW-003 S), section 4(a)(1);</p> <ul style="list-style-type: none"> • Form FW-005 (and the corresponding Spanish-language translation, FW-005 S), section 4; • Form FW-008 (and the corresponding Spanish-language translation, FW-008 S), section 5(a)(1); and <p>Form FW-012 (and the corresponding Spanish-language translation, FW-012 S), section 6(d)(2).</p> <p>5. Because Code of Civil Procedure section 1010.6(d)(1)(B) requires that fees for electronic filing and service be waived for any party who has received a fee waiver, CAJ recommends that rule 3.55 be amended as follows:</p> <p>Court fees and costs that must be waived upon granting an application for an initial fee waiver include:</p> <ol style="list-style-type: none"> (1) Clerk's fees for filing papers; (2) Clerk's fees for reasonably necessary certification and copying; (3) Clerk's fees for issuance of process and certificates; 	<p>5. The committees will look at the fee waiver rules in the future to determine whether they need to be amended.</p>

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Commentator	Position	Comment	Committees' Response
		<p>(4) Clerk's fees for transmittal of papers;</p> <p>(5) Court-appointed interpreter's fees for parties in small claims actions;</p> <p>(6) Sheriff's and marshal's fees under article 7 of chapter 2 of part 3 of division 2 of title 3 of the Government Code (commencing with section 26720);</p> <p>(7) Reporter's daily fees for attendance at hearings and trials held within 60 days of the date of the order granting the application;</p> <p>(8) The court fee for a telephone appearance under Code of Civil Procedure section 367.5; and</p> <p>(9) Clerk's or electronic filing and service provider's fees for electronic filing and service of papers; and</p> <p>(9)(10) Clerk's fees for preparing, copying, certifying, and transmitting the clerk's transcript on appeal to the reviewing court and the party. A party proceeding under an initial fee waiver must specify with particularity the documents to be included in the clerk's transcript on appeal.</p>	
69. Superior Court of Sacramento County By: William Yee Research Attorney		<p>Rule 2.253 [In] subsection [b](6), we recommend that the word "must" be replaced with "may" and a period be placed at the end of the second sentence following the word "court," as follows:</p>	<p>Rule 2.253 The committees disagreed with this suggestion. The recommended new language is inconsistent with the statutory language. The statute reads: "Any fees charged by the court...shall be waived"</p>

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Commentator	Position	Comment	Committees' Response
		<p>Any fees for electronic filing charged by the court or by an electronic filing service provided must <u>may</u> be waived when deemed appropriate by the court, including providing a waiver of the fees for any party that has received a fee waiver.</p> <p>It is unclear what the rest of the sentence is trying to convey about a previously approved waiver of court fees and costs. The court is responsible for waiving e-filing or e-service so there is no need to mention a previously filed fee waiver in the rule.</p>	<p>when deemed appropriate by the court, including but not limited to, for any party that has received a fee waiver. Any fees charged by an electronic filing service provider shall be...waived when deemed appropriate by the court, including, but not limited to, for any party who has received a fee waiver." (Code Civ., Proc., §1010.6(d)(1)(B).) Proposed rule 2.253(b)(6) tracks this statutory language but condenses it for the sake of clarity and simplicity.</p>
<p>70. Superior Court of San Bernardino County By: Stephen Nash Court Executive Officer</p>		<p>• The existing rules on fee waivers allow fee waivers to be filed electronically, but do not address whether e-filing charges, whether court or EFSP-based, must be included in the fees being waived. We recommend that an e-filing fee implemented by a court acting as their own EFSP should be included in the fees waived by a fee waiver.</p> <ul style="list-style-type: none"> • Where the court is acting as its own EFSP, there will typically be only one method of gaining access (no competition); and, • The court will have already taken judicial notice of the need for a fee waiver. It would be inconsistent to then charge its own fee. • However, where e-filing fees are levied by EFSP's we recommend that these fees not be impacted by fee waivers. • There will be multiple EFSP's available, 	<p>The recommendations of the commentator appear to be consistent with the applicable statutory and proposed rule provisions on fee waivers. (See Code Civ. Proc., § 1010.6(d)(1)(B) and rule 2.253(b)(6).)</p>

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		<p>working to keep the cost low; and,</p> <ul style="list-style-type: none"> The legal aid and other non-profit agencies will work to provide services in this area. Again, keeping charges low, but requiring some level of funding to be able to operate. 	
<p>Forms (form EFS-007, form EFS-008)</p>			
<p>71. Legal Services of Northern California By: Stephen Goldberg Senior Attorney</p>		<p>[T]he proposed e-filing exemption form should be clarified in the event that e-filing is mandatory for everyone. The proposed form implies that pro per litigants need good cause to opt out beyond just being pro per. That should not be the case. The court rules should be clear on that point as well. A box on the form for pro per litigants to opt out would solve the problem.</p> <p>Moreover, the proposed <i>Order of Exemption From Electronic Filing</i> should include a way for the person making the opt-out request to ask for a hearing. As written, the form only allows for the court to set a hearing. This process should be like fee waivers where the requester can ask for a hearing on the form whenever there is a denial.</p>	<p>The committees are recommending that self-represented parties be exempt from mandatory electronic filing and service. Hence, the form for requesting an exemption will be used only by <i>represented</i> parties. For such parties, the form correctly identifies the grounds for exemption to be a showing of undue hardship or significant prejudice. No box on the form to identify self-represented parties is needed.</p> <p>The order form that is issued by the court would not be one that could be used by a party to request a hearing. In the future, the committees might consider developing a separate form for this purpose.</p>
<p>72. State Bar of California, Litigation Section By: Saul Bercovitch</p>		<p>Proposed Forms</p> <p>a. The committee agrees that the proposed forms should be optional rather than mandatory. We see no need at this time to preclude a party requesting an exemption from mandatory filing and service from filing papers in a different format.</p>	<p>Proposed Forms</p> <p>a. The committees recommend that the form be optional.</p>

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		<p>b. The clerk's certificate of service on the form order refers to service on the moving party, but does not require service on other parties. The committee believes that the form should be modified to require service on other parties.</p> <p>c. The caption of both forms, at the bottom right, includes a box to indicate the court department, judicial officer, and date the complaint was filed, in addition to "CASE ASSIGNED TO:." In light of the other information requested, we are uncertain what information should be provided after "CASE ASSIGNED TO:." and suggest that this language be deleted.</p>	<p>b. The Clerk's Certificate of Service on form EFS 008 provides for three options, including "a certificate of mailing is attached" which can be used show service on other parties. Often, however, this order will be served directly on the applicant at or near the commencement of an action before the other parties have been served; hence, including options for service on the applicant alone is appropriate.</p> <p>c. The committee agreed that the box should be modified. It should be consistent with other Judicial Council forms that generally do not require the information requested. Also, insofar as these forms would frequently be used connection with initial filings, the fields of information that are identified in the box would not yet be available.</p>
73.	Superior Court of Sacramento County By: William Yee Research Attorney	We agree with the proposed Judicial Council forms used to request an exemption from electronic filing and service, however, we recommend that they be adopted for optional use.	The committees recommend that the forms be optional.
Limited Scope and Pro Bono Representation			
74.	Legal Aid Association of California By: Salena Copeland Directing Attorney	Pro Bono Clients and Legal Services Clients In addition to self-represented parties, parties represented pro bono and legal services attorneys should also be allowed to "opt-out" or to qualify for a waiver of the cost of filing. The	Pro Bono Clients and Legal Services Clients These suggestions are generally beyond the scope of the present proposal. While parties who are eligible for a fee waiver under current law are entitled to request a waiver of their electronic

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		<p>clients represented by pro bono attorneys are essentially in the same situation as self-represented parties financially and added expenses may prevent access to the courts even for parties represented by pro bono attorneys.</p>	<p>filing fees under the current statute and rule, fee waivers for pro bono attorneys who are representing persons who are not eligible for fee waivers may require a change in the law. On the other hand, Code of Civil Procedure section 1010.6, as amended by AB 2073, may give courts some discretion in this area because the statute provides that fees charged by electronic filing service providers "shall be reasonable and shall be waived when deemed appropriate by the court, including, <i>but not limited to</i>, for any party who has received a fee waiver." (Code Civ. Proc. §1010.6(d)(1)(B)(italics added).) There may also be some other ways to address the commentators concerns. For example, legal aid organizations that become electronic filing service providers might be able to assist pro bono attorneys to electronically file documents free of charge. Also, courts' contracts with private EFSPs might provide some relief in this area.</p>
<p>75. Legal Aid Foundation of Los Angeles By: JoAnn Lee Directing Attorney</p>		<p>Pro Bono Clients and Legal Services Clients In addition to self-represented parties, parties represented by pro bono and legal services attorneys should also be allowed to "opt-out" or to qualify for a waiver of the cost of electronic filing. As a legal services provider that represents many LEP litigants, we are uncertain of whether we will have the personnel and resources to meet the technological requirements for electronic filing. Without such an option, added expenses and costs may prevent or curtail pro bono attorneys' ability and willingness to represent clients.</p>	<p>Pro Bono Clients and Legal Services Clients These suggestions are generally beyond the scope of the present proposal. While parties who are eligible for a fee waiver under current law are entitled to request a waiver of their electronic filing fees under the current statute and rule, fee waivers for pro bono attorneys who are representing persons who are not eligible for fee waivers may require a change in the law. On the other hand, Code of Civil Procedure section 1010.6, as amended by AB 2073, may give courts some discretion in this area because the statute provides that fees charged by electronic filing</p>

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76. Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		<p>What if a party is represented and consents to e-filing, e-service and receipt of e-service, then becomes self-represented. Should the self-represented party become exempt? How should Limited Scope Representation be handled?</p> <p>If a represented party who has consented to e-service becomes unrepresented, that party should be exempted from e-filing and e-service, unless the party chooses to opt-into e-filing and e-service and/or becomes represented again by counsel. Civil forms, such as the proposed EFS-007 and EFS-008, or the Substitution of Attorney-Civil, could be used to request such a change in status, or this may be done when the court grants substitution of counsel. Notice would then be given to the other parties that the now self-represented litigant is no longer subject to e-filing and e-service.</p>	<p>service providers "shall be reasonable and shall be waived when deemed appropriate by the court, including, <i>but not limited to</i>, for any party who has received a fee waiver." (Code Civ. Proc. §1010.6((d)(1)(B)(italics added).) There may also be some other ways to address the commentators concerns. For example, legal aid organizations that become electronic filing service providers might be able to assist pro bono attorneys to electronically file documents free of charge. Also, courts' contracts with private EFSs might provide some relief in this area.</p> <p>Under the committees' proposals, if a party who had been represented becomes self-represented, that person would become exempt from mandatory electronic filing and service unless the person affirmatively opts in to e-filing, e-service, or both.</p> <p>The committees agreed with this comment, and recommend the version of the proposed rules that provides for an exemption from mandatory e-filing and e-service for self-represented parties. Because self-represented parties would be exempt from the requirements, no request would be necessary. The commentator is correct that the <i>Substitution of Attorney-Civil</i> form could be used by self-represented persons to indicate a change of status.</p>

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		<p>The rules should require creation of a mechanism for parties whose attorneys substitute out as counsel of record. E-filing and e-service exemptions should be assessed after a party substitutes in as her own counsel. In the court's order granting substitution of counsel, the self-represented party could be directed to file an exemption request with the clerk's office within five days of the order's date. The order would trigger a mechanism by which all represented parties send hard copies of filings to the self-represented litigant.</p> <p>If a represented party who has consented to e-service becomes unrepresented, the party should be exempt from mandatory e-filing from that point on unless they opt-in and/or become represented again. Either EFS-007 and EFS-008 can be used to request a change in status OR the Substitution of Attorney – Civil form can be modified so that if a party is becoming self-represented then a notice informing the other parties that the SRL is no longer subject to e-filing/e-service.</p> <p>As Limited Scope Representation is encouraged and widely used in family law cases, the Notice of Limited Scope Representation form should be changed. Low- and moderate-income litigants in family law often hire attorneys for court appearances or limited time periods, due to the often extensive duration and cost of family law matters. These litigants should not be required to request permission to be</p>	<p>Once an attorney substitutes out and a party represents himself or herself, the party would be exempt from electronic filing and service. No order would be required for an exemption; it would be automatic. However, the party would need to give notice of their new service address to the other parties in the action and the court. To provide notice, a self-represented party can use <i>Substitution of Attorney–Civil</i> (form MC-050), which has places for the party to indicate that he or she is self-represented and to provide the street address where he or she can be served. If the party wants to be served electronically, he or she can use the EFS forms for this purpose.</p> <p>The committees, or other advisory committees, may review the limited scope representation forms in the future to determine whether these forms should be modified to make them more usable in the context of electronic filing and service.</p> <p>The rules have been modified to clarify that, if a person is self-represented, they must be served by conventional means unless they affirmatively</p>

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Commentator	Position	Comment	Committees' Response
		<p>exempted from e-filing and e-service each time they hire a limited scope attorney, and litigants and attorneys who oppose SRLs should have clear direction on how and whom to serve. As such, the Notice of Limited Scope Representation should be changed to reflect whom and how to serve the party, and on what issue.</p>	<p>consent to electronic service. (See rule 2.251(c)(2)(B).) On the other hand, if an attorney is providing limited scope representation in a case subject to mandatory e-filing and e-service, the attorney must serve documents on all other represented parties by electronic means unless they have requested and been granted an exemption.</p>
77.	National Housing Law Project By: Renee Williams Executive Director	(See comment 75 by Legal Aid Foundation of Los Angeles above.)	(See responses to comment by LAFLA.)
78.	Public Law Center By: Elizabeth Gonzalez Lead Attorney	<p>Pro Bono Clients and Legal Services Clients In addition to self-represented parties, litigants represented by pro bono and legal services attorneys should also be allowed to "opt-out" or to qualify for a waiver of the cost of e-filing. Clients of qualified legal services programs are essentially in the same financial situation as many self-represented parties and added expenses may prevent access to the courts even though they are represented by pro bono or legal services attorneys. Legal services programs have limited financial ability to absorb fees and costs and requiring pro bono attorneys to absorb them may chill some lawyers, particularly those in small firm or solo practice settings, from volunteering.</p> <p>For that reason, we suggest that either the court provide a free way to e-file documents or require electronic filing service providers to allow for no-fee transmissions for litigants represented by legal services programs or pro</p>	<p>Pro Bono Clients and Legal Services Clients The suggestions regarding pro bono attorneys are generally beyond the scope of the present proposal. While parties who are eligible for a fee waiver under current law would be entitled to a waiver of their electronic filing fees under the current statute and rule, providing fee waivers for attorneys who are representing pro bono persons who are not eligible for fee waivers would require changes in the law.</p> <p>There might be some other ways to address the commentators concerns, however. For example, legal aid organizations that become electronic filing service providers might offer to provide electronic filing to pro bono attorneys free of charge. Also, courts' contracts with private EFSPs might be able to provide for some relief in this area.</p>

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Commentator	Position	Comment	Committees' Response
<p>79. State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim</p>		<p>bono attorneys working with legal services programs.</p> <p>What if party is represented and consents to e-service. Attorney subs out. Is party still submitting to e-service?</p> <p>Under the process wherein a self-represented litigant is automatically exempted from mandatory e-filing and e-service, and a represented party who has consented to receipt of e-service becomes unrepresented, that party should be exempted from e-filing and e-service as a self-represented litigant. That party may e-file and receive e-service by choosing to opt-in to it or by becoming represented again by counsel.</p> <p>Civil forms, such as the proposed EFS-007 and EFS-008, the Substitution of Attorney-Civil and the Notice of Limited Scope Representation, could be modified and used to request such a change in status, or this may be done when the court grants substitution of counsel. Notice would then be given to the other parties that the now self-represented litigant is no longer subject to e-filing and e-service.</p>	<p>What if party is represented and consents to e-service. Attorney subs out. Is party still submitting to e-service?</p> <p>The committees agreed with this comment and recommend rules that would exempt self-represented parties from mandatory electronic filing and service.</p> <p>Because self-represented parties would be exempt from the requirements, no request would be necessary. The commentator is correct that the <i>Substitution of Attorney-Civil</i> form could be used by self-represented persons to indicate a change of status.</p>
<p>80. Task Force on Self-Represented Litigants By: Hon. Kathleen O'Leary Presiding Justice Fourth District Court of Appeal</p>		<p>The representational status of self-represented litigants is often not consistent within a single case. For example, in family law, a litigant may start out represented, then lose that attorney at some future point due to lack of funds. The e-filing rule should address this situation clearly</p>	<p>Under the proposed rules recommended by the committees, a person who becomes self-represented would be exempt from electronic filing and service unless the person affirmatively opts in to electronic filing or service, or both.</p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
Court-Ordered Electronic Filing (Rule 2.253(c))			
81. Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		Should Rule 2.253(c), regarding mandatory e-filing for consolidated cases, be considered consolidated for this rule? Consolidated family law, domestic violence, probate and housing actions should be exempted from Rule 2.253(c), given the extraordinary number of SRLs, and the regular (proposed) rules regarding opt-ins to e-filing and service should apply.	The committees did not think that rule 2.253(c) on court-ordered electronic filing and service in complex cases needs to be changed. The provisions on court-ordered filing and service in these cases have been working effectively for a number of years without apparent difficulties.
82. Superior Court of San Diego County By: Michael M. Roddy Executive Officer		Rule 2.253 provides in subsection (b) that a court must have at least two electronic service providers, if it does not offer e-filing directly, in order to have mandatory e-filing; however, the current version of the rule allows mandatory e-filing by court order "in any class action, a consolidated action, a group of actions, a coordinated action, or an action that is complex under rule 3.403..." and there is no requirement for having two electronic service providers. Because some courts have court ordered electronic filing and currently have only one provider, the rule should provide that in those cases the court can order "e-filing through the court directly or through an electronic service provider." If this were not clarified, our court	The committees do not think that the requirement in the statute and in rule 2.253(b) for more than one electronic filing service provider applies to court-order electronic filing and service in complex cases under (c). Nonetheless, to make this clear and address the concerns of the Superior Court of San Diego County, the committees recommend adding an explanatory Advisory Committee Comment. This Comment would state that court-ordered electronic filing and service under subdivision (c) are different from mandatory electronic filing and service established by local rule under subdivision (b) and Code of Civil Procedure section 1010.6 because court-ordered filing and service do not require more than one electronic filing service provider.

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
Additional Issues			
83. IOLTA-Funded California Disability Advocacy Organizations		(See complete comments attached to this chart as Attachment B.)	<p>The comments are well-taken. As the commentators observe, the self-represented population includes many persons with disabilities, low-incomes, and limited English proficiency. Electronic filing and service may pose challenges for many of these persons. The committees' response is, first of all, to recommend that electronic filing and service not be made mandatory for self-represented persons. These persons would continue to have the ability to file and serve documents by conventional means. E-filing and e-service would be strictly voluntary for them.</p> <p>At the same time, the committees think that technology can be of substantial assistance to self-represented persons, including those with disabilities. Thus, self-represented parties should definitely be given the opportunity to "opt in" to</p>

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Commentator	Position	Comment	Committees' Response
<p>84. Legal Aid Association of California By: Salena Copeland Directing Attorney</p>		<p>Access for People with Disabilities: LAAC is aware that Disability Rights Education and Defense Fund and other organizations have submitted a comment addressing accessibility issues. LAAC defers to the expertise of those groups in this area and reiterates four major concerns for e-filing and people with disabilities: (1) need to protect confidentiality of disability-related information, (2) need to include check-boxes for disability accommodation, (3) need to be compatible with specific access considerations, (4) need for coordination with California Rule of Court 1-100, which establishes procedures for persons with disabilities to request accommodation; and (5) need to recognize that there are physical and policy access implications, as well as technology implications, for users who rely on shared public computers.</p>	<p>e-filing and e-service to the extent that is feasible.</p> <p>Third, courts implementing e-filing should undertake to ensure that, as e-filing expands, it is developed in a manner that addresses the needs and situations of persons with disabilities, low-income individuals, and persons with limited English proficiency. See <i>Advancing Access to Justice Through Technology: Guiding Principles for California Judicial Branch Initiatives</i> (Judicial Council, August 2012.) This includes taking into account the need of persons with limited English proficiency to have information about e-filing and e-service provided in different languages.</p>
			<p>See response to comment 83.</p>

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Commentator	Position	Comment	Committees' Response
		<p>Language Access: LAAC is also aware that the Legal Aid Foundation of Los Angeles and others plan to submit a comment addressing concerns with e-filing and litigants with limited English proficiency. LAAC would like to reiterate that mandatory e-filing for self-represented litigants means a large number of people with limited English may face an additional hurdle to accessing justice in California.</p> <p>Any e-filing programs would ideally be provided in the primary languages spoken in California, including Spanish, Vietnamese, Korean, Mandarin/Cantonese, and Tagalog. At a minimum, the notice of the requirement to opt-in/opt-out must be provided in each of those languages so that litigants are aware of the requirement and can take steps to complete the proper form.</p> <p>....</p> <p>LAAC respectfully requests that the Judicial Council recognize the potential impact on the public and vulnerable Californians as the implementation of Mandatory E-Filing is analysed.</p>	
85.	Legal Aid Society of Orange County	<p><u>E-Filing in Small Claims Cases</u> Many litigants and the courts would benefit from the ability to e-file small claims cases. The Rules ought to have the flexibility to allow</p>	<p><u>E-Filing in Small Claims Cases</u> Code of Civil Procedure section 1010.6 and the rules of court have allowed courts to institute e-filing for small claim cases for a number of years,</p>

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Commentator	Position	Comment	Committees' Response
		<p>individual courts to adopt rules allowing e-filing.</p> <p><u>Statewide and Local Rules</u> When adopted, do these rules supersede the Orange County local rules on e-filing?</p>	<p>and the proposed rule changes would not alter that.</p> <p><u>Statewide and Local Rules</u> Once the statewide rules are adopted, the local rules including those in Orange County will need to be consistent with those statewide rules.</p>
<p>86. Legal Services of Northern California By: Stephen Goldberg Senior Attorney</p>		<p>LSNC believes the e-filing rules should be express about ex parte filing in order to avoid any possible ambiguity. This is the possibility mentioned on page 12 of the Invitation to Comment in the heading "Other electronic filing issues." Legal services programs assist pro per litigants with many ex parte applications, including ex parte applications for orders shortening time in Unlawful Detainers for both pre-trial and post-trial motions and ex parte applications for restraining orders. The rules for filing these applications need to be very clear to avoid issues that can cause delay in these types of emergency situations.</p>	<p>A special provision regarding ex parte applications does not appear necessary, especially if certain other changes are made to the rules, as proposed. The same deadlines that apply to conventionally filed documents also apply to electronically filed documents. (See current Cal. Rules of Court, rule 2.252(f) ("Filing a document electronically does not alter any filing deadline.") Because ex parte applications follow this general rule, there is no reason to single out ex parte applications for special attention in the rule. If a particular document must be filed by a certain time of day, that document needs to be filed by that time—whether it is filed electronically or on paper. To the extent that there has been some ambiguity about the rule that the same deadlines apply for electronically filed documents as for conventionally filed documents, this issue is addressed in the proposed rules by relocating the provision in rule 2.252(f) to be more prominent. (See amended rule 2.252(c)(2). Only if e-filed documents would require a <i>different</i> treatment from conventionally filed documents would it be important to have a specific rule; otherwise, it seems preferable to rely on the general rule rather</p>

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Commentator	Position	Comment	Committees' Response
		<p>The court rules should require that if a clerk rejects a document that is filed electronically that there be an explanation why the filing was rejected. This is the only way any litigant, but most importantly pro per litigants, can know why a filing is rejected and either correct it accordingly or challenge the rejection as being incorrect.</p> <p>The court rules should include a way to demand that documents be filed when a document that is filed electronically is rejected or some other way to challenge an improper rejection by a clerk. Absent that, there is will be no way to get past clerks improperly rejecting filings. One way to do this could be to deem all e-filings as requests for filing on demand, meaning all e-filings would be lodged but could be returned by a clerk for correction.</p> <p>The court rules should specify a file format or require local rules to specify file format for each court so everyone is on notice and there cannot be arbitrary rejections because of file format.</p> <p>The court rules should specify that authorized file formats should not require special software. For example, courts should not require a .pdf format that requires a special version of Adobe software that is not free. Such special file formats would be an impossible barrier for</p>	<p>than adding specific rules on each type of proceeding to the e-filing rules.</p> <p>It is anticipated that courts that reject an electronic filing will inform the filer of the reasons, just as they do for paper filings. Thus, it does not appear necessary to include this in the rules.</p> <p>Like paper filings, electronic filings should be liberally accepted by the courts. A court's duty to accept filings is well-established in the in the case law; there does not appear to be a need for special rules on this subject as it relates to electronic filings.</p> <p>It appears premature to specify particular file formats in the statewide rules on electronic filing and service until the courts and litigants have had more experience with electronic filing.</p> <p>In developing local rules and eventually in developing statewide rules on format, this point should be considered.</p>

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Commentator	Position	Comment	Committees' Response
87. Legal Aid Foundation of Los Angeles By: JoAnn H. Lee Directing Attorney		<p>many low income pro per litigants because they could not afford the special software and libraries do not generally have such special software.</p> <p>Introduction¹ California is a state that is racially, ethnically, and linguistically diverse. Over 27 percent of Californians are foreign-born, compared to nearly 13 percent nationally. Californians speak over 220 languages and 43 percent of Californians speak a language other than English in their homes. The top five primary languages spoken at home after English include Spanish (8.1 million speakers), Chinese (815,386 speakers), Tagalog (626,399 speakers), Vietnamese (407,119 speakers), and Korean (298,076 speakers). While the wide variety of languages spoken in the state enriches California culturally, individuals who speak other languages at home may also be limited-English proficient (LEP). In fact, approximately 6 million Californians "experience some difficulty speaking English," with "roughly 40% of Latinos and Asians overall and half of certain Latino and Asian ethnic groups being LEP."</p> <p>Limited-English proficiency impacts one's "ability to access fundamental necessities such as employment, police protection, and healthcare." While underrepresented groups among native English speakers often face</p>	<p>LAFLA provides helpful comments here about the importance of considering the needs of persons with limited-English proficiency. (For LAFLA's specific comments on key issues and the committees' responses, see comments 44, 61, and 75 above.)</p>

¹ Footnotes have been omitted. The complete version of the comment (Attachment C to this chart) includes the footnotes.

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Commentator	Position	Comment	Committees' Response
		<p>similar challenges, these challenges are compounded for LEP individuals who must also contend with an incredible language barrier. Thus, unsurprisingly, access to the courts has proven difficult for LEP individuals, who have higher rates of poverty than the general population in California. As the California Commission on Access to Justice observed in its 2005 report, “[f]or Californians not proficient in English, the prospect of navigating the legal system is daunting, especially for the growing number of litigants who have no choice but to represent themselves in court and The report notes that approximately 7 million Californians “cannot access the courts without significant language assistance, cannot understand pleadings, forms or other legal documents and cannot participate meaningfully in court proceedings without a qualified interpreter.”</p> <p>To ensure that the California state court system is promoting justice for all Californians regardless of language ability, issues concerning language access and limited-English proficiency in the courts must be addressed in light of the proposed rule change concerning mandatory electronic filing and service.</p> <p>Legal Background and Mandates Safeguards protecting limited-English proficient individuals in accessing the courts can be found in both state and federal statutes. California Government Code §§ 11135, <i>et seq.</i> and its accompanying regulations provide that no one</p>	

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Commentator	Position	Comment	Committees' Response
		<p>shall be "denied full and equal access to benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state," on the basis of "linguistic characteristics."</p> <p>Federally, Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations prohibit direct and indirect recipients of federal financial assistance from discriminating on the basis of national origin, which has been interpreted to include meaningful language access. As recipients of federal financial assistance, California courts are subject to the mandates of Title VI and its implementing regulations to ensure equal access to the courts by providing necessary language assistance services. The Department of Justice (DOJ), the federal agency that enforces Title VI requirements, provides financial assistance to California courts, and on June 18, 2002 issued guidance to recipients of such funding detailing these mandates. This guidance is clear that language access to litigants be provided both inside and outside the courtroom.</p> <p>Overview of Key Issues Affecting LEP Litigants and Communities</p> <p>We do not wish to duplicate comments on general topics concerning low-income, legal services-eligible individuals and court access, as these are well-documented in other comments</p>	

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Commentator	Position	Comment	Committees' Response
		<p>submitted by the organizations referenced above. We want to emphasize that the needs of and mandates regarding LEP litigants must be incorporated into all aspects of any rule. The points below highlight and support some key areas that we believe are especially critical for LEP litigants and communities.</p> <p>[Specific comments by LAFLA on exemption of self-represented litigants, electronic service, and pro bono representation are elsewhere in this chart. See comments 44, 61, and 75.]</p> <p>Translating Materials and Forms</p> <p>The proper translation of state court materials and forms is essential to bridging the language divide between the California court system and the LEP populations it serves. The following suggestions are ways in which state courts can make themselves more accessible to LEP populations, should the proposed mandatory electronic filing rule be adopted.</p> <p>First, courts in each county should work with their vendors to create introductory materials and clear guidance such that LEP individuals understand the steps they need to take in order to successfully complete necessary transactions and electronic filings. Each county's courts should provide any such materials and/or guidance in the five most widely spoken non-English languages in each county. Courts should also have bilingual staff or access to interpretive services at filing windows, public kiosks and</p>	<p>[Responses to specific comments by LAFLA on exemption of self-represented litigants, electronic service, and pro bono representation are located elsewhere on the chart. See responses to comments 44, 61, and 75.]</p> <p>The committees agreed that proper translation of materials and forms is important, and recommend that courts instituting mandatory electronic filing consider the comments and suggestions submitted by LAFLA.</p>

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Commentator	Position	Comment	Committees' Response
		<p>self-help centers so LEP litigants can ask questions and seek assistance.</p> <p>Similarly, courts in each county should provide bilingual forms containing translated text written alongside the original English text, thus facilitating litigants understanding and completing forms in English. The courts should create one such form for each of the five most widely spoken non-English languages in their respective counties.</p> <p>Third, courts should be strongly discouraged from using Google Translate or similar services to translate court webpages, as the translations have been proven to be inaccurate and confusing to non-English speakers. The use of online translators such as Google is not an adequate substitute for human translation. Our bilingual staff attempted to explore the website of the Orange County Courts (www.occourts.org), where a pilot project of this mandatory rule is being conducted, using the Google translation offered on the homepage. Navigating the website in some of the Asian languages, as translated by Google, did not provide meaningful translation of the content and was very confusing to the reader. The court forms were too large to translate and the services provided by the vendor were not translated.</p> <p>Finally, the courts must conduct effective outreach to LEP communities concerning any</p>	

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Commentator	Position	Comment	Committees' Response
		<p>changes to court rules regarding electronic filing. Courts in each county should create signs and flyers to be posted prominently in each courthouse detailing electronic filing requirements. These signs and flyers should appear in the five most widely spoken non-English languages in the county. Additionally, courts should consider placing translated notices pertaining to the changes in local media that reach LEP communities, such as non-English language newspapers. This multilingual outreach should clearly explain both changes to the electronic filing requirements and any exemptions that may apply. Effective outreach is essential in ensuring that LEP communities receive fair and proper notice concerning any changes to state court filing requirements.</p>	
<p>88. Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney</p>		<p>Of additional concern is the demand for additional resources by low-income and self-represented litigants. They often seek services from free and low-cost legal services providers, including legal aid organizations, non-profit legal services organizations, paralegals, and notaries. If they are not exempted from mandatory e-filing requirements, court self-help centers and free legal services providers will simply be unable to meet the demand without substantial increases in personnel and technology budgets. For-profit notarios, particularly those serving Spanish-speaking litigants, will be able capitalize on this unmet need, and without regulation this could be</p>	<p>The committees are recommending that self-represented parties be exempted from mandatory electronic filing and service.</p>

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Commentator	Position	Comment	Committees' Response
89. National Housing Law Project By: Renee Williams Executive Director		disastrous. Family law and eviction defense services are, necessarily, a huge part of what any legal aid organization provides on behalf of their low-income clients. These organizations often provide representation, often in limited scope, in all types of civil matters. Any software and technology requirements for e-filing, e-service and receipt of e-service should be easily accessible and available to low- or no-cost. Systems that require the purchase of costly software programs or vast amounts of internet storage space may be a disincentive for these agencies to representing low-income litigants. (See comments above by Legal Aid Foundation of Los Angeles.)	The commentator is correct that increasing the voluntary use of e-filing by self-represented parties will necessarily involve substantial support from legal aid organizations, using appropriate technology at a reasonable cost.
90. Public Law Center By: Elizabeth Gonzalez Lead Attorney	 To ensure that all litigants understand applicable e-filing procedures, we suggest that the first time a litigant files a document electronically in a particular case they are provided with an "E-filing Information Sheet." The handout would provide information regarding that particular clerk's office closures and cutoffs for manual filing, manual service and e-filing and e-service. This sheet should be provided in the litigant's primary language.	(See response to comments by Legal Aid Foundation of Los Angeles.) This suggestion for a handout on e-filing is a good idea. It should be considered by courts instituting e-filing.
91. State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS)		The proposal does not make specific reference to accommodate people with disabilities. However, many low-income and moderate-	Although the rules on mandatory electronic filing

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Commentator	Position	Comment	Committees' Response
By: Sharon Ngim		income individuals in California are people with disabilities who will be subject to the proposed rules. Accordingly, it would be prudent and appropriate to add references to relevant sections of California and Federal rules and regulations that speak to the need to provide accommodations to people with disabilities and the need to make online content accessible to people with disabilities, such as Rule 1.100 of the California Rule of Court, and pertinent sections of the Unruh Civil Rights Act, California Civil Code Sections 54 through 55.2, Title 24 California Building and Standards Code (Physical Access Regulations), California Government Code Section 11135-11138, and the Fair Employment and Housing Act, as well as the Federal Rehabilitation Act and Americans with Disabilities Act. Further, the proposal should align with Court Rule 1.100 so as to avoid confusion or redundancy	and service do not make specific reference to laws relating to persons with disabilities, they obviously must be implemented consistent with those laws. The commentator's suggestion about providing references, however, seems intended to apply more broadly than to just these rules—for example, the comment mentions the need to make online content accessible. Providing references to the law on accommodations for people with disabilities in the relevant rules of court is a project that a committee or committees might look at in the future.
92. Superior Court of San Diego County By: Michael M. Roddy Chief Executive Officer		The rules should provide that courts have the right to require paper courtesy copies be provided to the court in any proceedings that are going to be held within one day of the electronic filing since it could, depending on the press of business, take that long for an electronic filing to be processed and available on the court's case management system.	The committees do not recommend adoption of a rule on this subject at this time; however, the suggestion will be explored in the future. If a rule is developed, it would be circulated for public comment.
Question No. 1 – General - Does the proposal appropriately address the stated purpose?			
93. California Family Law Facilitator's Association		Does the proposal appropriately address the stated purpose?	Does the proposal appropriately address the stated purpose?

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Commentator	Position	Comment	Committees' Response
By: Melanie Snider Vice President		Yes.	No response required.
94. Julie A. Goren, Attorney Lawdable Press		<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes.</p>	<p>Does the proposal appropriately address the stated purpose?</p> <p>No response required.</p>
95. Los Angeles Center for Law and Justice By: Suma Mathai Supervising Family Law Attorney		<p>Does the proposal appropriately address the stated purpose?</p> <p>The purpose of the proposed shift to e-filing and e-service is unclear. Is the purpose of the proposal to increase accessibility to the court? Is the purpose ultimately to streamline filing and service procedures and allow for future outsourcing and/or reduction in the court's physical facilities? Is the purpose to allow for future access of all court records online? Is the purpose to ultimately save money or catch up with technology? Having a clear statement of the goals and purpose of this proposal would help the legal community better tailor responses and attempt to address the needs of our constituencies and the court.</p> <p>This proposal addresses both e-filing and e-service/receipt of e-service, which are fundamentally different and pose different challenges for low-income and self-represented litigants. For reasons outlined below, we believe that each should be addressed separately and comprehensively.</p>	<p>Does the proposal appropriately address the stated purpose?</p> <p>The immediate purpose of the proposal, as stated in the Invitation to Comment, is to amend the California Rules of Court to provide uniform rules on mandatory electronic filing and service in the trial courts. The rule implements Assembly Bill 2073, which requires the Judicial Council to adopt rules to permit the electronic filing and service of documents in specified civil actions on or before July 1, 2014. The rationale for the legislation is provided in the Senate Judiciary Analysis of AB 2073: http://www.leginfo.ca.gov/pub/11-12/bill_asm/ab_2051-2100/ab_2073_cfa_20120618_163341_sen_comm.html.</p> <p>The commentator is correct that the proposal addresses both e-filing and e-service/receipt of e-service. The committees agreed that each should be addressed separately and comprehensively.</p>

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

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
96. Superior Court of Los Angeles County		<p>Does the proposal appropriately address the stated purpose?</p> <p>If the working group thought it was necessary to provide alternatives on key issues, we should not be making decisions without the input from the courts which will run the pilot projects. The rules should provide more flexibility on how rules apply to different case types.</p>	<p>Does the proposal appropriately address the stated purpose?</p> <p>Alternatives were provided to give the bar, the courts, legal aid organizations, other interested entities, and the public the fullest opportunity to comment on, and provide suggestions about, the best way to implement mandatory e-filing and e-service. Broad input is important for many reasons, including that, because there is only one authorized pilot project, getting input from other sized courts and diverse populations is valuable. Although other courts may not have mandatory e-filing, they may have experience with voluntary e-filing. The rules provide great flexibility as to the how courts may implement mandatory e-filing go for different types of civil cases. (See proposed rule 2.253(b)(1) and Advisory Committee Comment on rule 2.253 ("This subdivision allows courts to institute mandatory electronic filing and service in any type of civil case for which the court determines that mandatory electronic filing is appropriate."))</p>
97. Superior Court of Orange County By: Jeff Wertheimer General Counsel		<p>Does the proposal appropriately address the stated purpose?</p> <p>The proposal appropriately addresses the stated purpose of the Invitation to Comment.</p>	<p>Does the proposal appropriately address the stated purpose?</p> <p>No response required.</p>
98. Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		<p>Does the proposal appropriately address the stated purpose?</p>	<p>Does the proposal appropriately address the stated purpose?</p>

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
99. Superior Court of San Bernardino County By: Stephen Nash Court Executive Officer		Yes. Does the proposal appropriately address the stated purpose? Yes, we feel the proposal adequately and appropriately addresses the need for rules needed to implement mandatory e-filing in local courts.	No response required. Does the proposal appropriately address the stated purpose? No response required.
100 Superior Court of San Diego County By: Michael M. Roddy Chief Executive Officer		Does the proposal appropriately address the stated purpose? Yes.	Does the proposal appropriately address the stated purpose? No response required.
101 Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		Does the proposal appropriately address the stated purpose? Yes. This feedback is in alignment with the e-filing workstream participants.	Does the proposal appropriately address the stated purpose? No response required.
Question No. 2 - On the rules on mandatory e-filing: scope. Is the scope of the proposal for the rules on mandatory e-filing —i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?			
102 California Family Law Facilitator's Association By: Melanie Snider Vice President		Is the scope of the proposal for the rules on mandatory e-filing—i.e. that the rules would apply to all civil cases except juvenile cases—appropriate? No. The scope would include family law cases and, for reasons explained further, would	Is the scope of the proposal for the rules on mandatory e-filing—i.e. that the rules would apply to all civil cases except juvenile cases—appropriate? The commentator's main concern appears to be that self-represented parties would suffer hardship

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>potentially cause great hardship and result in inequitable access for some self-represented litigants.</p> <p>Should the scope be narrowed to exclude any types of categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile cases)?</p> <p>Yes. It may be acceptable and even beneficial to allow voluntary participation in the e-filing program for some family law cases—for example those cases in which both sides are represented by counsel. But a requirement forcing self-represented litigants to e-file (unless the court will be providing access to the service to the self-help centers and allowing waivers of costs for those litigants who otherwise qualify for such waivers) would be onerous for many self-represented litigants.</p>	<p>and inequitable access if they are included in mandatory e-filing, especially in family law cases. These concerns would be addressed by exempting such parties from mandatory e-filing. Once this approach is adopted and only represented parties would be required to file electronically, it seems appropriate to include all civil cases—including family and juvenile cases—in the group of cases that might, on a court-by-court-basis, be included in mandatory e-filing programs.</p> <p>Should the scope be narrowed to exclude any types of categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile cases)?</p> <p>The committees agreed that self-represented litigants should not be required, but should be encouraged voluntarily in appropriate cases, to file electronically in family law.</p>
103 Martin Dean Essential Publishers LLC		<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be</p>	<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be</p>

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
104 Julie A. Goren, Attorney Lawdable Press		<p>narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>Our experience indicates that the scope of filing types should be as broad as possible. We do not believe however, that mandatory eFiling should necessarily apply over all case types in a single court. For instance, there could be mandatory eFiling in Civil cases, and opt-in eFiling in Family law cases. We also believe that it is early in the game for rules regarding electronic filing. Therefore, we believe that they should be as open as flexible as possible so as not to stifle the natural growth and direction of this new court service.</p>	<p>narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>The committees agreed that the permissible scope of filing should be as broad as possible. The rules on mandatory e-filing would be flexible—permitting each court to determine for itself what specific types of civil cases should be subject to mandatory e-filing. (See proposed rule 2.253(b)(1) and Advisory Committee Comment on rule 2.253 (“This subdivision allows courts to institute mandatory electronic filing and service in any type of civil case for which the court determines that mandatory electronic filing is appropriate.”).)</p>
105 Los Angeles Center for Law and		<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate?</p> <p>Yes.</p> <p>Should the scope be narrowed to exclude any type or categories or civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>No.</p>	<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate?</p> <p>No response required.</p> <p>Should the scope be narrowed to exclude any type or categories or civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>No response required.</p>
		Is the scope of the proposal for the rules on	Is the scope of the proposal for the rules on

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
<p>Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney</p>		<p>mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>The scope of the proposal for the rules on mandatory e-filing should consider not only what types of civil cases the mandatory e-filing rules should apply to, but also whether specific categories of litigants should be exempted.</p> <p>We propose that cases involving domestic violence restraining orders, civil harassment restraining orders, probate guardianship and conservatorship and unlawful detainers should be exempted from the mandatory e-filing and e-service rules due the time-sensitive nature of these cases.</p> <p>The rule should not be expanded to include juvenile cases, for the same reason that criminal cases are not included.</p>	<p>mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>The key recommendation of the committees is that self-represented parties be exempted from mandatory e-filing and e-service. Once this approach is adopted, only represented parties will be required to file and service electronically. The argument for excluding particular case types from mandatory e-filing is no longer persuasive if all the filings are being done by an attorney. Indeed, e-filing by attorneys will often have benefits (e.g., speed and efficiency) in many of the specific types of cases mentioned by the commentator. Furthermore, in an exceptional case, the attorney could request an exemption based on hardship or substantial prejudice.</p> <p>Juvenile cases, in which the parties are represented by attorneys, may be appropriate for mandatory e-filing and therefore would not be excluded under this proposal; however, there may be prudential reasons to defer including juvenile cases from the initial mandatory e-filing efforts. (See Advisory Committee Comment on rule 2.253.)</p>
106 Public Law Center		<p>Is the scope of the proposal for the rules on</p>	<p>Is the scope of the proposal for the rules on</p>

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
<p>By: Elizabeth Gonzalez Lead Attorney</p>		<p>mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>As to the scope of areas of law covered by the mandatory e-filing and e-service requirements, Orange County currently does not require e-filing for family law or probate/mental health cases. Additionally, in Unlawful Detainer cases, defendants – who are frequently self-represented – are required to be served with the opt-out form along with the summons and complaint.</p> <p>We recommend that the exclusion for family law and probate/mental health cases be implemented state-wide. We also recommend that Unlawful Detainer cases be excluded. The majority of litigants in these three types of cases are frequently self-represented and requiring them to opt-out could impose a burden on the courts. The shorter timelines that often occur in family law, probate/mental health and unlawful detainer cases could create an access to the courts issue if e-filing were required and particularly if the procedure were an opt-out procedure.</p>	<p>mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>This information is useful. The court is implementing mandatory e-filing and e-service in a flexible, selective manner. This approach makes good sense. (See Advisory Committee Comment to rule 2.253.)</p> <p>The committees do not recommend categorically excluding any of the case types mentioned from mandatory e-filing, but recommend giving courts the flexibility to choose not to institute mandatory e-filing in those types of cases. The commentator's main concern about instituting mandatory e-filing in these types of cases appears to be that they involve many self-represented parties. However, the committees are recommending excluding self-represented parties from mandatory e-filing. If this is done, there should be fewer access and other issues. Also, with automatic exclusion, no burden will be imposed on the courts from requiring self-represented parties to follow opt-out procedures.</p>

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
<p>107 State Bar of California's Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim Program Development & Staff Liaison</p>		<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>The rule should not be expanded to include juvenile cases, for the same reason that criminal cases are not included.</p> <p>For the reasons discussed in detail below, SCDLS strongly believes that self-represented litigants should be exempted from mandatory e-filing and e-service, but allowed to opt-in. If all self-represented litigants are not automatically exempted from mandatory e-filing and e-service, then certain types of cases should be exempted. These include domestic violence cases, civil harassment, and unlawful detainer actions. This is due to the fact that these cases oftentimes involve self-represented litigants and are particularly time-sensitive. Further, given the large number of self-represented litigants involved, family law cases should be automatically exempted from mandatory e-</p>	<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>The committees disagreed about excluding juvenile cases. Juvenile cases, in which the parties are represented by attorneys, may be appropriate for mandatory e-filing and therefore would not be excluded under this proposal; however, there may be prudential reasons to defer including juvenile cases from the initial mandatory e-filing efforts. (See Advisory Committee Comment on rule 2.253.)</p> <p>The committees agreed that self-represented parties should be exempt from mandatory e-filing but allowed to opt-in. As SCDLS indicates, the argument for excluding various types of cases is based principally on the fact that these types of cases involve substantial numbers of self-represented litigants for whom e-filing would be challenging. But if self-represented litigants are excluded and only litigants represented by an attorney would be required to e-file, the argument for excluding a particular case type basically disappears. In fact, e-filing might be quite helpful in more time-sensitive cases.</p>

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 Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
108 Superior Court of Los Angeles County Los Angeles County Superior Court		<p>filing and e-service, assuming there is no general exemption for all self-represented litigants.</p> <p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>The scope is appropriate. The rules should apply to all civil cases except juvenile cases. The rules, however, should be flexible so that different rules can apply to different case types. As discussed below, the rule regarding self-represented litigants should be different for general civil cases than it is for family law.</p>	<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>The committees recommend a broad, flexible approach that includes all civil cases. (See response to comment 96 above.) They recommend including juvenile cases among the case types for which e-filing may be mandated. Juvenile cases, in which the parties are represented by attorneys, may be appropriate for mandatory e-filing and therefore should not be categorically excluded; however, there may be prudential reasons to defer including juvenile cases from the initial mandatory e-filing efforts. (See Advisory Committee Comment on rule 2.253.)</p>
109 Superior Court of Orange County By: Jeff Wertheimer General Counsel		<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize</p>	<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize</p>

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
<p>110 Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer</p>		<p>mandatory e-filing in juvenile law cases)? The scope should be a broadly-worded mandate to authorize e-filing in as many categories of civil cases as the local trial court deems appropriate. The local courts should be permitted to generate as many efficiencies as possible through civil e-filing. The rules, as written, contain sufficient safeguards to insure that fairness will not be compromised in the event of widespread usage.</p>	<p>mandatory e-filing in juvenile law cases)? The committees agreed that the trial courts should be given broad leeway to institute mandatory e-filing in all types of civil cases. (See responses to comments 96, 103, 106, and 108 above.)</p>
		<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)? Yes. Not having to go back to the Legislature repeatedly to expand the scope is efficient and economical. E-filing capabilities should be allowed to grow independently in each court and not require the rule to be changed to allow each incremental advancement.</p>	<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)? The committees recommend that the rules apply broadly to all categories and types of civil cases, including juvenile cases. They agreed that it would not be desirable to be required to go back repeatedly to the Legislature or to frequently change the rules to expand the scope of mandatory e-filing.</p>
<p>111 Superior Court of Sacramento County By: William Yee Research Attorney</p>		<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be</p>	<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be</p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>We agree with the scope of the proposed rule but recommend that “small claims” cases be added to the types of civil cases that may be included. In proposed Rule 2.253(b)(1), we recommend that the specific categories in subsections (A) through (G) be omitted allowing local courts to define the categories/combinations of cases included.</p>	<p>expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>The scope of the proposed rule is very broad--- permitting mandatory e-filing in virtually all types of civil cases. (See rule 2.253(b)(1).) But small claims a cases would not be covered. Even though rule 2.253(b)(1) allows mandatory e-filing in virtually all types of civil cases, the exclusion of self-represented parties from mandatory e-filing under rule 2.253(b)(3) means that mandatory e-filing would not be able to be instituted in small claims cases, where all parties are self-represented. The list of categories in (A) through (G) is helpful and should be retained in the rule: it shows the range of options and possible combinations available to the courts, and is in no way restrictive.</p>
<p>112 Superior Court of San Bernardino County By: Stephen Nash Court Executive Officer</p>		<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>Yes, we feel the proposed scope of the rules is adequate and appropriate; including family law and excluding juvenile cases. Family Law represents a large and challenging set of cases within the trial courts and all measures which</p>	<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>The committees recommend a broad, flexible approach that includes all civil cases. (See response to comment 96 above.) They recommend including juvenile cases among the case types for which e-filing may be mandated. Juvenile cases, in which the parties are</p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
113 Superior Court of San Diego County By: Michael M. Roddy Executive Officer		could assist in the effective and efficient resolution of these cases should be available.	represented by attorneys, may be appropriate for mandatory e-filing and therefore should not be categorically excluded; however, there may be prudential reasons to defer including juvenile cases from the initial mandatory e-filing efforts. (See Advisory Committee Comment on rule 2.253.)
		<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>Yes, the rules as drafted will allow trial courts the ability to decide what civil cases would be included and to expand civil case types as court staff and resources allow.</p>	<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>The committees recommend a broad, flexible approach that includes all civil cases. (See response to comment 96 above.) They recommend including juvenile cases among the case types for which e-filing may be mandated.</p>
114 Superior Court of Santa Clara County By: Robert Oyung Chief Technology Center		<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>Yes, however, we recommend that Small Claims cases be explicitly included in the scope.</p>	<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>The scope of the proposed rule is very broad---permitting mandatory e-filing in virtually all types</p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
115 TCPJAC/CEAC Joint Rules Working Group		<p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>Regarding the scope of the proposal, the JR WG requests that juvenile cases not be excluded outright.</p>	<p>of civil cases. (See rule 2.253(b)(1).) But small claims cases would not be covered. Even though rule 2.253(b)(1) allows mandatory e-filing in virtually all types of civil cases, the exclusion of self-represented parties from mandatory e-filing under rule 2.253(b)(3) means that mandatory e-filing would not be able to be instituted in small claims cases, where all parties are self-represented.</p> <p>Is the scope of the proposal for the rules on mandatory e-filing—i.e., that the rules would apply to all civil cases except juvenile cases—appropriate? Should the scope be narrowed to exclude any types or categories of civil cases (for example, family law cases) or be expanded (for example, to authorize mandatory e-filing in juvenile law cases)?</p> <p>The committees agreed. They recommend including juvenile cases among the case types for which e-filing may be mandated. Juvenile cases, in which the parties are represented by attorneys, may be appropriate for mandatory e-filing and therefore should not be categorically excluded; however, there may be prudential reasons to defer including juvenile cases from the initial mandatory e-filing efforts. (See Advisory Committee Comment on rule 2.253.)</p>
<p>Question No. 3 – On the rules on mandatory e-filing: exemptions. Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons</p>			

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
<p>116 California Commission on Access to Justice By: Hon. Ronald B. Robie Chair</p>		<p>Should self-represented parties be exempt from mandatory e-filing? If so, why? Self-represented parties should be exempt from mandatory e-filing, but should have the opportunity to opt in. As the <i>Invitation to Comment</i> states, "for many self-represented litigants, e-filing would be challenging. Many of them may not have access to computers. Even if they do, the process of filing documents electronically may be difficult. Requiring them to file papers electronically may create significant barriers to access to the courts." Most self-represented parties do not retain counsel for economic reasons, and access to computers correlates with economic status, as well as with geographical location. Urban home broadband access is at 56 percent compared to 51 percent in rural homes. Lower average rural income is part of the equation: There is Internet access in 47 percent of state households with incomes under \$40,000 and in 94 percent where income is over \$80,000. (see <i>Improving Civil Justice in Rural California</i>, a report by the Commission on Access to Justice at page 25).</p>	<p>Should self-represented parties be exempt from mandatory e-filing? If so, why? The committees agreed with the Commission that self-represented parties should be exempt from mandatory electronic filing and should have the opportunity to opt in.</p>
<p>117 California Family Law Facilitator's Association By: Melanie Snider Vice President</p>		<p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p>	<p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>Yes. The self-help centers in Butte County, Tehama County and Lake County conducted surveys of their litigants regarding computer use. These surveys were conducted in April and July of 2011. The purpose of the survey at that time was to determine if the self-help center's litigants would be served if the centers offered litigants the use of computer-based resources in conjunction with their litigation. The results of the survey indicated that a significant portion of the self-help centers' clientele lack access to computers as well as the skill and comfort level to use computers without assistance.</p> <p>Some significant results of the survey indicate that only 60% of the self-help center litigants even have a computer at home, and of those litigants, only 86% have internet access. Of all litigants surveyed, only 30% use a computer at work. Nearly 50% of the litigants who have a computer or access to a computer use it for social networking and less than 40% have the skills to use a computer for more sophisticated purposes.</p> <p>Another indication that the digital divide still looms in California's rural counties, our survey results indicate that 15% of those responding litigants who do use computers do not use the internet at all. Overall, about 35% of the litigants responding to the survey do not use the internet for business or court purposes.</p>	<p>The committees agreed with the commentator that self-represented parties should be exempt from mandatory electronic filing. The survey information provided by the commentator was useful.</p>

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

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Commentator	Position	Comment	Committees' Response
		<p>As to the skill level of many of our self represented litigants who live in rural areas, less than 44% of those surveyed indicated that they are "very" comfortable using computers, 21.6% are "fairly" comfortable, while 14.8% are "okay with using computers for games, email and the internet". The remaining 20% were "not very" or "not at all" comfortable using computers.</p> <p>Again, these survey results indicate the existence of a digital divide in California. If the courts are to require filing and service of documents electronically, it is likely that 40% of the family law litigants in rural counties will be adversely affected and will either not have access or will not have equal access to the courts. It could affect due process for these litigants and result in poor rulings by the court that adversely affect children.</p> <p>In addition to the barriers many of these litigants face accessing and using computers, many of the self-help litigants are indigent or impoverished. Any costs associated with filing and accepting service electronically may also serve as a barrier to justice for these litigants. This barrier may be lowered if the rules regarding fee waivers apply to electronic filing, but there may still be access issues if the waiver provisions do not apply to private filing services. Currently litigants experience barriers when using the "Court-Call" service because that service is privately operated and litigants cannot get the "Court Call" fees waived. The</p>	<p>The applicable statute and the proposed rules provide that eligible parties are be entitled to request waivers from paying electronic filing fees to vendors or the courts. (See Code Civ. Proc., 1010.6(d)(1)(B) and rule 2.253(b)(6).) Similarly, waivers are available for the fees charged for appearances by telephone. (See Code Civ. Proc., § 367.6(b) and Cal. Rules of court, rule 3.670(k)(1).)</p>

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Commentator	Position	Comment	Committees' Response
118 Martin Dean Essential Publishers LLC		<p>result is that some litigants cannot appear telephonically because the "Court Call" fees are onerous to them and so they cannot make necessary appearances in some cases without traveling great distances. This is an inequitable situation and results in unequal access to the courts for the impoverished.</p> <p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>Our experience (100,000+ electronic filings in 3 California venues) is likely somewhat different from that of other commenters. Our rule for electronic filing has always been "Don't make it mandatory, make it irresistible." Sacramento has been accepting electronic filings (2GEFS) for more than 7 years. They accept electronic filings only in Unlawful Detainer and Small Claims cases. For both case types, eFiling has been voluntary. The percentage of electronic filers has not varied for years. Sacramento reports that electronically filed Unlawful Detainer cases represent 90+% of their filings, and as best as we can recall, 70±% in Small Claims. At the California Public Utilities Commission their 2GEFS electronic filing capability has been in use for 5 years. Their electronically filed document percentage is about 93%. Their filing is also voluntary.</p>	<p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>The commentator's point about the importance of developing effective, user-friendly technology before instituting mandatory e-filing for self-represented parties is well-taken.</p>

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Commentator	Position	Comment	Committees' Response
119 Family Violence Law Center By: Rebecca Bauen Executive Director Oakland		<p>Until well designed user interfaces that are as good as other commercial web based or even desktop based software; that create a process environment that requires no manual, no training, and is designed for use just once by non-lawyer users are common, we believe that mandatory electronic filing places a too heavy burden on self-represented litigants. We believe that once the industry of electronic filing has evolved to meet these standards, deciding about mandatory filing will be obvious. We believe that the industry would be best served by moving in this direction, rather than spending precious court or judicial time trying to decide whether the use of a particular user interface on a computer is a hardship.</p> <p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>(See comment below by Legal Aid Association of California (LAAC) [similar]).</p>	(See response to comment below by LAAC.)
120 Julie A. Goren, Attorney Lawdable Press		<p>Should self-represented parties be exempt from mandatory e-filing?</p> <p>No.</p> <p>If so, why? If not, what procedures and criteria for exemptions should apply to self-</p>	<p>Should self-represented parties be exempt from mandatory e-filing?</p> <p>Based on other comments, the committee disagreed with this conclusion.</p> <p>If so, why? If not, what procedures and criteria for exemptions should apply to self-represented</p>

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Commentator	Position	Comment	Committees' Response
		<p>represented persons requesting hardship exemptions?</p> <p>If they don't have a computer with internet service, then they should be exempt.</p>	<p>persons requesting hardship exemptions?</p> <p>For self-represented parties, the committees do not recommend an individualized exemption process based on specific criteria, but rather a general exemption.</p>
<p>121 Legal Aid Association of California By: Salena Copeland Directing Attorney</p>		<p>Should self-represented parties be exempt from mandatory e-filing? If so, why?</p> <p>Self-represented parties should be exempt from mandatory e-filing, but should be allowed to opt-in by electronically filing documents. LAAC echoes the concerns of the working group that self-represented litigants may not have access to computers and may have difficulty filing documents electronically. Allowing self-represented parties to be exempt addresses many of the concerns about barriers to justice and the courts.</p> <p>Self-represented parties who do not have the means to hire an attorney may be prohibited from having their cases heard fairly because of their inability to access a computer or other required equipment such as a scanner, a printer, a modem, software to "save as" pdfs, etc., discomfort with composing and sending private personal information via a public library or court terminal, and a misunderstanding of how to send and confirm transmittal of an electronic document. Many self-represented litigants may have to rely on public computer portals that do</p>	<p>Should self-represented parties be exempt from mandatory e-filing? If so, why?</p> <p>The committees agreed that self-represented parties should be exempt from mandatory electronic filing but should have the opportunity to opt in.</p>

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Commentator	Position	Comment	Committees' Response
		<p>not protect privacy, may have time limits for use, or may not allow saving of documents for later editing. Many self-represented litigants also do not have access to an email address, or access to an email address that they can check regularly.</p> <p>If a self-represented litigant opts in, there should be an opportunity to opt out later if the litigant discovers that electronic services of documents is not appropriate for that person. Accessing electronically served documents via public libraries, borrowed computers, smart phones, or via dial-up internet all creates additional barriers to accessing court files and may lead to additional confusion.</p> <p>LAAC suggests that the opt-in form offer two options when a litigant chooses to file a document electronically: an opt-in for the remainder of the case and an opt-in only for the one particular filing. This is important in cases where a litigant may learn of a required filing while in court and need to file that same day. The litigant may want to opt-in for that filing only, or may choose to opt-in later when she gains reliable access to the internet.</p> <p>If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>LAAC strongly urges the Judicial Council to adopt an exemption for self-represented parties.</p>	<p>The committees will consider this comment and review the opt-in form in the future.</p> <p>If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>Like the commentator, the committees recommend an exemption for self-represented</p>

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Commentator	Position	Comment	Committees' Response
		<p>If self-represented litigants are not exempt, the procedure must be simple and easy to complete. LAAC recommends, as one procedural option, that any party who files for and is granted a fee waiver be exempt from mandatory electronic filing. Additionally, parties who are not eligible for a fee waiver should still be able to request an exemption through the sample document "Request for Exemption From Electronic Filing and Service."</p> <p>However, if a litigant requests a fee waiver, she should be <i>allowed</i> to opt-in, but providing an automatic exemption for litigants filing a fee waiver could simplify the process. No fee waivers should be <u>required</u> to be filed electronically.</p> <p><u>Other Questions</u></p> <p>All other questions below are only relevant if the Judicial Council does not adopt an exemption. If there is an opt-out, rather than an opt-in exemption, each court will have to ensure that all litigants' access to the courts is protected. Requiring an opt-out procedure further complicates litigants' experience with the courts as self-represented litigants must understand when to file a request before they've missed early deadlines.</p> <p>Requiring an opt-out procedure will increase the burden on the courts because self-represented litigants will inevitably require individualized</p>	<p>parties.</p> <p><u>Other Questions</u></p> <p>As the commentator notes, the other questions are relevant only if an exemption for self-represented parties is not adopted.</p>

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Commentator	Position	Comment	Committees' Response
122 Legal Aid Society of Orange County		<p>assistance and review or analysis. Additionally, some protections for self-represented litigants may need to be implemented, for example, tolling the time to file an answer while the litigant requests an opt-out.</p> <p>L.A.A.C. is concerned about what may happen to the litigants' filing while the request to opt-out is pending. It must be considered filed as of the day of filing, otherwise a self-represented litigant would be required to file early and to approximate how long it would take the court to review and grant or deny the opt-out request.</p>	
		<p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>SRLs should be automatically exempted from mandatory e-filing and receipt of e-service requirements, but encouraged to opt-into e-filing.</p> <p>Many LASOC clients still do not have readily accessible internet access, do not have email addresses, or do not use the internet or email proficiently. Additionally, many low-income litigants do not have credit cards. As a result they cannot e-file, register or pay.</p> <p>If self-represented parties are made to opt-out of e-filing, rather than the desired opt-in</p>	<p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>The committees agreed that self-represented parties should be exempt from mandatory electronic filing but should have the opportunity to opt in.</p>

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Commentator	Position	Comment	Committees' Response
123 Legal Services of Northern California By: Stephen Goldberg Senior Attorney		<p>procedure, then the exemption process should be modeled upon the fee waiver process.</p> <p>1. If the Judicial Council agrees that e-filing should be optional for pro per litigants, there needs to be an easy way for a pro per litigant to opt-out of e-filing after they opt-in if e-filing turns out not to work for them. This should be an easy process that does not require a showing of good cause or a judicial order. These requirements would be an unnecessary barrier that many in pro per litigants could not maneuver, and it would unnecessarily take court time and resources to adjudicate opt-out requests.</p> <p>2. If the Judicial Council decides that e-filing will be mandatory for everyone, there must be an easy way for pro per litigants to opt-out of e-filing. There should not be a requirement for good cause or for a judicial order. These requirements would be an unnecessary barrier that many in pro per litigants could not maneuver, and it would unnecessarily take court time and resources to adjudicate opt-out requests.</p>	<p>1. The proposed rules are clear that self-represented parties are not subject to mandatory electronic filing or service and must affirmatively consent to either or both. The committees will consider in the future the issue of how to improve the opt-out process for self-represented parties who have voluntarily opted in to e-filing and/or e-service.</p> <p>2. The committees are not recommending that e-filing be mandatory for everyone—just for represented parties.</p>
124 Los Angeles Center for Law and Justice By: Suma Mathai Supervising Family Law Attorney		<p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p>	<p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p>

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Commentator	Position	Comment	Committees' Response
		<p>We advocate strongly that low-income and self-represented litigants should be exempted from mandatory e-filing and e-service rules, as detailed below. While we recognize that e-filing and e-service may be feasible for some low-income and self-represented litigants, it will be an additional hurdle that most must overcome, and requiring mandatory participation may effectively close the Court's door to them. Adoption of an "opt-out" procedure, whether through use of request for exemption or a hearing, will place a significant burden on low-income and self-represented litigants, who already have difficulties navigating the legal system.</p> <p>Forcing self-represented litigants to opt-out would be overly burdensome. In many immigrant communities, there is already a pervasive problem with many low-income and self-represented litigants – particularly those who are immigrants and/or limited English proficient (LEP) - seeking assistance from unscrupulous notarios and document preparers, who charge exorbitant fees to assist individuals with form preparation, which is usually very poor quality. Placing further burdens and barriers on these populations would only create new opportunities for these notarios and document preparers to take advantage of litigants facing desperate situations.</p> <p>Therefore, we strongly urge that low-income</p>	<p>The committees agreed that self-represented parties should be exempt from mandatory electronic filing but should have the opportunity to opt in.</p>

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		<p>and self-represented litigants be exempted from mandatory e-filing and e-service rules, and be allowed to "opt-in" if they desire. We also recommend that significant outreach be conducted and informational materials be made available to advise low-income, self-represented and LEP communities of the consequences and benefits of opting-in to e-filing and e-service prior to the advent of widespread e-filing.</p> <p>Low-income and self-represented litigants should be exempt from mandatory e-filing requirements for the following reasons:</p> <ul style="list-style-type: none"> • <u>Lack of Access to Technology:</u> Mandatory e-filing, e-service and receipt of e-service for self-represented litigants would create a serious barrier to access to the courts. Low-income and moderate-income Californians are more likely to be self-represented litigants, as the inability to afford legal representation is the primary reason litigants decide to represent themselves. See, "Handling Cases Involving Self-Represented Litigants: A Bench Guide for Judicial Officers," Administrative Office of the Courts (Jan. 2007), at: http://www.courts.ca.gov/documents/benchguide_self_rep_litigants.pdf. Moreover, low-income Californians are far less likely to have to an electronic device with internet connection, a secure e-mail address, and a scanner for 	<p>The committees agreed that it is important to provide outreach to low-income, self-represented and LEP communities about the consequences and benefits of opting-in to e-filing and e-service.</p>

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		<p>scanning documents with original signatures—all necessary equipment for e-filing, e-service and receipt of e-service. This is particularly true for litigants with limited English proficiency, who are more likely than English-speaking litigants to be living in poverty and face more barriers to accessing the courts. According to 2010 United States Census Bureau statistics, for example, over 34% of households with an annual income of \$50,000 or less do not have a computer. (By contrast, 98.8% of households with an annual income of \$150,000 or more have a computer.) See, "Computer and Internet Use in the United States: 2010," U.S. Department of Commerce, United States Census Bureau, available at: http://www.census.gov/hhes/computer/publications/2010.html.</p> <p>Given this lack of personal resources by low-income Californians, all California state courts would need to be equipped with that technology for use by self-represented litigants. Given the current court funding crisis, however, it is highly unlikely that such resources are available.</p> <p>Litigants without the personal resources to own the necessary devices can access them at a local library or court without cost, or</p>	

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Commentator	Position	Comment	Committees' Response
		<p>pay for access at an internet café or other location. However, this raises many concerns, as litigants who must utilize public resources to e-file, e-serve and receive e-service:</p> <ul style="list-style-type: none"> ○ Are restricted to the hours and locations these agencies are open, which often wax and wane depending on public funding (e.g. public libraries); ○ May compromise their privacy and safety, particularly in domestic violence cases, if they must generate and transmit private personal information via a public terminal; ○ May not have access to scanners (currently unavailable at public libraries and courts in Los Angeles County); ○ May have difficulty saving their documents if they are unable to complete them in one sitting. <p>Even if litigants are able to access, understand and effectively use technology to e-file, the mandatory receipt of e-service requires that these litigants have daily access to that technology to ensure that the are receiving documents in a timely fashion that allows them proper notice and an opportunity to respond. Given that many low-income and self-represented litigants may access technology via public</p>	

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		<p>institutions, requiring low-income and self-represented litigants to receive e-service will pose an immeasurable burden on them.</p> <ul style="list-style-type: none"> • <u>Computer Literacy</u>: Even assuming all California state courts were equipped with computers, scanners, and internet access for use by low-income and self-represented litigants, many of those individuals may lack the computer skills necessary to e-file, e-serve, and receive e-service. We are concerned that low-income and self-represented litigants who lack sufficient computer literacy will be unable to e-file, even if equipped with the necessary technology; thus, they will be denied or discouraged from accessing the courts. In order to guarantee access to the courts in the event of mandatory e-filing, California courts would need to supply hands-on assistance for self-represented litigants. Again, given the precarious financial condition of the state courts, they will most likely not be able to sustain such added strain on their sparse resources. • <u>Excessive Cost to Courts</u>: In order to ensure that low-income and self-represented litigants would continue to have access to the courts in the event that are not automatically exempted from e-filing and e-service/receipt of e- 	<p>The committees recognize that electronic service may be challenging for self-represented parties and are recommending rules on electronic service that take into account this issue. (See rule 2.251(b)-(c).)</p>

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		<p>service, every courthouse in the State would need to invest significant resources to assist those litigants who lack access to technology and/or sufficient computer literacy, including providing computers, scanners, and hands-on assistance with e-filing. California state courts are currently in the midst of an unprecedented financial crisis, as court staff, hours, and budgets have been drastically cut. Simply, the California state courts do not have the resources to ensure growing numbers of low-income and self-represented litigants are able to access the courts by fulfilling mandatory e-filing requirements. (In 2004, more than 4.3 million of California's court users were self-represented. See, "California Courts Self-Help Centers," Administrative Office of the Courts' Report to the California Legislature (June 2007), available at: http://www.courts.ca.gov/documents/Le gRpt2007Self-Help.pdf.)</p> <ul style="list-style-type: none"> • <u>Cost to Self-Represented Litigants:</u> Any costs associated with e-filing and e-service/receipt of e-service that are not covered by fee waiver applications would pose a significant barrier to the courts for low-income and self-represented litigants and the legal services organizations that assist them. 	

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		<p>In addition, even if Electronic Filing Service Providers do honor Orders on Fee Waiver, to the extent that they still require a credit card to be able to access the service at all will effectively shut out the segment of the low-income and self-represented population that do not qualify for or are unable to obtain credit.</p> <p>None of these comments are meant to limit low-income and self-represented litigants from voluntarily opting into e-filing and e-service/receipt of e-service requirements. One method for exempting self-represented litigants from mandatory e-filing is simply to allow them to file, either in person or through a designee, in hard copy at the usual court location.</p> <p>Represented parties would be required to e-file and hard copies would not be accepted at a clerk's filing window unless an exemption was requested and granted. The original filing method (in hard copy or e-filing) would then be continued in the same manner until a party requests a change. Exempted litigants could opt-in to e-filing at any time simply by e-filing.</p> <p>Additionally, if self-represented litigants who have opted in to e-filing no longer have the ability to e-file, they should be able to revert to paper filing simply by filing hard copies of new documents directly with the court. If this is not feasible, then they should be able to request an</p>	<p>The commentator's support for voluntary electronic filing and service by self-represented parties is noted.</p> <p>The committees will look further into the issues involved with self-represented parties opting out of e-filing and e-service in the future to determine if any additional rules or clarification of the rules are needed.</p>

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		<p>exemption at any point in the case. In addition, given the prevalence of Limited Scope Representation, streamlined and standardized procedures should be developed to manage cases in which a litigants' representation status is fluid.</p> <p>Exempting self-represented litigants from mandatory e-filing but allowing them to e-file when they are able will minimize difficulties for litigants who receive limited scope services on occasion from free and low-cost legal services providers including legal aid and non-profit legal services offices, paralegals and notaries. If fluidity in the e-filing process is allowable and low-income and self-represented litigants are able to e-file whenever possible without obligating them to e-file forever after, legal services providers assisting self-represented litigants may e-file on their behalf without prejudicing them and self-represented litigants who are no longer eligible or can no longer afford legal services are not then obligated to continue e-filing.</p> <p>Further, if case-by-case exemptions are made for low-income and self-represented litigants and they are required to "opt-out" rather than "opt-in," then certain procedures should be put into place in addition to those above, such as:</p> <ul style="list-style-type: none"> • All vendors must have an alternative registration process which does not require a credit card, allowing those 	<p>In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered.</p>

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		<p>who qualify for fee waivers and who do not have a credit card access to the e-filing vendor sites;</p> <ul style="list-style-type: none"> • All vendors should offer a secure e-filing portal for users to obtain their documents which have been served through e-file; • Self-represented litigants should be able to e-file without paying the convenience fee if they file from a court's Self-Help Center; • While a request for exemption from mandatory e-filing or e-service is pending, the documents that the party is seeking to file should be accepted in hard copy in order to preserve the file date and thus meet any statutory timelines. Thus, no defaults would result from the exemption process itself. 	
<p>125 OneJustice By: Linda S. Kim Deputy Director</p>		<p>Should self-represented parties be exempt from mandatory e-filing? (See comment 121 by LAAC [similar].)</p> <p>If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions? (See comment 121 by LAAC [similar].)</p>	<p>Should self-represented parties be exempt from mandatory e-filing? (See responses to comment 121 by LAAC.)</p> <p>If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions? (See responses to comment 121 by LAAC.)</p>
<p>126 Public Law Center By: Elizabeth Gonzalez</p>		<p>Should self-represented parties be exempt from mandatory e-filing? If so, why?</p>	<p>Should self-represented parties be exempt from mandatory e-filing? If so, why?</p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
Lead Attorney		<p>Self-represented parties should be exempt from mandatory e-filing, but should be allowed to opt-in by electronically filing documents. As the Invitation to Comment recognized, self-represented parties may not have access to computers and may have difficulty filing documents electronically. Exempting self-represented parties from mandatory e-filing would address many of the concerns about barriers to justice and the courts.</p> <p>Self-represented parties who do not have the means to hire an attorney may be prohibited from having their cases heard fairly for various reasons. For example, self-represented parties may be unable to access a computer or other required equipment or technology such as a scanner, a printer, a modem, software to "save as" pdfs, etc. In addition, self-represented parties may be uncomfortable with composing and sending private personal information via a public library or court terminal, and may have a misunderstanding of how to send and confirm transmittal of an electronic document. Many self-represented parties may have to rely on public computer portals that do not protect privacy, may have time limits for use, or may not allow saving of documents for later editing. Finally, accessing electronically served documents via public libraries, borrowed computers, smart phones, or via dial-up internet may create additional barriers to accessing court files and may lead to additional confusion.</p>	<p>The committees agreed that self-represented parties should be exempt from mandatory electronic filing but should have the opportunity to opt in.</p>

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Commentator	Position	Comment	Committees' Response
		<p>For instance, Public Law Center attorneys have had to type up Word documents, request credit reports online and complete fillable pdfs for clients because of their lack of understanding of computers, their lack of access to a printer and their frustration with time-limited computer access.</p> <p>Self-represented parties who opt-in to e-filing (and e-service) should have an opportunity to later opt-out if the litigant discovers that electronic filing and service of documents is not feasible for them. It may not be until a self-represented party attempts electronic filing or electronic service that the party realizes that he or she does not have the necessary tools to e-file or e-serve. This is also important in cases where a litigant may learn of a required filing while in court and need to file that same day. The litigant may want to opt-out of e-filing for an individual filing.</p> <p>It may also be helpful to allow a self-represented party to e-file one document but not be required to e-file all documents in a case. To achieve this, the opt-in form could provide two options, opt-in for the entire case or opt-in for an individual filing. Legal services organizations often assist self-represented parties in pro per with answers and other filings. Legal services organizations also provide limited scope assistance under the California Rules of Court provisions authorizing limited</p>	<p>The committees will look further into the issues involved with self-represented parties opting out of e-filing and e-service in the future to determine if any additional rules or clarification of the rules are needed.</p>

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Commentator	Position	Comment	Committees' Response
		<p>scope representation. In these cases, the legal services organization may be able to assist the litigant with the electronic filing of a single document but may not be able to represent the litigant for the remainder of the case. As such, the self-represented party would require manual filing for the remainder of the case.</p> <p>If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>We strongly urge the Judicial Council to adopt an exemption for self-represented parties. If self-represented parties are not exempt, the procedure must be simple and easy to complete. We recommend, as one procedural option, that any litigant who files for and is granted a fee waiver be exempt from mandatory electronic filing. Additionally, litigants who are not eligible for a fee waiver should still be able to request an exemption through the sample document "Request for Exemption From Electronic Filing and Service."</p> <p>In either case, self-represented parties who are exempted from electronic filing should be given the opportunity to opt-in for the remainder of the case or for a single filing, as discussed above.</p> <p>Although not entirely related to this question, Public Law Center would like to encourage State Courts to allow hardship exemptions to be</p>	<p>If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered.</p>

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

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
127 State Bar of California's Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim Program Development & Staff Liaison		<p>filed electronically. From the perspective of a pro bono organization, requiring that fee waivers be manually filed may limit the availability of a pro bono attorney. In Bankruptcy Court, fee waivers cannot yet be filed electronically. Because of this, the Public Law Center has encountered attorneys who are unwilling to accept fee waiver cases because of the burden it imposes on them. The Bankruptcy Court is moving to allow fee waivers to be filed electronically and Public Law Center recommends that State Courts allow e-filing of hardship exemptions from the beginning.</p> <p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>(See comment 124 above by Los Angeles Center for Law and Justice on this question [similar].)</p>	<p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>(See response to comment 124 by LACLJ on this question.)</p>
128 Superior Court of Los Angeles County Los Angeles County Superior Court		<p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>One rule should not apply to all civil case types. A court should be allowed to exempt self-represented litigants from family law and small claims cases, but not in general civil</p>	<p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>The committees do not support providing courts with the authority to decide locally whether exemptions for self-represented parties should be allowed in certain types of civil cases and not</p>

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Commentator	Position	Comment	Committees' Response
129 Superior Court of Orange County By: Jeff Wertheimer General Counsel		<p>The rules should provide some flexibility so that an individual court can decide whether exemptions should occur in certain case types. Individual courts have different demographics, budget constraints, availability of self-help, availability of pro-bono groups, etc. The rules should allow the individual court to decide if its circumstances make it necessary or preferable for a different decision on exemption. If only one rule must apply, then self-represented litigants should be exempt. Too many self-represented litigants do not have access to computers and the Internet. The rules to opt-out may discourage these litigants from fully participating in the legal process.</p>	<p>others. Most of the arguments for exempting self-represented parties presented by many commentators would apply across different case types. Also, providing for exemptions that differ from county to county would be inconsistent with the goal of uniformity that is part of AB 2073.</p> <p>The committees agreed that, assuming one rule must apply, then self-represented parties should be exempt.</p>
		<p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>Self-represented litigants should not be categorically exempt from mandatory e-filing. In order to realize the full benefits of e-filing for both litigants and the court, the rule should start with the presumption that all parties will be treated equally. Starting with the presumption that self-represented litigants are incapable or unwilling to take advantage of e-filing does them a significant disservice. By initially treating them like all other litigants, we will encourage all parties to e-file from the comfort of their home, office, or through an assistance</p>	<p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>The committees did not agree. Based on a consideration of all the comments, there are good reasons to exempt all self-represented parties even though some of the benefits of mandatory e-filing would not be realized for those filers.</p>

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Commentator	Position	Comment	Committees' Response
		<p>group such as self-help or legal aid, and enable the court to benefit from the financial efficiencies generated by mandatory e-filing. Simple electronic and over-the-counter procedures will be available to address the needs of the small minority of litigants who are unable to file electronically.</p> <p>Although it is only a brief snapshot, Orange County's first eight days of mandatory e-filing brought in over 22,000 civil e-filings and only one hundred and ten requests for e-filing exemptions, indicating that the large majority of litigants are both capable and willing to electronically file their documents. We anticipate the percentage of exemption requests to actually decrease as the technology improves and the local population becomes more comfortable with e-filing. For these reasons, we encourage the Committee to amend proposed Rule 2.253(b)(2) to put the presumption in favor of requiring self-represented litigants to e-file their documents.</p>	
<p>130 Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer</p>		<p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>Opt Out (Option 2) is the most desirable Mechanism. If a blanket exemption existed they would be relieved of e-filing with no apparent justification for the exemption. If an exemption</p>	<p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>The committees did not agree. Based on a consideration of all the comments, there are good reasons to exempt all self-represented parties even though some of the benefits of mandatory e-filing</p>

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Commentator	Position	Comment	Committees' Response
131 Superior Court of Sacramento County By: William Yee Research Attorney		<p>for all self-represented litigants existed, those who wanted the benefit of e-filing would need to opt IN. With Opt Out, all filers may start with the benefits of e-filing.</p> <p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>We recommend that self-represented parties not be exempted from mandatory e-filing. Courts should establish a process allowing self-represented and represented parties alike to apply for an exemption of the mandatory e-filing and electronic service requirements if they feel they have a hardship. The local courts should establish the criteria and procedures used to assess a hardship including the approval authority for exemption requests, which may include delegating responsibility to the clerk's office to approve, not deny, requests based on specific criteria.</p>	<p>would not be realized for those filers.</p> <p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>The committees did not agree. Based on a consideration of all the comments, there are good reasons to exempt all self-represented parties even though some of the benefits of mandatory e-filing would not be realized for those filers.</p>
132 Superior Court of San Bernardino County By: Stephen Nash Court Executive Officer		<p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>It is our recommendation that self-represented parties should be included within the scope of</p>	<p>The committees did not agree. Based on a consideration of all the comments, there are good reasons to exempt all self-represented parties even</p>

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Commentator	Position	Comment	Committees' Response
133	Superior Court of San Diego County By: Michael M. Roddy Executive Officer	<p>mandatory e-filing, but that there must be a simple, paper-based request for exemption available.</p> <p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>Yes. Self-represented litigants should be exempt from the mandatory requirements of e-filing and our court agrees with option one in the proposal; however, self-represented litigants should be allowed to participate in e-filing if they choose to do so. The language in rule 2.253(b) (2) should state: "Self-represented parties are exempt from any mandatory electronic filing requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6. However, self-represented parties are encouraged to participate voluntarily in electronic filing and service." Self-represented litigants often do not have the resources, knowledge and/or access to the facilities required to e-file documents and, making this mandatory, could result in creating a barrier to justice.</p>	<p>though some of the benefits of mandatory e-filing would not be realized for those filers.</p> <p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>The committees agreed that self-represented parties should be exempt from mandatory electronic filing but should have the opportunity to opt in.</p> <p>The statement about encouraging self-represented parties to voluntarily file and serve electronically has been preserved but relocated to an advisory committee comment rather than being directly in the rule.</p>
134	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer	<p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p>	<p>Should self-represented parties be exempt from mandatory e-filing? If so, why? If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p>

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Commentator	Position	Comment	Committees' Response
		<p>We recommend that self-represented parties should not be exempt from mandatory e-filing and the proposed "Option 2: Mandating e-filing with a procedure for self-represented persons and others to "opt out" be adopted. The benefits of mandatory e-filing cannot be realized if a substantial portion of filers is exempt by default. Those courts that feel there would be too high of a burden on self-represented parties for mandatory e-filing should not implement mandatory e-filing and should just implement voluntary e-filing for the court.</p> <p>This feedback is in alignment with the e-filing workstream participants.</p>	<p>The committees did not agree. Based on a consideration of all the comments, there are good reasons to exempt all self-represented parties even though some of the benefits of mandatory e-filing would not be realized for those filers.</p>
135 Western Center on Law and Poverty By: Mona Tawatao Senior Litigator		<p>Should self-represented parties be exempt from mandatory e-filing? If so, why?</p> <p>(See comment 121 above by LAAC [similar].)</p> <p>If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>(See comment 121 above by LAAC [similar].)</p>	<p>Should self-represented parties be exempt from mandatory e-filing? If so, why?</p> <p>(See response to comment 121 by LAAC.)</p> <p>If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?</p> <p>(See response to comment 121 by LAAC.)</p>
<p>Question No. 4 – Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?</p>			

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Commentator	Position	Comment	Committees' Response
<p>136 California Family Law Facilitator's Association By: Melanie Snider Vice President</p>		<p>Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?</p> <p>Yes. If it is determined that the process for all civil cases including family law shall include mandatory e-filing, the rules should include details regarding the procedures for the requests. Because the procedures required may significantly increase court costs for processing and handling such requests—for instance if the process includes mandatory hearings then, of course, court calendars will be larger to handle the requests—any rules that are developed should include details regarding procedures.</p>	<p>Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?</p> <p>In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.</p>
<p>137 Martin Dean Essential Publishers LLC</p>		<p>Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were</p>	<p>Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were</p>

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Commentator	Position	Comment originally presented to the court?	Committees' Response originally presented to the court?
		<p>We don't believe that there is yet enough data to make a recommendation. As of today there are two courts in the State that accept electronic filings in cases where self-represented litigants would ordinarily file. We don't know for instance, whether mandatory filing will drive down the number of SRL filings because of some perceived barrier to access by potential users. If an exemption is in fact determined necessary, our experience would indicate that a procedure that matches a Fee Waiver Request be implemented. But when it comes to defining "hardship" as used in proposed rules and forms, we find it difficult, without statutory support to determine what constitute a "hardship"?</p> <p>Consequently we would argue that question #1 in the form EFS-007 should not be free form as it is now, but rather a checklist of specific reasons why a filer should be excused from electronic filing:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Filer does not possess the necessary English Language skills <input type="checkbox"/> Filer does not have regular access to a computer connected to the Internet <input type="checkbox"/> Filer does not have an email account (after all, CCMS court policies require that a filer provide an email address so that they can be served) <input type="checkbox"/> Filer does not understand the nature of the litigation. 	<p>In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures and forms to be used by these litigants do not need to be considered.</p>

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Commentator	Position	Comment	Committees' Response
138 Julie A. Goren, Attorney Lawdable Press Sherman Oaks		<p><input type="checkbox"/> Filer has a religious prohibition against the use of a computer</p> <p><input type="checkbox"/> Filer does not have the necessary personal skills or training to use and understand a computer.</p> <p><input type="checkbox"/> Filer is unable to afford or gain access to the necessary assistance in order to respond to the claim against him/her.</p> <p>While this list is only intended as an example, we believe that a checklist is far better than a free form empty space.</p>	
		<p>Should the rules on requests for exemptions contain more detailed procedures-for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?</p> <p>Leave it to local rule.</p>	<p>Should the rules on requests for exemptions contain more detailed procedures-for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?</p> <p>In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.</p>

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Commentator	Position	Comment	Committees' Response
139	Legal Aid Society of Orange County	<p>Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?</p> <p>LASOC believes that self-represented parties should be automatically exempted from mandatory e-filing and receipt of e-service requirements, but allowed to opt-in.</p> <p>The rules should contain more detailed procedures for the exemption process. The application for exemption should be made ex parte without a hearing similar to the Fee Waiver process.</p> <p>Even represented parties may suffer a hardship. Two examples:</p> <p>1. Pro bono placement. LASOC assists litigants up to 200% of FPG [Federal Poverty Guidelines]. Their fee waiver requests are often not granted. Some of those cases are placed with pro bono attorneys. If required to pay the mandatory fees the client would suffer a significant hardship. Attorneys may decide to no longer be listed as attorney of record and instead</p>	<p>Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?</p> <p>The committees agreed that self-represented parties should be exempt from mandatory electronic filing but should have the opportunity to opt in.</p> <p>In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.</p> <p>These suggestions regarding pro bono and reduced fee representation are beyond the scope of the present proposal. While parties who are eligible for a fee waiver under current law would be entitled to waivers of their electronic filing fees under the current statute and rule, providing fee waivers for attorneys who are representing clients pro bono or for a reduced fee but the clients are</p>

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Commentator	Position	Comment	Committees' Response
		<p>have the litigant file in pro per requesting an exemption and then file a substitution of attorney, or make a limited scope appearance on a case that they may have been attorney of record.</p> <p>2. Modest Means Panels. LASOC runs a state bar certified LRS. Some attorneys agree to take cases for a reduced fee. I have spoken to several attorneys who confirmed that the additional fees will be a hardship for those clients.</p>	<p>not eligible for fee waivers would require changes in the law. There might be some other ways to address the commentators concerns, however. For example, legal aid organizations that become electronic filing service providers might offer to provide electronic filing to pro bono attorneys free of charge. Also, courts' contracts with private EFSPs might provide for some relief in this area.</p>
<p>140 Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney</p>		<p>Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?</p> <p>There should be more detailed procedures contained within the rules, as rules regarding filing and service are fundamental to the issue of court access. A process similar to that for evaluating fee waivers should be considered, including:</p> <ul style="list-style-type: none"> • The proposed form EFS-007 can be submitted ex-parte without a hearing, by parties with attorneys requesting 	<p>Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?</p> <p>In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.</p>

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Commentator	Position	Comment	Committees' Response
		<p>hardship exemption or by low-income or self-represented litigants who have previously opted in to e-filing and/or e-service. However, a hearing may be held if a judicial officer requires additional information;</p> <ul style="list-style-type: none"> • EFS-007 should not be required for low-income and self-represented litigants who file hard copy documents in the clerk's office (meaning the litigant is exempted and does not need to file a document to opt-out); • Like a fee waiver request, the matter should be decided expeditiously within a certain time (10 days) or deemed granted; • If ultimately granted, the documents should be deemed filed as of the date they were originally presented to the court; • If denied, the litigant should be able to request a hearing set within a reasonable time; • If the litigant attempted to file in hard copy concurrent with a request for exemption, no default should be taken against the litigant; • Further, if the Rules require "opt-out" rather than "opt-in," self-represented parties should be exempted from the requirement for the first year to afford time for widespread outreach and education, with self-represented parties 	

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
141 State Bar of California, Committee on Administration of Justice By: Saul Bercovitch Legislative Counsel		being encouraged to participate in e-filing for that first year. Should the rule contain more detailed procedures—for example, specifying whether the request for an exemption may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?	Should the rule contain more detailed procedures—for example, specifying whether the request for an exemption may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court? In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.
		There was some disagreement within CAJ on whether the procedures for seeking an exemption from the mandatory rules—e.g., whether ex parte basis without a hearing or a noticed motion should be used—should be left to the individual counties or be part of the statewide rules. The majority of CAJ believes that the procedure should be part of the uniform statewide rules. A potentially serious problem with the proposed rules is their failure to address compliance with the mandatory service and filing requirements during the time between the filing of a request for an exemption and the time of a ruling on that exemption. For example, what happens if party who is filing a complaint (or other pleading) cannot comply	

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
142 Superior Court of Los Angeles County Los Angeles County Superior Court		<p>with the e-filing rules and wants to seek an exemption? Should a mechanism be available to permit pleadings to be filed manually at the clerk's office, pending approval of an ex parte application to be excused from the e-filing rules? And how would an ex parte application be made if the case has not yet been filed? What happens if a manual filing is attempted on the last day of a limitations period? Can the clerk's office refuse to file it?</p> <p>CAJ believes that the failure of the rules to address these issues is problematic. CAJ suggests that a stopgap mechanism be formulated to deal with what happens during the interim between the time a request to be excused from electronic filing or service is made and the time an order on that request is made.</p>	
		<p>Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?</p> <p>No. The individual courts should be allowed to determine the procedures for that court.</p>	<p>Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?</p> <p>For represented parties, the proposed rule on hardship exemptions, which reflects the statutory</p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
143 Superior Court of Orange County By: Jeff Wertheimer General Counsel		<p>Should the rules on requests for exemptions contain more detailed procedures-for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of originally presented to the court?</p> <p>Certain basic statewide guidelines similar to those established for fee waiver applications found in Gov. Code Section 68632, et seq., would be useful, such as:</p> <ol style="list-style-type: none"> 1. They can be submitted ex parte; 2. A hearing is not required, unless the judicial officer requires additional information; 3. The Court can grant the clerk's office the authority to grant if the party meets certain basic criteria (e.g., there is a previously granted fee waiver on file, a party is submitting fee waiver application with filing and indicates receipt of government assistance or income below poverty level, or a party does not have access to a computer); 	<p>provision and leaves substantial discretion to the trial courts, appears to be satisfactory.</p> <p>Should the rules on requests for exemptions contain more detailed procedures-for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?</p> <p>In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory. Thus, the court providing these comments and suggestions may implement them on its own for represented parties seeking an exemption based on hardship or substantial prejudice.</p>

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Commentator	Position	Comment	Committees' Response
144 Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		<p>4. Documents submitted with application should be filed the day application is received to preclude statutory deadline or default issues.</p> <p>However, the rules should be left sufficiently flexible to enable local trial courts to enact their own procedures for exemptions. Every court has already created their own local processes for how to handle the exemption requests arising out of a variety of hardships in a number of different circumstances. In all likelihood, the local courts will process the requests for e-filing exemptions the same way they process other similar requests.</p>	
		<p>Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?</p> <p>No. These situations should be covered by Local Rules.</p>	<p>Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?</p> <p>In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts,</p>

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Commentator	Position	Comment	Committees' Response
<p>145 Superior Court of San Diego County By: Michael M. Roddy Executive Officer</p>		<p>Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?</p> <p>No, individual trial courts should be allowed to establish their own rules and/or procedures for these types of requests.</p>	<p>appears to be satisfactory.</p> <p>Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?</p> <p>In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures for these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.</p>
<p>146 Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer</p>		<p>Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?</p>	<p>Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request may be made ex parte or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?</p>

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Commentator	Position	Comment	Committees' Response
		<p>Yes. In particular there should be consistency in forms used and the timing for submitting and processing the requests.</p>	<p>In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures and forms to be used by these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.</p>
<p>Question No.5 – Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p>			
<p>147 California Family Law Facilitator's Association By: Melanie Snider Vice President</p>	<p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p>	<p>Yes. There should be rules specifying to whom the request for exemption and request for hardship shall be made. Further, such information should be posted in the courthouses, and available to the public through the self-help centers and the family law facilitators. Many self-represented litigants, particularly in family law, struggle to understand the legal process now. Questions that may seem simple for those educated persons drafting rules are often burdensome and confusing for those litigants who are not so sophisticated. It is feared that the e-filing requirement is going to create confusion and fear among many self-represented litigants.</p>	<p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p> <p>In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures to be used by these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.</p>

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Commentator	Position	Comment	Committees' Response
148 Martin Dean Essential Publishers LLC		<p>It would be helpful if the rules specify to whom the request is to be made. It would also be helpful if the person to whom the requests are to be made would be authorized to give legal information to litigants in the event they are confused by the whole process.</p> <p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p> <p>We believe that [no]thing other than the actual filing of the EFS-007 in person or by mail is all that should be expected of a filer.</p>	<p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p> <p>In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures to be used by these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.</p>
149 Julie A. Goren, Attorney Lawdable Press		<p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted must specify to whom the request for a hardship exemption is to be made?</p> <p>Local rules.</p>	<p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted must specify to whom the request for a hardship exemption is to be made?</p> <p>In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures to be used by these litigants do not need to be considered. For represented parties, the proposed</p>

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Commentator	Position	Comment	Committees' Response
150 Legal Aid Society of Orange County		<p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p> <p>Self-represented parties should be automatically exempted from mandatory e-filing and receipt of e-service requirements. The rules should specify that when a party even if represented seeks an exemption from mandatory e-filing and receipt of e-service, the initial filings and exemption form should be submitted to the clerk of the court. The request for exemption should be deemed granted, subject to review by a judicial officer. Before the judicial officer denies a request, the court should schedule a hearing on the matter and allow a party to submit additional justification at the hearing on the application or in a subsequent request.</p>	<p>rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.</p> <p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p> <p>The committees agreed that self-represented parties should be exempted from mandatory e-filing. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.</p>
151 Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		<p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p> <p>The rules should specify that the clerk's office designate a filing window and staff member to</p>	<p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p> <p>In light of the committees' recommendations to exempt self-represented parties altogether from</p>

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Commentator	Position	Comment	Committees' Response
<p>152 State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim</p>		<p>handle exemption requests. Coordinating the fee waivers with e-filing exemption status would be a logical overlap.</p> <p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p> <p>(See comment 140 above by Los Angeles Center for Law and Justice [similar].)</p> <p>If the rules ultimately require self-represented litigants to “opt-out” rather than “opt-in,” SCDLS suggests that the following procedures be contained within the rules:</p> <ul style="list-style-type: none"> • The Request for Exemption is granted concurrent with the filing of petition or response, the requesting party should serve the order along with the petition/response in the same manner that the petition/response is required to be served. For instance, if a Request for Exemption is granted at the same time a Petition for Dissolution of Marriage is filed, the Order on Request for Exemption should be personally served along with the Summons and Petition. 	<p>mandatory e-filing, the opt-out procedures to be used by these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.</p> <p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p> <p>(See response to comment 140 above by Los Angeles Center for Law and Justice [similar].)</p> <p>In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures to be used by these litigants do not need to be considered.</p>

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Commentator	Position	Comment	Committees' Response
153 Superior Court of Los Angeles County		<ul style="list-style-type: none"> Self-represented parties should be exempted from the requirement to e-file, e-serve, and receive e-service for a grace period, so as to allow public services to create infrastructure to assist self-represented litigants, with those parties being encouraged to participate in e-filing, and not opt out. <p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p> <p>The local rules should cover this.</p>	<p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p> <p>In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures to be used by these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.</p>
154 Superior Court of Orange County By: Jeff Wertheimer General Counsel		<p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p> <p>(See comment 143 above.)</p>	<p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p> <p>(See response to comment 143 above.)</p>

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Commentator	Position	Comment	Committees' Response
<p>155 Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer</p>		<p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p> <p>This situation should be covered by Local Rules.</p>	<p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p> <p>In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures to be used by these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.</p>
<p>156 Superior Court of San Diego County By: Michael M. Roddy Executive Officer</p>		<p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p> <p>No. Individual trial courts should be allowed to establish their own rules and/or procedures for who should hear these types of requests.</p>	<p>Should the rules specify to whom a request for exemption shall be made or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p> <p>In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures to be used by these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.</p>
<p>157 Superior Court of Santa Clara County By: Robert Oyung</p>		<p>Should the rules specify to whom a request for exemption shall be made or require that</p>	<p>Should the rules specify to whom a request for exemption shall be made or require that the</p>

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Commentator	Position	Comment	Committees' Response
Chief Technology Officer		<p>the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p> <p>No. The rules should be flexible to allow each court to decide.</p> <p>This feedback is in alignment with the e-filing workstream participants.</p>	<p>local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?</p> <p>In light of the committees' recommendations to exempt self-represented parties altogether from mandatory e-filing, the opt-out procedures to be used by these litigants do not need to be considered. For represented parties, the proposed rule on hardship exemptions, which reflects the statutory provision and leaves substantial discretion to the trial courts, appears to be satisfactory.</p>
<p>Question No.6 – Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p>			
158 California Commission on Access to Justice By: Hon. Ronald B. Robie Chair		<p>Should a party be able to request exemption from electronic service and other relief?</p> <p>A party should be able to request exemption from electronic service. Whether or not electronic service is required should be a separate question from whether or not e-filing is employed. Receiving documents electronically requires steady access to and ease with e-mail, as well as some means to store or print documents.</p>	<p>Should a party be able to request exemption from electronic service and other relief?</p> <p>The committees agreed that electronic service should be addressed separately from electronic filing. For self-represented parties, electronic service —like electronic filing—should be voluntary; hence, no request for exemption would be needed. The rule on electronic service has been revised to provide expressly for self-represented parties. These parties would be exempt from mandatory electronic service and must affirmatively consent (opt in) to electronic service. (See amended rule 2.251(b)–(c); see also amended rule 2.253(b)(3).)</p>
159 California Family Law Facilitator's		<p>Should a party be able to request exemption</p>	<p>Should a party be able to request exemption</p>

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Commentator	Position	Comment	Committees' Response
<p>Association By: Melanie Snider Vice President</p>		<p>from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p> <p>Yes. Particularly in the areas of family law, and if the decision is made to apply the electronic filing rules to the juvenile dependency courts, indigent litigants and those who are incapable of using computers will potentially effectively be denied access to the court process.</p> <p>Therefore, if the rules allow for an exemption from electronic service and mandatory e-filing, these litigants would at least have access. It would be preferable to have voluntary e-filing and e-service with an opt-in requirement rather than an opt-out requirement. This would reduce the number of additional litigants in the self-help centers and at the clerks' windows who are applying for exemption from the process. It would also eliminate the additional burdens created by the need for additional hearings to either approve an application or to hear reasons why a denial was in appropriate, for clerks to process requests for exemption, and for the courts to file and store the additional paperwork created by litigants filing requests for exemption.</p>	<p>from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p> <p>See response to comment 158 above.</p>
160	Martin Dean Essential Publishers LLC	<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p>	<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p>

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Commentator	Position	Comment	Committees' Response
		<p>[T]he current CCMS/Court Policy requirements require the inclusion of an email address in a filing (both initiating and subsequent). If a filer has an email address to attach to a filing, then arguably they have access to a computer. Thus it seems an artificial division to separate the filing of a document with the court and service of that filer. Both require an email address, and some computer skills.</p> <p>While we clearly understand that court efficiency is best served if it receives no paper at all, we believe that we do not yet have enough data to make choices such as these. Perhaps a 6 month trial of this form and the accompanying rules would be a good place to start, but not necessarily end.</p>	<p>For represented parties, the point that e-filing and e-service are often closely connected and linked to having a computer seems valid. For self-represented parties, however, e-filing and e-service may be disparate. A self-represented party may receive assistance with e-filing from a self help-center or a legal aid organization, yet not have a home computer or other ready means of access to e-mail. Hence, the rules need to take into account the situation of self-represented parties regarding e-service. The committees recommend that such parties be exempt from mandatory e-service and be allowed to voluntarily opt in if they have the means and skill to do so.</p> <p>If self-represented parties are exempt from mandatory e-service, they will not need to use the opt out procedures or the form. On the other hand, the form and opt out rules will be used by represented parties—so, as the commentator suggests, the form and rules can be evaluated after a period of use.</p>
161 Julie A. Goren, Attorney Lawdable Press		<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p> <p>Yes – again only if they don't have a computer with internet.</p>	<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p> <p>The committees recommend that, for self-represented parties, electronic service—like electronic filing—should be voluntary; hence, no request for exemption would be needed. These parties would be exempt from mandatory electronic service and must affirmatively consent</p>

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Commentator	Position	Comment	Committees' Response
162 Legal Aid Society of Orange County		<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p> <p>LASOC believes that self-represented parties should be automatically exempted from mandatory e-filing and receipt of e-service, but allowed to opt-in.</p> <p>LASOC believes that tying e-filing and e-service together will greatly increase the requests for exemptions. As an example, LASOC can help many pro per litigants file their pleadings but is resistant because of the e-service component. As explained previously, many LASOC clients still do not have readily accessible internet access, do not have email addresses, or do not use the internet or email proficiently. Since they do not have access to the internet and are not accustomed to checking sites on the internet regularly they will miss important deadlines and hearing dates. Additionally, many low-income litigants do not have credit cards. As a result they cannot e-file, register or pay.</p>	<p>(opt in) to electronic service. (See amended rule 2.251(b)-(c); see also amended rule 2.253(b)(3).)</p> <p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p> <p>The committees agreed that self-represented parties should be exempt from mandatory e-service but should be able to opt in.</p>
163 Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p>	<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p>

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>Yes, parties should be able to request exemption from e-service and receipt of e-service. E-filing would require litigants to have access to an electronic device with internet access at the time they choose to file their documents. Courts can provide such devices, along with other resources necessary to e-file. However the automatic inclusion of e-service would be a hardship for those parties who do not have regular access to internet-capable electronic devices.</p> <p>The hardships that would come from receipt of e-service would include having to check their e-mail accounts daily, which may entail having to travel to a public institution if they could not afford a personal computer or smartphone with internet access. Even if a litigant had the means to travel to a public library or court, they may not have the means to do so on a daily basis, or to pay for usage fees to check their e-mail accounts.</p> <p>With the exception of homeless litigants, who must find a stable address to receive mail, all other litigants living at a fixed location have access to mail service via the United States Postal Service. The mail comes to them without any additional costs to them, and is protected by federal law from tampering. Access to an e-mail service is not free, nor easily accessible, to all those living at a fixed location. Delay in checking e-mail could result in significant prejudice against litigants if they</p>	<p>The committees recommend that, for self-represented parties, electronic service—like electronic filing—should be voluntary; hence, no request for exemption would be needed. Self-represented parties would be exempt from mandatory electronic service and must affirmatively consent (opt in) to electronic service. (See amended rule 2.251(b)–(c); see also amended rule 2.253(b)(3).)</p>

W13-05
 Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>are e-served with documents that have pending deadlines or court dates.</p> <p>The burden of mandatory e-receipt of service is significantly higher than mandatory e-filing and e-service. Low-income and self-represented litigants who were able to access assistance with document preparation through a self-help center or legal services agency may be able to receive one-time assistance in e-filing, but no one provider can assist litigants with free, daily access to electronic devices with internet and scanner or PDF conversion software. Thus, even if parties must e-file or can opt-in to do so, they should be able to request exemption from mandatory receipt of e-service.</p>	
164 State Bar of California, Committee on Administration of Justice By: Saul Bercovitch Legislative Counsel		<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from e-filing requirements?</p> <p>Yes. The proposed form has a box to check for exemptions from e-service as well as e-filing. Assuming a simplified opt-out procedure is adopted for mandatory e-filing (e.g. permitting the clerk to allow the exemption), that simplified procedure should also cover an exemption from mandatory e-service.</p>	<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from e-filing requirements?</p> <p>The committees recommend that, for self-represented parties, electronic service—like electronic filing—should be voluntary; hence, no request for exemption would be needed. These parties would be exempt from mandatory electronic service and must affirmatively consent (opt in) to electronic service. (See amended rule 2.251(b)–(c); see also amended rule 2.253(b)(3).)</p>
165 State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS)		<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p>	<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p>

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment requirements?	Committees' Response requirements?
By: Sharon Ngim		<p>SCDLS believes that self-represented litigants should be automatically exempted from e-service and receipt of e-service, but allowed to opt-in. However, if this exemption is not automatically granted, parties should be able to request exemption from e-service and receipt of e-service. E-filing requires litigants to have access to an electronic device with internet access at the time they choose to file their documents with the court. Courts can provide such devices, along with other resources necessary to e-file, at the time of filing. However the automatic requirement of e-service and receipt of e-service for those parties who do not have a hardship for those parties who do not have regular access to internet-capable electronic devices, as this would be an ongoing need for such devices, rather than the discretionary access needed for e-filing.</p> <p>The hardships that would come from receipt of e-service to those people without regular access to internet-capable devices would include having to check their e-mail accounts daily. Given that they do not have regular access to such devices, this may entail having to travel to a public institution to gain access so as to ascertain whether they have been served electronically on that day. Even if a litigant had such means to travel to a public institution, they may not have the means to do so on a daily basis, or to pay for usage fees to check their e-</p>	<p>The committees agreed that, for self-represented parties, electronic service—like electronic filing—should be voluntary; hence, no request for exemption would be needed. These parties would be exempt from mandatory electronic service and must affirmatively consent (opt in) to electronic service. (See amended rule 2.251(b)–(c); see also amended rule 2.253(b)(3).)</p>

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>mail accounts for receipt of e-service.</p> <p>With the exception of homeless litigants, who must find a stable address to receive mail, all other litigants living at a fixed location have access to mail service via the United States Postal Service. The mail comes to them without any additional costs to the litigants, and is protected by federal law from tampering. Access to an e-mail service is not free, nor easily accessible, to all those living at a fixed location. Delay in checking e-mail could result in significant prejudice to litigants.</p> <p>Even if parties must e-file or can opt-in to do so, they should be able to request exemption from mandatory e-service and receipt of e-service. Further the clerk's office staff could be trained to assist the self-represented litigants with the e-service procedure, in addition to administering the e-filing service, though this would entail a cost upon the courts that would not otherwise have been endured if not for mandatory e-service and receipt of e-service.</p>	
166 Superior Court of Los Angeles County Los Angeles County Superior Court		<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p> <p>If a party is bound by e-filing, that party should be bound by electronic service.</p>	<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p> <p>The committees agreed that this should be the rule for represented parties. (See amended rule 2.251(c).) On the other hand, self-represented parties should be exempt from both e-filing and e-</p>

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
<p>167 Superior Court of Orange County By: Jeff Wertheimer General Counsel</p>		<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p> <p>Yes, a party should be able to request exemption from both electronic filing and service requirements or from either requirement separately.</p> <p>Rule 2.253(b)(3) should be revised in order to accurately reflect the hardships imposed by electronic service. As currently proposed, Rule 2.253(b)(3) encourages represented parties to file and serve documents electronically, yet in the same sentence self-represented parties are instructed to file, serve, and be served documents by non-electronic means. For the reasons detailed below, represented parties are being instructed to electronically serve documents on parties that may not be required or able to accept electronic service. The rule should mandate electronic filing and service by all parties, with easily accessible methods for claiming exemptions for service, as detailed below.</p> <p>With respect to e-service, Rule 2.251(b) should be revised to accommodate the needs of those who do not have ready access to equipment or services allowing electronic filing or service.</p>	<p>service. See amended rule 2.251(b)-(c) and amended rule 2.253(b.)</p> <p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p> <p>The committees agreed that, for represented parties who are required to serve and file documents electronically, a procedure must be available for those parties to request an exemption from electronic service, electronic filing, or both, based on undue hardship or significant prejudice. (See amended rule 2.251(c)(2)(A) and amended rule 2.253(b)(4).)</p> <p>However, the committees recommend that self-represented parties be exempt entirely from mandatory electronic service and filing, though they should be encouraged to voluntarily opt in. (See amended rule 2.253(b)(2) and Advisory Committee Comment to rule 2.253.)</p> <p>The committees did not agree that the rules should mandate electronic filing by all parties, including self-represented parties.</p> <p>The committees agreed that rule 2.251(b) needed to be revised to address the situation of parties who may receive assistance so that they can file documents electronically but do not have the</p>

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>As currently written, the rules provide that any party who electronically files automatically consents to e-service. For self-represented parties who electronically file through Legal Aid or other assistance centers, they often do not have the technological or financial wherewithal to accept e-service. Even if they had the skills and ability to understand the importance and intricacies of e-service, it is often expensive and time consuming for these individuals to continually travel to the self-help or legal aid center to check their emails to determine if they have been e-served with documents. There must be a procedure to excuse self-represented litigants from e-service even if they are able to e-file. We suggest adding the following as CRC, Rule 2.251(b)(3):</p> <p>(3) The court shall have a procedure for the filing of request for a waiver from consent to electronic service if such service shall cause undue hardship or significant prejudice to any party in an action, including, but not limited to, unrepresented parties.</p> <p>Such a process will prevent attorneys from e-serving documents to an email address that an unrepresented party is unable to check. It will also further encourage self-represented litigants to e-file because they will no longer be concerned about the problems associated with consenting to e-service at an email address they</p>	<p>ability to serve and receive service of documents electronically.</p> <p>To address the problem raised by the commentator (i.e., that the presumption that electronic filing constitutes consent to e-service may be a problem for some parties) and consistent with the committees' recommendation the exclude self-represented parties from mandatory e-serve as well as e-filing, it recommends that following version of amended rule 2.251(b)-(c) be adopted:</p> <p>(b) <u>Electronic service by consent of the parties</u></p> <p>(2)(1) <u>Electronic service may be established by consent of the parties in an action.</u></p> <p>A party indicates that the party agrees to accept electronic service by:</p> <p>(A) Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The</p>

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>either do not or cannot monitor.</p>	<p>notice must include the electronic service address at which the party agrees to accept service; or</p> <p>(B) Electronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service at the electronic service address the party has furnished to the court under rule 2.256(a)(4). <u>This subpart (B) does not apply to self-represented parties; they must affirmatively consent to electronic service under subpart (A)</u></p> <p>(2) A party that has consented to electronic service under (2)(1) and has used an electronic filing service provider to serve and file documents in a case consents to service on that electronic filing service provider as the designated agent for service for the party in the case, until such time as the party designates a different agent for service.</p> <p>(c) <u>Electronic service required by local rule or court order</u></p>

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
			<p>(1) <u>A court may require parties to serve documents electronically in specified actions by local rule or court order, as provided in Code of Civil Procedure section 1010.6 and the rules in this chapter.</u></p> <p>(2) <u>Except when personal service is otherwise required by statute or rule, a party that is required to file documents electronically in an action must also serve documents and accept service of documents electronically from all other parties, unless:</u></p> <p>(A) <u>The court orders otherwise, or</u></p> <p>(B) <u>The action includes parties that are not required to file or serve documents electronically, including self-represented parties; those parties are to be served by non-electronic methods unless they affirmatively consent to electronic service.</u></p> <p>(3) <u>Each party that is required to serve and accept service of documents electronically must provide all other parties in the action with its electronic service address and must promptly notify all other parties and</u></p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
168 Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p> <p>Parties should be able to request exemption of either or both Filing and Service. The court could then achieve benefits of documents e-filed where the filer does not have the capability to receive eService.</p>	<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p> <p>The committees agreed that, for represented parties who are required to serve and file documents electronically, a procedure must be available for those parties to request an exemption from electronic service, electronic filing, or both, based on undue hardship or significant prejudice. (See amended rule 2.251(c)(2)(A) and amended rule 2.253(b)(4).) However, the committees recommend that self-represented parties be exempt entirely from mandatory electronic service and filing, though they should be encouraged to voluntarily opt in. (See amended rule 2.253(b)(2) and Advisory Committee Comment to rule 2.253.)</p>
169 Superior Court of San Diego County By: Michael M. Roddy Executive Officer		<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p> <p>Yes.</p>	<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p> <p>See responses to comments 167 and 168.</p>
170 Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p>	<p>Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?</p>

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>No. This should be an "all or nothing" exemption. The party may either fully "opt in" or "fully opt out." It will cause a high administrative overhead to exempt portions of the program.</p> <p>This feedback is in alignment with the e-filing workstream participants.</p>	<p>The committees disagreed. See responses to comments 167 and 168.</p>
<p>Question No.7 – Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p>			
<p>171 California Family Law Facilitator's Association By: Melanie Snider Vice President</p>		<p>Should the same procedures that are used for the hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed-be all that is required for self-represented litigants?</p> <p>It depends on whether the need for the exemption is based upon financial need or some other reasoning. If the issue is limited to e-filing and the courts and/or self-help centers are given the resources necessary to assist litigants to file electronically so that the barrier for the litigant is solely financial (inability to pay the filing fee) then it would make sense that a litigant who qualified for a fee waiver in a family law case should use the same procedures (filing forms FW-001 and FW-003) to request a waiver of the filing fees. If the reason the process is</p>	<p>Should the same procedures that are used for the hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed-be all that is required for self-represented litigants?</p> <p>In light of the committees' recommendation to exempt self-represented parties altogether from mandatory e-filing, the question of whether a simplified opt-out procedure should be developed for these parties does not need to be considered.</p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
172 Martin Dean Essential Publishers LLC		burdensome for the litigant is not financial, then the current procedures will not suffice. For instance, if the requirement is to accept e-service and the litigant does not have an email account or access to a computer so that they can regularly check to determine whether or not they have been served with process, then it will not matter whether or not they have been granted a fee waiver.	
173 Family Violence Law Center By: Rebecca Bauen Executive Director Oakland		Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed be all that is required for self-represented litigants? Yes, see above.	Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed be all that is required for self-represented litigants? See response to comment 171.
174 Julie A. Goren, Attorney Lawdable Press		Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed-be all that is required for self-represented litigants? (See comment 175 by LAAC below [same].)	Should the same procedures that are used for hardship requests generally also apply to self-represented persons? See response to comment 171.

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>self-represented persons?</p> <p>Yes.</p> <p>Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>No.</p>	<p>represented persons?</p> <p>See response to comment 171.</p> <p>Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>See response to comment 171.</p>
<p>175 Legal Aid Association of California By: Salena Copeland Directing Attorney</p>		<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>If self-represented litigants must opt-out, the procedure must be simple. The "Request for Exemption From Electronic Filing and Service" meets that requirement.</p> <p>Separate forms and procedures should be available for e-filing and e-service. It may be possible for someone to e-file as a one-time or occasional occurrence, but that litigant may not have ready access to an email account. Libraries have time-limited access to computers and litigants may not have computer or internet at home.</p>	<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>See response to comment 171.</p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
176 Legal Aid Society of Orange County		<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>The exemption process should follow along the same lines as the fee waiver requests. A standardized form requesting exemption from e-filing and receipt of e-service should be filed with the clerk and granted.</p>	<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>See response to comment 171.</p>
177 Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>A standardized procedure should be developed, similar to the ones developed for fee waiver requests with accompanying forms and rules. Further, the rule should be to automatically opt litigants out of e-filing and e-service/receipt of e-service. Setting the default as filing hard copy at court and service by mail does not automatically disadvantage any litigant, though it may inconvenience the court. However the</p>	<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>See response to comment 171.</p>

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
<p>178 OneJustice By: Linda S. Kim Deputy Director</p>		<p>cost to litigants who do not realize that they have been automatically opted into e-filing and e-service/receipt of e-service is a great deal more onerous and runs the risk of ultimately closing the court's doors to them.</p> <p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be filed-be all that is required for self-represented litigants?</p> <p>(See comment 175 by LAAC above [same].)</p>	<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed-be all that is required for self-represented litigants?</p> <p>See response to comment 171.</p>
<p>179 State Bar of California, Committee on Administration of Justice By: Saul Bercovitch Legislative Counsel</p>		<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something even simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>CAJ believes that self-represented parties should be exempt from mandatory participation. If, however, self-represented parties are not exempt, CAJ would support a simple procedure for seeking an exemption for those parties, such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed, with no additional</p>	<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something even simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>See response to comment 171.</p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
180 State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim		<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>If self-represented litigants are not exempted from mandatory e-filing and e-service, a standardized procedure should be developed, similar to the ones developed for fee waiver requests with accompanying forms and rules. SCDLS believes the process should be made as simple as possible, such as filing a standardized request to be excused from e-filing with the initial papers to be filed.</p>	<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>See response to comment 171.</p>
181 Superior Court of Los Angeles County		<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>A simpler request should apply to self-represented litigants. The critical criteria should be whether the litigant has access to a computer with Internet access.</p>	<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>See response to comment 171.</p>

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
182 Superior Court of Orange County By: Jeff Wertheimer General Counsel		<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>The same procedures for hardship requests, developed by the individual trial courts, should continue to apply to self-represented persons. Any proposed rule should have the same essential elements as outlined above, while leaving the discretion for processing the requests in the purview of the local trial courts.</p>	<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>See response to comment 171.</p>
183 Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>Each court should be allowed to decide what it would like to do to make hardship requests easy. Again, self-represented should not be associated with hardship. These are two distinct situations.</p>	<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>See response to comment 171.</p>
184 Superior Court of San Diego County By: Michael M. Roddy		<p>Should the same procedures that are used for hardship requests generally also apply to</p>	<p>Should the same procedures that are used for hardship requests generally also</p>

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
Executive Officer		<p>self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>As set forth above, our court believes self-represented litigants should be exempt from mandatory e-filing requirements.</p>	<p>apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>See response to comment 171.</p>
185 Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>Yes. This will ensure consistency.</p>	<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>See response to comment 171.</p>
186 Western Center on Law and Poverty By: Mona Tawatao Senior Litigator		<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>(See comment 175 by LAAC above [same].)</p>	<p>Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?</p> <p>See response to comment 171.</p>

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
<p>Question No.8 – Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?</p> <p>187 California Commission on Access to Justice By: Hon. Ronald B. Robie Chair</p>		<p>Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?</p> <p>The decision whether to allow a self-represented parties to opt out of e-filing should be ministerial rather than discretionary. Requiring judges to rule on those requests will further burden an overburdened system.</p>	<p>Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?</p> <p>In light of the committees' recommendation to exempt self-represented parties altogether from mandatory e-filing, the question of whether a clerk's office should be able to grant an exemption or a hearing should be required is inapplicable to those litigants. For represented parties, the proposed rule—which simply provides that the court must have a procedure for requesting exemptions—appears satisfactory. (See amended rule 2.253(b)(4).) If based on experience, further rules on this subject are warranted, they can be developed.</p>
<p>188 California Family Law Facilitator's Association By: Melanie Snider Vice President</p>		<p>Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?</p> <p>If the rules are going to mandate that everyone participate in e-filing and e-service with an opt-out provision in the case of hardship, the clerk's office should be able to grant such requests but very specific rules about who would qualify and who would not qualify would need to be developed. Otherwise each clerk would have discretion based upon whom to determine who would be exempt and who would not be exempt.</p>	<p>Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?</p> <p>See response to comment 187.</p>

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
189 Martin Dean Essential Publishers LLC		Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied? Yes, we don't believe that creating any barrier to access such as a court appearance will encourage the SRL to file electronically. There is no data that would support this approach.	Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied? See response to comment 187.
190 Legal Aid Society of Orange County		Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied? Yes, see [previous comments] above.	Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied? See response to comment 187.
191 Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied? The clerk's office should be able to grant a party's request to be exempt from mandatory e-service/receipt of e-service without a hearing, unless the request is denied; then a hearing should be available in all cases. A process similar to the ones developed for fee waiver requests should be developed, with accompanying forms and rules. In those cases, the litigant receives their fee waiver and is only required to appear for a hearing in the event their request for fee waiver is denied.	Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied? See response to comment 187.
192 State Bar of California, Committee on Administration of Justice By: Saul Bercovitch		Should the clerk's office be able to grant such requests with no appearance or hearing	Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
Legislative Counsel		<p>required unless the request is denied?</p> <p>CAJ believes the clerk's office should be able to grant a request for an exemption, but that a judicial officer should be required to consider a request before it is denied.</p>	See response to comment 187.
193 State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim		<p>Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?</p> <p>The clerk's office should be able to grant a party's request to be exempted from e-filing pleadings, with no appearance or hearing, in all cases, unless the request for exemption is denied. A process similar to the ones developed for fee waiver requests should be developed, with accompanying forms and rules. In those cases, the litigant receives their fee waiver and is only required to appear for a hearing in the event their request for fee waiver is denied.</p>	<p>Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?</p> <p>See response to comment 187.</p>
194 Superior Court of Los Angeles County Los Angeles County Superior Court		<p>Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?</p> <p>The individual court should make this decision by local rule.</p>	<p>Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?</p> <p>See response to comment 187.</p>
195 Superior Court of Orange County By: Jeff Wertheimer General Counsel		<p>Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?</p> <p>The decision on how to process these should be</p>	<p>Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied?</p> <p>See response to comment 187.</p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

	Commentator	Position	Comment	Committees' Response
196	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		left to the discretion of the trial court, but the same options provided in Gov. Code Section 68632, et seq. [on fee waivers] should be made available in this context as well. It is unlikely any court would require an appearance or hearing, but there is no need to prohibit them.	
197	Superior Court of San Diego County By: Michael M. Roddy Executive Officer		Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied? Yes. Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied? Trial courts should be allowed to delegate this authority if they deem it to be appropriate.	Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied? See response to comment 187.
198	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied? Yes. This will avoid unnecessary processing. This feedback is in alignment with the e-filing workstream participants.	Should the clerk's office be able to grant such requests and no appearance or hearing be required unless the request is denied? See response to comment 187.
<p>Question No. 9 – Are the proposed two new optional forms listed below for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified? (a) Request for Exemption from Mandatory Electronic Filing and Service (form EFS007) and (2) Order on Request for Exemption from Mandatory Electronic Filing and Service (form EFS-008).</p>				

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
<p>199 California Family Law Facilitator's Association By: Melanie Snider Vice President</p>		<p>Are the proposed two new optional forms listed below for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?</p> <p>The forms appear to address the problem if it is determined that there should be an opt-out provision. The problem that may result from this process is related to delays caused when the matter is set for a hearing. The effect this process may have on legal timelines and upon the dynamics of conflicted family law matters may become problematic.</p>	<p>Are the proposed two new optional forms listed below for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?</p> <p>As a result of the recommendation to exempt self-represented parties altogether from mandatory e-filing, the two optional forms will be used only by self-represented parties seeking exemptions. Based on other comments discussed below, some modifications have been made to the forms. The problems raised that may result from delays caused when the matter is set for a hearing and how these problems are addressed will depend not on the forms but on the local court procedures adopted to enable self-represented parties to request exemptions. (See rule 2.253(b)(4).)</p>
<p>200 Martin Dean Essential Publishers LLC</p>		<p>Are the proposed two new optional forms ... for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?</p> <p><i>Request for Exemption from Mandatory Electronic Filing and Service</i> (form EFS-007)</p> <p>Yes, there are several parts of this form which can be improved.</p> <p>The data in the caption that requires the court to enter data about to whom the case has been assigned, the department, the judicial officer and date of the filing of the complaint would I</p>	<p>Are the proposed two new optional forms ... for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?</p> <p><i>Request for Exemption from Mandatory Electronic Filing and Service</i> (form EFS-007)</p> <p>The fields for this information in the caption have been removed from the form.</p>

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 Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>believe require that the court modify its file stamp to be able to enter data into these fields. That is not an insignificant requirement. And, of course the filer cannot enter this data.</p> <p>Question one part A should not have so many choices (filing, service, receipt of service). We don't believe that the average user will understand the difference between service and receipt of service, and so three choices will not be effective. Just eliminate the parts to this question.</p> <p><i>Order on Request for Exemption from Mandatory Electronic Filing and Service</i> (form EFS-008)</p> <p>Wouldn't it be possible to combine with form (somehow) with EFS-007? Wouldn't this cut down on the paper that goes into the court file, and make the processing easier.</p> <p>The FW-001 does not require Proof of Service by Mail, why should this form? It would only be necessary to notify the other party if that party would have standing to object to the waiver request, and if they don't, why use up the bottom 1/3rd of the form, when instead the court can use this to either grant or deny the request. Eliminating the EFS-008 altogether.</p>	<p>The committees agreed that "receipt of service" should be deleted as a separate category; it is covered by "service."</p> <p><i>Order on Request for Exemption from Mandatory Electronic Filing and Service</i> (form EFS-008)</p> <p>The committees do not recommend combining the two forms. Processing may be easier if the application and order are processed separately. Also, since the forms are optional, courts may elect to use their own orders.</p> <p>The committees agreed that a Proof of Service is not needed on form EFS-007, but a clerk's certificate of service is useful on EFS-008.</p>
201	Legal Aid Society of Orange County	<p>Are the proposed two new optional forms . . . for use in requesting an exemption from</p>	<p>Are the proposed two new optional forms . . . for use in requesting an exemption from</p>

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Commentator	Position	Comment	Committees' Response
		<p>mandatory e-filing appropriate or do they need to be modified?</p> <p>Commenting on these forms is difficult. These forms will be used in many different scenarios.</p> <p>With that in mind suggestions for modification are below.</p> <p><u>Form EFS-007</u></p> <p>CAPTION Section:</p> <p>Add "optional" after email and fax number. Litigants who fill out these forms are confused and ask what to do when they do not have a fax number.</p> <p>Email address (Optional):</p> <p>Fax Number (Optional):</p> <p>In the PLAINTIFF/PETITIONER box add "OTHER PARTY"</p> <p>APPLICATION section:</p> <p>Isn't 1(a) an example of 1(b)? Does the applicant need more than 1(a)?</p> <p>Proposed language:</p> <p>I _____ am unable to electronically () file () serve () and receive</p>	<p>mandatory e-filing appropriate or do they need to be modified?</p> <p><u>Form EFS-007</u></p> <p>CAPTION Section:</p> <p>The committees disagreed with this suggestion. As on party-prepared pleadings (see rule 2.111), the information about fax numbers and e-mail address requested on Judicial Council forms is generally not optional, unless the forms are of a type (e.g., domestic violence prevention forms) where providing the information publicly may pose risks or create problems for the filers.</p> <p>The committees recommend adding "OTHER."</p> <p>APPLICATION section:</p> <p>The committees agreed that the proposed language is more logical and has modified the form.</p>

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Commentator	Position	Comment	Committees' Response
		<p>forms electronically because:</p> <p>It would cause undue hardship or significant prejudice as:</p> <p><input type="checkbox"/> I do not readily have access to a computer with internet access, or</p> <p><input type="checkbox"/> Other</p> <hr/> <p>On the signature line, change "DECLARANT" to "APPLICANT/DECLARANT." The consistency will help SRLs. Often they get confused on who is supposed to sign documents.</p>	<p>This change is not necessary. The person signing is a "declarant." This term should not cause confusion; the form will generally be used by represented parties because self-represented parties will be exempt from electronic filing and service.</p>
		<p>PROOF OF SERVICE BY MAIL Section:</p> <p>This should be the back page of the form with instructions. Untrained litigants may believe they are supposed to put the court's address in the box and mail it to the court, not the other parties. Must this form be served on all other parties, those who have been served, or those who have appeared in the action?</p> <p><i>Draft</i> sample instructions include:</p> <p>If you are the plaintiff:</p> <p>You do not need to fill out this section if you are starting the case. If however, you have already filed papers, opted into e-filing, or someone has</p>	<p>PROOF OF SERVICE BY MAIL Section:</p> <p>Based on a separate comment, the Proof of Service has been removed. Because the parties using form EFS-007 will be represented, the attorney could provide a proof of service of the application when it is appropriate. Also, the suggested instructions are not needed because applications will be filed by represented, not self-represented, parties.</p>

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Commentator	Position	Comment	Committees' Response
		<p>e-filed papers for you then you need to complete this section and have it served on all other parties/attorneys in the case. Put the names and addresses of the people who have filed papers in this case below.</p> <p>If you are the defendant:</p> <p>A copy of this form must be served on all other parties who are involved in the case. If the party has an attorney, place the attorney's address in the box otherwise place the unrepresented party's address. If you need additional space prepare an attachment listing the other names and addresses of the parties/attorney's where you mailed a copy of this form.</p> <p><u>Form EFS-008</u></p> <p>This Order ought to be granted at the window. If the court denies the request, it can then send out a notice of hearing.</p> <p>Otherwise, paragraph #2 ought to add at the end:</p> <p>2. ...</p> <hr/> <hr/> <hr/> <p>“You may file another request providing more information about the reasons why it would be hard to file, serve and/or receive service electronically.”</p>	<p><u>Form EFS-008</u></p> <p>Assuming this procedure is followed, the additional statement at the end of item 2 is not necessary.</p> <p>Adding this statement at the end of 2 would be confusing if item 3 is checked.</p>

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Commentator	Position	Comment	Committees' Response
<p>202 Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney</p>		<p>Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?</p> <p>We recommend that EFS-007 be amended as follows:</p> <ul style="list-style-type: none"> • In the caption box, "Optional" should be listed after "Telephone No.," "Fax No.," and "E-mail address." • Under the parties' names, an additional space for "Other Party/Claimant" should be added. • Number 1 should read: "I, (<i>name of applicant</i>): request to be exempt from the requirements for electronic <input type="checkbox"/> filing <input type="checkbox"/> service <input type="checkbox"/> receipt of service in this as it would cause undue hardship or significant prejudice because: <ol style="list-style-type: none"> <input type="checkbox"/> I do not readily have access to a computer with Internet access; or <input type="checkbox"/> Other: _____ • The Proof of Service portion of the form should be stricken. Like the fee waiver application, application for exemption should not be served on the other party; the Order on Request for Exemption should be served. <p>In addition, we suggest that the following forms should be developed:</p>	<p>Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?</p> <p>See response to comment 201.</p>
			<p>The committees do not consider any additional forms to be necessary at this time, but based the courts' on experiences with mandatory e-filing and e-service may consider possible additional</p>

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Commentator	Position	Comment	Committees' Response
		<ul style="list-style-type: none"> • <i>Information Sheet on Electronic Filing and Service</i>, explaining exactly what opting in means and how to request an exemption • <i>Information Sheet on Receipt of Electronic Service</i>, explaining that being subject to e-service means checking e-mail daily and being able to download PDFs and/or clicking through hyperlinks, that spam filters should be adjusted and junk mail reviewed, suggesting that litigants have email addresses specifically designated for litigation to avoid official court documents being mixed with other mail • <i>Request for Hearing About Exemption from Electronic Filing and Service</i> • <i>Notice on Hearing About Exemption from Electronic Filing and Service</i> • <i>Order After Hearing on Request for Exemption from Electronic Filing and Service</i> 	forms in the future.
203 State Bar of California, Committee on Administration of Justice By: Saul Bercovitch Legislative Counsel		<p>Proposed form EFS-007 has three boxes which may be checked to request exemption from electronic (i) filing; (ii) service; and (iii) receipt of service:</p> <p>In rule 2.251(c)(2) and (3) the terms “serve” and “accept service” are in the conjunctive:</p> <p>(2) Except when personal service is otherwise required by statute or rule, a party that is required to file</p>	

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Commentator	Position	Comment	Committees' Response
		<p>documents electronically in an action <i>must also serve documents and accept service of documents</i> electronically from all other parties, unless:</p> <p>(A) The court orders otherwise, or</p> <p>(B) The action includes parties that are not required to file or serve documents electronically, including self-represented parties; those parties are to be served by</p> <p>(3) Each party that is <i>required to serve and accept service of</i> documents electronically must provide all other parties in the action with its electronic service address and must promptly notify all other parties and the court of any changes under (f).</p> <p>Given that electronic service and receipt of service appear to be tethered as one item in rule 2.251(c), the question is whether a party could (or should) be excused from one but not the other. Some members of CAJ believe that to avoid confusion, the proposed forms should be revised to combine the boxes for service and receipt of service into one box. On the other hand, some members of CAJ believe there may be situations where a party might seek to be</p>	<p>The committees agreed that the two boxes on “service” and “receipt of service” should be combined into one box on “service”; “service” includes “receipt of service.”</p>

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Commentator	Position	Comment	Committees' Response
		<p>excused from serving documents electronically or from receiving documents electronically, but not both. In that case, the form would remain as proposed. However this issue is ultimately resolved, the same resolution would need to carry over to proposed form EFS-008, the order granting or denying the exemption.</p> <p>In addition, if the clerk can issue that order, the line "JUDICIAL OFFICER" should be changed to read "JUDICIAL OFFICER OR CLERK," and the references to "The court" should be revised. Regarding the "Clerk's Certificate of Service," CAJ did not entirely understand whether or why the clerk is to be responsible for serving all the parties in the case.</p>	<p>The committees did not agree to change the signature line on optional form EFS-008 as proposed. If the court has a different procedure that allows a clerk to grant an application, it can develop a local form for that purpose.</p>
<p>204 State Bar of California's Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim Program Development & Staff Liaison</p>		<p>Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?</p> <p>As noted above, SCDLS strongly urges that the self-represented litigants be exempted from mandatory e-filing and e-service.</p> <p>In any event, SCDLS suggests that the forms be changed so as to make clearer as to whom the forms should be sent, and when they should be sent. To be more specific, the proof of service section should be modified to explain when the form needs to be served, and to whom the form</p>	<p>Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?</p> <p>The committees agreed with this recommendation.</p> <p>See responses to comment 201.</p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>should be served upon.</p> <p>Further, EFS-007 should be modified as follows:</p> <p>I _____ am unable to electronically () file () serve () and receive forms electronically because:</p> <p>It would cause undue hardship or significant prejudice as:</p> <p>() I do not readily have access to a computer with internet access, or</p> <p>() Other _____</p> <p>_____</p> <p>This is because the Committee believes that lack of access to a computer with internet access is a type of undue hardship or significant prejudice, and not a separate reason for an exemption.</p> <p>As well, on the signature line of EFS-007, the form should be changed to read "DECLARANT/APPLICANT" instead of "DECLARANT" to avoid confusion.</p> <p>If mandatory exemption from e-filing and e-service for self-represented litigants is not made the rule, then the Committee suggests that in the alternative, EFS-008 (Order of Exemption from Electronic Filing and Service) note clearly that one rejection of a request for exemption does not mean the end of the exemption process. The</p>	<p>As indicated in the report and in response to previous comments, the committees are recommending that self-represented parties be exempt from mandatory electronic filing and service.</p>

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

W13-05
 Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>form can do this by changing the second paragraph of EFS-008 by adding "you may file another request to provide more information for the reasons why you seek an exemption from the requirements to file, serve, and receive service electronically."</p> <p>Finally, EFS-007 and EFS-008 should be used to request changes in status during pendency of a case.</p> <p>1. <i>Should these forms be made mandatory rather than optional?</i></p> <p>The Committee could not come to a consensus as to whether the forms should be made mandatory or optional. The mandatory forms make it easier to adopt statewide, however optional forms make it easier for local courts to adapt to their procedures. Both methods have their advantages and disadvantages.</p> <p>2. <i>Are any other forms needed to implement the rules on mandatory e-filing?</i></p> <p>Additional forms should be developed, as listed below:</p> <ul style="list-style-type: none"> • <i>Election Regarding Electronic Filing and Service</i> (mandatory); • <i>Information Sheet on Electronic Filing</i>, explaining exactly what opting in means; 	<p>It is not necessary to add this language and it might be confusing, particularly if item 3 is checked.</p> <p>Nothing on the form precludes this use.</p> <p><i>Should these forms be made mandatory rather than optional?</i></p> <p>The committees recommend that the forms be optional, as proposed.</p> <p><i>Are any other forms needed to implement the rules on mandatory e-filing?</i></p> <p>The committees do not consider any additional forms to be necessary at this time, but based the courts' on experiences with mandatory e-filing and e-service may consider possible additional forms in the future.</p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<ul style="list-style-type: none"> • <i>Information Sheet on Electronic Service</i>, specifying the file types and size of electronic documents that can be served, and that hyperlinks should be sent if files exceed a certain size; • <i>Information Sheet on Receipt of Electronic Service</i>, explaining that being subject to e-service means checking e-mail daily and being able to download PDFs and/or clicking through hyperlinks, that spam filters should be adjusted and junk mail reviewed, suggesting that litigants have e-mail addresses specifically designated for litigation to avoid official court documents being mixed with other mail; • <i>Request for Hearing about Exemption from Electronic Filing and Service</i>; • <i>Notice on Hearing about Exemption from Electronic Filing and Service</i>; • <i>Order on About Exemption from Electronic Filing and Service After Hearing</i>. 	
205 Superior Court of Los Angeles County		<p>Are the proposed two new optional forms ... for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?</p> <p>They are appropriate.</p>	<p>Are the proposed two new optional forms ... for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?</p> <p>Based on other comments discussed above, some modifications have been made to the forms.</p>
206 Superior Court of Orange County		<p>Are the proposed two new optional forms ...</p>	<p>Are the proposed two new optional forms ...</p>

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

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
<p>By: Jeff Wertheimer General Counsel</p>		<p>for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?</p> <p><i>Request for Exemption from Mandatory Electronic Filing and Service (form EFS-007)</i></p> <p>The title of the form should be changed to "Request for Exemption from mandatory Electronic Filing and/or Service" to reflect the fact that the form gives the filer the ability to opt out of electronic filing and/or service.</p> <p><i>Order on Request for Exemption from Mandatory Electronic Filing and Service (form EFS-008).</i></p> <p>Same as above.</p>	<p>for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?</p> <p><i>Request for Exemption from Mandatory Electronic Filing and Service (form EFS-007)</i></p> <p>The committees declined to make this change. The specific text of the application form makes it clear that the request can be for an exemption from electronic filing, electronic service, or both.</p> <p><i>Order on Request for Exemption from Mandatory Electronic Filing and Service (form EFS-008).</i></p> <p>The committees declined to make this change. The specific text of the order makes it clear that the order can be used to grant or deny an exemption from electronic filing, electronic service, or both.</p>
<p>207 Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer</p>		<p>Are the proposed two new optional forms ... for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?</p> <p>Yes they are appropriate and do not need to be modified.</p>	<p>Are the proposed two new optional forms ... for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?</p> <p>Based on other comments discussed above, some modifications have been made to the forms.</p>
<p>208 Superior Court of San Bernardino County By: Stephen Nash</p>		<p>Are the proposed two new optional forms ... for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?</p>	<p>Are the proposed two new optional forms ... for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?</p>

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
Court Executive Officer		<p>need to be modified?</p> <p>The proposed optional forms EFS-007 and EFS-008 appear reasonable and appropriate for this purpose and satisfy the broader requirement for a hardship exemption from e-filing. We would however recommend three changes to the proposed forms:</p> <ul style="list-style-type: none"> • Simplify the proposed forms to eliminate the separate boxes for e-filing, e-service, and e-receipt of service. Instead, an exemption should be an exemption from all electronic requirements as implied by the form name, "Request for Exemption from Electronic Filing and Service"; • On Form EFS-007, we would suggest adding "(check all that apply)" at the end of question 1, before the check boxes; and • We question whether service of the "Request for Exemption from Electronic Filing and Service" on the other parties in the case is necessary. <p>Similar to a Fee Waiver, service may not be required.</p>	<p>to be modified?</p> <p>The committees agreed with this suggestion and have eliminated "receipt of service"; "service" included receipt of service.</p> <p>The language in item 1 has been revised based on other comments. In the revised version, it would not be necessary to state "check all that apply."</p> <p>The commentator is correct that service of the application would not always be necessary (e.g., at the time of initial filing before other parties have been served); hence, the Proof of Service has been removed from the form. If service on other parties is required (e.g., later in the action), the represented party's attorney can serve the application and provide proof of service.</p>
209	Superior Court of San Diego County By: Michael M. Roddy Executive Officer	<p>Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they</p>	<p>Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need</p>

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
210 Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		<p>need to be modified?</p> <p>We agree with the forms as drafted.</p> <p>Are the proposed two new optional forms listed below for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?</p> <p>On form EFS-007, we recommend the following changes:</p> <p>1. Question 1: remove the check box choices for what the party wishes to opt out of. It should only state: "...request to be exempt from the requirements for electronic filing and service in this case for the following reasons:" This is due to our recommendation for an "all or nothing" opt out model.</p> <p>2. Questions 1b: provide a check box list of acceptable hardship choices similar to what is provided on the standard fee waiver form.</p>	<p>to be modified?</p> <p>Based on other comments discussed above, some modifications have been made to the forms.</p> <p>Are the proposed two new optional forms listed below for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?</p> <p>1. The committees disagreed with this suggestion. There may be circumstances in which a party should be exempted from electronic filing or from electronic service, but not both.</p> <p>2. It is not necessary to provide a list. Especially because only represented parties will be requesting exemptions, a party's attorney can explain the undue hardship or substantial prejudice that warrants granting an exception.</p>
Question No.10 –Should these forms be made mandatory rather than optional?			
211 California Family Law Facilitator's Association By: Melanie Snider Vice President		<p>Should these forms be made mandatory rather than optional?</p> <p>If the forms remain optional, the court could make orders sua sponte which may eliminate</p>	<p>Should these forms be made mandatory rather than optional?</p> <p>The committees recommend that the forms be optional, as proposed.</p>

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
212 Martin Dean Essential Publishers LLC		<p>some of the problems created by the process that would ensue if the forms are mandatory.</p> <p>Should these forms be made mandatory rather than optional?</p> <p>Mandatory. This assures that court that the data will come to the court in the same format for each case and that all data will be included. These forms will be used by SRL's they need the guidance offered by mandatory forms.</p>	<p>Should these forms be made mandatory rather than optional?</p> <p>The committees recommend that the forms be optional, as proposed.</p>
213 Legal Aid Society of Orange County		<p>Should these forms be made mandatory rather than optional?</p> <p>These forms ought to be optional. As electronic filing is implemented, courts may find clauses or instructions that should be included to assist informing the public about its specific procedures.</p>	<p>Should these forms be made mandatory rather than optional?</p> <p>The committees recommend that the forms be optional, as proposed.</p>
214 State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim		<p>Should these forms be made mandatory rather than optional?</p> <p>The Committee could not come to a consensus as to whether the forms should be made mandatory or optional. The mandatory forms make it easier to adopt statewide, however optional forms make it easier for local courts to adapt to their procedures. Both methods have their advantages and disadvantages.</p>	<p>Should these forms be made mandatory rather than optional?</p> <p>The committees recommend that the forms be optional, as proposed.</p>
215 Superior Court of Los Angeles County		<p>Should these forms be made mandatory rather than optional?</p>	<p>Should these forms be made mandatory rather than optional?</p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
216 Superior Court of Orange County By: Jeff Wertheimer General Counsel		Optional. Should these forms be made mandatory rather than optional? The forms should be strongly recommended, but possibly provide for flexibility to accommodate those members of the public who are facing a deadline and unfamiliar with the forms.	The committees recommend that the forms be optional, as proposed. Should these forms be made mandatory rather than optional? The committees recommend that the forms be optional, as proposed.
217 Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		Should these forms be made mandatory rather than optional? Yes.	Should these forms be made mandatory rather than optional? The committees recommend that the forms be optional, as proposed.
218 Superior Court of San Diego County By: Michael M. Roddy Executive Officer		Should these forms be made mandatory rather than optional? The forms should not be mandatory.	Should these forms be made mandatory rather than optional? The committees recommend that the forms be optional, as proposed.
219 Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		Should these forms be made mandatory rather than optional? Yes. Mandatory to ensure consistency.	Should these forms be made mandatory rather than optional? The committees recommend that the forms be optional, as proposed.
Question No.11 – Are any other forms needed to implement the rules on mandatory e-filing?			
220 California Family Law Facilitator's Association		Are there any other forms needed to implement the rules on mandatory e-filing?	Are there any other forms needed to implement the rules on mandatory e-filing?

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
By: Melanie Snider Vice President		The answer to this question is unclear and probably will not be determined until the pilot project is implemented and the results of the pilot are analyzed.	The committees do not consider any additional forms to be necessary at this time, but based the courts' on experiences with mandatory e-filing and e-service may consider possible additional forms in the future.
221 Martin Dean Essential Publishers LLC		<p>Are any other forms needed to implement the rules on mandatory e-filing?</p> <p>No.</p>	<p>Are any other forms needed to implement the rules on mandatory e-filing?</p> <p>See response to comment 220.</p>
222 State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim		<p>Are any other forms needed to implement the rules on mandatory e-filing?</p> <p>Additional forms should be developed, as listed below:</p> <ul style="list-style-type: none"> • <i>Election Regarding Electronic Filing and Service</i> (mandatory); • <i>Information Sheet on Electronic Filing</i>, explaining exactly what opting in means; • <i>Information Sheet on Electronic Service</i>, specifying the file types and size of electronic documents that can be served, and that hyperlinks should be sent if files exceed a certain size; • <i>Information Sheet on Receipt of Electronic Service</i>, explaining that being subject to e-service means checking e-mail daily and being able to download PDFs and/or clicking through 	<p>Are any other forms needed to implement the rules on mandatory e-filing?</p> <p>See response to comment 220.</p>

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
223 Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		<p>hyperlinks, that spam filters should be adjusted and junk mail reviewed, suggesting that litigants have e-mail addresses specifically designated for litigation to avoid official court documents being mixed with other mail;</p> <ul style="list-style-type: none"> • <i>Request for Hearing about Exemption from Electronic Filing and Service;</i> • <i>Notice on Hearing about Exemption from Electronic Filing and Service;</i> • <i>Order on About Exemption from Electronic Filing and Service After Hearing.</i> 	<p>Are any other forms needed to implement the rules on mandatory e-filing?</p> <p>See response to comment 220.</p>
224 Superior Court of San Diego County By: Michael M. Roddy Executive Officer		<p>Are any other forms needed to implement the rules on mandatory e-filing?</p> <p>No.</p> <p>Are any other forms needed to implement the rules on mandatory e-filing?</p> <p>Trial courts should be allowed to develop additional forms they deem appropriate to implement mandatory e-filing.</p>	<p>Are any other forms needed to implement the rules on mandatory e-filing?</p> <p>See response to comment 220.</p>
225 Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		<p>Are any other forms needed to implement the rules on mandatory e-filing?</p> <p>No.</p>	<p>Are any other forms needed to implement the rules on mandatory e-filing?</p> <p>See response to comment 220.</p>
Question No.12 –Are any more specific rules needed on fee or fee waivers than are currently provided?			
226 California Commission on Access to	Are any more specific rules needed on fee or	Are any more specific rules needed on fee or	Are any more specific rules needed on fee or

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
Justice By: Hon. Ronald B. Robie Chair		To acquire a fee waiver a party must file a request to be determined by the judge who can waive fees. With e-filing, this request should not require a filing fee from either an attorney that represents a qualified party or from an indigent self represented party. The process for handling fee waivers is not outlined in detail in the regulations, and may require further study.	The committees do not consider any additional rules on fees or fee waivers to be necessary at this time, but based the courts' and the public's experiences with mandatory e-filing and e-service may consider possible additional rules on these subjects in the future.
227 California Family Law Facilitator's Association By: Melanie Snider Vice President		Are more specific rules needed on fee or fee waivers than are currently provided? The answer to this question is also unclear and probably will not be determined until the pilot project is implemented and the results of the pilot are analyzed.	Are more specific rules needed on fee or fee waivers than are currently provided? See response to comment 226.
228 Martin Dean Essential Publishers LLC		Are any more specific rules needed on fee or fee waivers than are currently provided? No.	Are more specific rules needed on fee or fee waivers than are currently provided? See response to comment 226.
229 Family Violence Law Center By: Rebecca Bauen Executive Director Oakland		Are any more specific rules needed on fee or fee waivers than are currently provided? (See comment 230 below by Legal Aid Association of California.)	Are more specific rules needed on fee or fee waivers than are currently provided? See response to comment 226.
230 Legal Aid Association of California By: Satena Copeland Directing Attorney		Are any more specific rules needed on fee or fee waivers than are currently provided?	Are more specific rules needed on fee or fee waivers than are currently provided?

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>L.AAC agrees with the recommendation of the working group to include the suggested language in rule 2.253(b) regarding permitting the court to charge only actual costs and requiring reasonable fees of the electronic filing service provider. Additionally, L.AAC agrees that the fees must be waived when deemed appropriate by the court. This means that, if mandatory e-filing is required, the court must provide a free way to file documents or require electronic filing service providers to allow for no-fee transmissions.</p> <p>Many self-represented litigants qualify for fee waivers and truly cannot afford the costs of litigation. If an attorney is able to represent them pro bono, it is important to keep the costs low despite the presence of an attorney. Pro bono clients remain responsible for the costs and passing on the cost of e-filing to the client could mean that litigation is cost prohibitive for some legal services' poorest clients.</p>	<p>See response to comment 226.</p>
<p>231 Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney</p>		<p>Are any more specific rules needed on fee or fee waivers than are currently provided?</p> <p>Specific rules should be developed regarding fees charged by electronic filing service providers (EFSP). The proposed rule states that fees should be "reasonable," but there are no provisions for review, judicial or otherwise, to determine reasonability. Fees charged by EFSPs may be prohibitive to many of the underserved, especially if e-filing is made opt-</p>	<p>Are more specific rules needed on fee or fee waivers than are currently provided?</p> <p>See response to comment 226.</p>

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>out rather than opt-in. Given this, as well as current demands upon the courts making judicial review inappropriate, a citizen committee or volunteer lawyer commission should be given authority to rule what fees charged by EFSPs are reasonable or not.</p> <p>Further if the courts wish to encourage e-filing by low-income litigants, particularly those being assisted by legal service providers and self-help centers, then fee waivers should also cover fees charged by EFSPs.</p>	<p>Code of Civil Procedure section 1010.6(d)(1)(B) provides: "Any fees charged by an electronic filing service provider...shall be waived when deemed appropriate by the court, including, but not limited to, for any party who has received a fee waiver." (See also rule 2.253(b)(6)).</p>
232	One Justice By: Linda S. Kim Deputy Director	<p>Are any more specific rules needed on fee or fee waivers than are currently provided? (See comment 230 above by LAAC [similar].)</p>	<p>Are more specific rules needed on fee or fee waivers than are currently provided? See response to comment 226.</p>
233	Public Law Center By: Elizabeth Gonzalez Lead Attorney	<p>Are any more specific rules needed on fee or fee waivers than are currently provided? (See comment 230 above by LAAC [similar].)</p>	<p>Are more specific rules needed on fee or fee waivers than are currently provided? See response to comment 226.</p>
234	State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim	<p>Are any more specific rules needed on fee or fee waivers than are currently provided? The charges assessed by e-filing service providers to low-income litigants who do not qualify for fee waivers are potentially significant to the litigants and to the attorneys who take their cases on flat-fee or reduced fee arrangements. The current range of charges in Orange County from \$9.00 to \$9.95 per filing</p>	<p>Are more specific rules needed on fee or fee waivers than are currently provided? See response to comment 226.</p>

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Commentator	Position	Comment	Committees' Response
		<p>can quickly become a substantial burden on the filer. In a collections defense action, for example, the service provider charges at the demurrer stage alone can approach \$100, not including the fees charged by the court. Any law and motion after that, as well as all filings required prior to trial, have the real possibility of eating up any margin for the attorney or, if shifted to the client, make it economically infeasible to defend the case. In its initial phase, e-filing charges may be affordable, but without some type of guidelines other than "reasonable," it is easy to foresee that providers will increase fees, effectively barring the courthouse door for many low-income litigants. The issue of charges by e-filing providers could be initially addressed by setting a ceiling of no more than four or five dollars per filing, with a review period after the system has been in place for a year.</p>	
235	Superior Court of Los Angeles County Los Angeles County Superior Court	<p>Are any more specific rules needed on fee or fee waivers than are currently provided?</p> <p>No.</p>	<p>Are more specific rules needed on fee or fee waivers than are currently provided?</p> <p>See response to comment 226.</p>
236	Superior Court of Orange County By: Jeff Wertheimer General Counsel	<p>Are any more specific rules needed on fee or fee waivers than are currently provided?</p> <p>No, this should be left to the discretion of the local trial courts.</p>	<p>Are more specific rules needed on fee or fee waivers than are currently provided?</p> <p>See response to comment 226.</p>
237	Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer	<p>Are any more specific rules needed on fee or fee waivers than are currently provided?</p>	<p>Are more specific rules needed on fee or fee waivers than are currently provided?</p>

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Commentator	Position	Comment	Committees' Response
238	Superior Court of San Diego County By: Michael M. Roddy Executive Officer	<p>Yes. Each EFSP must have a fee waiver process consistent with the court they are e-filing into.</p> <p>Are any more specific rules needed on fee or fee waivers than are currently provided?</p> <p>No. Our court believes the rules related to fees and fee waivers are sufficient.</p>	<p>See response to comment 226.</p> <p>Are more specific rules needed on fee or fee waivers than are currently provided?</p> <p>See response to comment 226.</p>
239	Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer	<p>Are any more specific rules needed on fee or fee waivers than are currently provided?</p> <p>No.</p> <p>This feedback is in alignment with the e-filing workstream participants.</p>	<p>Are more specific rules needed on fee or fee waivers than are currently provided?</p> <p>See response to comment 226.</p>
240	Western Center on Law and Poverty By: Mona Tawatao Senior Litigator	<p>Are any more specific rules needed on fee or fee waivers than are currently provided?</p> <p>(See comment 230 above by LAAC [similar].)</p>	<p>Are more specific rules needed on fee or fee waivers than are currently provided?</p> <p>See response to comment 226.</p>
Question No. 13 – How should the effective time of electronic filing and service be determined?			
241	California Family Law Facilitator's Association By: Melanie Snider Vice President	<p>How should the effective time of electronic filing and service be determined?</p> <p>Someone needs to analyze the effect on litigation—particularly in the situation where some litigants file electronically and others file in the traditional manner. This is because there may be an inequality created when a litigant with a paper filing is limited by the fact that the Clerk's office is closed yet the e-filer can file</p>	<p>How should the effective time of electronic filing and service be determined?</p> <p>The pilot study under AB 2073 and the proposed new provision in rule 2.253(d)(8) requiring courts to report on their mandatory electronic filing and service programs should provide more information.</p>

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Commentator	Position	Comment	Committees' Response
		<p>until midnight.</p> <p>Also, no one has mentioned a situation where the filing goes out and is later rejected and the person filing receives a "MAILER-DAEMON" notice that the e-filing was unsuccessful. An occurrence like this may either lead an e-filer to believe that something was filed and, in fact, it was not or it may lead to a situation in which filers can deceive the court and/or the other parties.</p>	<p>Based on the experiences of the courts and the public with e-filing, it should be possible to determine how often this situation arises and what should be done about it. For the court's responsibility to address problems that impede or preclude electronic filings that it becomes aware of, see rule 2.254 (b).</p>
242 Martin Dean Essential Publishers LLC		<p>How should the effective time of electronic filing and service be determined?</p> <p>In days gone by, the notion that extending the time for a user to file – until midnight – was thought of as an inducement filers to use electronic methods of delivering filings to the court. With mandatory filing this inducement becomes moot. Additionally midnight filings in electronic filings can and will cause general confusion amongst the entire filing population:</p> <ul style="list-style-type: none"> • If for example a county has required electronic filing for all civil cases, optional electronic filing for Probate, and no electronic filing for Family law cases, how do you expect a law firm staff to deal with two different filing times each day. • If in fact, the filing time for civil filings is set for midnight, and SRL's are 	<p>How should the effective time of electronic filing and service be determined?</p> <p>The commentator's support for the current "close of business" standard rather than the "file until midnight" standard is noted. For more on this subject, see report and comments 248 through 259 below.</p>

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
243 Los Angeles Center for Law and Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney		<p>allowed to file paper, doesn't that give a substantial advantage to those who file electronically.</p> <ul style="list-style-type: none"> • What will happen if some courts choose the midnight filing cut off and other courts choose the court window hours for cut off? It is not reasonable to expect filers to keep track of these rule variants. They're just not necessary. • Nope, we believe that there is absolutely no benefit to the filer or the court to extending the filing time beyond window hours. 	
244 State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim		<p>How should the effective time of electronic filing and service be determined?</p> <p>Effective times of electronic filing and service should ensure a level playing field between parties. . . .</p> <p>How should the effective time of electronic filing and service be determined?</p> <p>Effective times for e-filing and e-service should mirror current standards.</p>	<p>How should the effective time of electronic filing and service be determined?</p> <p>The commentator's concern is duly noted.</p>
245 Superior Court of Los Angeles County Los Angeles County Superior Court		<p>How should the effective time of electronic filing and service be determined?</p>	<p>How should the effective time of electronic filing and service be determined?</p> <p>The commentator's support for the current "close of business" standard is noted. For more on this subject, see report and comments 248 through 259 below.</p> <p>How should the effective time of electronic filing and service be determined?</p>

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>This decision should be determined after the pilot projects have had time to provide sufficient experiences.</p>	<p>As explained in the report, the committees' recommended approach is that the rules of court on mandatory electronic filing, effective July 1, 2013, should provide for the "close of business" standard but give individual courts the option of adopting instead the "file until midnight" standard by local rule. This will provide an opportunity for experimentation. The committees also recommend that courts with mandatory e-filing programs be required to provide semiannual reports to the Judicial Council to be used to evaluate the courts' different approaches and improve e-filing processes and procedures in the future.</p>
<p>246 Superior Court of Orange County By: Jeff Wertheimer General Counsel</p>		<p>How should the effective time of electronic filing and service be determined?</p> <p>There should be a uniform statewide rule permitting the "file until midnight" option – the second of the three options listed under CRC Rule 2.253(b)(7). This will be a significant benefit to the attorneys who will have more time to draft their pleadings, and very little hardship to the local courts. By giving attorneys more flexibility, it will provide an additional incentive for them to adopt e-filing.</p> <p>The third proposed option recommends basing the filing date on the time the document is transmitted to the court. This has the potential to create numerous conflicts over when a document was transmitted and whether the transmitted document was actually filed or even suitable for filing. It is the modern day</p>	<p>How should the effective time of electronic filing and service be determined?</p> <p>The court's support for the "file until midnight" standard is noted. As the pilot court under AB 2073, it is presently authorized by statute to experiment with this approach. Under the proposed rules, it could continue by local rule to experiment with this standard. (See amended rule 2.253(b)(7).) For more on this subject, see report and comments 248 through 259 below.</p>

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
247 Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		<p>equivalent of deeming a document filed the moment the messenger leaves the attorney's office and begins transporting it to court. The document can only be deemed filed at the point it is actually filed, not when it is transmitted to the court.</p> <p>How should the effective time of electronic filing and service be determined?</p> <p>Submission time should be captured by the e-filing system but acceptance or initiation time is determined by when the document is processed by the clerk.</p>	<p>How should the effective time of electronic filing and service be determined?</p> <p>The rules would be amended to clarify the distinction between the time of receipt of the filing (which determines the effective date and time of the filing) and the subsequent acceptance of the filing by the court. See amended rules 2.250(b)(7), 2.253(b)(7), and 2.259(c).</p>
<p>Question No.14 –Should the “close of business,” the “file until midnight,” or the “time of transmission” standard—or some other standard—be adopted for determining the effective date of electronic filings?</p>			
248 California Family Law Facilitator's Association By: Melanie Snider Vice President		<p>Should the “close of business”, the “file until midnight” or the “time of transmission” standard-or some other standard-be adopted for determining the effective date of electronic filings?</p> <p>It should be “close of business” with the court. This is because it is inherently unfair to allow someone with access to a computer to file at midnight but the opposing side—who may be already disadvantaged because of the financial disparity between the parties—must file by “close of business” at the Clerk’s office, which</p>	<p>Should the “close of business”, the “file until midnight” or the “time of transmission” standard-or some other standard-be adopted for determining the effective date of electronic filings?</p> <p>The commentators are clearly divided on the issue of whether the close of business” or the “file until midnight” standard should be adopted. The committees recommend that the rules of court on mandatory electronic filing, effective July 1, 2013, provide for the “close of business” standard, but give individual courts the option of adopting</p>

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>in some counties is as early as 1 or 2 o'clock each day.</p>	<p>instead the "file until midnight" standard by local rule. (See amended rules 2.253(b)(7) and 2.259(c).) This flexibility will give the courts an opportunity to experiment and will generate further information on which a more definite decision about the better standard can be made in the future.</p> <p>The committees also recommend that courts that establish mandatory e-filing programs report to the Judicial Council on their experiences, including their experiences with different effective times of filing. (See amended rule 2.253(b)(8).) The Superior Court of Orange County already needs to provide information on its pilot project under AB 2073. The additional reporting requirement in rule 2.253 will ensure that information from other courts' mandatory e-filing programs will also be available to the Judicial Council.</p>
249	Martin Dean Essential Publishers LLC	<p>Should the "close of business," the "file until midnight," or the "time of transmission" standard--or some other standard--be adopted for determining the effective date of electronic filings?</p> <p>See comment 242 above.</p>	<p>Should the "close of business," the "file until midnight," or the "time of transmission" standard--or some other standard--be adopted for determining the effective date of electronic filings?</p> <p>See response to comment 248 above.</p>
250	Julie A. Goren, Attorney Lawdable Press	<p>Should the "close of business," the "file until midnight," or the "time of transmission" standard--or some other standard--be adopted for determining the effective date of electronic filings?</p>	<p>Should the "close of business," the "file until midnight," or the "time of transmission" standard--or some other standard--be adopted for determining the effective date of electronic filings?</p>

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>First, practitioners have been used to 5:00 deadlines for decades. Extending the deadline to midnight cannot be necessary, and I cannot see how it could benefit anyone, particularly the attorneys and staff forced to work so late.</p> <p>Second, there historically has been concern over ensuring a level playing field between eFilers and non. A midnight deadline for eFilers is as unlevel as it could get.</p> <p>Third, given the fact that the new rules propose to require that eFilers eServe, and the likely scenario is that eFilers will have their EFSP's do both simultaneously, the midnight deadline is problematic because it would be different from the current eService deadline. This presents a potential trap for the unwary. The eFiling and eService deadlines need to be the same (more below), and to accomplish this, the provisions re eFiling and the provisions re eService must be revised.</p> <p>With regard to the eFiling deadline, CCP 1010.6(b)(3) currently provides that "close of business" means "5 p.m. or the time at which the court would not accept filing at the court's filing counter, whichever is earlier." (emphasis added) It is my recollection that when it was passed, courts routinely were open until 5 p.m., so that the "whichever is earlier" language was of no moment (and now most practitioners probably don't even realize that the language is</p>	<p>See response to comment 248 above.</p>

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>there). I recall it being written this way so that eFilers would not get an advantage over paper filers by being able to file later.</p> <p>With today's court closures and limited service days, it makes no sense. Surely there is no reason to peg the time to the court's filing counter in any event. If pegged to anything, it should be the court's drop box, typically open 1-2 hours later than the filing counter. So, one fix could be changing "whichever is earlier" to "whichever is later" (likely 5:00 p.m.).</p> <p>However, for purposes of uniformity, I think the eFiling deadline for all cases should simply be 5:00 p.m. Then the eService deadline needs to be changed to match that.</p> <p>With regard to the eService deadline, mirroring CCP 1010.6(b)(3), current CRC Rule 2.250(b)(10) provides that "Close of business" is 5 p.m. or any other time on a court day at which the court stops accepting documents for filing at its filing counter, whichever is earlier." (emphasis added) Current CRC 2.251(f)(4) provides that "Service that occurs after the close of business is deemed to have occurred on the next court day."</p> <p>Although unlikely the intent of the drafters, read literally, someone who eServes notice of an MSJ at 3:15 p.m. on the last day to do so via eService in a court whose filing counter happens to close at 3:00 p.m. that day was too late.</p>	

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
251 Legal Aid Society of Orange County		<p>Similarly, if a midnight eFiling deadline goes into effect and the eService provision either remains as is or is changed to 5:00 p.m., then someone simultaneously eFiling and eServing at 11:45 p.m. would satisfy the eFiling deadline but blow the eService deadline if they are eFiling and eServing on the last day to do so.</p> <p>This type of trap needs to be avoided. Calculating deadlines in CA is difficult enough already. Certainty and uniformity – a 5:00 p.m. eFiling deadline and a 5:00 p.m. eService deadline for all cases – will do just that. Speaking of uniformity, the deadline to serve by mail is 5:00 p.m. The deadline to serve by fax is 5:00 p.m. The deadline to serve personally is 5:00 p.m. The eService deadline should be no different.</p> <p>Should the “close of business,” the “file until midnight,” or the “time of transmission” standard—or some other standard—be adopted for determining the effective date of electronic filings?</p> <p>LASOC believes that the standard should be file until midnight. This would allow greater access for clients who come in after the close of business, as well as evening clinics, to be able to e-file their documents. This is particularly important for litigants who need to file answers to an Unlawful Detainer action.</p>	<p>Should the “close of business,” the “file until midnight,” or the “time of transmission” standard—or some other standard—be adopted for determining the effective date of electronic filings?</p> <p>See response to comment 248 above.</p>
252 Los Angeles Center for Law and			<p>Should the “close of business,” the “file until</p>

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

	Commentator	Position	Comment	Committees' Response
	<p>Justice By: Suma Mathai, JD/MSW Supervising Family Law Attorney</p>		<p>midnight," or the "time of transmission" standard—or some other standard—be adopted for determining the effective date of electronic filings?</p> <p>The current standard should be maintained, that is determining that any document e-filed with the court after the close of business (which should be a standard time such as 5pm, since different courts close at different times) on any day is deemed to have been filed on the next court date. This is to ensure fairness to those who do not have the resources to e-file and must do so before the close of business and not give an unfair advantage to those who do have the resources to e-file and may do so before midnight.</p>	<p>midnight," or the "time of transmission" standard---or some other standard-be adopted for determining the effective date of electronic filings?</p> <p>See response to comment 248 above.</p>
253	<p>Public Law Center By: Elizabeth Gonzalez Lead Attorney</p>		<p>Should the "close of business," the "file until midnight," or the "time of transmission" standard—or some other standard—be adopted for determining the effective date of electronic filings?</p> <p>We are suggesting that the cut-off for filing should be the time of the court closure. Setting the cut-off for filing at 11:59 pm may create a challenge for self-represented parties who have opted out of electronic filing and service. This situation would likely manifest itself during motion practice when the moving party files a motion at 11:59 pm the day the motion is due. A self-represented party who is, according to the Code, required to receive personal service of</p>	<p>Should the "close of business," the "file until midnight," or the "time of transmission" standard---or some other standard-be adopted for determining the effective date of electronic filings?</p> <p>See response to comment 248 above.</p>

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
254 State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) By: Sharon Ngim		<p>the motion by close of business may not be served until the following day, effectively depriving the litigant of the notice required under the Code. In addition, self-represented parties who do not opt-in to electronic filing would have less time to prepare filings if they are required to file at the clerk's window by 4:00 pm (or other close of business) but their opponent is allowed to electronically file until 11:59 pm.</p> <p>Should the "close of business," the "file until midnight," or the "time of transmission" standard—or some other standard—be adopted for determining the effective date of electronic filings?</p> <p>Ultimately no consensus was reached by SCDLS on how to best answer this question. The Committee was able to see benefits and drawbacks to both allowing for the "file until Midnight" standard as well as for "file until 5 PM" standard. No member of the Committee was in favor of a "close of business" standard as currently defined in Code of Civil Procedure section 1010.6(b)(3), as this would allow for wide variations in filing times – which continue to change – dependent upon the different courts and different days of the week.</p> <p>Some members felt that allowing for a "file until Midnight" standard would allow for those assisting low-income litigants to be able to e-file after normal business hours. Yet this would</p>	<p>Should the "close of business," the "file until midnight," or the "time of transmission" standard—or some other standard—be adopted for determining the effective date of electronic filings?</p> <p>See response to comment 248 above.</p>

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		<p>also allow for those opposing low-income litigants to take advantage of e-filing to the detriment of low-income or self-represented litigants. An example of this would be a landlord's attorney filing for default during the night, when a low-income or self-represented litigant would be unable to file during that time due to lack of resources. Before, the litigant would be able to file an answer with the court by going in person and being the first to file, perhaps even after the statutory deadline has passed; now the landlord's attorney is able to file for default during the night, depriving the low-income or self-represented litigant the opportunity to file an answer.</p> <p>Other members favored a "file at 5 PM" standard, which would provide less of a difference between the time allowed for paper filing and electronic filing than a midnight e-filing deadline, but would create a uniform statewide deadline for e-filing, unlike the "close of business" deadline. Yet this standard would deprive those assisting low-income and self-represented litigants the opportunity to e-file file after normal business hours.</p>	
255	Superior Court of Los Angeles County	<p>Should the "close of business," the "file until midnight," or the "time of transmission" standard—or some other standard—be adopted for determining the effective date of electronic filings?</p> <p>Close of business. Adopting this standard would</p>	<p>Should the "close of business," the "file until midnight," or the "time of transmission" standard—or some other standard—be adopted for determining the effective date of electronic filings?</p> <p>See response to comment 248 above.</p>

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
256 Superior Court of Orange County By: Jeff Wertheimer General Counsel		provide for a consistent standard for all filings regardless of the process by which they are received. Should the "close of business," the "file until midnight," or the "time of transmission" standard---or some other standard---be adopted for determining the effective date of electronic filings? See [comment 246] above.	Should the "close of business," the "file until midnight," or the "time of transmission" standard---or some other standard---be adopted for determining the effective date of electronic filings? See response to comments 246 and 248 above.
257 Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		Should the "close of business," the "file until midnight," or the "time of transmission" standard---or some other standard---be adopted for determining the effective date of electronic filings? 'Time of Transmission' should never be used as the standard. 'Time of Receipt at the court' should be the standard. File until midnight has most appeal because all courts across the state do not close at the same time. This is also a tangible benefit of e-filing for the filers but may put a burden on the court.	Should the "close of business," the "file until midnight," or the "time of transmission" standard---or some other standard---be adopted for determining the effective date of electronic filings? See response to comment 248 above.
258 Superior Court of San Diego County By: Michael M. Roddy Executive Officer		Should the "close of business," the "file until midnight," or the "time of transmission" standard---or some other standard---be adopted for determining the effective date of electronic filings? Our court believes the rules should adopt a close of business standard. With the severe staffing	Should the "close of business," the "file until midnight," or the "time of transmission" standard---or some other standard---be adopted for determining the effective date of electronic filings? See response to comment 248 above.

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
259 Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		<p>shortages, allowing filing until midnight would backlog items for processing by court staff the next business day and this would make it more difficult to process emergency requests in a timely manner. It also would create inconsistency in the code related to when documents must be filed, which would be unmanageable for court personnel. Our court also believe that this makes it fair for all litigants because some, like self-represented parties, may not have access to e-filing, which would put them on an unequal playing field.</p> <p>Should the "close of business," the "file until midnight," or the "time of transmission" standard—or some other standard—be adopted for determining the effective date of electronic filings?</p> <p>We recommend "close of business as determined by the court." This option provides equal access to justice and ensures consistency at a specific court without imposing a particular time on all courts.</p> <p>This does not eliminate the option for a party to submit the document after hours, however it will not be considered filed until it is processed by a clerk during business hours.</p>	<p>Should the "close of business," the "file until midnight," or the "time of transmission" standard—or some other standard—be adopted for determining the effective date of electronic filings?</p> <p>See response to comment 248 above.</p>
<p>Question No.15 –Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?</p>			
260	California Family Law Facilitator's	Regardless of what standard is adopted,	Regardless of what standard is adopted, should

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W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
<p>Association By: Melanie Snider Vice President</p>		<p>should the standard be uniform for voluntary and mandatory e-filing? Yes, for the same reasons listed in the answer to question [14].</p>	<p>the standard be uniform for voluntary and mandatory e-filing? Though uniformity remains the eventual goal, the committees recommend that the rules of court on mandatory electronic filing, effective July 1, 2013, provide for the "close of business" standard, but give individual courts the option of adopting instead the "file until midnight" standard by local rule. (See amended rules 2.253(b)(7) and 2.259(c).) This flexibility will give the courts an opportunity to experiment and will generate further information on which a more definite decision about the better standard can be made in the future.</p>
<p>261 Martin Dean Essential Publishers LLC</p>		<p>Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing? Yes, see above.</p>	<p>Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing? See response to comment 260.</p>
<p>262 Legal Aid Society of Orange County</p>		<p>Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing? The standard should be made uniform in order to reduce confusion.</p>	<p>Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing? See response to comment 260.</p>
<p>263 Superior Court of Los Angeles County Los Angeles County Superior Court</p>		<p>Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing? Yes.</p>	<p>Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing? See response to comment 260.</p>

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
264 Superior Court of Orange County By: Jeff Wertheimer General Counsel		Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing? Yes.	Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing? See response to comment 260.
265 Superior Court of Riverside County By: Sherri R. Carter Court Executive Officer		Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing? Uniform.	Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing? See response to comment 260.
266 Superior Court of San Diego County By: Michael M. Roddy Executive Officer		Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing? Yes, it would be extremely difficult for court staff to have to stop and determine whether the case upon which a filing received is voluntary or mandatory e-filing, and then apply a different deadline based upon the case type. In addition, our court does not have an easy way to indicate whether a case is voluntary or mandatory e-file, which would make it even more time consuming for staff to attempt to make this determination.	Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing? See response to comment 260.
267 Superior Court of Santa Clara County By: Robert Oyung Chief Technology Officer		Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing? Yes. To ensure consistency.	Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing? See response to comment 260.

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

W13-05

Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250–2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
		This feedback is in alignment with the e-filing workstream participants.	
<i>Question No.16 –If the “file until midnight” standard is to be adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?</i>			
268 California Family Law Facilitator's Association By: Melanie Snider Vice President		If the “file until midnight” or “time of transmission” standard is adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing? It should be postponed until legislation is enacted or at least until enough time has passed after implementation of the Orange County pilot project so that some analysis can be made regarding the effects of the various times for filing.	If the “file until midnight” or “time of transmission” standard is adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing? See response to comment 260.
269 California Judges Association By: Jordan Posamentier, Esq. Legislative Counsel		If the “file until midnight” or “time of transmission” standard is adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing? You asked for feedback as to how to resolve the standard for the effective date of filing. CJA	If the “file until midnight” or “time of transmission” standard is adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing? See response to comment 260.

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

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Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service (amend rules 2.250-2.254, 2.256, 2.258, and 2.259)

Commentator	Position	Comment	Committees' Response
270 Martin Dean Essential Publishers LLC		<p>recommends adopting the "close of business" rule. It avoids problems that otherwise arise with the "up to midnight" rule, as the proposal discusses.</p> <p>If the "file until midnight" or "time of transmission" standard is to be adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?</p> <p>As we've stated two different standards for electronic filers and papers files; two different standards for filers amongst case types; and different standards between different courts, far outweigh any purported convenience of midnight filing. Although we know that the Federal Pacer system allows for midnight filing, this is a uniform standard applied to all filers in all Pacer courts. That works. But what happens when we file a case at 1:59 pm on the day that a statute of limitations expires, while the court paper filing window has closed at 4:00 pm the same day. Are we now providing additional benefits to electronic filers in extending the Statute by 1/3 of a day? It's just not necessary.</p>	<p>If the "file until midnight" or "time of transmission" standard is adopted for electronic filings, should this standard be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making the standard applicable to both voluntary and mandatory e-filing?</p> <p>See response to comment 260.</p>
271 Superior Court of Los Angeles County		<p>If the "file until midnight" or "time of transmission" standard is to be adopted for electronic filings, should this standard be</p>	<p>If the "file until midnight" or "time of transmission" standard is adopted for electronic filings, should this standard be made</p>

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