

## Invitation to Comment

Title	<b>Electronic Filing and Service by Fax (amend Cal. Rules of Court, rules 2.250, 2.253, 2.256, 2.257, 2.259, 2.260, and 2.306)</b>
Summary	Electronic filing and fax filing are being used more frequently in the courts. It is therefore important that the current rules on e-filing and fax filing be updated to reflect changes in practice and to improve their application. The proposed amendments are intended to achieve those purposes.
Source	Court Technology Advisory Committee Justice Ming W. Chin, Chair
Staff	<p>Christopher Smith, Senior Business Systems Analyst, 415-865-7416, christopher.smith@jud.ca.gov</p> <p>Patrick O'Donnell, Supervising Attorney, 415-865-7665, patrick.o'donnell@jud.ca.gov</p>
Discussion	<p><i>Rule 2.250 (Definitions)</i> The definition of “electronic filer” in rule 2.250(3) would be amended to clarify that the term means a party filing a document with the court in electronic form either directly or through an electronic filing service provider. In addition, a new definition of “electronic notification address” would be added in rule 2.250(8). This term would mean “the e-mail address of a party or the proxy address of a third party through which a party is to be electronically served.”</p> <p><i>Rule 2.253 (Court order requiring electronic service or filing)</i> This rule would be amended to clarify that the court, in an appropriate type of case, may order all documents to be served electronically, or filed electronically, or both served and filed electronically.<sup>1</sup></p> <p><i>Rule 2.256 (Responsibilities of electronic filer)</i> This rule would be amended to add the following sentence at the end of subdivision (b): “If a document is filed electronically under the rules in this chapter and cannot be formatted consistent with a formatting rule elsewhere in the California Rules of Court,</p>

<sup>1</sup> This proposal to amend rule 2.253 was recommended by the Civil and Small Claims Advisory Committee. The Court Technology Advisory Committee supports the proposal and includes it in this extensive set of rule proposals on e-filing and service being circulated for public comment.

the rules in this chapter prevail.” Thus, a document may be filed electronically under the e-filing rules, even though it would not comply with rule 2.113 requiring a firm binding at the top of the papers filed, rule 2.115 requiring two-hole punching, or rule 3.1110(f) requiring the insertion between exhibits of hard paper or plastic taps extending below the bottom of the page.

*Rule 2.257 (Judicial signatures)*

Rule 2.257 would be amended to add a new subdivision that provides: “If a document requires a signature by a court or a judicial officer, the document may be electronically signed in any manner provided by law.”

*Rule 2.259 (Actions by court on receipt of electronic filing)*

Rule 2.259(a)(1) would be amended to reflect the new definition of “electronic filer” and to include the statement: “A document is considered received at the date and time the confirmation of receipt is created.”

*Rule 2.260 (Electronic service)*

Several changes are proposed to rule 2.260 on electronic service. First, subdivision (a) would be amended to include a new subpart (3), which would provide that a party who has consented to electronic service and has used an electronic filing service provider to file and serve documents consents to service on that electronic filing service provider as the designated agent for service for the party in the case. (See amended rule 2.260(a)(3).)

Second, new subdivision (b) would be added requiring by January 1, 2009, or before if possible, each court that permits electronic filing in a case to maintain an electronic service list. The court would also be required to make the service list available electronically to the parties. The service list would contain the current electronic notification addresses as provided by the parties that have filed electronically in the case. (See amended rule 2.260(b).)

Third, a new subdivision (c) would be added specifying that, notwithstanding (b), parties are responsible for electronic service on all other parties in the case. This subdivision would further state that a party may serve documents electronically either directly or through a designated electronic filing service provider. (See amended rule 2.260(c).)

Fourth, the current subdivision on notification of change of electronic address would be located in amended subdivision (d). A new subpart (2) would be added to this subdivision stating that a party's election to contract with an electronic filing service provider to file and serve documents electronically does not relieve the party of its responsibility to promptly provide notice of any changes in its electronic notification address under subpart (1) to all parties and the court. (See amended rule 2.260(d)(1)–(2).)

If the preceding changes are made to rule 2.260, the remaining subdivisions in the rule would be relettered.

*Rule 2.306 (Service of papers by fax transmission)*

A new subdivision (b) on service lists would be added to rule 2.306 on service of papers by fax transmission. This subdivision would contain a new subpart (1) on the duties of the first-named plaintiff or petitioner in a case where the parties have agreed to service by fax. The plaintiff or petitioner would be obligated to maintain a current list of the parties that includes their fax numbers for service and furnish the list on request to any party or the court. (See 2.306(a)(1).)

Subdivision (b) would also contain a new subpart (2) requiring each party in cases involving fax filing to (1) furnish the first-named plaintiff or petitioner with its current fax number when it first appears in the action, and (2) serve a copy of the service list with the fax numbers on new parties to the action.

If the preceding changes are made to rule 2.306, the remaining subdivisions in the rule would be relettered.

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Attachment

## Rules Proposal

Rules 2.250, 2.253, 2.256, 2.257, 2.259, 2.260, and 2.306 of the California Rules of Court would be amended, effective January 1, 2008, to read as follows:

### 1 **Rule 2.250. Definitions**

2  
3 (1)–(2) \* \* \*

4  
5 (3) An “electronic filer” is a party filing a document in electronic form either  
6 directly with the court or through an electronic filing service provider.

7  
8 (4)–(7) \* \* \*

9  
10 (8) “Electronic notification address” means the e-mail address of a party or the  
11 proxy address of a third party through which a party is to be electronically  
12 served.

### 13 **Rule 2.253. Court order requiring electronic ~~filing and service~~ service or** 14 **filing**

#### 15 16 17 (a) **Court order:**

18  
19 The court may, on the motion of any party or on its own motion, after finding  
20 that such an order would not cause undue hardship or significant prejudice to  
21 any party, order all parties to serve and file all documents electronically in  
22 any class action, a consolidated action, a group of actions, a coordinated  
23 action, or an action that is complex under rule 3.403, after finding that such  
24 an order would not cause undue hardship or significant prejudice to any  
25 party. The court’s order may also provide that: to:

26  
27 (1) Serve all documents electronically;

28  
29 (2) File all documents electronically; or

30  
31 (3) Serve and file all documents electronically.

#### 32 33 (b) **Additional provisions of order**

34  
35 The court’s order may also provide that:

36  
37 (1) Documents previously filed in paper form may be resubmitted in  
38 electronic form; and

- 1  
2 (2) When the court sends confirmation of filing to all parties, receipt of the  
3 confirmation constitutes service of the filing.  
4

5 **~~(b)~~(c) Filing in paper form**  
6

7 When it is not feasible for a party to convert a document to electronic form  
8 by scanning, imaging, or another means, a court may allow that party to  
9 serve, file, or serve and file the document in paper form.  
10

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

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

15 \* \* \*  
16

17 **(b) Format of documents to be filed electronically**  
18

19 A document that is filed electronically with the court must be in a format  
20 specified by the court unless it cannot be created in that format. The format  
21 adopted by a court must meet the following requirements:  
22

- 23 (1) The software for creating and reading documents must be in the public  
24 domain or generally available at a reasonable cost.  
25  
26 (2) By January 1, 2020, any format adopted by the court must allow for full  
27 text searching. Documents not available in a format that permits full text  
28 searching must be scanned or imaged as required by the court, unless  
29 the court orders that scanning or imaging would be unduly burdensome.  
30 By January 1, 2020, such scanning or imaging must allow for full text  
31 searching to the extent feasible.  
32  
33 (3) The printing of documents must not result in the loss of document text,  
34 format, or appearance.  
35

36 If a document is filed electronically under the rules in this chapter and cannot  
37 be formatted consistent with a formatting rule elsewhere in the California  
38 Rules of Court, the rules in this chapter prevail.  
39

40 **Rule 2.257. Requirements for signatures on documents**  
41

42 **(a)–(d) \* \* \***  
43

44 **(e) Judicial signatures**

1  
2 If a document requires a signature by a court or a judicial officer, the  
3 document may be electronically signed in any matter permitted by law.  
4

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

6  
7 **(a) Confirmation of receipt and filing of document**

8  
9 (1) *Confirmation of receipt*

10  
11 When a court receives an electronically submitted document ~~directly~~  
12 ~~from the filer and not through an electronic filing service provider~~, the  
13 court must promptly send the electronic filer confirmation of the court's  
14 receipt of the document, indicating the date and time of receipt. A  
15 document is considered received at the date and time the confirmation  
16 of receipt is created.  
17

18 (2)–(4) \* \* \*

19  
20 **(b)–(f) \* \* \***

21  
22 **Rule 2.260. Electronic service**

23  
24 **(a) Consent to electronic service**

25  
26 (1) When a notice may be served by mail, express mail, overnight delivery,  
27 or fax transmission, electronic service of the notice is permitted.

28  
29 (2) A party indicates that he or she agrees to accept electronic service by:

30  
31 (A) Filing and serving a notice that the party accepts electronic service.  
32 The notice must include the electronic notification address at  
33 which the party agrees to accept service; or

34  
35 (B) Electronically filing any document with the court. The act of  
36 electronic filing is evidence that the party agrees to accept service  
37 at the electronic notification address the party has furnished to the  
38 court under rule 2.256(a)(4).  
39

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

1  
2 **(b) Maintenance of electronic service lists**

3  
4 By January 1, 2009, or before if possible, a court that permits electronic  
5 filing in a case must maintain and make available electronically to the parties  
6 an electronic service list that contains the current electronic notification  
7 addresses, as provided by the parties that have filed electronically in the case.  
8

9 **(c) Service by the parties**

10  
11 Notwithstanding (b), parties are responsible for electronic service on all  
12 other parties in the case. A party may serve documents electronically either  
13 directly or through a designated electronic filing service provider.  
14

15 **(d) Change of electronic notification address**

- 16  
17 (1) A party whose electronic notification address changes while the action  
18 or proceeding is pending must promptly file a notice of change of  
19 address electronically with the court and must serve this notice  
20 electronically on all other parties.  
21  
22 (2) A party's election to contract with an electronic filing service provider  
23 to electronically file and serve documents or to receive electronic  
24 service of documents on the party's behalf does not relieve the party of  
25 its duties under (1).  
26  
27 (3) An electronic notification address is presumed valid for a party if the  
28 party files electronic documents with the court from that address and has  
29 not filed and served notice that the address is no longer valid.  
30

31 **(b)(e) When service is complete**

- 32  
33 (1) Electronic service is complete at the time of transmission.  
34  
35 (2) If a document is served electronically, any period of notice, or any right  
36 or duty to act or respond within a specified period or on a date certain  
37 after service of the document, is extended by two court days.  
38  
39 (3) The extension under (2) does not extend the time for filing:  
40  
41 (A) A notice of intent to move for a new trial;  
42  
43 (B) A notice of intent to move to vacate the judgment under Code of  
44 Civil Procedure section 663a; or

1  
2 (C) A notice of appeal.

3  
4 (4) Service that occurs after the close of business is deemed to have  
5 occurred on the next court day.

6  
7 **(e)(f) Proof of service**

8  
9 (1) Proof of electronic service may be by any of the methods provided in  
10 Code of Civil Procedure section 1013(a), except that the proof of  
11 service must state:

12  
13 (A) The electronic notification address of the person making the  
14 service, in place of that person's residence or business address;

15  
16 (B) The date and time of the electronic service, instead of the date and  
17 place of deposit in the mail;

18  
19 (C) The name and electronic notification address of the person served,  
20 in place of that person's name and address as shown on the  
21 envelope; and

22  
23 (D) That the document was served electronically and the transmission  
24 was reported as complete and without error, in place of the  
25 statement that the envelope was sealed and deposited in the mail  
26 with postage fully prepaid.

27  
28 (2) Proof of electronic service may be in electronic form and may be filed  
29 electronically with the court.

30  
31 (3) Under rule 3.1300(c), proof of service of the moving papers must be  
32 filed at least five calendar days before the hearing.

33  
34 (4) The party filing the proof of service must maintain the printed form of  
35 the document bearing the declarant's original signature and must make  
36 the document available for inspection and copying on the request of the  
37 court or any party to the action or proceeding in which it is filed, in the  
38 manner provided in rule 2.257(a).

39  
40 **~~(d) Change of electronic notification address~~**

41  
42 ~~(1) A party whose electronic notification address changes while the action~~  
43 ~~or proceeding is pending must promptly file a notice of change of~~



1 address with the court electronically and must serve this notice on all  
2 other parties.

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

7  
8 **(e)(g) Electronic service by court**

9  
10 The court may electronically serve any notice, order, judgment, or other  
11 document issued by the court in the same manner that parties may serve  
12 documents by electronic service.

13  
14 **Rule 2.306. Service of papers by fax transmission**

15  
16 **(a) Service by fax**

17  
18 (1) *Agreement of parties required*

19  
20 Service by fax transmission is permitted only if the parties agree and a  
21 written confirmation of that agreement is made.

22  
23 (2) *Service on last-given fax number*

24  
25 Any notice or other document to be served must be transmitted to a fax  
26 machine maintained by the person on whom it is served at the fax  
27 machine telephone number as last given by that person on any document  
28 that the party has filed in the case and served on the party making  
29 service.

30  
31 **(b) Service lists**

32  
33 (1) Duties of first-named plaintiff or petitioner

34  
35 In a case in which the parties have agreed to service by fax, the plaintiff  
36 and petitioner named first in the complaint or petition, in addition to its  
37 responsibilities under rule 3.254, must:

38  
39 (A) Maintain a current list of the parties that includes their fax numbers  
40 for service of notice on each party; and

41  
42 (B) Furnish a copy of the list on request to any party or the court.

43  
44 (2) Duties of each party

1  
2 In a case in which the parties have agreed to service by fax, each party,  
3 in addition to its responsibilities under rule 3.254, must:

4  
5 (A) Furnish the first-named plaintiff or petitioner with its current fax  
6 number for service of notice when it first appears in the action; and

7  
8 (B) If it serves an order, notice, or pleading on a party who had not yet  
9 appeared in the action, serve a copy of the service list under (1) at  
10 the same time as the order, notice, or pleading is served.

11  
12 **(b)(c) Transmission of papers by court**

13  
14 \* \* \*

15  
16 **(e)(d) Notice period extended**

17  
18 \* \* \*

19  
20 **(d)(e) Extension inapplicable to certain motions**

21  
22 \* \* \*

23  
24 **(e)(f) Availability of fax**

25  
26 \* \* \*

27  
28 **(f)(g) When service complete**

29  
30 \* \* \*

31  
32 **(g)(h) Proof of service by fax**

33  
34 \* \* \*

## Item SPR07-22 Response Form

**Title:** Electronic Filing and Service by Fax (amend Cal. Rules of Court, rules 2.250, 2.253, 2.256, 2.257, 2.259, 2.260, and 2.306)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

**Address:** Ms. Camilla Kieliger,  
Judicial Council, 455 Golden Gate Avenue,  
San Francisco, CA 94102  
**Fax:** (415) 865-7664      **Attention:** Camilla Kieliger  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

**DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 20, 2007**

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council,  
the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.  
All comments will become part of the public record of the council's action.*