

# Attachment A

*"The Unified Voice of Legal Services"*



January 23, 2013

Attn: Invitations to Comment  
Administrative Office of the Courts  
455 Golden Gate Ave.  
San Francisco, CA 94102  
invitations@jud.ca.gov

**Re: Public Comment re: Item W13-05,  
Mandatory E-Filing: Uniform Rules To Implement Assembly Bill 2073**

To Whom It May Concern:

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.

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.

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.

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.

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 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.

### **Threshold Question**

**Should self-represented parties be exempt from mandatory e-filing?**

#### **Answer:**

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.

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 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.

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.

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.

### **Other Questions**

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.

Requiring an opt-out procedure will increase the burden on the courts because self-represented litigants will inevitably require individualized 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.

LAAC 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.

#### **Question:**

**If not, what procedures and criteria for exemptions should apply to self-represented persons requesting hardship exemptions?**

#### **Answer:**

LAAC strongly urges the Judicial Council to adopt an exemption for self-represented parties. 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."



However, if a litigant requests a fee waiver, she should be *allowed* to opt-in, but providing an automatic exemption for litigants filing a fee waiver could simplify the process. No fee waivers should be required to be filed electronically.

**Question:**

**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?**

**Answer:**

If self-represented litigants must opt-out, the procedure must be simple. The "Request for Exemption From Electronic Filing and Service" meets that requirement.

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.

**Question:**

**Are any more specific rules needed on fee or fee waivers than are currently provided?**

**Answer:**

LAAC 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, LAAC 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.

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.

### **Additional concerns**

#### **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 reiterate 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 established 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.

#### **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.

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.

#### **Phase in Courts Requiring Mandatory E-filing**

LAAC 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.

#### **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.

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.

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 have additional time to respond to filings."

#### **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 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.

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.

Thank you for your consideration,

Salena Copeland  
Directing Attorney  
Legal Aid Association of California

# Attachment B



January 25, 2013

Attn: Invitations to Comment  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102

Re: Comments of IOLTA-Funded California Disability Advocacy Organizations  
re Proposed Mandatory E-Filing and E-Service Rules to Implement AB 2073  
Item Number: W13-05

Submitted via Electronic Mail to [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

To Whom It May Concern:

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").

Our four offices are either solely or significantly devoted to advancing and protecting the civil rights of people with disabilities. All signatories have an extensive presence in California, and are nationally recognized for their decades-long experience with and expertise in both federal and California disability civil rights law analysis. Additional description of each of the signatory offices, with complete addresses, is attached as Appendix A.

Respectfully submitted,

DRC by Catherine J. Blakemore, [catherine.blakemore@disabilityrightscalifornia.org](mailto:catherine.blakemore@disabilityrightscalifornia.org)  
DREDF by Linda D. Kilb, [lkilb@dredf.org](mailto:lkilb@dredf.org)  
DRLC by Paula D. Pearlman, [paula.pearlman@lls.edu](mailto:paula.pearlman@lls.edu)  
DRLC by Lani M. Sen Woltman, [lani.woltmann@lls.edu](mailto:lani.woltmann@lls.edu)  
LAS-ELC by Claudia B. Center, [center@las-elc.org](mailto:center@las-elc.org)

## TABLE OF CONTENTS

<b>General Principles &amp; Recommendations</b> .....	1-12
Endorsement of other legal services community comments.....	1
Recognition of multi-faceted impact of technology on disability access.....	2
Need to explicitly recognize statutory disability rights mandates.....	3
Need to coordinate and align with CRC 1-100.....	5
Need to ensure confidentiality of disability-related information.....	6
Need to recognize <i>physical</i> and <i>policy</i> — as well as <i>electronic</i> — components of technology access.....	7-9
Physical access concerns.....	8
Policy access concerns.....	8
Electronic access concerns.....	9
Need to decouple e-filing and e-service.....	9
Strong recommendation for exclusively “opt-in” process.....	10
Need for appropriate pre-conditions for any mandatory “opt-out” process....	10
Need for appropriate exemptions process.....	11
Need for technology access advisory resources.....	11
Need for ongoing feedback mechanisms.....	12
<b>Comments as to Proposed Forms</b> .....	13
Should include separate forms for e-filing and e-service.....	13
Should include specific check-boxes for disability accommodation.....	13
Should be “fillable”.....	14
Should be compatible with specific access considerations below.....	14
<b>Comments as to Specific Access Considerations</b> .....	14-15
Access for people with mobility disabilities.....	14
Access for people with manual dexterity disabilities .....	14
Access for people with vision disabilities.....	15
Access for people with hearing disabilities .....	15
Access for people with cognitive or learning disabilities.....	15
<b>Conclusion</b> .....	15
<b>Appendix A</b> (description & addresses of signatory organizations)	

## **General Principles & Recommendations**

We begin by highlighting the following general principles and recommendations, which should undergird any Judicial Council e-filing and e-service rule:

### **◆ Endorsement of other legal services community comments**

We are aware of the simultaneously submitted public comments being offered by the Legal Aid Association of California (LAAC) and other legal services commenters regarding the general impact of e-filing on legal services-eligible Californians.<sup>1</sup> We note our agreement with the insights and recommendations offered in those comments, and urge the Judicial Council's close attention to them. We write separately here to focus on the disability access issues within the scope of our collective expertise.<sup>2</sup>

---

<sup>1</sup> The California legal services system is empowered to offer free civil legal services to persons with incomes of 125% or less of the current federal poverty guidelines — meaning, generally, households with incomes from approximately \$14,000 to \$48,000 (depending on size of family). Additionally, the system is empowered to serve persons eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. See Cal. Bus. & Prof. Code § 6213(d). As consistently confirmed by decennial U.S. census data, and other statistical data, there is a strong correlation between disability and poverty, as well as between disability and age.

People with disabilities are thus disproportionately eligible for California legal aid, and disproportionately likely to be among the low-income and disadvantaged parties that comprise the bulk of self-represented litigants. Concerns of relevance to legal aid-eligible and self-represented Californians are thus of particular relevance to people with disabilities.

See data available at <http://www.census.gov/prod/2011pubs/p60-239.pdf>; and <http://www.cdc.gov/ncbddd/disabilityandhealth/data.html>.

<sup>2</sup> To avoid redundancy, we do not address or duplicate comments as to “scope of cases covered,” and issues of “fees and fee waivers,” and “effective time of electronic filing and service.” We recognize the critical importance of these issues to all attorneys and litigants, including attorneys and litigants with disabilities. But their implications are well-addressed in other submissions. We have no more specific insights to offer on those issues, beyond our general emphasis on the need to incorporate disability access mandates and principles into all aspects of any rule.

♦ **Recognition of multi-faceted impact of technology  
on disability access**

We commend the Judicial Council for recognizing that technological advances — including the availability of e-filing and e-service — can be highly beneficial to many attorneys and litigants.<sup>3</sup> Moreover, because they are disproportionately eligible for critical public cash, housing and health care benefits, those with lower incomes often have both more, and more important, interactions with government systems. In addition to turning to the courts for the myriad reasons that might bring any litigant before the bench, they are more likely to need to draw on the interpretive and enforcement powers of the state judiciary to secure and maintain those benefits and protect their housing. Wider availability of e-filing and e-service options can thus be a great boon to lower- income constituencies.

In a similar vein, in the upcoming rule the Judicial Council should explicitly recognize that technological advances can be highly beneficial for people with disabilities. Again, interactions with government and the state courts are often heightened for the disability community, which is disproportionately lower-income, and eligible for specific government benefits due to disability. Persons with disabilities that preclude or limit travel, limit functioning to certain times of day (e.g., due to endurance issues or effect of medication), or require extended or repeated information review can greatly benefit from automated services, electronic access, and the 24/7 cyber world. Indeed, there are many instances where use of technology is necessary — and therefore legally required under the disability rights laws discussed below — to eliminate disability access barriers.

However, unless designed and implemented with attention to a wide range of needs, new technologies can also create new access barriers. Again, this is true for

---

<sup>3</sup> This reality is noted in *Advancing Access to Justice Through Technology: Guiding Principles for California Judicial Branch Initiatives* (Judicial Council, August 2012)(“*Advancing Access*”), which was referenced in the Invitation at 5. See *Advancing Access*, Principle 1 at 4 (“Remote services allow those with geographic, age, health, financial, or other restrictions to access the courts in a more comfortable fashion at their convenience.”)



**Re: Proposed Mandatory E-Filing Rules to Implement AB 2073**

**Item Number: W13-05**

**Comments of IOLTA-Funded California Disability Advocacy Organizations**

**January 25, 2013**

**Page 3**

the population at large, as well as for various specific subpopulations.<sup>4</sup> New technologies have clear physical, policy and electronic access implications for people with disabilities. They raise specific variable concerns for people with mobility, manual, sensory and cognitive disabilities. There will be people who either cannot afford — or cannot find, because it does not yet exist — computer technology with the added adaptive features necessary to make it usable in light of particular individual disabilities.

The Judicial Council — and the implementing courts — are thus faced with a nuanced reality. Depending on the particular circumstance, attorney or litigant involved, true disability access requires both the availability of and right to use technology when it eliminates barriers, and the right to bypass technology when it creates barriers. The rule to be issued here must reflect both of these equally critical aspects of access.<sup>5</sup>

◆ **Need to explicitly recognize statutory disability rights mandates**

We commend the Invitation for demonstrating the Committees' awareness of the significance of e-filing and e-service issues, particularly for self-represented litigants, and the need to proceed thoughtfully in addressing these issues. To help underscore that significance, we urge the Judicial Council to explicitly identify federal<sup>6</sup> and state<sup>7</sup> statutory disability civil rights mandates in the upcoming uniform rules.

---

<sup>4</sup> See *Advancing Access*, Principle 3 at 7 (“But not everyone is able to afford these technologies or is comfortable using them.”); and Principle 4 at 8 (“Considerations for those with special needs, those for whom English is not their first language, or those who might access such services from remote locations such as a library are critical in establishing an online service system that is equitable and usable.”)

<sup>5</sup> See *Advancing Access*, Principle 1 at 1 (“[I]ntroduction of technology or changes in the use of technology must not reduce and should advance access or participation whenever possible.”); and Principle 3 at 7 (“[I]t is important to design online systems in a way that is consistent with and complementary to the in-person experience.”)

<sup>6</sup> Relevant federal mandates include Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, implemented by 28 C.F.R. §§ 42.501 et seq.

**Re: Proposed Mandatory E-Filing Rules to Implement AB 2073**

**Item Number: W13-05**

**Comments of IOLTA-Funded California Disability Advocacy Organizations**

**January 25, 2013**

**Page 4**

These mandates — which include entitlements to physical and communication access, and reasonable policy modification<sup>8</sup> — should be explicitly acknowledged and reflected in the specifics of any rules ultimately adopted.<sup>9</sup>

---

(relevant to all public and private recipients of federal financial assistance)(“Section 504”); Title II of the Americans with Disabilities of 1990, as amended, 42 U.S.C. §§ 12131-12134, implemented by 28 C.F.R. Part 35 (relevant to public entities, including the California state court system)(“ADA Title II”); and Title III of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12181-12189, implemented by 28 C.F.R. Part 36 (relevant to private entities offering goods or services, including privately owned and operated electronic filing service providers (EFSPs))(“ADA Title III”).

<sup>7</sup> Relevant state mandates include California Government Code Section 11135 (relevant to the state of California and any entity receiving state financial assistance)(“Section 11135”); the Unruh Civil Rights Act, Cal. Civ. Code §§ 51 et seq. (“the Unruh Act”)(covering “all businesses of every kind whatsoever” in California); and the California Disabled Persons Act, Cal. Civ. Code §§ 54.1 et seq. (“the CDPA”)(covering California “public accommodations”). Notably, all of these state statutes incorporate federal disability rights mandates as a floor of protection, but also establish independent California disability rights mandates that may exceed federal protections. See particularly Cal. Gov. Code §§ 11135(d)(2) and (d)(3).

<sup>8</sup> See, e.g., 28 C.F.R. §§ 35.149-35.152 (ADA Title II mandate for “program accessibility,” addressing physical barriers); 28 C.F.R. §§ 35.160-35.164 (ADA Title II mandate for “communication access”); and 28 C.F.R. § 35.130(b)(7)(ADA Title II mandate for “reasonable modifications in policies, practices or procedures”). See also, 28 C.F.R. §§ 36.304-36.305, and 36.401-36.406 (ADA Title III mandates regarding physical access and barrier removal); 28 C.F.R. § 36.303 (ADA Title III mandate for “effective communication” and provision of “auxiliary aids and services”) and 28 C.F.R. § 36.302 (ADA Title III mandate for “reasonable modifications in policies, practices or procedures”). See also Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, implemented by 29 C.F.R. § 35.130 and 36 C.F.R. Part 1194.

<sup>9</sup> AB 2073 (2012) itself made no explicit reference to disability rights statutes because it is, of course, not necessary for new legislation to reference existing laws with which it can be harmonized. However, it is important that more detailed implementing regulations offer explicit discussion of the ways in which pre-existing

**Re: Proposed Mandatory E-Filing Rules to Implement AB 2073**

**Item Number: W13-05**

**Comments of IOLTA-Funded California Disability Advocacy Organizations**

**January 25, 2013**

**Page 5**

◆ **Need to coordinate and align with CRC 1-100**

For consistency with previously implemented legal mandates, and to facilitate practical administration, the new rule should explicitly coordinate and align with existing California Rule of Court (CRC) 1-100. This existing rule states and implements the policy of the California courts to “ensure that persons with disabilities have equal and full access to the judicial system.” CRC 1.100(b). It establishes procedures for persons with disabilities to request accommodation,<sup>10</sup> and broadly defines “accommodation” to include a range of adjustments likely to be of equal relevance to e-filing and e-service requirements. CRC 1.100(a)(3).<sup>11</sup> CRC 1-100

---

legal requirements have legal and practical relevance to new rules. It is particularly important here, where disability rights mandates clearly dictate or constrain particular aspects of this rulemaking.

<sup>10</sup> Specifically, requests for accommodation “may be presented ex parte on a form approved by the Judicial Council, in another written format, or orally.” CRC 1.100(c)(1). Requests “must include a description of the accommodation sought, along with a statement of the impairment that necessitates the accommodation. The court, in its discretion, may require the applicant to provide additional information about the impairment.” CRC 1.100(c)(2). The submission deadline is at least five court days before the requested implementation date, although the court may waive the requirement. CRC 1.100(c)(3). Requests are to be forwarded to the court’s ADA coordinator. CRC 1.100(c)(1).

<sup>11</sup> Rule 1.100(a)(3) defines accommodations as “actions that result in court services, programs, or activities being readily accessible to and usable by persons with disabilities. Accommodations may include making reasonable modifications in policies, practices, and procedures; furnishing, at no charge, to persons with disabilities, auxiliary aids and services, equipment, devices, materials in alternative formats, readers, or certified interpreters for persons with hearing impairments; relocating services or programs to accessible facilities; or providing services at alternative sites. Although not required where other actions are effective in providing access to court services, programs, or activities, alteration of existing facilities by the responsible entity may be an accommodation.”

<sup>12</sup> Under the rule, requests for accommodation are to be forwarded to the court’s ADA coordinator. CRC 1.100(c)(1). Upon submission, the court “must consider, but is

and related case law establishes that the California courts have an obligation to process, consider and clearly respond to accommodation requests.<sup>12</sup> Such requests may only be denied for specifically enumerated reasons.<sup>13</sup> There is also a review procedure to ensure that initial accommodation decisions comport with specified entitlements and requirements.<sup>14</sup>

◆ **Need to ensure confidentiality of disability-related information**

We again reference and endorse the insights and recommendations of other commenters as to general confidentiality concerns of relevance to all attorneys and litigants (particularly those who must rely on shared public computers for electronic access). But in addition, we emphasize the need for any e-filing and e-service protocols to reflect and preserve specific statutory privacy protections for disability-related information. Here again the rule should be coordinated and aligned with the already existing provisions of CRC 1.100.<sup>15</sup>

---

not limited by [the Unruh Act & the ADA] and other applicable state and federal laws” in determining “whether to grant an accommodation request or provide an appropriate alternative accommodation.” CRC 1.100(e)(1). Failure to rule on a CRC 1.100 request creates structural error. *Biscaro v. Stern* (2d. App. Dist. 2010) 181 Cal.App.4th 702, 710.

<sup>13</sup> Specifically, the court may deny a request for an accommodation only when it determines that: (1) the applicant fails to satisfy the requirements of the rule; (2) the requested accommodations “would create an undue financial or administrative burden on the court;” or (3) the requested accommodation “would fundamentally alter the nature of the service, program, or activity.” CRC 1.100(f); *In re Marriage of James M. and Christine J.C.* (4th App. Dist. 2008), 158 Cal.App. 4th 1261, 1273.

<sup>14</sup> Denials by non-judicial court personnel are subject to review by the presiding judge or designated judicial officer. Denials by the presiding judge or designated judicial officer are subject to review via petition for mandate. CRC 1-100(g).

<sup>15</sup> Specifically, CRC 1.100(c)(4) provides: “The court must keep confidential all information of the applicant concerning the request for accommodation, unless confidentiality is waived in writing by the applicant or disclosure is required by law. The applicant's identity and confidential information may not be disclosed to the public or to persons other than those involved in the accommodation process. Confidential

◆ **Need to recognize *physical* and *policy* — as well as *electronic* — components of technology access**

As noted by other commenters, there is a well-documented “digital divide,” which refers to the lack of access that lower-income households have to various kinds of communication and information technologies. Because people with disabilities are disproportionately lower income, they are clearly affected by this general “divide,” which has profound implications for equal access to the wide range of life activities that increasingly involve or depend on new technologies.

In particular, many low-income people with disabilities cannot afford personal computers, and thus will need to rely on shared, publically available computers to accomplish e-filing, or receive e-service.<sup>16</sup> For these constituencies, it is important to recognize that technology access involves not just *cyberspace* (and the software used to reach it), but also *physical* space, and the *policies* that govern such space. Certainly the public and private entities offering shared public computers have their own legal obligations to ensure the accessibility of those computers.<sup>17</sup> But the new rule — and the implementing courts — must also recognize that California courts have their own *independent* legal obligations to ensure the accessibility of shared public computers, to the extent that they rely on them as an integral part of the delivery of court programs involving e-filing and e-service activities.<sup>18</sup>

---

information includes all medical information pertaining to the applicant, and all oral or written communication from the applicant concerning the request for accommodation.”

CRC 1.100 (g)(3) additionally mandates that “confidentiality of all information of the applicant concerning the request for accommodation and review under [CRC 1.100] (g)(1) or (2) must be maintained as required under [CRC 1.100] (c)(4).”

<sup>16</sup> See *Advancing Access*, Principle 2 at 6 (Self-represented litigants “are likely to access court systems from home, public libraries, legal aid offices, and court self-help centers. Security precautions and registration requirements may need to be tailored to make accessing online court services from these locations feasible and secure.”)

<sup>17</sup> See the disability civil rights law mandates cited above at nn.6-8.

<sup>18</sup> See, e.g., 28 C.F.R. § 35.130(b)(1) (prohibiting ADA Title II public entities such as California courts from engaging in disability discrimination “directly or through contractual, licensing, or other arrangements” when providing “any aid, benefit or service”). See also *Armstrong v. Schwarzenegger* (9<sup>th</sup> Cir. 2010) 622 F.3d. 1058.

The e-filing and e-service rule must anticipate that many litigants will turn to shared public computers available at public libraries, public and private law libraries, court self-help centers, and legal services offices. As judicially-related e-communication becomes more prevalent (and particularly to the extent mandated), courts may also move to providing shared public computers in clerk's offices or court buildings. All of these sites must be anticipated by the rule.

◆ **Physical access concerns**

It is critically important for any e-filing and e-service rule to recognize that the following *location* and *hardware-related* features of the buildings housing shared public computers are necessary to ensure disability-accessibility:

- proximity to disability-accessible public transit and paratransit service areas;
- availability of disability-accessible parking;
- unobstructed, disability-accessible path-of-travel from the outside of the building to the location of the shared public computer;
- disability-accessibility of public restrooms serving the facility; and
- unobstructed, disability-accessible workspace around the shared public computer (e.g., sufficient under-table clearance for persons using wheelchairs, computer screen sight-lines accessible to persons using wheelchairs, and appropriate positioning of hardware for people with limited manual dexterity).

◆ **Policy access concerns**

The rule must also recognize the ways in which the following related *policies* are necessary to ensure disability-accessibility:

- sufficient open hours on different days of the week, and different hours of the day, (particularly important to people with disabilities that affect ability to undertake tasks at certain times (e.g. morning medication grogginess); people with time-restricted access to accessible transit; and

people with cognitive disabilities who require extended or repeated access to e-communications);

- availability and willingness of staff to remove obstructions and reposition computer hardware as needed; and
- availability and willingness of staff to modify other standard rules, practices or protocols (e.g., permitting extended or repeated access to computers; permitting presence of companions or service animals; accepting alternative forms of identifications for people whose disabilities preclude obtaining a drivers' license).

◆ **Electronic access concerns**

In addition, the rule must ensure the disability-accessibility of the *electronic* aspects of the e-filing and e-service experience. This includes all relevant software and website features, and electronic interfaces, and needs to encompass all of the disability-specific access concerns highlighted below (e.g., ensuring compatibility with visual captioning of aural content, amenability to review via screen reader technology, ability to bypass visual "CAPTCHA" challenge-response tests, ability to bypass "timeout" barriers that penalize those not able to respond quickly to instructions).

◆ **Need to decouple e-filing and e-service**

The access issues that arise in connection with e-filing and e-service are sufficiently distinct and unique that they should be decoupled in the rule. E-filing involves affirmative contact with the court at the initiation of attorneys and litigants. In contrast, e-service may occur at the initiation of the court or opposing parties. In contrast to e-filers, who can choose the date and time of their communications, e-service recipients are not necessarily on notice that the communication will be coming or available at a specific date or time. Such uncertainty creates particular barriers for those who must rely on shared public computers. There may well be instances where an attorney or litigant would benefit from an e-filing option, but will not be able to successfully access e-service in an efficient or timely manner. Additionally, there may be instances where an attorney or litigant can effectively access e-service, but will have barriers to e-filing (for example, parties with home computers may be set up to receive and review incoming documents, but lack the ability to submit outgoing documents due to disability-specific access barriers of the kind identified below). The

rule should ensure that e-filing and e-service obligations and entitlements are addressed separately, so that where appropriate an attorney or litigant can e-file but avoid e-service, or vice versa, as needed.

◆ **Strong recommendation for exclusively “opt-in” process**

We again reference and endorse the insights and recommendations of other commenters as to the importance of implementing an “opt-in” (rather than “opt-out”) process. This is particularly important to attorneys and litigants with disabilities, given the additional unique physical, policy and technology issues that affect disability-accessibility. ***We strongly urge the Judicial Council to avoid a “mandatory opt-out” requirement.***

◆ **Need for appropriate pre-conditions for any mandatory “opt-out” process**

At a minimum, if any type of “mandatory opt-out” requirement is still contemplated, it should be issued and implemented *only* under the following conditions:

- it should be rolled out in stages, beginning with “attorneys only”, with a specified timeline and process in place to evaluate the first stage experience before it is expanded;
- any subsequent expansion to self-represented litigants should be pilot-tested in a limited region for a limited period of time, again with specified timeline and process in place for evaluation; and
- the rule should explicitly state — and in implementation all courts should be similarly explicit — that existence of *physical, policy or electronic* barriers to disability-accessibility are an appropriate basis for exemption.



◆ **Need for appropriate exemptions process**

Regardless of whether the rule specifies an “opt-out” or “opt-in” process — but particularly in the event the Judicial Council decides to proceed with “opt-out” — the rule must include a clear exemptions process that should have all of the following features:

- compliant with federal and state disability civil rights law requirements;
- coordinated and aligned with the existing provisions of CRC 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 screener(s) authorized to rule on exemption requests; and identification of oversight process for review of initial decisions); and
- clearly memorialized, widely distributed and easily available in multiple accessible formats relevant to people with various disabilities.

◆ **Need for technology access advisory resources**

Technology is currently developing and changing with enormous speed, and all iterations of technology affect people with different disabilities in variable and complex ways. Any e-filing and e-service rule will be adopted and implemented against the backdrop of this dynamic reality. While AB 2073 and the Judicial Council have generally recognized this reality, there has not yet been specific outreach as to, and consideration of, technical issues and standards of potential relevance to the disability-accessibility of expanded e-filing and e-service requirements. We thus strongly recommend that the Judicial Council undertake the following activities before and in connection with issuing the upcoming rule:

- solicit specific public comment on disability access issues (including outreach in multiple accessible formats to disability community organizations throughout California);

- retain and consult experts with technical knowledge of disability access issues (including all of the access issues identified in this comment) to advise the Judicial Council in the crafting of this rule;<sup>19</sup>
- direct courts implementing the rule to retain and consult experts with technical knowledge of disability access issues (including all of the access issues identified in this comment); and
- invite participation of users with disabilities in technical system design and testing.<sup>20</sup>

***Experience has demonstrated that entities that fail to incorporate appropriate technical expertise into new online rollouts frequently end up with disability-inaccessible systems that ultimately prove more costly.*** Particularly when overall cost is a concern, it is far preferable for entities to pay for and incorporate appropriate advice at the design and testing stage, rather than face exposure to the more expensive legal and retrofit costs that result when systems are rolled out without appropriate disability accessibility.<sup>21</sup>

◆ **Need for ongoing feedback mechanisms**

The upcoming e-filing and e-service expansion will be novel and complex in its own right. It will also be affected by the ongoing broader patterns of technology

---

<sup>19</sup> We note that commitment to obtain the services of technical experts comports with *Advancing Access*, Principle 1 at 4 (Recognizing that goal to ensure access and fairness “includes building accessible websites and tools as well as providing content in multiple languages.”). We would be happy to recommend appropriate experts.

<sup>20</sup> See *Advancing Access*, Principle 4 at 8 (“[T]he overall suite of solutions should provide multiple services or layered services that meet the needs of a broad range of court users. An important way to ensure that systems meet user requirements is to have users participate in system design and testing before launch.”)

<sup>21</sup> As one recent example, we cite to the disability access failures that attended the Secretary of State’s September 2012 launch of the California Online Voter Registration (COVR) website. More information about voting access available at [http://www.disabilityrightscalifornia.org/news/2012\\_newsabout%20us/pressrelease%202012-09-25%20Voting.htm](http://www.disabilityrightscalifornia.org/news/2012_newsabout%20us/pressrelease%202012-09-25%20Voting.htm).

development. As the Judicial Council has already recognized, this means that the rule and the implementing courts must be attentive not only to user insights, but also to technology changes that will occur over time.<sup>22</sup> The rule should establish clear and detailed feedback mechanisms to permit modifications as necessary, and to ensure its real-world workability over time.<sup>23</sup>

### **Comments as to Proposed Forms**

#### **◆ Should include separate forms for e-filing and e-service**

Consistent with the decoupling recommendation discussed above, the proposed forms should be amended to include separate forms related to e-filing and e-service, respectively. The proposed order form should similarly be amended to decouple documentation of rulings as to e-filing and e-service. We recognize that as drafted the forms seem to allow for the possibility of distinct requests and ruling as to e-filing and e-service. However, many self-represented litigants — particularly those both unfamiliar with legal terminology and lacking in computer skills — can be reasonably expected to be confused about the difference between these two activities. Combining the two in the same request form and order also creates a greater risk that courts will fail to appropriately consider e-filing and e-service independently.

#### **◆ Should include specific check-boxes for disability accommodation**

Both the e-filing and e-service forms should include a check-box specific to disability accommodations. They could explicitly read, respectively, “I do not have computer or Internet access to e-file because of my disability” and “I do not have

---

<sup>22</sup> See *Advancing Access*, Principle 3 at 7 (“Newer, more advanced technologies are appearing in the marketplace at an astonishing rate.”); and Principle 10 at 16 (“With the rapid state of innovation and the corresponding evolution in people’s expectations of what they can do with technology, courts must consider future change and growth with any technology project. Building a technology infrastructure that can grow and adapt is critical to the sustainability and evolution of online services.”)

<sup>23</sup> See *Advancing Access*, Principle 2 at 5 (the “framework of policies, laws, and rules supporting e-filing will need to evolve”); and Principle 2 at 6 (“implications regarding access will evolve and so should court policies.”)

computer or Internet access for e-service because of my disability.” The order forms should also have corresponding a check-box, reading, respectively “The court grants the application for exemption from e-filing as a disability accommodation,” and “The court grants the application for exemption from e-service as a disability accommodation.”

◆ **Should be “fillable”**

The final forms available to the public must be “fillable,” so there is no need to print the form as hard-copy and input requested information on a hard-copy form.

◆ **Should be compatible with specific access considerations below**

All software and website features, and electronic interfaces, relevant to the forms must be disability-accessible, and form accessibility needs to encompass all of the disability-specific access concerns highlighted below.

**Comments as to Specific Access Considerations**

◆ **Access for people with mobility disabilities**

Examples of barriers include:

- reach ranges for controls
- viewing angles of controls, displays or information
- heights of work surfaces
- size, placement, slope and surface of path of travel and clear floor space

◆ **Access for people with manual dexterity disabilities**

Examples of barriers include:

- objects required for interaction (styli, card swipes, keypads, mobile devices) that are hard to retrieve, hold, position, manipulate, and stow
- keypads and buttons (physical or on-screen) that are small or require precision to operate or don't work with prosthetic devices
- input mechanisms that time out

◆ **Access for people with vision disabilities**

Examples of barriers include:

- touch screen interfaces without audio and tactile input options
- visual (on-screen or printed) information without audio, tactile, large print, or high contrast output options
- video information without audible description
- biometric authorization, authentication, or identification mechanisms that depend on retina or iris
- input mechanisms that time out
- untagged visual images
- lack of text-only versions
- posting of documents in PDF versions that are not searchable or readable by screen readers
- lack of HTML structure
- presence of inaccessible pop-up windows

◆ **Access for people with hearing disabilities**

Examples of barriers include:

- audio or video information that is not captioned or otherwise available in visual format
- audio information without volume control
- hearing aid interference

◆ **Access for people with cognitive and learning disabilities**

Examples of barriers include:

- content, authorization/authentication systems, and navigational controls that are complicated, lack simple cues, or use multiple media at the same time

**Conclusion**

Again, we commend the Invitation for demonstrating the Committees' awareness of the significance of e-filing and e-service issues, particularly for self-represented litigants, and the need to proceed thoughtfully in addressing these issues. We would be happy to serve as a further resource to the Judicial Council as to the recommendations memorialized in this comment.

**APPENDIX A:**  
(Descriptions of Signatory Offices)

**Disability Rights California (DRC)** (formerly Protection & Advocacy) is a private non-profit agency established under federal law to advance the rights of Californians with disabilities. DRC receives California IOLTA funding as a qualified legal services project. Contact via Catherine J. Blakemore, Esq., Executive Director, Disability Rights California, 1831 K Street, Sacramento, CA 9581, [catherine.blakemore@disabilityrightscalifornia.org](mailto:catherine.blakemore@disabilityrightscalifornia.org)

**Disability Rights Education & Defense Fund (DREDF)** is a national nonprofit law and policy center founded in 1979 by adults with disabilities and parents of children with disabilities, dedicated to advancing and protecting the civil rights of people with disabilities. DREDF receives California IOLTA funding as the Support Center offering disability rights expertise to the California legal services system. Contact via Linda D. Kilb, Esq., Director, DREDF IOLTA Support Center Program, Disability Rights Education & Defense Fund, 3075 Adeline Street, Suite 210, Berkeley, CA 94703, [lkilb@dredf.org](mailto:lkilb@dredf.org)

**Disability Rights Legal Center (DRLC)** has worked to implement the civil rights of people with disabilities for over 35 years. DRLC is the oldest cross-disability legal advocacy organization in the country, championing the rights of people with disabilities through education, advocacy and litigation. DRLC provides assistance through its four programs: Civil Rights Litigation Project, Cancer Legal Resource Center, Education Advocacy Project, and Community Advocacy Program, and receives California IOLTA funding as a qualified legal services project. Contact via Paula D. Pearlman, Esq., Executive Director, Lani M. Sen Woltmann, Esq., Pro Bono Director, Disability Rights Legal Center, 800 South Figueroa Street, Suite 1120, Los Angeles, CA 90017, [paula.pearlman@ucla.edu](mailto:paula.pearlman@ucla.edu), and [lani.woltmann@ucla.edu](mailto:lani.woltmann@ucla.edu)

**Legal Aid Society–Employment Law Center (LAS-ELC)** is a nonprofit, legal services organization that has been assisting California's low-income working families for more than 90 years. LAS-ELC has a Disability Rights Program specifically dedicated to disability rights law issues. LAS-ELC receives California IOLTA funding as a qualified legal services project. Contact via Claudia B. Center, Esq., Director, Disability Rights Program, Legal Aid Society-Employment Law Center 180 Montgomery Street, Suite 600, San Francisco, CA 94104, [center@las-elc.org](mailto:center@las-elc.org)



# ADMINISTRATIVE OFFICE OF THE COURTS

---

LEGAL SERVICES OFFICE

**Proceedings in Which Official  
Shorthand Court Reporters Are Required  
or May Be Required**

**October 2012**

**General categories of case types are listed below, followed by specific proceedings within those categories.**

Type of Case	Official Court Reporters Required?	Electronic Recording Authorized?
<b>Unlimited Civil</b>	Yes, on the order of the court or at the request of a party <sup>1</sup> (Code Civ. Proc., §§ 269(a)(1) and 274a.)	No
<b>Felony Criminal</b>	Yes, on order of the court or at the request of the prosecution, the defendant, or the attorney for the defendant <sup>2</sup> (Code Civ. Proc., §§ 269(a)(2) and § 274a; Gov. Code, § 69952; Pen. Code, § 869.)	No
<b>Family Law</b>	Yes, at the court's discretion	No

<sup>1</sup> Each court must adopt a local policy enumerating the departments in which the services of official court reporters are normally available. (Cal. Rules of Court, rule 2.956(b)(1).) Unless the court's policy states that all courtrooms normally have the services of official court reporters available for civil trials, the court must require that each party file a statement before the trial date indicating whether the party requests the presence of an official court reporter. (Cal. Rules of Court, rule 2.956(b)(3).) If a party requests the presence of an official court reporter and it appears that none will be available, the clerk must notify the party of that fact as soon as possible before the trial. (*Id.*) Additionally, if the services of an official court reporter will not be available during a hearing on law and motion or other nontrial matters in civil cases, that fact must be noted on the court's official calendar. (Cal. Rules of Court, rule 2.956(b)(4).) When the services of an official court reporter are not available for a hearing or trial in a civil case, a party may arrange, at its own expense, for the presence of a certified shorthand reporter to serve as an official pro tempore reporter. (Cal. Rules of Court, rule 2.956(c).)

<sup>2</sup> Government Code section 69952's enumeration of the circumstances where the court may require an official court reporter overlaps with Code of Civil Procedure section 269. Government Code section 69952 provides, in pertinent part, that the court may specifically direct the making of a verbatim record in the following cases: criminal matters, juvenile proceedings, proceedings to declare a minor free from custody, proceedings for involuntary civil commitment, and "as otherwise provided by law." Government Code section 69952(b) states, in part: "Except as otherwise authorized by law, the court shall not order to be transcribed and paid for out of the county treasury any matter or material except that reported by the reporter pursuant to Section 269 of the Code of Civil Procedure. . . ." Government Code section 69953 states, in part:

In any case where a verbatim record is not made at public expense pursuant to Section 69952 or other provisions of law, the cost of making any verbatim record shall be paid by the parties in equal proportion; and either party at his option may pay the whole. In either case, all amounts so paid by the party to whom costs are awarded shall be taxed as costs in the case. The fees for transcripts and copies ordered by the parties shall be paid by the party ordering them.



Type of Case	Official Court Reporters Required?	Electronic Recording Authorized?
	(Code Civ. Proc., § 274a.)	
<b>Probate</b>	Yes, at the court's discretion (Code Civ. Proc., § 274a.)	No
<b>Juvenile</b>	Yes, required in proceedings conducted by a juvenile court judge, or juvenile court referee (Code Civ. Proc., § 274a; Gov. Code, § 69952; Welf. & Inst. Code, §§ 347 and 677; Cal. Rules of Court, rules 5.532, 5.536(b), and 5.538(a).)	No
<b>Limited Civil</b>	Yes, on the order of the court or at the request of a party (Code Civ. Proc., § 269(a)(1).)	Yes (Gov. Code, § 69957(a).) <sup>3</sup>
<b>Involuntary Civil Commitment</b>	Yes, at the court's discretion	No

<sup>3</sup> Government Code section 69957(a) states, in part:

If an official reporter or an official reporter pro tempore is unavailable to report an action or proceeding in a court, subject to the availability of approved equipment and equipment monitors, the court may order that, in a limited civil case, or a misdemeanor or infraction case, the action or proceeding be electronically recorded, including all the testimony, the objections made, the ruling of the court, the exceptions taken, all arraignments, pleas, and sentences of defendants in criminal cases, the arguments of the attorneys to the jury, and all statements and remarks made and oral instructions given by the judge.

Further, Government Code section 69957(b) states that courts may use electronic recording equipment "for the internal personnel purpose of monitoring the performance of subordinate judicial officers . . . hearing officers, and temporary judges while proceedings are conducted in the courtroom, if notice is provided to the subordinate judicial officer, hearing officer, or temporary judge, and to the litigants, that the proceeding may be recorded for that purpose. An electronic recording made for the purpose of monitoring that performance shall not be used for any other purpose and shall not be made publicly available."

Type of Case	Official Court Reporters Required?	Electronic Recording Authorized?
	(Gov. Code, § 69952; Code Civ. Proc., § 274a.)	
<b>Criminal Misdemeanor/ Infraction</b>	<p>Yes, at the court's discretion (Code Civ. Proc., § 269(a)(3).)</p> <p>In addition, on defendant's request, the court must provide a method for creating a verbatim record of oral proceedings (<i>In re Armstrong</i> (1981) 126 Cal.App.3d 565, 574.)</p>	<p>Yes (Gov. Code, § 69957(a).)</p>
<b>Traffic</b>	<p>Yes, at the court's discretion (Code Civ. Proc., § 269(a)(3).)</p> <p>In addition, on defendant's request, the court must provide a method for creating a verbatim record of oral proceedings. (<i>In re Armstrong</i> (1981) 126 Cal.App.3d 565, 574.)</p>	<p>Yes (Gov. Code, § 69957(a).)</p>
<b>Small Claims</b>	<p>No</p> <p>"The hearing and disposition of the small claims action shall be informal, the object being to dispense justice promptly, fairly, and inexpensively." (Code Civ. Proc., § 116.510.)</p>	<p>Yes (Gov. Code, § 69957(a); Code Civ. Proc., § 87; <i>General Electric Capital Auto Financial Services, Inc. v. Appellate Division</i> (2001) 88 Cal.App.4th 136, 138.)</p>
<b>Small Claims Appeals</b>	No	N/A

Type of Case	Official Court Reporters Required?	Electronic Recording Authorized?
	<p>“The hearing on an appeal to the superior court shall be conducted informally.”</p> <p>(Code Civ. Proc., § 116.770(b).)</p>	

Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
<b>CRIMINAL</b>  Case in which death sentence may be imposed	Yes  "In any case in which a death sentence may be imposed, all proceedings conducted in the superior court, including all conferences and proceedings, whether in open court, in conference in the courtroom, or in chambers, shall be conducted on the record with a court reporter present."  (Pen. Code, § 190.9(a)(1).)	No
Hearing before magistrate after arrest of defendant who has threatened to commit an offense	Yes, at the discretion of the magistrate  "When the person informed against is brought before the magistrate, if the charge be controverted, the magistrate shall take testimony in relation thereto. The evidence shall be reduced to writing and subscribed by the witnesses. The magistrate may, in his or her discretion, order the testimony and proceedings to be taken down in shorthand, and for that purpose he or she may appoint a shorthand reporter. The deposition or testimony of the witnesses shall be authenticated in the form prescribed in Section 869."  (Pen. Code, § 704.)	No
Oral statement under oath of probable cause for arrest by a peace officer	Yes  "The oath shall be taken under penalty of perjury and recorded and transcribed. The transcribed statement shall be deemed to be the declaration for the purposes of this section. The recording of the sworn oral statement and the transcribed statement shall be certified by the magistrate receiving it and shall be filed with the clerk of the court. In the alternative, the sworn oral statement may be recorded by a certified court reporter who shall certify the transcript of the statement, after which the magistrate receiving it shall certify the transcript, which shall be filed with the clerk of the court."	No

Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
	(Pen. Code, § 817(c)(1).)	
<b>Testimony in homicide case</b>	<p>Yes</p> <p>“The testimony of each witness in cases of homicide shall be reduced to writing, as a deposition, by the magistrate, or under his or her direction . . .”</p> <p>(Pen. Code, § 869.)</p>	No
<b>Criminal cause investigated before the grand jury</b>	<p>Yes</p> <p>“Whenever criminal causes are being investigated before the grand jury, it shall appoint a competent stenographic reporter. He shall be sworn and shall report in shorthand the testimony given in such causes and shall transcribe the shorthand in all cases where an indictment is returned or accusation presented.”</p> <p>(Pen. Code, § 938(a).)</p>	No
<b>Plea made in open court</b>	<p>Yes</p> <p>“Every plea must be made in open court and, may be oral or in writing, shall be entered upon the minutes of the court, and shall be taken down in shorthand by the official reporter if one is present. All pleas of guilty or nolo contendere to misdemeanors or felonies shall be oral or in writing.”</p> <p>(Pen. Code, § 1017.)</p>	No, except in misdemeanor or infraction case (Gov. Code, § 69957(a).)
<b>Court's oral instructions in criminal trial</b>	<p>Yes</p> <p>“All instructions given shall be in writing, unless there is a phonographic reporter present and he takes them down, in which case they may be given orally; provided</p>	No, except in misdemeanor or infraction case

Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
	however, that in all misdemeanor cases oral instructions may be given pursuant to stipulation of the prosecuting attorney and counsel for the defendant.”  (Pen. Code, § 1127.)	(Gov. Code, § 69957(a).)
Examination by magistrate of person seeking a warrant and any witnesses the person may produce	Yes  “The oath shall be made under penalty of perjury and recorded and transcribed.”  (Pen. Code, § 1526(b)(1).)	No
In camera hearing in a criminal proceeding (outside the presence of the defendant and his counsel) on whether to disclose the identity of the informant	Yes  “A reporter shall be present at the in camera hearing.”  (Evid. Code, § 1042(d).)	No, except in misdemeanor or infraction case  (Gov. Code, § 69957(a).)
In camera hearing on motion to exclude the public from any portion of a criminal proceeding to prevent disclosure of trade secrets	Yes  “A court reporter shall be present during the hearing.”  (Evid. Code, § 1062(b).)	No, except in misdemeanor or infraction case  (Gov. Code, § 69957(a).)
Any opinion given or rendered by the judge in the trial of a felony case	Yes, at the court’s discretion  “Any judge of the superior court may have any opinion given or rendered by the judge in the trial of a felony case . . . taken down in shorthand and transcribed . . . by the official reporter or an official reporter pro tempore of the court.”	No

Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
	(Code Civ. Proc., § 274a.)	

Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
<b>CIVIL</b>		
Any necessary order, petition, citation, commitment or judgment in any proceeding concerning new or additional bonds of county officials	Yes, at the court's discretion  "Any judge of the superior court may have . . . any necessary order, petition, citation, commitment or judgment in any . . . proceeding concerning new or additional bonds of county officials . . . taken down in shorthand and transcribed . . . by the official reporter or an official reporter pro tempore of the court."  (Code Civ. Proc., § 274a.)	No
Any opinion given or rendered by the judge in the trial of an unlimited civil case	Yes, at the court's discretion  "Any judge of the superior court may have any opinion given or rendered by the judge in the trial of . . . an unlimited civil case, pending in that court . . . taken down in shorthand and transcribed . . . by the official reporter or an official reporter pro tempore of the court."  (Code Civ. Proc., § 274a.)	No
Court's ruling on motion for summary judgment	Yes, at the court's discretion  "Upon denial of a motion for summary judgment, on the ground that there is a triable issue as to one or more material facts, the court shall, by written or oral order, specify one or more material facts raised by the motion as to which the court	No

Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
	<p>has determined there exists a triable controversy. This determination shall specifically refer to the evidence proffered in support of and in opposition to the motion which indicates that a triable controversy exists. Upon the grant of a motion for summary judgment, on the ground that there is no triable issue of material fact, the court shall, by written or oral order, specify the reasons for its determination. The order shall specifically refer to the evidence proffered in support of, and if applicable in opposition to, the motion which indicates that no triable issue exists. The court shall also state its reasons for any other determination. The court shall record its determination by court reporter or written order.”</p> <p>(Code Civ. Proc., § 437c.)</p>	
<p><b>Party’s objections to evidence in the papers on a motion for summary judgment</b></p>	<p>Yes, at the party’s option</p> <p>“A party desiring to make objections to evidence in the papers on a motion for summary judgment must either:</p> <p>(1) Submit objections in writing under rule 3.1354; or</p> <p>(2) Make arrangements for a court reporter to be present at the hearing.</p> <p>(Cal. Rules of Court, rule 3.1352.)</p>	No
<p><b>Pre-voir dire conference</b></p>	<p>Yes</p> <p>“Before the examination the trial judge should, outside the prospective jurors’ hearing and with a court reporter present, confer with counsel, at which time specific questions or areas of inquiry may be proposed that the judge in his or her discretion may inquire of the jurors. Thereafter, the judge should advise counsel of the questions or areas to be inquired into during the examination and voir dire procedure. The judge should also obtain from counsel the names of the witnesses whom counsel then plan to call at trial and a brief outline of the nature of the case,</p>	No



Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
	including any alleged injuries or damages and, in an eminent domain action, the respective contentions of the parties concerning the value of the property taken and any alleged severance damages and special benefits.”  (Cal. Rules of Court, rule 3.25.)	
View by trier of fact of property which is the subject of litigation, place where any relevant event occurred or any object, demonstration, or experiment, a view of which cannot with reasonable convenience be viewed in the courtroom	Yes, to the same extent as proceedings in the courtroom  “On such occasion, the entire court, including the judge, jury, if any, court reporter, if any, and any necessary officers, shall proceed to the place, property, object, demonstration, or experiment to be viewed. The court shall be in session throughout the view. At the view, the court may permit testimony of witnesses. The proceedings at the view shall be recorded to the same extent as the proceedings in the courtroom.”  (Code Civ. Proc., § 651.)	N/A
Proceedings concerning involuntary civil commitment	Yes at the judge’s discretion  “The court may specifically direct the making of a verbatim record . . . in the following cases: . . . Proceedings under the Lanterman-Petris-Short Act . . .”  (Gov. Code, § 69952(a)(4).)	No
<b>FAMILY LAW</b> Hearing, attended by conference call, on contested motions in dissolution of marriage/legal	Yes  “A court-ordered case management plan, as stipulated by the parties, may include all of the following: . . . Use of telephone conference calls for	No

Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
separation proceedings	hearing contested motions. These conference call hearings shall be recorded by a court reporter." (Fam. Code, § 2451(e).)	
Hearing on motion or petition to withdraw consent to stepparent adoption	Yes "At the hearing, the parties may appear in person or with counsel. The hearing shall be held in chambers, but the court reporter shall report the proceedings and, on court order, the fee therefor shall be paid from the county treasury." (Fam. Code, § 9005(d).)	No
Testimony or judgment relating to the custody or support of minor children	Yes at the judge's discretion "Any judge of the superior court may have . . . the testimony or judgment relating to the custody or support of minor children in any proceeding in which the custody or support of minor children is involved, taken down in shorthand and transcribed . . . by the official reporter or an official reporter pro tempore of the court." (Code Civ. Proc., § 274a.)	No
<b>JUVENILE</b> Any necessary order, petition, citation, commitment or judgment in any juvenile court proceeding	Yes, at the judge's discretion "Any judge of the superior court may have . . . any necessary order, petition, citation, commitment or judgment in any . . . juvenile court proceeding . . . taken down in shorthand and transcribed . . . by the official reporter or an official reporter pro tempore of the court."	No

Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
	(Code Civ. Proc., § 274a.)	
Juvenile court dependency hearings conducted by a juvenile court judge	<p>Yes</p> <p>“At any juvenile court hearing conducted by a juvenile court judge, an official court reporter shall . . . take down in shorthand all the testimony and all of the statements and remarks of the judge and all persons appearing at the hearing.”</p> <p>(Welf. &amp; Inst. Code, § 347.)</p>	No
Juvenile court dependency hearings conducted by a juvenile court referee	<p>Yes, at the court’s discretion</p> <p>“At any juvenile court hearing . . . conducted by a juvenile court referee, the official reporter, as directed by the court, may take down in shorthand all the testimony and all of the statements and remarks of the judge and all persons appearing at the hearing . . .”</p> <p>(Welf. &amp; Inst. Code, § 347.)</p>	No
Testimony of minor in chambers in juvenile court dependency hearing	<p>Yes</p> <p>“After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.”</p> <p>(Welf. &amp; Inst. Code, § 350(b).)</p>	No
Juvenile court hearings involving wards of the court conducted by a juvenile court judge	<p>Yes</p> <p>“At any juvenile court hearing conducted by a juvenile court judge, an official court reporter shall . . . take down in shorthand all the testimony and all of the statements and remarks of the judge and all persons appearing at the hearing . . .”</p>	No

Type of Proceeding	Official Court Reporters Required?	Electronic Recording Authorized?
	(Welf. & Inst. Code, § 677.)	
<b>Juvenile court hearings involving wards of the court conducted by a juvenile court referee</b>	<p>Yes, at the court's discretion</p> <p>"At any juvenile court hearing . . . conducted by a juvenile court referee, the official reporter, as directed by the court, may take down in shorthand all the testimony and all of the statements and remarks of the judge and all personal appearing at the hearing . . ."</p> <p>(Welf. &amp; Inst. Code, § 677.)</p>	No
<b>PROBATE</b> Any necessary order, petition, citation, or commitment, or judgment in any probate proceeding	<p>Yes, at the judge's discretion</p> <p>"Any judge of the superior court may have . . . any necessary order, petition, citation, commitment or judgment in any probate proceeding . . . taken down in shorthand and transcribed . . . by the official reporter or an official reporter pro tempore of the court."</p> <p>(Code Civ. Proc., § 274a.)</p>	No

# Attachment C



## Legal Aid Foundation of Los Angeles

### API Unit

1102 Crenshaw Boulevard  
Los Angeles, CA 90019  
Phone: (323) 801-7989  
Fax: (323) 936-6898  
www.lafla.org

### Other Office Locations:

Central Office, 1550 W. 8<sup>th</sup> Street, Los Angeles, CA 90017 T: (213) 640-3881  
East Los Angeles Office, 5228 Whittier Boulevard, Los Angeles, CA 90022 T: (213) 640-3883  
Long Beach Office, 601 Pacific Avenue, Long Beach, CA 90802 T: (562) 435-3501  
Santa Monica Office, 1640 5<sup>th</sup> Street, Suite 124, Santa Monica, CA 90401 T: (310) 899-6200  
South Los Angeles Office, 7000 S. Broadway, Los Angeles, CA 90003 T: (213) 640-3950  
West Office, 1102 Crenshaw Boulevard, Los Angeles, CA 90019 T: (323) 801-7989

Writer's Direct Line (323) 801-7976

Our File Number 00-00001402

January 25, 2013

Attn: Invitations to Comment  
Judicial Council of California  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102

Submitted via electronic mail  
to [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

**Re: Proposed Mandatory E-Filing: Uniform Rules to Implement  
AB 2073, Item Number: W13-05**

To Whom It May Concern:

On behalf of the Legal Aid Foundation of Los Angeles (LAFLA), 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.

**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.

## Introduction

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.<sup>1</sup> Californians speak over 220 languages<sup>2</sup> and 43 percent of Californians speak a language other than English in their homes.<sup>3</sup> 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).<sup>4</sup> 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.”<sup>5</sup>

Limited-English proficiency impacts one’s “ability to access fundamental necessities such as employment, police protection, and healthcare.”<sup>6</sup> While underrepresented groups among native English speakers often face 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.<sup>7</sup>

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

<sup>1</sup> See U.S. Census Bureau, “State & County QuickFacts,” available at:

<http://quickfacts.census.gov/qfd/states/06000.html> (listing 2007-2011 figures for foreign-born individuals).

<sup>2</sup> See California Commission on Access to Justice, “Language Barriers to Justice in California” at 1 (2005), available at: <http://www.calbar.ca.gov/LinkClick.aspx?fileticket=79bAIYydnho%3D&tabid=216>

<sup>3</sup> See U.S. Census Bureau, “State & County QuickFacts,” available at:

<http://quickfacts.census.gov/qfd/states/06000.html> (listing percentage of people over age 5 speaking language other than English at home, 2007-2011).

<sup>4</sup> Asian Pacific American Legal Center of Southern California and APIAHF, “California Speaks: Language Diversity and English Proficiency by Legislative District” at 5 (2009), available at [http://www.apiahf.org/sites/default/files/APIAHF\\_Report05\\_2009.pdf](http://www.apiahf.org/sites/default/files/APIAHF_Report05_2009.pdf)

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> See U.S. Census Bureau, American Fact Finder, available at:

[http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_11\\_1YR\\_S1603&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_S1603&prodType=table) (listing characteristics of people by language spoken at home, 2011 American Community Survey 1-Year Estimates).

therefore cannot rely on an attorney to ensure they understand the proceedings.”<sup>8</sup> 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.”<sup>9</sup> 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.

### **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, *et seq.* and its accompanying regulations provide that no one 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”.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup> The DOJ has

---

<sup>8</sup> “Language Barriers to Justice” at 1.

<sup>9</sup> *Id.*

<sup>10</sup> California Government Code §§ 11135, 11139; Cal. Code Regs. Title 22, Section 98210(b).

<sup>11</sup> 42 U.S.C. § 2000d (2004); *Lau v. Nichols*, 414 U.S. 563, 568-569 (1974) (“Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents’ school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by the [Title VI] regulations.”).

<sup>12</sup> 67 Fed. Reg. 41455-41471 (2002).



released a number of guidance letters to recipients on this issue, including one on August 16, 2010, making it clear that Title VI requires state courts to provide free interpreter services in all civil, criminal, and administrative proceedings.<sup>13</sup> This mandate is also for services outside the courtroom, as well:

Examples of such court-managed offices, operations, and programs can include information counters; intake or filing offices; cashiers; records rooms; sheriffs offices; probation and parole offices; alternative dispute resolution programs; *pro se* clinics; criminal diversion programs; anger management classes; detention facilities; and other similar offices, operations, and programs. Access to these points of public contact is essential to the fair administration of justice, especially for unrepresented LEP persons. DOJ expects courts to provide meaningful access for LEP persons to such court operated or managed points of public contact in the judicial process, whether the contact at issue occurs inside or outside the courtroom.<sup>14</sup>

Therefore, any implementation of new requirements mandating electronic filing and electronic service must take into consideration the needs of LEP litigants at every stage of the court process.

### **Overview of Key Issues Affecting LEP Litigants and Communities**

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 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.

#### **1. 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

<sup>13</sup> [www.lep.gov/final\\_courts\\_ltr\\_081610.pdf](http://www.lep.gov/final_courts_ltr_081610.pdf)

<sup>14</sup> *Id.*

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 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.

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.

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 situations.

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.<sup>15</sup>

## **2. Notice of the Exemption and Opt-In/Opt-Out Process Should be Made Clear**

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 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.

Further, if a self-represented litigant opts-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.

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 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. The Substitution of Attorney – Civil form should be modified to include an opt-out box to check, so that

---

<sup>15</sup> National Asian Women's Health Organization, "Silent Epidemic: A Survey of Violence Among Young Asian American Women." 2002, p. 9.

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.

### **3. 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.

### **4. Opting-Out of Electronic Filing and Electronic Services**

If the Judicial Council does not adopt an exemption, and 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 miss early deadlines. Again, for self-represented LEP litigants, this creates an additional barrier in accessing the courts. We request that courts provide appropriate written translations and have staff with access to interpretive services available to explain the new requirements, so that LEP litigants can meaningfully access the court process. Requiring an opt-out procedure will increase the burden on the courts because self-represented LEP litigants will inevitably require individualized assistance in their language.

Like the current fee waiver process, litigants must be permitted to paper file any documents or pleadings with their request to opt-out. It must be considered filed as of the day of filing, and the litigant must be given an

opportunity to cure any defects in the request within a reasonable period of time.

## **5. 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.

### **Translating Materials and Forms**

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.

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 self-help centers so LEP litigants can ask questions and seek assistance.

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.

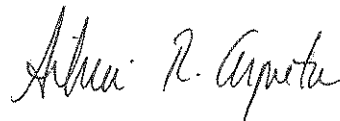
Third, courts should be strongly discouraged from using Google Translate or similar services to translate court webpages, as the translations have been proven to be inaccurate and confusing to non-English speakers. The use of online translators such as Google is not an

adequate substitute for human translation. Our bilingual staff attempted to explore the website of the Orange County Courts ([www.occourts.org](http://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.

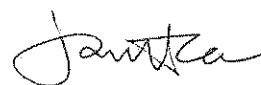
Finally, the courts must conduct effective outreach to LEP communities concerning any changes to court rules regarding electronic filing. Courts in each county should create signs and flyers to be posted prominently in each courthouse detailing electronic filing requirements. These signs and flyers should 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.

If you have any questions regarding these comments, please feel free to contact Joann Lee at [jlee@lafla.org](mailto:jlee@lafla.org) or (323) 801-7976. Thank you very much for your consideration.

Sincerely,



Silvia R. Argueta  
Executive Director



Joann H. Lee  
Directing Attorney

# Attachment D



Rachel Matteo-Boehm  
Direct: 415-268-1996  
Fax: 415-430-4396  
rachel.matteo-boehm@bryancave.com

January 31, 2013

**VIA HAND DELIVERY AND E-MAIL**

Camilla Kieliger  
Judicial Council of California  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102

Re: Press Group Comments on Mandatory E-Filing:  
Uniform Rules to Implement Assembly Bill 2073 (Item W13-05)

Dear Ms. Kieliger:

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."

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.

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).<sup>1</sup>

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.

---

<sup>1</sup> Also at issue are proposed changes to Rule of Court 2.259(c) and proposed new Rule 2.253(b)(7).

**Bryan Cave LLP**  
560 Mission Street, 25th Floor  
San Francisco, CA 94105-2994  
Tel (415) 268-2000  
Fax (415) 268-1999  
www.bryancave.com

**Bryan Cave Offices**

Atlanta  
Boulder  
Charlotte  
Chicago  
Colorado Springs  
Dallas  
Denver  
Frankfurt  
Hamburg  
Hong Kong  
Irvine  
Jefferson City  
Kansas City  
London  
Los Angeles  
New York  
Paris  
Phoenix  
San Francisco  
Shanghai  
Singapore  
St. Louis  
Washington, DC

**Bryan Cave  
International Consulting**  
A TRADE AND CUSTOMS CONSULTANCY

www.bryancaveconsulting.com  
Bangkok  
Jakarta  
Kuala Lumpur  
Manila  
Shanghai  
Singapore  
Tokyo



Judicial Council  
January 31, 2013  
Page 2

As detailed in part II of these comments, changing the technical definition of “filing” cannot alter the fundamental federal constitutional requirement of timely public access to records submitted to the court. Adopting the proposed changes, if used to justify access delays, would put the Rules of Court in violation of this federal constitutional mandate.

And as explained in part III, the adoption of these proposed changes would put the revised rules in conflict with the legislative treatment of court records in this state, which comports with the federal constitutional standard. The proposed rules, if adopted, would thus also violate Article VI, § 6(d) of the California Constitution, which provides that while the Judicial Council may “adopt rules for court administration, practice and procedure,” those rules “shall not be inconsistent with statute.” To avoid these federal and state constitutional concerns, the proposed rule changes that would divide e-filed documents into “filed” and “officially filed” records should be removed or revised along the lines suggested in part IV to make clear that they may not be used to delay access to court records.

Finally, as discussed in part V, rushing to adopt statewide mandatory e-filing rules to be effective in July 2013 completely undermines the rationale for operating a mandatory e-filing pilot program in the first place. Assembly Bill 2073 explicitly requires the Judicial Council to adopt mandatory e-filing rules that are “informed” by a study of a pilot program at the Orange County Superior Court. Code of Civ. Proc. § 1010.6(d)(2) & (f). But instead of following this mandate, the proposed rules were drafted and circulated before the Orange County pilot program even *began*. Both as a matter of prudent policymaking and under the express terms of § 1010.6, the proposed rules are premature, especially considering the serious federal and state constitutional concerns that adoption of the proposed rules would create.

The prospect of precipitously adopting mandatory e-filing rules without first going through a pilot program is especially troubling in light of the recent debacle over the California Case Management System (“CCMS”). Although CCMS was adopted in only a few courts, Orange County – the site of the pilot program envisioned by AB 2073 – was one of them. Given the enormous amount of public funds spent on that failed project, caution is essential to ensure that the past mistakes associated with CCMS are not repeated and that the delays and inconsistencies in public access associated with CCMS in Orange County – as well as in the handful of other courts that were early adopters of CCMS – do not carry over into the expansion of e-filing authorized by AB 2073.

## **I. About The Press Groups Submitting These Comments**

The California Newspaper Publishers Association (“CNPA”) is a nonprofit trade association that represents the mutual interests of the state’s newspapers, from the smallest weekly to the largest metropolitan daily. Its 850 daily, weekly, and student newspaper members depend on quick and complete access to court records to inform the public about criminal and civil cases and the judicial system.

The First Amendment Coalition (“FAC”) is an award-winning, nonprofit public interest organization dedicated to advancing free speech, more open and accountable government, and public participation in civic affairs. It serves the public, public servants, and the media in all its forms. It is committed to the principle that government is accountable to the people, and strives through education, public advocacy, litigation, and other efforts to prevent unnecessary government secrecy and to resist censorship of all kinds.

Californians Aware is a nonprofit organization established to help journalists and others keep Californians aware of what they need to know to hold government and other powerful institutions accountable for their actions. Its mission is to support and defend open government, an enquiring press, and a citizenry free to exchange facts and opinions on public issues.

Courthouse News Service (“Courthouse News”) is a legal news service for lawyers and the news media that focuses on civil lawsuits, from the initial filing on through to appellate rulings. It covers every major civil courthouse in every county in California on a regular basis, as well as in major cities across the nation. Other news outlets increasingly look to Courthouse News to provide them with information about newsworthy civil filings, which puts Courthouse News in a position similar to that of a pool reporter. Courthouse News’ media subscribers include such California entities as the Los Angeles Times, the San Jose Mercury News, and the Los Angeles Business Journal. Several academic institutions, including UCLA, also subscribe to Courthouse News’ reports.

## **II. Defining “Filed” To Mean Something Other Than What “Filed” Has Traditionally Meant Would Not Solve Any Existing Problem But Would Create Serious New Ones**

The Rules of Court currently define “electronic filing” as “the electronic transmission to a court of a document in electronic form.” Rule 2.250(b)(7). This definition is consistent with existing rules and law governing paper records, as well as traditional understandings of what it means to file a document with a court.

The proposed changes would add the following sentence to the current definition: “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.”

This proposed language, perhaps innocuous at first glance, is potentially profound in significance. The concept of an “officially filed” document – and the notion that such status is dependent on the completion of unspecified tasks associated with “processing and review” – is foreign to California law. It appears the primary – and perhaps sole – purpose of the “officially filed” concept is to justify arguments by court administrators that the public has no right to access a court record until court staff deem it fit for public viewing. The access delays that would inevitably result would violate the federal constitutional right of timely access to court records and be contrary to the practices of state and federal courts around the nation.

The “officially filed” concept is echoed in the three variations of proposed Rule 2.253(b)(7) concerning the time by which a document must be filed to satisfy deadlines: “Any document that is electronically filed with the court after the close of business on any day is deemed to have been 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.” This second sentence – which appears in all three variations of proposed Rule 2.253(b)(7) – also appears in the proposed changes to Rule 2.259(c).

**A. Recent History Suggests The Proposed Change In What It Means To “File”  
 A Record Electronically Is Meant To Allow Court Administrators To Delay Public  
 Access To Court Records Until After “Processing And Review”**

As far as the Press Groups can determine, the first public attempt by court administrators to suggest “filed” means something other than what the bar and the public have always understood it to mean occurred in 2010, in connection with public comments relating to a draft document prepared by the Administrative Office of the Courts entitled “Trial Court Records Manual” (“TCRM”).

In September 2010, the same coalition of press groups submitting these comments responded to an invitation for comment on the TCRM. The Press Groups noted that the TCRM laudably recognized that “providing a ‘complete, accurate, and accessible court record, created and available in a timely manner,’ is a ‘basic role[] of the judiciary,’” but that it provided no specific guidance or requirements to counteract the increasing degree to which trial courts in California were failing to fulfill this basic role. Press Groups’ Comments on TCRM at 2 (quoting TCRM at 3)) (attached as **Exhibit A**).

As the Press Groups noted, delays in public and press access to newly filed court documents are almost always caused by internal procedures in the clerk’s office that require the completion of administrative “review” and/or “processing” (amorphous terms that can include any number of administrative tasks and can take days or even weeks) *before* the press or public is allowed to view documents filed with the court. *Id.* at 4-5. But as reflected in the survey of other state and federal courts’ access procedures attached as **Exhibit B**, courts around the country provide access to newly filed documents prior to review or processing.

Putting review and processing – whatever that may mean and however long it takes – before access makes the speed of access wholly dependent on court staffing and other administrative resources, commodities in short supply in California’s courts. Though speedier access is a virtue espoused by proponents of Assembly Bill 2073,<sup>2</sup> the Press Groups observed that e-filing has not always provided

---

<sup>2</sup> See, e.g., Assem. Comm. on Judiciary, Analysis of Assem. Bill 2073, 2011-2012 Reg. Sess., at 6 (April 23, 2012) (noting Orange County Superior Court’s representation that “[e]-filing makes the court records available faster and sooner to everyone, including the public”); Sen. Judiciary Comm., Analysis of Assem. Bill 2073, 2011-2012 Reg. Sess., at 9 (June 18, 2012) (noting bill author’s identification of “easier and timelier access to records and documents by the courts and the public” as an advantage of e-filing).

Judicial Council  
January 31, 2013  
Page 5

that result because e-filing systems are just as susceptible to processing delays as paper-based courts (and perhaps more so, depending on how the system is operated). *Id.* at 9-10. The Press Groups' comments therefore recommended that whatever intake procedures were adopted should ensure there is some means for timely, traditional same-day access to newly filed court records. *Id.* at 5-7.

The official response to the Press Groups' comments – included in a report by William Vickery, then-Administrative Director of the Courts, to the Judicial Council – was surprising. Rather than address the delays in access created by making administrative procedures a precondition to access, the response effectively denied their existence. Agreeing that the public has a right to access “documents that have been *filed* with the court,” the response suggested that filing did not mean what the press and public – and the bar and other members of the judicial community – had long thought it did. December 14, 2010 Report from William Vickery to Judicial Council (“Report”), at 6-10.<sup>3</sup> “[D]ocuments that have been received [by the court], but not yet processed for filing,” the Report opined, were “pre-filed documents” that the public had no right to see. *Id.* at 7-9.

As far as we are aware, the notion of a “pre-filed document” did not appear again in official discourse after the Report, perhaps because the notion of a “pre-filed document” is so clearly at odds with traditional conceptions of what it means to “file” a document with a court. But the impulse to put administrative procedures ahead of public access remains, and the proposed rules appear to be an attempt to play a similar semantic game with respect to the public's right of access to court records.<sup>4</sup>

In the proposed rules, the dubious notion of a “pre-filed” document has been replaced with the equally dubious notion of an “officially filed” document. The proposed rules would retain the traditional understanding of “filing” as a document crossing the threshold of the clerk's window, passing from the possession of the litigant to the possession of the court for its consideration and action. But, as in the “pre-filed” conception, the proposed changes would create a second threshold for the document to cross – one that separates “filed” from “officially filed” documents.

---

<sup>3</sup> The Report is attached as **Exhibit C**. According to the Report, the TCRM was prepared by the Court Executives Advisory Committee's Working Group on Records Management, comprised of court executive and technology officers from various counties, including Orange County, and the responses to the Press Groups' comments were recommended by the Committee. Report, at 3 & nn.5, 7.

<sup>4</sup> Alan Carlson, the CEO of the Orange County Superior Court – the site of the e-filing pilot program envisioned by AB 2073 – has previously asserted that a court record is not a public record until after a certain amount of processing has been completed. Similarly, the CEO of the Ventura County Superior Court, which has not adopted e-filing, has taken the position that he will not provide press or public access to newly filed civil complaints until after the “requisite processing” has been completed and the complaints are “approved for public viewing.” The delays in access flowing from that position – more than 75% of complaints delayed by two or more court days, with actual delays stretching up to 34 calendar days – are the subject of litigation filed by Courthouse News Service against the Ventura County CEO, currently pending before the Ninth Circuit. *See Courthouse News Service v. Planet*, U.S. Court of Appeals Docket No. 11-57187.

If this new category is intended to give court staff authority to decline requests to access newly filed documents for some undetermined amount of time, until after a document has been deemed “officially filed,” the result would be repeated violations of the federal constitutional right of access, as explained further below.

It would also mark a dramatic departure from the many other courts, both state and federal, that provide access to court records upon receipt, before review or processing by court staff. As reflected in the nationwide survey of court access procedures attached as **Exhibit B**, this access was traditionally provided in the paper-based world and continues with e-filing.

For example, in many federal courts, newly e-filed documents flow instantly onto PACER for online paid viewing – and at public access terminals at the courthouse where the same documents can be viewed free of charge – without any human intervention prior to public access. In other federal courts where newly filed documents do not flow automatically onto PACER, alternative provisions are made so that interested persons can nevertheless access the new filings as they are received by the court, such as setting up a separate electronic queue where new documents can be accessed before they have been reviewed or processed by court staff, in some instances even before a case number has been assigned. Similar procedures for access prior to review or processing by court staff have been in use by state courts, including those that have transitioned to e-filing, as is also reflected in **Exhibit B**.<sup>5</sup>

Indeed, there is nothing inherently different about e-filing versus paper filing that would justify delaying public and press access to newly filed court records until after processing and review. As demonstrated by the courts that already do it, there is no technological barrier to providing electronic access – either at the courthouse itself through public access terminals, or online over the Internet, or both – as soon as a document is received by the court. And unlike in the paper world, where access is usually provided to the original paper document, e-filing means a court can provide an electronic *copy* for viewing by interested persons while retaining, at all times, physical possession of the document itself.

**B. Adopting A New Definition of “Filed,” In An Attempt To Justify Delays In Access During “Processing,” Would Violate The Federal Constitutional Right Of Access**

The Judicial Council should not countenance the definitional sleight of hand reflected in the proposed rule changes when the public’s access to court records – a right that is fundamental to the transparency of the judicial branch of our government – is at issue. Just as a court may not “carve[] out an[] exception” to the right of access “by determining that if a document is lodged, rather than

---

<sup>5</sup> In contrast, and despite the Legislature’s express intent that AB 2073 speed public access, Orange County Superior has refused requests to make newly filed documents available for review upon their receipt by the court through an electronic queue similar to that adopted by other courts. Instead, newly e-filed documents are made available for review through the court’s web site, and only after they have been processed, the result of which has been persistent delays in access.

Judicial Council  
January 31, 2013  
Page 7

filed, with the court, it is not a judicial record,” *Rocky Mt. Bank v. Google, Inc.*, 428 Fed. Appx. 690, 692 (9th Cir. 2011), neither may the Judicial Council sanction an attempt to circumvent the right of access to documents “[o]nce ... filed with the court.” *In re Marriage of Johnson*, 598 N.E.2d 406, 410 (Ill. App. 1992). The proposed changes would put the Rules of Court in conflict with the First Amendment only a dozen years after the Judicial Council revised the Rules to bring them into compliance with the First Amendment in light of *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4<sup>th</sup> 1178 (1999).

# **1. The Federal Constitutional Right Of Access Applies To Substantive Records As Soon As They Are Received By The Court, Whether “Filed,” “Lodged” Or “Submitted”**

The press and public have a federal right of access under the First Amendment and the common law to civil court cases, including court records. *See, e.g., Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988); *In re Continental Ill. Secur. Litig.*, 732 F.2d 1302, 1308-09 (7th Cir. 1984).

The federal right of access attaches to “judicial records,” which includes all substantive “written documents submitted in connection with judicial proceedings.” *Vasquez v. City of New York*, 2012 U.S. Dist. LEXIS 138444, \*8 (S.D.N.Y. 2012) (quoting *Lugosch v. Pyramid Co.*, 435 F.3d 110, 124 (2d Cir. 2006)); *accord, e.g., Lencadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 164 (3d Cir. 1993) (“[b]y submitting pleadings and motions to the court for decision, one ... exposes oneself [to] public scrutiny”) (quoting *Mokhiber v. Davis*, 537 A.2d 1100, 1111 (D.C. App. 1988)); *United States v. Corbitt*, 879 F.2d 224, 228 (7th Cir. 1989) (access attaches to “documents submitted in connection with a judicial proceeding”); *F.T.C. v. Standard Financial Mgmt. Corp.*, 830 F.2d 404, 409 (1st Cir. 1987).

Thus, while the cases applying the federal constitutional and/or common law right of access often speak of the right attaching “at the time documents are filed with the court,” *Mokhiber*, 537 A.2d at 1112; *accord, e.g., Lencadia*, 998 F.2d at 161-62, that is judicial shorthand for the document leaving the possession of a private party and coming into the possession of a branch of government, at which point they become public records because “the public at large pays for the courts and therefore has an interest in what goes on at all stages.” *Citizens First Nat’l Bank v. Cincinnati Ins. Co.*, 178 F.3d 943, 945 (7th Cir. 1999) (per Posner, C.J.); *Union Oil Co. v. Leavell*, 220 F.3d 562, 568 (7th Cir. 2000) (“What happens in the halls of government is presumptively public business.”).

Consequently, the federal constitutional and common law rights of access attach to substantive documents once received by court staff – *i.e.*, “lodged with the court,” *Mokhiber*, 537 A.2d at 1111; *accord, e.g., Rocky Mt. Bank*, 428 Fed. Appx. at 692 – even if they are never formally filed or are subsequently withdrawn. *In re Continental Ill. Secur. Litig.*, 732 F.2d at 1310-11 (“immaterial” that party withdrew substantive motion in support of which document at issue had been submitted to the court); *In re Peregrine Sys.*, 311 B.R. 679, 688 (D. Del. 2004) (recognizing that the First Circuit has held “that documents not even part of the court file were accessible under the right of access doctrine because ‘they were duly submitted to the court’ and were ‘relevant and material to the matters sub judice’”) (quoting *FTC*, 830 F.2d at 410).

Judicial Council  
January 31, 2013  
Page 8

That the “federal and the state Constitutions provide broad access rights to judicial hearings and records” has been equally recognized by courts in this state. *Copley Press, Inc. v. Superior Court*, 6 Cal. App. 4<sup>th</sup> 106, 111 (1992) (quoted with approval on this point in *NBC Subsidiary*, 20 Cal. 4<sup>th</sup> at 1208 n.25) (citations to the First Amendment and Article I, § 2(a) of the California Constitution omitted).

In *NBC Subsidiary*, the California Supreme Court explicitly held that California law governing access to civil court proceedings and substantive records must comply with First Amendment requirements. 20 Cal. 4<sup>th</sup> at 1216–17, 1208 n.25; accord, e.g., *Savaglio v. Wal-Mart Stores, Inc.*, 149 Cal. App. 4<sup>th</sup> 588, 596 (2007); *Burke v. Burke*, 135 Cal. App. 4<sup>th</sup> 1045, 1062 (2006); see also Rule of Court 2.550(c) (“Unless confidentiality is required by law, court records are presumed to be open.”).

This “broad” federal constitutional right of access “encompasses a great volume and diversity of materials, including most of the contents of files in the courthouse,” *Copley Press*, 6 Cal. App. 4<sup>th</sup> at 114, such as “the various documents *filed in or received by the court.*” *Id.* at 113 (emphasis added).

## 2. As Recognized By The California Supreme Court, The Federal Constitutional Right Requires That Access To Court Records Be “Immediate” And “Contemporaneous”

A critical component of the federal constitutional right of access is that, “[i]n light of the values which the presumption of access endeavors to promote, a necessary corollary ... is that once found to be appropriate, access should be immediate and contemporaneous.” *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994); *Globe Newspaper Co. v. Pokaski*, 868 F.2d 497, 507 (1st Cir. 1989) (“even a one to two day delay impermissibly burdens the First Amendment”); *Associated Press v. U.S. District Court*, 705 F.2d 1143, 1147 (9th Cir. 1983) (“It is irrelevant that some of these pretrial documents might only be under seal for ... 48 hours .... The effect of the order is a total restraint on the public’s first amendment right of access even though the restraint is limited in time.”); *Vasquez*, 2012 U.S. Dist. LEXIS 138444, \*10 (“The First Amendment and common-law create a ‘presumption of *immediate* public access.’”) (quoting *Lugosch*, 435 F.3d at 126) (emphasis in original).

It necessarily follows, as the California Supreme Court has held, that delays in access are the functional equivalent of access denials and are thus unconstitutional unless the procedural and substantive requirements for sealing records have been satisfied. *NBC Subsidiary*, 20 Cal. 4<sup>th</sup> at 1219 n.42 (rejecting argument that “[d]elaying media access ... is not a prior restraint warranting exacting First Amendment scrutiny” because “temporarily seal[ing] the hearing transcripts ... preclud[es] access to information in the first instance” and thus is “subject to ‘exacting First Amendment scrutiny’”); *id.* at 1220 n.43 (refusing to follow authority asserting that “[c]ontemporaneity of access to written material does not significantly enhance’ the public’s ability to ensure proper functioning of the courts”).

In sum, “the public’s long-standing right [of access] cannot be absterged by the simple expedient of [treating] documents [as] lodged,” rather than “filed,” until staff determines they should be officially filed. *Rocky Mt. Bank*, 428 Fed. Appx. at 692. Court administrators have “not point[ed] to any authority for the proposition that lodging alone,” or treating documents as lodged but not yet officially

filed, “is sufficient to overcome the public’s right of access,” *id.*, even for a relatively brief period of time. *Courthouse News Service v. Jackson*, 2009 U.S. Dist. LEXIS 62300, \*4-5, 10-11 (S.D. Tex. 2009) (“the 24 to 72 hour delay in access [to newly filed complaints]” – created by state court’s clerk position that documents must be “verified for correct cause number, proper court, accurate title of document and proper category before they are made available to the public,” as well as scanned and posted online – “is effectively an access denial and is, therefore unconstitutional”).

Accordingly, redefining “filed” to allow staff to deny public and press access to documents received by the court until staff deem them ready to be “officially filed” would violate the federal constitutional right of access because administrators’ denial of access during that period cannot satisfy the procedural and substantial standards for sealing (even temporarily) of court records set out in *NBC Subsidiary*, 20 Cal. 4<sup>th</sup> at 1216-18 and Rules of Court 2.550 and 2.551.

### **III. Treating “Filed” Electronic Court Records As Something Other Than Public Records Is Contrary To State Law Incorporating The Federal Constitutional Standard, And Would Be Unconstitutional For This Additional Reason**

The First Amendment’s mandate that a public right of access attaches to substantive records received by the court has been codified in California court rules and statutes. And although the statute that the proposed rule changes purport to implement does not speak directly to this issue, it evinces a clear legislative intent to treat electronically filed documents the same way by requiring that e-filed documents have the same legal status as paper records. Code of Civ. Proc. § 1010.6(b)(1).

Because the proposed rule changes conflict with “the Legislature’s intent behind the statutory scheme that the rule was intended to implement,” adopting the proposed rule changes would not only put the Rules of Court in conflict with federal constitutional requirements but also with the California Constitution, which only allows the Judicial Council to “adopt rules for court administration, practice and procedure ... [that are] not inconsistent with statute.” *California Court Reporters Ass’n v. Judicial Council*, 39 Cal. App. 4<sup>th</sup> 15, 21-22, 25-26 (1995) (quoting Cal. Const., Art. VI, § 6(d)).

#### **A. California Law On Court Records Follows The Federal Constitutional Standard**

California statutory law defines a “[c]ourt record” to include “[a]ll filed papers and documents in the case folder” and “all filed papers and documents that would have been in the case folder if one had been created.” Gov’t Code § 68151(a)(1). This definition was enacted in 1994, two years after the Court of Appeal’s decision in *Copley Press* and is consistent with the “broad” definition of “[c]ourt records” in that decision, which held that “most of the contents of files in the courthouse” – such as “the various documents filed in or received by the court” – are “public records available to the public in general including news reporters.” 6 Cal. App. 4<sup>th</sup> at 111, 113-14 (internal quotation omitted).

Any doubt that the statutory definition of a “court record,” to which the right of access attaches, was intended to apply to pleadings received by the court was dispelled in 2001. After *NBC Subsidiary* held



Judicial Council  
January 31, 2013  
Page 10

that state laws concerning access to civil court proceedings and records must meet federal constitutional standards, 20 Cal. 4th at 1197, 1216, the Judicial Council amended the Rules of Court to bring them into compliance with “the First Amendment right of access.” Cal. R. Ct 2.550, Advisory Comm. Comment. These rules provide that “court records are presumed to be open,” Cal. R. Ct. 2.550(c), and define a court “‘record’ [to] means all or a portion of any document, paper, exhibit, transcript, or other thing *filed or lodged* with the court.” Cal. R. Ct 2.550(b)(1) (emph. added).<sup>6</sup>

Even before the most recent amendments to Code of Civil Procedure § 1010.6 brought about by AB 2073, that section incorporated these requirements by specifying, *inter alia*, that “[a] document that is filed electronically shall have the same legal effect as an original paper document.” Code of Civ. Proc. § 1010.6(b)(1). That provision remains unaffected by the current amendments.

## **B. The Proposed Changes Are Inconsistent With Legislative Treatment Of Court Records**

The proposed changes to Rules 2.250(b)(7) and 2.259(c) and proposed new Rule 2.253(b)(7), to the extent they are used to justify delaying access after a court record becomes “officially filed,” would be “‘inconsistent with statute’” – and thus would violate Article VI, § 6(d) of the California Constitution as well as the First Amendment – “because they cannot be squared with the existing legislative scheme requiring” that, with certain exceptions not applicable here, the public and press have a right of access to court records, in paper or electronic form, once filed or received by the court. *California Court Reporters Ass’n*, 39 Cal. App. 4th at 33 (following, *e.g.*, *People v. Hall*, 8 Cal. 4th 950, 953 (1994)).

The division of electronic records into those that have been “filed” and those that have been “officially filed,” if used to delay access until after a document is “officially filed,” is inconsistent with Government Code § 68151(a) because it, in essence, takes an “unduly restrictive” view of what constitutes a court record. *People v. Dubon*, 90 Cal. App. 4th 944, 954 (2001) (rejecting interpretation of “record” in Penal Code § 1016.5 inconsistent with definition of “court record” in § 68151(a) and *Copley Press*, 6 Cal. App. 4th at 113). Indeed, if Rules 2.550(b) & (c) are consistent with the definition of “court record” in § 68151(a), and clearly they are, the proposed rule changes necessarily are not.

Combined, Government Code § 68151(a) and Rules 2.550(b)-(c) – and the decisions in *NBC Subsidiary* and *Copley Press* they incorporate – leave no doubt that a substantive document received by a court from a party in a case becomes a “court record” to which the press and public have a right of access. There is also no doubt the proposed rule changes would give documents filed electronically a different legal effect until they cross an ill-defined administrative threshold and become “officially filed” documents. This squarely conflicts with the legislative mandate that electronically filed documents “shall have the same legal effect as an original paper document,” Code of Civ. Proc. § 1010.6(b)(1),

---

<sup>6</sup> Although a conflict between existing and new Rules of Court may not violate Article VI, § 6(d) of the California Constitution, the “Judicial Council’s own” actions can help “support” a court’s determination of the legislative intent underlying the statutory scheme to which the proposed rule changes must be compared to determine if they pass constitutional muster. *California Court Reporters Ass’n*, 39 Cal. App. 4th at 30.

Judicial Council  
January 31, 2013  
Page 11

and thus would fail to pass constitutional muster. *California Court Reporters Ass'n*, 39 Cal. App. 4th at 22 (“the Judicial Council may not adopt rules that are inconsistent with governing statutes”).

The proposed changes also far exceed the scope of the Legislative mandate to 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.” *Id.*, § 1010.6(f). Nothing in AB 2073 directs the Judicial Council to create a new category of documents that are “officially filed,” nor does it suggest that the Legislature intended the Judicial Council to adopt rules to allow administrators to decline requests by the public or press to see newly filed documents until after administrative tasks associated with newly filed documents have been completed.

Since the legislative history shows the Legislature enacted AB 2073 with the intent of *facilitating* public access to newly filed court records, to instead use that legislation as a hook to *undermine* the public’s right to access court records by providing a justification for court administrators to delay public access to e-filed records until some unspecified time after “processing and review” is “inconsistent with the statute” because “its effect would have violated the legislative intent behind,” and directly contravene an important purpose of, the amendments to “the statute.” *California Court Reporters Ass'n*, 39 Cal. App. 4th at 24 (quoting *In re Robin M.*, 21 Cal. 3d 337, 346 (1978)).

#### **IV. The Proposed “Officially Filed” Rules Provisions Should Either Be Removed Or Revised To Make Clear That They May Not Be Used To Delay Access**

Other than as an administrative device to delay public access to court records, the concept of an “officially filed” document appears meaningless. A document need not be “officially filed” in order to satisfy statutory or court-imposed deadlines and need not be “officially filed” to have the “same legal effect as a document in paper form.” *See* Code of Civ. Proc. § 1010.6(b)(1); Rule 2.252(f)(1) & (2) (proposed to be renumbered as Rule 2.252(c)(1) & (2)).

The Invitation to Comment states that the proposed changes to the definition of “electronic filing” are meant “[t]o distinguish this definition from other meanings of ‘filing,’” but it does not say what those “other meanings of ‘filing’” might be. Invitation to Comment, No. W13-05 at 16. It also provides as an example that “when it is used to specify the effective date of a filing, it is the time of transmission, not of processing or the completion of processing, that is determinative,” but it does not explain what the time of “the completion of processing” determines. *Id.* at 17. Cryptically, the Invitation notes that the proposed language “is also useful in distinguishing the act of filing from the process required in order for a document to become an official record, which is significant for other purposes,” but it does not say what those “other purposes” are. *Id.*

If the proposed change to the definition of “electronic filing” is, in fact, intended to serve a legitimate purpose and not intended to impact public access to court records, then that purpose should be clearly identified in the proposed rules, and the rules should make clear that “officially filed” status is not intended to be a precursor to access. Among other things, there should be express language stating

Judicial Council  
January 31, 2013  
Page 12

that any changes to the rules do not affect Rule 2.254(c), which states that “[e]xcept 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.”

If however, the intent of the proposed rule changes is to allow court administrators to delay access until after “processing and review,” such a position should be taken in a manner that is open and obvious rather than through a semantic sleight of hand in e-filing rules.

#### V. Rushing To Adopt Uniform E-Filing Rules Undermines The Legislative Intent To Start With A Pilot Program And Is Ill-Advised, Especially In Light Of The Judiciary’s Recent History With CCMS

Finally, the adoption of statewide mandatory e-filing rules is premature.

In considering the Assembly Bill that led to the amendments to Civil Code § 1010.6, the Assembly Committee on the Judiciary noted that “a number of significant issues” – including public access to court records – “must be resolved before moving from a voluntary approach to a mandatory approach.” Assem. Comm. on Judiciary, Analysis of Assem. Bill 2073, 2011-2012 Reg. Sess., at 1-2 (April 23, 2012). The Committee proposed permitting “one trial court to pilot mandatory e-filing, and direct[ing] the Judicial Council to study the pilot and then timely develop a uniform statewide rule that all trial courts could choose to adopt.” *Id.* This is the route the Legislature chose to follow.

Amended Code of Civil Procedure § 1010.6 authorized Orange County Superior to operate a pilot program for mandatory e-filing from January 1, 2013 to July 1, 2014, and ordered the Judicial Council “to conduct an evaluation of the pilot project and report to the Legislature, on or before December 31, 2013, on the results of the evaluation.” Code of Civil Proc. § 1010.6(d)(2). The legislation requires the Judicial Council to then “adopt uniform rules to permit the mandatory electronic filing and service of documents” – rules which are to be “informed by” the evaluation of the pilot program. § 1010.6(f).

The proposed rules are at odds with the Legislature’s mandate and intent and thus “unlawful[y] conflict with the statutory authorization” for e-filing “contained in the governing statute.” *California Court Reporters Ass’n*, 39 Cal. App. 4th at 25 (quoting *Cox v. Superior Court*, 19 Cal. App. 4th 1046, 1050-51 (1993)). Instead of first allowing the Orange County pilot program to operate long enough for its effects – intended and unintended – to reveal themselves, and only then using the results of the evaluation of that program to prepare uniform mandatory e-filing rules, the process has been reversed. The mandatory e-filing rules were prepared and circulated ***before the Orange County mandatory e-filing pilot project even began***. This timing renders the statutorily required evaluation of Orange County’s e-filing pilot program utterly meaningless.

In addition to being contrary to what the Legislature ordered, this timing is a recipe for disaster. The people of California are still reeling from the hundreds of millions of dollars spent on the now-scuttled CCMS. A pilot program for compulsory e-filing is essential to ensure that past mistakes

associated with CCMS are not repeated.<sup>7</sup> While mandatory e-filing may ultimately be a good thing for California litigants and courts, we respectfully suggest that rushing to a new solution is not good public policy.

## VI. Conclusion

While the “officially filed” language in the proposed rule changes appears technical and harmless, its potential significance must not be overlooked. Rights fundamental to the democratic process – like the right to know what goes on in the courts – are meaningless if they can be disregarded when they become inconvenient. California has the opportunity to build e-filing systems that improve efficiency and transparency. But, as history has taught us, rushing forward without taking the time to assess how these systems will actually work for all concerned is quite likely to result in a system that is worse rather than better.

The Press Groups thus respectfully urge the Judicial Council to strike the “officially filed” language in the proposed changes to Rules 2.250(b)(7) and 2.259(c) and proposed new Rule 2.253(b)(7), or, if there is a purpose for this language that is unrelated to access, to amend the proposed rules to identify that purpose and make clear that “official filing” is not a precondition to public and press access.

In addition, the Press Groups respectfully submit that the Judicial Council should postpone the adoption of mandatory e-filing rules until the Orange County pilot program can be properly tested and evaluated, including an assessment of its impact on public and press access.

---

<sup>7</sup> The courts that were the early adopters of CCMS – including Orange County – were among the worst in terms of access delays, primarily because CCMS involved a cumbersome, labor-intensive intake process that put access after processing – a practice that the “officially filed” language in the proposed rules appears designed to institutionalize in the post-CCMS era. After that court implemented mandatory e-filing for certain categories of cases, e-filed documents were not typically available until a day or two *after* their paper-based counterparts were accessible. Orange County’s pilot expanded e-filing program – which requires that all documents filed in limited, unlimited and complex civil actions be e-filed unless the Court rules otherwise – has been in effect since January 1, 2013, and in the first few weeks of the pilot program, the delays in access that accompanied its earlier e-filing program for specific case types have not been resolved and appear largely unchanged. As noted above, Orange County has refused to implement the electronic queue solution for immediate access to e-filed documents despite its widespread use by the federal courts and despite the fact there are no technological barriers to doing so. San Diego, also an early adopter of CCMS, has similarly failed to provide an electronic queue to enable access to new documents as they are received by the court, despite requests that it do so.

Sacramento County Superior Court – also an early CCMS adopter – also provides an example of the delays in access that would result if processing were a precondition to access. In that court, a presiding judge’s standing order requires filing parties to submit an extra public access copy of case-initiating civil documents, which are placed in a public access bin in the clerk’s office for review by the public and press prior to processing. However, based on the court’s web site, processing regularly takes more than 30 days and sometimes stretches beyond 40 days.

Judicial Council  
January 31, 2013  
Page 14

The Press Groups greatly appreciate the consideration of their views on the proposed rules by the Judicial Council and the Court Technology and Civil and Small Claims Advisory Committees. Should you have any questions or wish to discuss any of these issues further, please do not hesitate to contact our offices.

Respectfully submitted,

BRYAN CAVE LLP  
Rachel Matteo-Boehm  
Roger Myers  
Katherine Keating

By: \_\_\_\_\_  
Rachel Matteo-Boehm

On behalf of California Newspaper Publishers Association,  
First Amendment Coalition, Californians Aware and Courthouse News Service

cc: California Newspaper Publishers Association  
First Amendment Coalition  
Californians Aware  
Courthouse News Service

# **Exhibit A**



**Holme Roberts & Owen LLP**  
*Attorneys at Law*

VIA HAND DELIVERY AND E-MAIL

SAN FRANCISCO

September 30, 2010

BOULDER

Ms. Camilla Kieliger  
Judicial Council  
455 Golden Gate Avenue  
San Francisco, CA 94102

COLORADO SPRINGS

Re: Comments on Trial Court Records Manual (Item SP10-02)

Dear Ms. Kieliger:

DENVER

On behalf of the California Newspaper Publishers Association, the First Amendment Coalition, Californians Aware, and Courthouse News Service (collectively, the "Press Groups"), we are pleased to make this submission in response to the Judicial Council's invitation for written comments on the Trial Court Records Manual (the "Manual").

DUBLIN

The Press Groups have a particular interest in the aspects of trial court record creation and maintenance that affect the media's ability to access court records in a timely manner and therefore focus their comments on the court record creation process (Section 4.1), e-filing (Section 4.4), press access to court records (proposed new section within Chapter 10), and case numbering systems (Sections 4.2 and 4.3).

LONDON

**I. About the California Newspaper Publishers Association, the First Amendment Coalition, Californians Aware, and Courthouse News Service**

LOS ANGELES

The California Newspaper Publishers Association is a nonprofit trade association that represents the mutual interests of the state's newspapers, from the smallest weekly to the largest metropolitan daily. Its 850 daily, weekly, and student newspaper members depend on quick and complete access to court records to inform the public about criminal and civil cases and the judicial system.

MUNICH

PHOENIX

The First Amendment Coalition is an award-winning, nonprofit public interest organization dedicated to advancing free speech, more open and accountable government, and public participation in civic affairs. It serves the public, public servants, and the media in all its forms. It is committed to the principle that government is accountable to the people, and strives through education, public advocacy, litigation, and other efforts to prevent unnecessary government secrecy and to resist censorship of all kinds.

SALT LAKE CITY

Holme Roberts & Owen LLP  
*Attorneys at Law*

Ms. Camilla Kieliger  
September 30, 2010  
Page 2

Californians Aware is a nonprofit organization established to help journalists and others keep Californians aware of what they need to know to hold government and other powerful institutions accountable for their actions. Its mission is to support and defend open government, an enquiring press, and a citizenry free to exchange facts and opinions on public issues.

Courthouse News Service ("Courthouse News") is a legal news service for lawyers and the news media that focuses on civil lawsuits, from the initial filing on through to appellate rulings. Other news outlets increasingly look to Courthouse News to provide them with information about newsworthy civil filings, which puts Courthouse News in a position similar to that of a pool reporter. Courthouse News' media subscribers include such well-known entities as the *Los Angeles Times*, the *San Jose Mercury News*, the *Houston Chronicle*, *The Dallas Morning News*, *The Boston Globe*, the *Detroit Free Press*, *The Atlanta-Journal Constitution*, and *Forbes*.

Courthouse News covers the major civil courthouse in *every* county in California on a regular basis, as well as in major cities across the nation. This extensive on-the-ground experience has given Courthouse News a first-hand look at how a court's intake procedures can affect media access to newly filed documents.

## II. General Comments

As an initial matter, the Press Groups applaud the recognition in the Manual that providing a "complete, accurate, and *accessible* court record, created and *available in a timely manner*" is a "basic role[]" of the judiciary. Manual at 3 (emphasis added).

This recognition is, of course, consistent with the First Amendment right of access to court documents, which has been repeatedly recognized by the Ninth Circuit. *See Oregonian Pub. Co. v. U.S. Dist. Court*, 920 F.2d 1462, 1465 (9th Cir. 1990); *Associated Press v. U.S. District Court*, 705 F.2d 1143, 1145 (9th Cir. 1983). Courts have also emphasized that access to court records must be timely. *See, e.g., Associated Press*, 705 F.2d at 1147 (even short delays constitute "a total restraint on the public's first amendment right of access even though the restraint is limited in time, and are unconstitutional unless the strict test for denying access has been satisfied"); *accord, e.g., Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) ("[i]n light of values which the presumption of access endeavors to promote, a necessary



Holme Roberts & Owen LLP  
Attorneys at Law

Ms. Camilla Kieliger  
September 30, 2010  
Page 3

corollary to the presumption is that once found to be appropriate, access should be immediate and contemporaneous"); *Globe Newspaper Co. v. Pokaski*, 868 F.2d 497, 507 (1st Cir. 1989) ("even a one to two day delay impermissibly burdens the First Amendment").

This timely access is critical because of the unique role the court record plays in providing a window into the processes of an open government. Or, as one judge put it, "In order to maintain a working democracy, it is essential that the people, the final arbiters of all rights, have knowledge of the operations of their government, including the courts." *Phoenix Newspapers v. Superior Court*, 418 P.2d 594, 600 (Ariz. 1966) (Bernstein, V.C.J., concurring).

Because few members of the public can observe the court's activities directly, they learn what transpires in courthouses "chiefly through the print and electronic media," which function as "surrogates for the public" in the context of access to judicial records and information. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572-73 (1980). Indeed, the vital nature of judicial activity has traditionally caused news reporters to cover the courts regularly and closely, often tracking the day's developments from a press room in the courthouse itself. This courthouse beat typically involved the journalist's end-of-day checking of designated media bins that contained the day's newly filed civil complaints.<sup>1</sup>

---

<sup>1</sup> As case-initiating documents, complaints have a special significance among judicial records that underscores the importance of prompt disclosure. As one federal district court recently explained:

[A] complaint ... is the root, the foundation, the basis by which a suit arises and must be disposed of. [A]long with a summons, it is the means by which a plaintiff invokes the authority of the court, a public body, to dispose of his or her dispute with a defendant. ... It *provides* the causes of action. ... It *establishes* the merits of a case, or the lack thereof. ... [W]hen a plaintiff invokes the Court's authority by filing a complaint, the public has a right to know who is invoking it, and toward what purpose, and in what manner.

*In re NVIDIA Corp.*, 2008 WL 1859067, at \*3 (N.D. Cal. 2008); accord *In re Eastman Kodak Co.*, 2010 WL 2490982, \*2 (S.D.N.Y. 2010) ("a complaint ... is a pleading essential to the

Holme Roberts & Owen LLP  
Attorneys at Law

Ms. Camilla Kieliger  
September 30, 2010  
Page 4

Increasingly, however, the pressures on the modern court to operate like a moneymaking business entity seem to obscure the court's fundamental character as a public institution. Over the last twenty years in California, the ability of reporters to monitor the court's business has been restricted in moves – big and small – by individual courts that limit where journalists can go, when they can be there, and what they can see. In particular, while same-day access to newly filed court records used to be the norm, courts increasingly delay media access to new filings, often refusing to allow the press to see them until after any number of intake and other administrative procedures have been completed.

The “newsworthiness of a particular story is often fleeting,” *Grove Fresh*, 24 F.3d at 897, and given the vast amount of information competing for its attention, it is only while new court actions are still “current news that the public’s attention can be commanded.” *Chicago Council of Lawyers v. Bauer*, 522 F.2d 242, 250 (7th Cir. 1975). Thus, a court record that cannot be accessed on the day it is filed has a far lower chance of being reported on, which means a far lower chance of coming to the attention of interested members of the public. Given the extent to which the public depends on the press for information about what happens in the courts, the result can only be a less informed citizenry.

This Manual presents an excellent opportunity to repair the long-term deterioration of press access to California’s courts and clearly state that the court record is the public record, which must be kept open and accessible to the press in a prompt and complete manner.

### **III. Court Record Creation Processes (Section 4.1)**

As a practical matter, delays in access to civil trial court records often stem from a court’s administrative intake procedures, although this need not be the case. Traditionally, courts put each day’s new filings into a designated press box that reporters

---

Court’s adjudication of the matter as well as the public’s interest in monitoring the federal courts”); *Vassiliades v. Israely*, 714 F. Supp. 604, 606 (D. Conn. 1989) (denying request to seal complaint: “The filing of the complaint is likely to be the first occasion that the public could become aware of the dispute”).

Holme Roberts & Owen LLP  
*Attorneys at Law*

Ms. Camilla Kieliger  
September 30, 2010  
Page 5

could review at the end of the day. Increasingly, however, courts are interposing various administrative tasks between the filing of a document and its being made available to the press. For example, court staff may insist that they must first scan, docket, put in folders, verify, accept, or perform any number of other clerical processes before new filings will be made available for review, which almost always results in delays.

Ironically, given the speed with which information moves across the Internet, these delays come at the very moment in history when timely access is at a premium. *See, e.g.,* Jeff Jarvis, *There is no hot news. All news is hot news*, BuzzMachine (June 28, 2010), <http://www.buzzmachine.com/2010/06/28/there-is-no-hot-news-all-news-is-hot-news/> (“Hot news is ridiculously obsolete. What’s hot today? As Tom Glocer, head of Thomson Reuters, said, his news is most valuable for ‘milliseconds.’”); David Carr, *Newsweek’s Journalism of Fourth and Long*, N.Y. Times, Week in Review, May 24, 2009, at 1 (present news environment is “a time when current events are produced and digested on a cycle that is measured with an egg timer, not a calendar”); Eric Klinenberg, *News Production in a Digital Age*, 597 *Annals Am. Acad. Pol. & Soc. Sci.* 48, 54 (2005) (“The advent of twenty-four-hour television news and the rapid emergence of instant Internet news sites have eliminated the temporal borders in the news day, creating an informational environment in which there is always breaking news to produce, consume, and – for reporters and their subjects – react against.”). Even delays of 24 hours are therefore unacceptable, and access to newly filed documents in California trial courts is often delayed much longer.

Fortunately, these delays can be easily avoided simply by returning to (or maintaining) intake procedures that ensure the press has an opportunity to review newly filed civil actions at the end of the day on which they are filed, regardless of whether the various administrative tasks associated with intake have been completed.

*A. Elements of Intake Procedures that Promote Access*

The critical element of intake procedures that result in same-day access is the opportunity for interested news reporters to see new filings promptly after they are submitted to the court, instead of making reporters wait until docketing or other administrative intake procedures have been completed. This is often accomplished either by placing the day’s newly filed documents in a press box that can be accessed during a pre-arranged window of time at the end of the day, or by promptly scanning

Holme Roberts & Owen LLP  
*Attorneys at Law*

Ms. Camilla Kieliger  
September 30, 2010  
Page 6

newly filed documents and making them immediately available through terminals at the courthouse, irrespective of whether the documents will later be made available for remote viewing over the Internet.

This fundamental principle is the same for courts that implement e-filing. Contrary to the popular assumption that speedy access to court records automatically flows from e-filing, the Press Groups' experience is that the implementation of e-filing often brings *delays* in access to newly filed civil actions because courts have chosen to make e-filed documents available only after various administrative tasks have been completed (*e.g.*, manually checking the filing, making it available for electronic review, etc.).<sup>2</sup> E-filing courts have typically surmounted these access problems in one of two ways:

1. Providing reporters with access to an electronic in-box on computer terminals at the courthouse through which records can be viewed as soon as they cross the electronic equivalent of the intake counter at the clerk's office, regardless of what administrative processing might remain to be done and/or whether the document has been made available for remote electronic viewing on a public web site. Variations of the electronic in-box have been successfully implemented in the United States District Courts for the Western District of Pennsylvania, the Northern District of Georgia, the District of New Jersey, the District of Minnesota, the Western District of Kentucky, and the Eastern District of Missouri. The Northern District of Illinois also used a similar in-box solution until recently, when it began making new civil complaints immediately available on PACER.
2. Printing out copies of e-filed cases (either as a standard practice or promptly upon a reporter's request), regardless of any processing tasks that may remain.

---

<sup>2</sup> A good example of the access delays that often accompany e-filing can be found in the King County Superior Court in Seattle, Washington. Traditionally, reporters who visited the court regularly had same-day access to paper filings behind the court's intake counter. After the court instituted e-filing, however, Courthouse News found that it could not access documents filed after about noon until the following day. Similarly, at the Eighth Judicial District Court in Las Vegas, Nevada, which switched to mandatory e-filing in early 2010, Courthouse News' reporter cannot see new complaints until they are at least a day old, and the delays are often longer.

Holme Roberts & Owen LLP  
*Attorneys at Law*

Ms. Camilla Kieliger  
September 30, 2010  
Page 7

Courts that have implemented this kind of system include the Travis County District Court in Austin, Texas, the San Francisco Division of the United States District Court for the Northern District of California, the United States District Courts for the Western and Eastern Districts of Texas, the Northern and Southern Districts of Ohio, the Eastern District of Wisconsin, and the District of Minnesota.

While the Manual need not dictate a particular method of giving the press timely access to newly filed court records, the Press Groups respectfully urge that the basic requirement that intake procedures ensure same-day access to newly filed civil complaints be included in the Manual.

***B. The Legal Basis for Building Immediate Access Into Intake Procedures***

As courts develop and implement intake procedures, it is important to keep in mind that the right of access to court records attaches as soon as the record is submitted to the court and is not contingent on the completion of any particular administrative task. *See, e.g.,* Rule of Court 2.550(b)(1) (public has right of access to any document that has been “filed *or lodged* with the court”) (emph. added). California’s Rules of Court thus recognize that the public character of complaints and other documents submitted to the court comes not from the court’s taking any particular action with respect to the document, but from a person’s invoking the power of the judiciary by submitting it to the court. Courts have agreed that the right of access springs into being the moment a person “undertake[s] to utilize the judicial process.” *Bank of Am. Nat’l Trust & Sav. Ass’n v. Hotel Rittenhouse Assocs.*, 800 F.2d 339, 344 (3d Cir. 1986). The fact that a litigant has requested judicial relief is an event that is properly open to public scrutiny. “By *submitting* pleadings and motions to the court for decision, one ... exposes oneself [to] public scrutiny.” *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 164 (3d Cir. 1993) (quotation omitted; emph. added).

Since the right of public access attaches at the moment a complaint or other document is submitted to the court, it is not appropriate to delay access on the ground that a particular record has not yet been fully processed, made available for electronic viewing, etc. This issue was the subject of recent litigation between Courthouse News and the elected clerk in Harris County, Texas. In that case, which Courthouse News reluctantly filed after repeated negotiation attempts failed to lead to a resolution, the clerk had begun requiring

Holme Roberts & Owen LLP  
*Attorneys at Law*

Ms. Camilla Kieliger  
September 30, 2010  
Page 8

reporters to wait for new civil complaints to be processed and posted on the clerk's web site before they could be reviewed, which delayed their availability by several court days. In a preliminary injunction order that issued in July 2009, the United States District Court for the Southern District of Texas found that a 24- to 72-hour delay in access was "effectively an access denial and is, therefore, unconstitutional." The court also observed that:

There is an important First Amendment interest in providing timely access to new case-initiating documents. Defendants attempt to argue that providing Plaintiff with same-day access interferes with their important objective of "getting online and not in line." The Court acknowledges that Defendant's goal is also in the public interest. However, as Plaintiff argues, same-day access and online access are not mutually exclusive. Defendants may provide Plaintiff with same-day access to newly-filed petitions while working in furtherance of their goal to make documents available online.

*Courthouse News Service v. Jackson, et al.*, 2009 U.S. Dist. LEXIS 62300, at \*10-11, 14 (S.D. Tex. July 20, 2009).

By the same token, courts may not justify delays in access by tying access to the "filing" of a document and defining "filing" to mean not only that a document has been submitted to the court but also that certain administrative processes have been completed. Any technical definition of "filing" that results in the court's having possession of a document submitted in the context of the court's adjudicatory powers but that is categorically excluded from public access (even if only for a relatively short time) is antithetical to principles of access firmly established in California law and guaranteed by the First Amendment. *See, e.g., Associated Press*, 705 F.2d at 1147; *Grove Fresh Distributions*, 24 F.3d at 897; *Globe Newspaper Co.*, 868 F.2d at 507.

Again, whatever procedures for court record creation procedures are outlined or advocated in future versions of the Manual, the Press Groups urge the Judicial Council to use the Manual as an opportunity to educate court administrators about their obligation to ensure same-day access to newly filed civil actions by creating a mechanism for media access very early in the intake process.

Holme Roberts & Owen LLP  
*Attorneys at Law*

Ms. Camilla Kieliger  
September 30, 2010  
Page 9

**IV. E-Filing (Section 4.4)**

Section 4.4 of the Manual is devoted to a fairly high-level discussion of the advantages and disadvantages of e-filing. Courthouse News has witnessed first-hand the implementation of numerous e-filing programs in courts throughout the country, and based on this experience the Press Groups suggest the inclusion of two primary observations in this overview. First, as noted, e-filing does not automatically improve access to court records and can actually delay access to court records unless specific procedures are adopted to protect against access delays. Second, e-filing programs operated by vendors can have serious disadvantages for courts and sometimes create discriminatory access problems of constitutional dimension.

**A. *Access to E-Filed Court Records***

The Manual lists the following as an advantage of e-filing:

Greater efficiency from the instantaneous, simultaneous access to filed court documents for participants in the case, judges, and court staff, and members of the public (to publicly available court documents) wherever participants may be located throughout the world.

Manual at 14.

In reality, however, e-filing programs rarely, if ever, result in “instantaneous” access to e-filed records. In fact, courts often provide more timely access to records filed on paper than to e-filed documents, presumably because decades of working with the press have led courts to adopt appropriate procedures for media access to records filed in paper form. As discussed above, timely access to e-filed documents generally requires that the court either make an electronic in-box available to the press (where reporters can see newly filed documents directly after transmission to the court and before whatever administrative processing might be done before the record can be viewed in the publicly accessible area) or maintain paper copies of e-filed documents for review at the courthouse.

Accordingly, the Press Groups propose that the statement noted above be removed from the Manual and that a statement like the following be included within Section 4.4: “In

Holme Roberts & Owen LLP  
*Attorneys at Law*

Ms. Camilla Kieliger  
September 30, 2010  
Page 10

implementing an e-filing system, courts must consider the effect the system will have on public access to court records and ensure that no system is implemented that would delay access to a document beyond the day of filing.”

***B. Risks of Vendor-Controlled E-Filing Systems***

There are a number of serious risks that are often implicated by a vendor-controlled e-filing system, including the potential for discriminatory press access to the public court record. As Courthouse News has discussed these risks in detail in its comments to the San Francisco Superior Court e-filing rule proposed earlier this year, the Press Groups will not repeat these observations but instead have attached those comments as *Exhibit A* to this letter. These risks seem appropriate for inclusion in any discussion of the advantages and disadvantages of e-filing.

**V. Press Access to Court Records (Proposed Section 10.x)**

The Press Groups note that Chapter 10, “Public Access to Court Records,” is devoted chiefly to outlining the records that may be excluded from public access and urge the Judicial Council to consider more expansive treatment of the positive aspects of public access. The Press Groups respectfully contend that access for a subsection of the public – the press – deserves particular attention and suggest that a new section be added to Chapter 10 with the heading “Press Access to Court Records.”

This section would emphasize the importance of providing the press with same-day access to court records and contain suggestions on appropriate procedures courts might implement to ensure same-day press access to newly filed civil actions. These might include implementing a press box containing each day’s complaints, allowing members of the press to remain in the clerk’s office or other intake area after it has been otherwise closed to the public, preserving existing press rooms, and including press rooms in new courthouse building plans.

While ensuring access to the public at large is important, the press performs a unique function in keeping the rest of the public informed, and this function merits particular consideration as courts develop procedures for court records. The press’ constitutional role in our society – reporting on the activities of public institutions – has been



Holme Roberts & Owen LLP  
*Attorneys at Law*

Ms. Camilla Kieliger  
September 30, 2010  
Page 11

recognized in many court decisions and was recently described by the New Jersey Supreme Court in these words:

Because it is impossible for the citizenry to monitor all of the operations of our system of justice, we rely upon the press for vital information about such matters. Members of the public simply cannot attend every single court case and cannot oversee every single paper filing, although clearly entitled to do so. Thus, it is critical for the press to be able to report fairly and accurately on every aspect of the administration of justice ....

*Salzano v. N. Jersey Media Group Inc.*, 993 A.2d 778, 790-91 (N.J. 2010). “What our citizens need to know to carry out their role in a democracy is what, in fact, has been filed in court and how the judicial system responds to it.” *Id.* at 791. The U.S. Supreme Court has described the media as “surrogates for the public,” and has noted in the context of courtroom proceedings that although “media representatives enjoy the same rights of access as the public, they often are provided special seating and priority of entry so that they may report what people in attendance have seen and heard.” *Richmond Newspapers*, 448 U.S. at 573.

For the same reason, it is appropriate to provide news reporters who visit a court every day with special procedures for obtaining same-day access to new filings, and to obtain copies of newsworthy new filings, so that those reporters may in turn disseminate information about those filings to interested persons. In other words, giving the press effective and timely access to court records is the best way of ensuring that interested members of the public are informed of what transpires in the courts.

Moreover, as a practical matter, unlike news reporters, the general public visiting the clerk’s office does not have a general, daily interest in reviewing the court’s new business – *i.e.*, reviewing the filings from a particular day. Instead, members of the public usually have a specific interest in one particular case, which may or may not have been recently filed. Similarly, the general public does not normally have the need or urgency of access a media outlet would have in timely reporting the news.

Ms. Camilla Kieliger  
September 30, 2010  
Page 12

**VI. Case Numbering Systems (Sections 4.2 and 4.3)**

A court's case numbering system can have a surprisingly significant impact on court record access for members of the press who regularly review new complaints. The key to an effective system is separate numeric sequencing for limited and unlimited cases (*i.e.*, the numeric portion of case identifiers is assigned in a continuous sequence for unlimited cases and in a separate continuous sequence for limited cases). This is important because limited cases will very rarely be of public interest and are generally not systematically reviewed by the media. Separate sequencing for limited and unlimited cases means that reporters can use the case numbers to guide their review of new filings. For example, if the last unlimited filing of a day is Case No. XYZ1234, the reporter can begin the next day's review with Case No. XYZ1235. Perhaps more importantly, a gap in the sequence indicates an unlimited case that the reporter has not reviewed – perhaps because it involved emergency relief that delayed its availability to the press – so that he or she can be sure to review the case when it is available.

When limited and unlimited cases are interspersed in the same numeric sequence, the risk of newsworthy cases being overlooked increases dramatically, as the significant unlimited cases become lost like needles in a haystack of cases formerly heard in municipal courts.<sup>3</sup> The separate sequencing is thus a simple but effective way to separate the newsworthy cases from those that are likely to be of less interest, which ultimately improves the public's understanding of what is being filed in the courts. In addition, without separate sequencing, reporters cannot monitor a continuous sequence to ensure that they have reviewed all newly filed case-initiating documents.

---

<sup>3</sup> Or, to draw on an iconic film image, requiring a reporter to look through all of the new limited cases in order to find the newsworthy unlimited cases reminds us of the last scene of the 1981 movie *Raiders of the Lost Ark*: Having located the Lost Ark of the Covenant in a secret chamber buried under centuries of sand and single-handedly fought off the Nazis who are also after it, Indiana Jones returns home to deliver the Ark to the U.S. Government. But despite our hero's pleas that the Ark's powers be researched, we see the Ark boxed up in a wooden crate and hauled into a massive storage facility, where it will be buried once again amid thousands of identical wooden crates.

Holme Roberts & Owen LLP  
*Attorneys at Law*

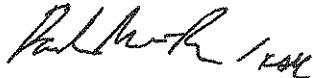
Ms. Camilla Kieliger  
September 30, 2010  
Page 13

To the extent the CCMS numbering system does not include separate numeric sequencing for unlimited and limited civil cases, it will seriously inhibit rather than promote the ability of the press to monitor civil court litigation on behalf of the public. The Press Groups therefore respectfully request that separate numeric sequencing for civil limited and unlimited cases be incorporated into the CCMS case numbering system and that, in the meantime, the Manual encourage individual courts to adopt such separate sequencing.

**VII. Conclusion**

The California Newspaper Publishers Association, the First Amendment Coalition, Californians Aware, and Courthouse News support the Judicial Council's efforts to provide trial courts with a practical guide both to their legal obligations and to best practices for administering court records and appreciate the opportunity to share their knowledge and experience in the hopes of improving access to court records in California's trial courts. Should you have any questions or wish to discuss any of these issues further, please do not hesitate to contact our offices.

Sincerely,



Rachel Matteo-Boehm

Encl.

cc: Tom Newton, California Newspaper Publishers Association  
Peter Scheer, First Amendment Coalition  
Terry Francke, Californians Aware  
Bill Girdner, Courthouse News Service

**Exhibits to this letter  
available upon request**

# **Exhibit B**



# Courthouse News Service

PRESS ACCESS TO COURTS AROUND THE NATION

## NATIONWIDE SURVEY

Courts around the country have developed a variety of procedures to provide members of the press with access to new civil case initiating documents (complaints or petitions, depending on the jurisdiction) on the same day they are filed. In many courts, members of the press see new complaints either as soon as they cross the intake counter (or, in e-filing courts, its electronic equivalent) or shortly after initial intake tasks but prior to full processing. Likewise, many courts make new complaints available to members of the press at the courthouse in a bin or via a press queue on a public access computer at the courthouse itself regardless of whether the complaint or petition has been made available for remote electronic viewing. Courthouse News Service has prepared the following summary of some of these same-day access procedures adopted in state and federal courts throughout the nation. Procedures at state and local courts are described in the first half of this survey, and procedures at federal courts are described in the second half of this survey.

## STATE AND LOCAL COURTS

### Albuquerque, NM

#### Second District Court (Bernalillo County)

- ***Mandatory E-Filing\****

The vast majority of new complaints are available for press viewing on the same day they are filed through public access terminals located at the courthouse. The terminals can also be used to print and pay for copies of complaints. Complaints filed in the First and Thirteenth district courts, which encompass courts in four

January 2013

---

\* In general in this survey, "Mandatory E-Filing" indicates that this method of filing is mandatory for attorneys only. Many, if not most, courts permit pro se litigants to file their pleadings by hand at the clerk's office.

## STATE AND LOCAL COURTS

other New Mexico counties, including Santa Fe, are also available for review on the Albuquerque courthouse's public access terminals on the same day they are filed. These procedures have resulted in same-day press access to the vast majority of new civil complaints filed in these courts.

### Atlanta, GA

#### Fulton County Superior Court

- ***Paper-Filing Only***

New complaints are scanned by court staff at intake and made available for viewing at computer terminals at the courthouse, most within minutes of filing. As a result of these procedures, members of the press have same-day access to virtually all newly filed civil complaints.

#### Fulton County State Court

- ***Mandatory E-Filing for Certain Case Types***

Paper-filed complaints are placed in baskets shortly after they have been filed, and before they have been assigned case numbers, and can be accessed and reviewed by members of the press on a same-day basis. E-filed complaints are emailed to reporters on a daily basis for immediate review and then subsequently made available for viewing at the courthouse through public access terminals. These procedures provide members of the press with access to the vast majority of newly filed civil complaints on the same day they are filed.

### Austin, TX

#### Travis County District Court

- ***Mandatory E-Filing***

Members of the press are given a printout of case numbers of new civil petitions filed earlier in the day upon arriving at the courthouse, which they use to search for and view electronic versions of new civil petitions using a public access terminal located at the courthouse. If, for some reason, a new petition is not available electronically on the public access terminals, reporters simply ask the court to make the case available either by printing out a copy or pushing the electronic version to the public terminals upon request. Once the reporter is finished searching for and reviewing the initial list of new petitions, an updated list is provided later in the day, which shows case numbers for petitions that have been filed since the first list was printed. Petitions filed

## STATE AND LOCAL COURTS

after 5:00 p.m. are made available the following day. These procedures have resulted in same-day press access to nearly all petitions filed during the court's business hours.

### Bakersfield, CA

#### Kern County Superior Court

- ***Paper-Filing Only***

Previously, members of the press had experienced long delays in access to newly filed civil complaints at the Kern County Superior Court. After the delays were brought to the attention of the presiding judge, the clerk's office adopted new procedures whereby reporters review new complaints in a secure "media room" located behind the clerk's counter that is reserved for members of the press. At around 3:00 p.m. each day, a designated court staff member will deliver a stack of all new civil unlimited jurisdiction complaints that have been filed so far that day to members of the press, or if a staff member is not available to deliver the complaints, reporters can retrieve them from the clerk's desk where they are collected. After reviewing the complaints, reporters return the initial stack to the clerk's desk, and are then given another stack of complaints that have been filed and placed on the clerk's desk in the meantime, including complaints that were deposited into the court's drop box during the day. Reporters return the second stack of complaints to the clerk's desk before the clerk's staff leaves the court at 5:00 p.m. Reporters are permitted to stay at the court until 5:00 p.m., although the court closes to the public at 4:00 p.m. As a result of these new procedures, on the vast majority of court days, the press has access to 100% of new complaints on the same day they are filed.

### Beaumont, TX

#### Jefferson County District Court

- ***Paper-Filing Only***

Members of the press are allowed behind the counter to access the stack of newly filed petitions on the same day they are filed, after the case number has been assigned but before any further processing of the cases takes place. These procedures have resulted in same-day access to the vast majority of new civil petitions filed with this court.



### Bronx, NY

#### Bronx Supreme Court

- ***Optional E-Filing***

In the Bronx Supreme Court, new civil complaints can be filed electronically or in paper over the counter. Paper-filed complaints are immediately scanned into electronic form, and both e-filed and scanned documents are posted to the court's website on the same day they are filed. There is no charge to search for case information or view the full text of new civil complaints online. Computer terminals are also set up at the courthouse for free same-day viewing via the same public website. These procedures have resulted in same-day press access to virtually all new civil complaints filed with the court.

### Chicago, IL

#### Cook County Circuit Court

- ***Optional E-Filing, Though Rarely Used***

Reporters from several news organizations review new complaints on a daily basis. The first news reporter to arrive at the courthouse goes behind the counter to pick up the day's new complaints, and then brings them to a press room located in the same building. Reporters can stay as late as they like to review the new complaints, which have been assigned a case number but have not been processed. Through these procedures, members of the press are able to see the vast majority of new complaints on the same day they are filed.

### Cleveland, OH

#### Cuyahoga County Court of Common Pleas

- ***Paper-Filing Only***

Members of the press have who visit the court on a daily basis have behind-the-counter access to new complaints on the same day they are filed. Court officials provide reporters with desk space where they may set up a laptop and review new complaints, which have been assigned a case number but have not been processed. These procedures have resulted in same-day access to nearly 100% of new civil complaints filed with the court.

### Dallas, TX

#### Dallas County District Court

- **Limited E-Filing**

The court provides members of the press with work space behind the counter, where they may review new petitions filed in paper form, even if they have not been processed. E-filed petitions can be viewed in the clerk's office, although not all e-filed petitions are posted online on a same-day basis. In that case, the clerk's staff provides news reporters with paper printouts of those e-filed petitions on the same day of filing.

### Detroit, MI

#### Wayne County Circuit Court

- **E-Filing Required for Most Case Types**

Virtually all e-filed complaints are made available for press review on the same day they are filed via public access terminals located in the basement of the courthouse. New actions are accepted immediately. Once news reporters are finished reviewing new e-filed complaints, they are permitted behind the counter to review the stack of new paper-filed complaints, which have been assigned case numbers but have not been processed. These procedures have resulted in same-day access to more than 90% of new civil complaints filed with the court.

### Fresno, CA

#### Fresno County Superior Court

- **Paper-Filing Only**

The press had experienced substantial delays in access up until early 2012 at the Fresno County Superior Court. After the matter was brought to the attention of the presiding judge, the clerk's office instituted a policy saying newly filed unlimited jurisdiction actions would be made available for review by the press on the day they are filed. With the implementation of that policy, members of the press may review complaints from a press box where new civil complaints are placed on the same day of filing in a secure viewing room located in the clerk's office. Although the clerk's office closes to the public at 4:00 p.m., reporters can stay until 4:45 p.m. and review newly filed actions. Ten at a time, the new actions are handed by a clerk through a window located next to the viewing

room. This procedure has resulted in nearly perfect same-day press access to newly filed civil unlimited jurisdiction complaints.

### Fort Worth, TX

#### Tarrant County District Court

- **Paper-Filing Only**

Most petitions appear on the court's online system the day they are filed. If any petition that was filed during court business hours is not available online the day it is filed, reporters may arrange with the clerk's staff for the petition to be immediately scanned and posted to the online access system. The end result is same-day access to almost 100% of all petitions filed with the court.

### Houston, TX

#### Harris County Civil District Courts

- **E-Filing Required for Certain Case Types**

The Harris County court provided same-day press access for many years by permitting reporters to go behind the intake counters and review newly filed petitions. In 2008, the clerk began requiring reporters to wait until new petitions had been processed and posted on the clerk's website before they could be reviewed, which delayed their availability by a day or more. After repeated attempts by Courthouse News to negotiate a solution with the clerk's office, Courthouse News reluctantly filed suit. In July 2009, the U.S. District Court for the Southern District of Texas issued a preliminary injunction ordering the clerk to provide same-day access to civil petitions, finding that "the 24 to 72 hour delay in access is effectively a denial of access and is, therefore, unconstitutional." *Courthouse News Service v. Jackson*, 2009 U.S. Dist. LEXIS 62300, \*11 (S.D. Tex. 2009). In accordance with that injunction order, the clerk's office began scanning new petitions and posting them to the clerk's website on the same day they are filed. Pursuant to a stipulated permanent injunction entered by the court in February 2010, 2010 U.S. Dist. LEXIS 74571, \*6-7 (S.D. Tex. 2010), the clerk's office was required not only to continue to provide same-day access to new civil petitions, but to pay more than \$250,000 to Courthouse News to compensate it for the attorney's fees it incurred in litigating the case. The stipulated permanent injunction did not specify the particular manner in which same-day access must be provided, and the clerk's office has chosen to comply with the order by continuing its practice of posting new petitions on the clerk's website. Those petitions can

## STATE AND LOCAL COURTS

be viewed, and printouts can be made, free of charge by the press and other interested parties on the day of filing. After that, petitions can still be viewed without charge, but printouts can be made only if they have not been certified. Once they are certified – which usually occurs the day after filing – there is a fee to print out copies of the petitions. These procedures have resulted in same-day access to 100% of newly filed civil petitions. Details about this program can be found on the Harris County District Clerk's website, at <http://www.hcdistrictclerk.com/Edocs/Public/search.aspx>.

### Indianapolis, IN

#### Marion County Circuit Court & Marion County Superior Court

- ***E-Filing Permitted for Certain Case Types***

The Marion County Circuit Court has a strong tradition of press access. News reporters, from the *Indianapolis Star* and Courthouse News, are given stacks of the new complaints filed earlier that same day after the complaints have been assigned case numbers but prior to docketing, which is done by the judges' clerks. The reporters can review those complaints at tables in the public viewing area from 4:00 to 4:30 p.m. They also have access to file cabinets in the docketing section where new cases are kept immediately after docketing. Marion County's tradition of press access to new matters has resulted in same-day press access to the vast majority of newly filed complaints.

### Las Vegas, NV

#### Eighth Judicial District Court

- ***Mandatory E-Filing***

Prior to the court's transition in February 2010 to mandatory e-filing, which uses Tyler Technology's Odyssey software, reporters saw the majority of new civil complaints on a same-day basis. Following that switch, however, the court no longer provided paper copies of complaints, and instead required members of the press to review new complaints at a computer terminal in the clerk's office. However, this system resulted in complaints not being available for viewing until the day after they were filed, primarily because the court required new complaints to be "accepted" by the clerk's office before they appeared on the computer terminals, and only after the terminals had been updated to reflect the new filings. After these delays were brought to the attention of the court, the court adopted a new system: an

## STATE AND LOCAL COURTS

electronic in-box, through which complaints can be viewed on a computer terminal as soon as they cross the electronic version of the intake counter at the clerk's office, even if they have not yet been processed. Through this system, which is similar to the electronic in-box access procedures in place at numerous federal district courts (many of which are described in this survey), members of the press are now seeing virtually all newly e-filed complaints on a same-day basis.

### Little Rock, AR

#### Pulaski County District Court

- ***Optional E-Filing***

Both paper and e-filed complaints are made available for electronic review through the court's case management system, which is accessible for free both at public access terminals at the courthouse or remotely through the web. New complaints are posted to the court's computer system shortly after they are filed, thereby providing same-day access to virtually all complaints filed with the court.

### Los Angeles, CA

#### Los Angeles Superior Court - Downtown Branch (Stanley Mosk Courthouse)

- ***Paper-Filing Only***

In the biggest court in the nation, court staff upload the full text of newly filed complaints to the court's computer system after initial intake tasks, which include scanning and assigning a case number, but before the complaints have been processed. Reporters can then review the vast majority of new actions that are filed on a particular day at public access terminals located at the courthouse or on additional terminals located in a designated press room. Both the filing room – including the intake and processing areas – and the area in which the general public may view cases close at 4:30 p.m., but the press room remains open later, and even the latest filed complaints of the day are available and can be reviewed by about 7:00 p.m. More than 100 new civil unlimited jurisdiction cases are filed each day, and the press is able to review all or nearly all of the day's newly filed actions at the end of the day on which they are filed. The system was developed and maintained with the repeated intercession of the court's presiding judge.

## STATE AND LOCAL COURTS

### Los Angeles Superior Court – Santa Monica Branch

- ***Paper-Filing Only***

After the matter of substantial delays in press access to new civil complaints was brought to the attention of the presiding judge, a system for review of the day's new actions was put in place by the clerk's office. Face pages of each day's newly filed civil complaints are made available for review by members of the press at 3:30 p.m. on the same day the complaints are filed. Reporters then request copies of those complaints that they wish to see in their entirety. Complete versions of late-filed complaints are made available at 4:30 p.m., when the filing room closes its doors to the public but where the courthouse employees continue to work until 5:00 p.m. Reporters can then request copies of any of those late-filed complaints, and they are generally provided right away. These access procedures have resulted in same-day access to virtually all new civil complaints filed with the court.

### Louisville, KY

#### Jefferson County Circuit Court

- ***Paper-Filing Only***

Members of the press may request the complete versions of newsworthy complaints filed during the court's business hours after reviewing either the face pages of newly filed complaints on paper or basic docket information on public access terminals located at the court. These procedures have resulted in same-day press access to virtually all new civil complaints filed during the court's hours of operation.

### Manhattan, NY

#### New York County Supreme Court

- ***Mandatory E-Filing for Commercial, Contract and Tort Cases***

Both paper-filed and e-filed complaints are made available to reporters on the same day they are filed. E-filed complaints are posted online to a public court website by the end of the day they are filed, while new complaints filed in paper form are indexed and scanned shortly after being filed, and made available electronically both online and via an internal computer system on terminals set up throughout the courthouse. Through these procedures, members of the press have same-day access to virtually all new civil complaints.

### Martinez, CA

#### Contra Costa County Superior Court

- ***Paper-Filing for Case-Initiating Documents***

After delays in access were brought to the attention of the presiding judge and the court's head clerk, the clerk implemented a set of procedures for same-day press access to new civil unlimited actions. The court closes its doors to the public at 1:00 p.m. each day. However, those still in line at that time are allowed to remain in the clerk's office to complete their filings, and the clerk's staff continue their work at the court until at least 5:00 p.m. The clerk's staff lets reporters into the clerk's office at around 3:45 p.m. each day, and then gives them a stack of the day's newly filed civil unlimited jurisdiction complaints, which have not been fully processed, at around 4:00 p.m. Reporters are permitted to remain in the clerk's office until 4:45 p.m. to review new complaints. The result of these new procedures is that the press has access to the vast majority of newly filed unlimited jurisdiction complaints at the end of the day on which they are filed.

### Miami, FL

#### Miami-Dade County Circuit Court

- ***Paper-Filing Only***

Most new civil complaints are filed over the counter at the main courthouse in Miami-Dade County. As new cases are filed, they are assigned a case number and quickly reviewed for sensitive information. (Note: this review is conducted in compliance with a Florida law that affirmatively mandates clerks to conduct such review. In contrast, most other states do not have such laws.) If no personal identification information is found in the document (which is the case for the vast majority of new civil complaints), non-foreclosure cases are separated out and placed into a bin for same-day press review. For the small percentage of complaints where personal identification information is found, the complaint is immediately routed to the redaction desk and then placed into the non-foreclosure bin by the end of the day. Reporters are permitted to review the new civil complaints behind the counter. These procedures are designed to provide same-day access to nearly all new civil complaints.

### Milwaukee, WI

#### Milwaukee County Court

- ***Optional E-Filing***

Members of the press have access to nearly 100% of new complaints on the same day of filing. Reporters are permitted to go behind the counter to review the stack of new paper-filed complaints before they are docketed. In order to ensure that reporters have the chance to review all new e-filed complaints on a same-day basis, the clerks place a one-page docket sheet from each e-filed complaint to the stack of paper complaints, also on the day of filing. If the reporter needs to review the full e-filed complaint, the clerks will print out a copy

### Modesto, CA

#### Stanislaus County Superior Court

- ***Paper-Filing Only***

The court clerk recently adopted procedures designed to provide members of the press with same-day access to newly filed complaints. Per the presiding judge's August 1, 2012 standing order, "all civil litigants filing case initiating pleadings in unlimited civil matters, including complaints, cross-complaints, petitions and applications, shall provide one additional complete paper copy of the pleading to the filing clerk at the time of filing." Per the court's directive that the extra copies be "placed by the filing clerk in the Court's Public Access Bin on the day of filing," the clerk's staff immediately places the extra copy in a designated bin located in the court's lobby. Under these newly adopted procedures, reporters review newly filed cases located in this bin on the same day they are filed, and can also request copies of new complaints that have not yet been placed in the bin from the intake clerks toward the end of the day. Court staff is directed to remove and discard public access copies located in the bin two weeks after filing. These procedures are intended to provide members of the press with same-day access to the vast majority of new civil complaints on the day they are filed.



### Nashville, TN

#### Davidson County Chancery Court

- ***Paper-Filing Only***

News reporters may review an intake log of the day's new complaints on a public computer terminal at the courthouse, from which they can compile a list of complaints they would like to review. The court staff will then retrieve the requested complaints, which have been assigned case numbers but have not been processed. Reporters may also request to see any new complaints that have not yet been added to the intake log by asking an intake clerk for any such complaints. As a result, nearly 100% of newly filed complaints are available for review at the courthouse by members of the press on the same day of filing. In addition to this free, same-day access at the courthouse itself, news organizations may pay a nominal quarterly fee for the convenience of remote online access, where approximately 90% of new civil complaints are posted each day.

#### Davidson County Circuit Court

- ***Paper-Filing Only***

New civil complaints are scanned throughout the day and are made available for review for free at the courthouse on public computer terminals, or for a nominal monthly fee through a government website. As a result of these procedures, 90% of new complaints are available for review on the same day they are filed.

### Oakland, CA

#### Alameda County Superior Court

- ***Paper-Filing Only***

The court makes newly filed complaints available for viewing on its website on a same-day basis without charge. Members of the press who visit the court each day are permitted to use a workstation equipped with a computer that is located behind the intake counter to review new complaints that have been posted to the court's website by the clerk's staff. If the day's docket shows any new complaints that have not yet been posted to the website, but which the reporter would like to review, the clerk's staff will post those new actions promptly upon request. The system has resulted in near-perfect press access to the day's newly filed actions by the end of the day they are filed.

### Oklahoma City, OK

#### Oklahoma County Court

- ***Paper-Filing Only***

Intake clerks place all of the day's new petitions into a central basket by 3:15 p.m. Petitions placed in the basket have been date stamped and indexed, but have not been fully processed. A member of the clerk's staff then provides the petitions to members of the press upon request. Reporters are instructed to sign the back of each petition to indicate that they have seen them all. After reviewing this first stack of complaints, reporters may request to see those complaints that have been date stamped, indexed and placed in the basket after 3:15 p.m. Through these procedures, members of the press are able to see the vast majority of newly filed complaints on the same day they are filed.

### Omaha, NE

#### Douglas County District Court

- ***Optional E-Filing***

New complaints, which may be filed electronically or in paper form, are immediately indexed and docket information is added to a statewide computer database that is updated hourly. Members of the press may review docket information for relevant cases on courthouse computer terminals and download images of new civil complaints as they become available. Complaints filed electronically before 4:00 p.m., as well as all paper documents filed up to the time the court closes at 4:30 p.m., are available on the same day they are filed. Members of the press may access docket information and the full text of new complaints for free at the courthouse or remotely online via the statewide Justice website for a fee. These procedures have resulted in same-day access to the vast majority of new civil complaints filed with in the Douglas County District Court.

### Philadelphia, PA

#### Philadelphia County Court of Common Pleas

- ***Optional E-Filing***

Civil complaints are made available for review by members of the public and press on the court's website, which may be accessed through public access terminals located at the courthouse. This system has resulted in same-day access to more than 95% of new civil complaints filed in this court.

### Phoenix, AZ

#### Maricopa County Superior Court

- ***Paper-Filing Only***

Members of the press previously experienced delays at this court, but after bringing these delays to the court's attention, the clerk implemented procedures to ensure same-day access to civil complaints filed at its downtown location. Under those procedures, court staff scan and upload for electronic viewing all complaints filed up to 5:00 p.m., which are then made available on a designated press computer located in the Customer Service Center for news reporters to review. The press computer is available for use by members of the press until 5:30 p.m., a half-hour after the Customer Service Center closes to the public. Complaints are typically made available to reporters prior to full processing. These procedures have resulted in near-perfect same-day access to newly filed civil complaints.

### Pittsburgh, PA

#### Allegheny County Court of Common Pleas

- ***Optional E-Filing***

More than 90% of the day's new civil complaints – whether e-filed or hand-filed – may be viewed by members of the press for no charge via the court's website, which may be accessed remotely by using a username and password provided to reporters by court staff.

### Portland, OR

#### Multnomah County Court

- ***Paper-Filing Only***

Following the assignment of case numbers (which occurs as soon as cases cross the counter) but prior to full processing, newly filed civil complaints are made available to members of the press. Early in the afternoon each day, the clerk's staff hands a stack of the day's new civil complaints to reporters, who are permitted to review the complaints at a cubicle located behind the counter. A half-hour before the court closes at 5:00 p.m., the clerk's staff hands another stack of complaints to reporters consisting of those complaints that have been filed in the interim. Any new complaints filed between 4:30 and 5:00 p.m. are made available for review to members of the press the next court day. These procedures have resulted in same-day access to the vast majority of complaints filed with the court. The court is currently preparing to transition to mandatory e-filing and will be using software designed by Tyler Technologies. Court administrators have asked the press for input on how to provide reporters with timely access to e-filed complaints.

### St. Louis, MO

#### St. Louis City Circuit Court

- ***Paper-Filing Only***

Reporters can get a stack of new complaints filed on the day of their visit from the clerk's staff at one of the intake windows at the clerk's office. Members of the press can review the complaints either at a table near the window or at the counter next to the intake window. Reporters are able to view nearly all new filed complaints on a same-day basis using these procedures.

### Salt Lake City, UT

#### Salt Lake County District Court

- ***Optional E-Filing***

At Salt Lake County's 3rd Judicial District Court, the main state court in Salt Lake City, members of the press are able to access and review almost every newly filed civil complaint on the same day of filing through public access terminals located at the courthouse. Documents filed by hand are scanned in by the clerks, while e-filed documents flow onto the court's public access system

## STATE AND LOCAL COURTS

shortly after they are filed and after only minimal processing. Reporters who wish to review newly filed complaints may use courthouse computer terminals for free to access docket information and full electronic text of civil complaints via Courts Information System, or CORIS, an internal file-viewing system. If the full text of any complaint, whether scanned or e-filed, is not yet available on CORIS, court clerks will provide news reporters with a paper copy of the complaint.

### San Francisco, CA

#### San Francisco County Superior Court

- ***E-Filing Authorized for Asbestos Cases***

News reporters are allowed behind the counter into the stacks to review new complaints after providing a driver's license and filling out a temporary name tag. The number of new complaints reviewed per day varies, but often exceeds 50. Per its written policy, the clerk's office holds all new complaints in a press box on the same day of filing, and makes those complaints available for review by members of the press "whether or not the cases have been entered into the computer," i.e., processed. The press box is available in the records department each day between 3:00 and 4:30 p.m., or can be requested at any point during the day by any member of the press. Complaints that are filed after 3:00 p.m. and have not been added to the press box are retrieved by the clerk's staff upon request. The result is that 90% or more of the day's new unlimited complaints can be reviewed by the press by the end of the day they are filed.

### San Jose, CA

#### Santa Clara County Superior Court

- ***Paper-Filing Only***

In 2010, the Santa Clara Superior Court clerk adopted a set of procedures designed to provide the press with same-day access to the vast majority of newly filed civil complaints. Under these procedures, new civil unlimited complaints are placed in a press bin so that they may be accessed by news reporters after receipt by the court of the filing fee, the assignment of a case number, and the assignment of a first status conference, but before any further processing. Complaints that are filed over the counter by 3:30 p.m., as well as civil unlimited jurisdiction complaints that are in the drop box by 4:00 p.m., are made available to reporters via the press bin on the same day they are filed. Unlimited jurisdiction

## STATE AND LOCAL COURTS

complaints that are filed over the counter between 3:30 and 4:00 p.m., when the clerk's office closes, are designated as a staff priority, and the court works to make them available for review on the same day as filed. Members of the press are permitted to remain at the court until 4:30 p.m., one half-hour after closing, to review late-filed cases.

### San Mateo, CA

#### Santa Mateo County Superior Court

- ***Paper-Filing Only***

After the issue of delays was brought to the attention of the clerk and the presiding judge, the court devised a solution for same-day access that was implemented by the clerk on December 3, 2012. Under the new procedures, all unlimited jurisdiction complaints that are filed before 3:30 p.m. each day are scanned and posted to the court's website by 6:00 p.m. that same day. The complaints may be accessed, reviewed and downloaded by any member of the public for free through the court's website. The court has designated a contact person to ensure that paper-filed complaints are being posted online on a same-day basis. The result has been near-perfect press access to new unlimited civil complaints by 6:00 p.m. of the day on which they are filed.

### Seattle, WA

#### King County Superior Court

- ***Mandatory E-Filing***

Newly e-filed complaints are not posted online until a certain amount of processing has been completed, but reporters may view complaints before they are posted online and before processing through the electronic equivalent of an in-box that is available at the clerk's office. Reporters are provided with a docket report of newly filed complaints two times per day – once at 11:00 a.m. and again at 3:00 p.m. The morning list includes all cases that have been filed from 3:00 p.m. on the previous day through 11:00 a.m. on the current day, while the afternoon list includes new cases that have been filed from 11:00 a.m. to 3:00 p.m. that day. Reporters review each list to find newsworthy cases, then search for and view new complaints on a computer terminal at the courthouse, even before processing has been completed. This system has resulted in same-day access to the vast majority of newly filed complaints by members of the press.

## U.S. DISTRICT COURTS

While e-filing is often seen as both uniform and omnipresent in federal courts, it is anything but that. A large number of federal courts have no e-filing at all for case-initiating documents, requiring that they be filed in paper; others require paper plus a diskette for the initial pleadings; and yet others allow either e-filing or paper-filing for the first filing in a case. Furthermore, within e-filing rules, there are host of variations court by court. Some courts have set up a master shell number system where lawyers file docket information and a PDF of the complaint itself into a common, online shell case number. Many of those shell case numbers work as a press queue because they are open to the press for review. In another variation, the court assigns a temporary case number to new actions, accessible to the press upon filing. Another set of federal courts provide an automatic, permanent case number upon filing. Most of those courts send the newly filed cases immediately, without processing or review by a court clerk, into public access terminals where they can be reviewed by the press. In a variation of this method, some courts make judicial assignments automatically with the case number assignment while others assign a judge only after an intake clerk has reviewed the filing. Yet another federal court assigns a number automatically but only posts e-filed complaints online after the judge's clerk has approved the filing; however, the court also provides immediate press access to these complaints at the courthouse. Some courts ask lawyers to first email the docket information to the clerk's office, wait for its approval by a clerk, and only then e-file a PDF of the complaint into the case opened by the clerk's office, which is sometimes done promptly, sometimes not. And a handful of courts describing themselves as "e-filing courts" only accept complaints by email and docket them in the traditional manner. E-filing has evolved on the federal side in a manner, and with rules, that fit the individual courts, not unlike local rules for paper filings. Within that evolution, there is an evident continuation of the tradition of same-day access to new matters for the press corps.

### **Albany (N.D. New York)**

#### ▪ ***Mandatory E-Filing***

Members of the press review newly filed complaints as they are received in the clerk's office, prior to the assignment of case numbers and prior to any form of processing by a court clerk. That review is accomplished through the use of a shell case number code provided to the press. The code allows members of the press to see an electronic press queue of new filings, which includes the filings themselves, on public computer terminals at the courthouse. As with all federal courts, there is no charge to use the terminals at

the courthouse. Except for prisoner and pauper petitions, these procedures result in near-perfect same-day access to newly filed civil complaints.

### **Atlanta (N.D. Georgia)**

- ***Optional E-Filing***

Before e-filing, the intake clerk put copies of new complaints into a wooden box for review by the press corps, before those cases were docketed. The system resulted in excellent, same-day press access. With the move to optional e-filing, the Court scans new paper-filed actions into a computerized press box before they are docketed. Those complaints are reviewed by the press corps on a computer terminal in the clerk's office. E-filed complaints are reviewed by reporters prior to a clerk's review through a shell case number code typed into a press queue. Through its press access procedures, past and present, the Northern District of Georgia has kept a strong tradition of press access, providing access to roughly 95% of the new actions on the same day that they are filed.

### **Austin (W.D. Texas)**

- ***Mandatory E-Filing***

When cases were filed in paper, members of the press corps reviewed newly filed complaints by first reviewing docketed cases through scans and then asking a clerk at the intake counter for complaints that were not yet docketed, which represented the majority of the day's cases. Copies of the undocketed complaints were often placed on the intake counter in anticipation of the late afternoon check by journalists. Subsequent to mandatory e-filing, new civil complaints are automatically assigned a case number and flow directly onto a public terminal in the clerk's office that is ahead of and separate from PACER. Apart from prisoner and pauper petitions, the press has 100% same day access to the new complaints on the great portion of court days. As a reporter put it, a lawyer-filed case is not seen on the day of filing only "once in a blue moon."



### **Beaumont (E.D. Texas)**

#### ▪ ***Mandatory E-Filing***

In the days of paper, two intake clerks logged newly filed actions into a red log book. At the end of the day, members of the press would review those complaints that had already been docketed and scanned on free public access terminals nearby and then check the red log book for any cases that had not yet been docketed. The clerks would hand the original undocketed complaints over the counter for review at a table in the middle of the room, a few steps from the intake counter. With the move to e-filing, the red log book is still kept for non-attorney filings, and reporters continue to check the book and request undocketed paper-filed complaints before going to the free terminals in the clerk's office, where e-filed complaints appear as soon as they are filed, without processing of any kind by a court clerk. The result is same-day access to 95-100% of the newly filed complaints.

### **Birmingham (N.D. Alabama)**

#### ▪ ***Optional E-Filing***

The Northern District of Alabama has also kept a tradition of excellent press access as the court has transitioned to optional e-filing. In the Northern District, where cases are filed in paper and electronically, the intake clerk puts copies of paper-filed complaints and print-outs of e-filed complaints into an old wooden box, referred to by the staff as the "media box." A worn label is affixed to the box that says: "NEW COMPLAINTS REVIEWING ONLY." The box is placed just outside the glass windows of the intake counter. The new cases are docketed after copies are placed in the media box. In one of the myriad local variations on federal e-filing, the e-filed cases do not go online until they have been assigned a judge and that judge's clerk has reviewed and okayed the filing. Through the media box, the Northern District of Alabama has kept in place its longstanding tradition of giving the press same-day access to new actions.

### **Brooklyn (E.D. New York)**

#### ▪ ***Optional E-Filing***

Parties are required to file "press copies" of new complaints, which are placed in a press box and made available to reporters

throughout the day, thereby allowing them same-day access to 90% or more of new civil complaints filed at the federal courthouse in Brooklyn, even if the new filings have not been docketed. In turn, e-filed actions are reviewed on public terminals at the courthouse. The court's system for press review has resulted in excellent same-day access.

### **Charleston (D. South Carolina)**

- ***Mandatory E-Filing***

New civil complaints can be reviewed by the press corps as they are received – prior to the assignment of a case number – via free terminals at the courthouse. Reporters use a shell case number code to see an electronic press queue of new filings. As a result, the court provides same-day access to nearly all new civil complaints.

### **Chicago (N.D. Illinois)**

- ***Mandatory E-Filing***

Before e-filing, members of the press reviewed newly filed paper complaints by going behind the counter and retrieving them from wire baskets, where they had been placed immediately after they crossed the counter. The location of the review was later changed to the records section, behind a gate next to the records clerk. But the cases were still placed in a wire basket and were still reviewed on the day of filing by a host of press entities, including the Associated Press, City News Service, the *Chicago Sun* and the *Chicago Tribune*. As the court moved to e-filing, the clerk established a press queue that accomplished the same purpose as the wire baskets – same-day access to the newly filed actions. The final evolution in the e-filing system allows newly filed complaints to flow directly onto terminals at the courthouse and online without stopping for a clerk's OK. Members of the press may view new complaints without charge through public access terminals at the courthouse. The result is same-day access to 95% or more of the newly filed actions. The Northern District of Illinois has continued a very strong tradition of press access on the day of filing from the past through the present.

### **Cleveland (N.D. Ohio)**

#### ▪ ***Optional E-Filing***

When cases were filed in paper, clerks put newly-filed actions in a wooden press box on the counter near the intake clerks for reporters to review. With optional e-filing, new actions can be reviewed via public computer terminals located at the courthouse on the same day those complaints are filed. In another local variation on federal e-filing, the court does not put some of the new actions, such as ERISA complaints, online but does print out copies at the courthouse. Through these procedures, past and present, the Northern District of Ohio has provided the press with same-day access to 90-95% of the new civil actions.

### **Dallas (N.D. Texas)**

#### ▪ ***Optional E-Filing***

Roughly half of the new cases continue to be filed in paper form in the Northern District of Texas. Both before e-filing and after, the court has followed a tradition of excellent same-day access for the press. Members of the press corps review the day's new complaints regardless of whether they have been docketed or not. Reporters review new actions that have been scanned and uploaded into the court's case management system through free terminals at the courthouse. They also review new complaints that have been scanned but not docketed through a bar code and case number, also on the terminals. Finally, complaints that have neither been scanned nor docketed are reviewed in paper form in their case folders. E-filed complaints flow directly onto the court's computer terminals without stopping for a clerk's review. The result of these procedures is same-day access to roughly 100% of the new civil complaints filed in the Northern District of Texas.

### **Denver (D. Colorado)**

#### ▪ ***Mandatory E-Filing***

The Court assigns cases numbers automatically and those complaints flow into public view immediately, without processing or checking by a court clerk. Thereby members of the press have nearly perfect same-day access to new civil complaints filed in the District of Colorado.

### **Detroit (E.D. Michigan)**

#### ▪ ***Mandatory E-Filing***

When complaints were filed in paper form, members of the press had same-day access to the day's newly filed complaints through a wooden media box located on the main counter in the filing room. Reporters checked out the box and reviewed the new cases at a table a few steps away. With the introduction of e-filing, new complaints are automatically assigned a case number and the complaints flow directly onto the court's public computer terminals and online, weekends and after hours, without a clerk's OK. Through these procedures, the Eastern District of Michigan has fostered a tradition of excellent same-day access, resulting in same-day access to 90-95% of the newly filed actions.

### **Houston (S.D. Texas)**

#### ▪ ***Mandatory E-Filing***

Prior to e-filing, members of the press walked to the end of a long intake counter and asked for the press bin, a plastic box similar to those used by the U.S. Post Office to hold bulk mail. The press bin contained the new filings from that day. With the advent of e-filing, new cases are automatically given a case number and the complaints flow into the terminals at the courthouse and online, without a clerk's intervention. Through these changing procedures, the Southern District of Texas has consistently maintained a strong tradition of press access resulting in same-day review by the press corps of nearly all new civil complaints.

### **Indianapolis (S.D. Indiana)**

#### ▪ ***Optional E-Filing***

The majority of new complaints are filed in paper form in the Southern District of Indiana. The press reviews the new actions by asking at each of three intake windows if there are new complaints that have not been scanned and docketed, which are then provided for review at a long counter. In addition to the undocketed complaints, those that have been scanned and docketed are posted to a public terminal in the clerk's office. Through these procedures, the Southern District of Indiana has maintained a tradition of press corps review of newly filed actions on the day of filing.

### Los Angeles

(C.D. California – Los Angeles Division)

- ***Paper-Filing for Case-Initiating Documents***

At the end of the court day, the day's new complaints are brought by a court staffer from the intake area and placed in pass-through boxes in a small room adjacent to the docketing department. Credentialed news reporters who cover the courthouse on a daily basis have a key to the room, which is otherwise locked, and they can stay as long as they need to look over the new cases, putting the complaints back in the pass-through boxes when their work is done. The cases in the boxes include cases that will be transferred to the Central District's other divisions. Through these procedures, which have been in place for decades, 90-95% of the newly filed complaints are available for review by members of the press on the same day they are filed.

### Louisville

(W.D. Kentucky)

- ***Mandatory E-Filing***

News reporters are able to review newly filed complaints as they come into the clerk's office, prior to docketing. Reporters use a shell case number code to access an electronic press queue of new filings, which is available for free at public computer terminals at the courthouse. These procedures have resulted in same-day access to the vast majority of new civil complaints filed with the court.

### Manhattan

(S.D. New York)

- ***Paper-Filing for Case-Initiating Documents***

New civil complaints are held at the filing window in a steel pass-through lock box. Members of the press can review the contents of the steel box at specific times during the day. The staff keeps a check-out book that members of the press are required to sign in order to review the actions. Through this system, which has been in place for decades, the Southern District has long maintained a strong tradition of press access, resulting in same-day review of virtually every new civil complaint filed in the Manhattan Division.

### **Milwaukee (E.D. Wisconsin)**

#### ▪ ***Mandatory E-Filing***

The court provides the press with a handwritten intake log on a clipboard. Journalists pick up the intake log upon arriving in the clerk's office and ask for paper-filed cases of interest held in folders next to the intake clerk, which are passed to journalists for review at one of two round tables in the intake area, a couple of steps from the counter. If a case is filed late in the day, the intake clerk will pass it to the journalist for review without a folder. E-filed cases flow directly, without stopping for a clerk's review, onto two free terminals in the clerk's office. The Eastern District of Wisconsin thus has kept a tradition of excellent press access that results in same-day access to about 95% of the day's newly filed actions.

### **Minneapolis/St. Paul (D. Minnesota)**

#### ▪ ***Optional E-Filing***

When all cases were filed in paper form, reporters first reviewed an intake log in the clerk's office and then reviewed scanned complaints on computer terminals. For those complaints that had not yet been scanned, reporters asked a clerk at the end of the intake counter for the most recent cases, which the clerk would photocopy and provide to reporters. The result was complete same-day access to new civil complaints. Subsequent to optional e-filing, reporters review an intake log of new cases on an internal computer system available only at the courthouse. Paper-filed complaints are scanned into that same system before they are docketed. E-filed cases go directly into the same internal system as they are filed. Those policies in the District of Minnesota have resulted in same-day access to virtually all new civil complaints filed with the court.

### **Newark (D. New Jersey)**

#### ▪ ***Mandatory E-Filing***

When cases were filed in paper, reporters covering the court asked for new complaints at the intake counter and reviewed them in a small, open room immediately adjacent to the intake counter. At that point, the new cases had not been given a case number, as the clerk followed an unusual procedure of assigning numbers after

intake at the time a new case was docketed, after which another clerk reviewed that docketing as well as the contents of the case-initiating pleadings. After the switch to e-filing, the court set up an electronic press queue through which members of the press are able to review the flow of newly filed civil complaints as they are received by the clerk's office, prior to being assigned a permanent case number. With both paper and electronic filing, the District of New Jersey has followed a tradition of same-day press access that has resulted in press review of all newly filed actions on the day of filing.

### **New Orleans (E.D. Louisiana)**

#### ▪ ***Mandatory E-Filing***

When cases were filed in paper form, members of the press would go down the line of division heads – docketing clerks for each courtroom – who worked in large cubicles set up in a row that opened towards the entrance to the docketing area. The individual clerks either left the new complaints on their cubicle's individual counter or handed them to reporters upon request. In addition, reporters would ask the intake clerk in an adjacent room for any new cases that had not yet been sent over to the docketing area, and would be provided with those new actions. With the move to e-filing, the court automatically assigns a case number and posts the new actions on public terminals at the courthouse at the time of filing. There is no processing checking by court clerks before posting to the terminals. A common local variation on federal e-filing is that judge assignments are made only after a clerk's review. In the past, with paper filing, and in the present, with e-filing, the Eastern District of Louisiana has preserved a tradition of press access that results in same day review by the press corps of roughly 95%, of the new actions.

### **Philadelphia (E.D. Pennsylvania)**

#### ▪ ***Paper-Filing for Case-Initiating Documents***

The Eastern District has traditionally provided excellent and extremely timely public access to all new filings. For decades, new complaints have been placed in a wooden box by the intake clerk after assigning a case number, a practice that continues today. The press corps reviews the new cases from that box. Docketing clerks periodically take the new complaints from the box, docket



them promptly and place them in folders on the intake counter near the wooden intake box. As a result, the press corps has near-perfect same-day access, seeing 95% if not more of the new cases on the day they are filed. Complaints filed in the Court's Allentown division are scanned, printed and also placed in folders on the counter in the Philadelphia courthouse. The court applies the same procedures to all newly filed court records, including subsequent filings and rulings, such that nearly all documents filed in the court can be immediately reviewed by the press.

### **Pittsburgh (W.D. Pennsylvania)**

#### ▪ ***Optional E-Filing***

The court provides news reporters with an "MC" case number code, which allows members of the press to view the new complaints in an electronic queue waiting to be okayed and assigned a permanent case number and judge. The press corps reviews the MC-coded civil complaints using free terminals at the courthouse. This system has resulted in same-day access to the vast majority of new civil complaints.

### **Portland (D. Oregon)**

#### ▪ ***Mandatory E-Filing***

The District of Oregon is another federal court that has a strong tradition of press access. When cases were filed in paper form, the clerks would hand newly filed actions to journalists for review at a desk within eyeshot of the clerks. This system gave the press access to 90% or more of the court's new complaints on the day of filing. During optional e-filing, the court established an electronic in-box at the courthouse where PDF files of the new cases were posted before docketing. With mandatory e-filing, complaints are given a case number automatically and flow immediately onto free terminals at the courthouse. As a result, through procedures past and present, the District of Oregon has consistently provided the press with same-day access to nearly all of the day's new complaints.



### **Sacramento (E.D. California)**

#### ▪ ***Mandatory E-Filing***

Prior to e-filing, the clerk allowed reporters to review the new complaints at a desk behind the counter, a system that resulted in complete same-day access. Subsequent to e-filing, complaints receive a provisional case number when they are filed, allowing the press to review them as they come into the court. Those provisional numbers are replaced by permanent case numbers once the docketing is okayed by a clerk. The result is that both historically and today the press has been given same-day access to 90-95% of the new actions filed in the Eastern District of California.

### **St. Louis (E.D. Missouri)**

#### ▪ ***Mandatory E-Filing***

Prior to e-filing, the clerk's staff placed new complaints in a wooden box on the intake counter. Subsequent to e-filing, the clerk set up a computer terminal marked with a sign that said "media terminal," used regularly by the *St. Louis Post-Dispatch*, for example, that gave access to the e-filing intake queue used by the clerk's staff. In the final iteration of federal e-filing, the designated media terminal is not necessary because the e-filed cases are automatically assigned a case number upon filing and flow immediately onto public terminals. Over time, the court has through various means – first the wooden box, then the media terminal, and now the automatic posting – followed a strong tradition of open access for members of the press corps, resulting in same-day review of near 100% of the new actions.

### **San Diego (S.D. California)**

#### ▪ ***Mandatory E-Filing***

When cases were filed in paper form, reporters reviewed that day's newly filed complaints in a wooden tray provided by a records clerk, before the complaints were docketed. With e-filing, reporters see virtually all newly filed complaints at the courthouse without charge by the end of the day of filing, in either printout or electronic form. The result is that both then and now, the Southern District provides same-day access to near 100% of the day's new complaints on the day of filing.

### **San Francisco (N.D. California)**

- ***Paper-Filing for Case-Initiating Documents Only***

Members of the press review new complaints before they are docketed. Intake clerks enter new cases into an intake log and assign case numbers as the new cases cross the counter. Reporters review the new cases immediately afterwards. Journalists are provided with a copy of the intake log and have access to “transfer boxes” that contain new actions being sent to different divisions of the court. Reporters can stay until 4:30 to review late-filed cases, after the clerk’s office closes at 4:00. This tradition of press access has been followed for decades and has resulted in 100%, same-day access to new civil complaints the majority of the time.

### **San Jose (N.D. California)**

- ***Paper-Filing for Case-Initiating Documents***

The court prepares an electronic intake log and assigns a cases number as the new cases cross the counter. Journalists can see the new case immediately afterwards, before docketing. As they do in the San Francisco division, reporters see the vast majority of individual complaints from the intake clerk and the rest from the docketing clerks. The court also provides same-day access to cases being sent from San Jose to other divisions through the mail clerk.

### **Scranton (M.D. Pennsylvania)**

- ***Optional E-Filing***

Members of the press are permitted to review new civil complaints on the same day they are filed by using a shell case number with an “MC” code that flows directly into terminals at the courthouse, functioning as an electronic press queue. Newly filed civil complaints appear in the press queue before they have been assigned a case number or have been looked over by a clerk. These procedures have resulted in same-day access to the vast majority of newly filed civil complaints filed in the Middle District.

### **Seattle (W.D. Washington)**

#### ▪ ***Mandatory E-Filing***

Prior to e-filing, members of the press went directly to the intake window and asked for the day's newly filed complaints, which were handed across the counter by the intake clerk. Reporters reviewed them at a counter in the same room. Subsequent to e-filing, members of the press review newly e-filed cases using free terminals at the courthouse where the cases show up as soon as they are filed, without delay caused by a clerk's review. Then and now, the Western District of Washington has followed a tradition of press access, resulting in daily review of 95% or more of the new cases on the day of filing.

### **Washington, D.C. (D. Columbia)**

#### ▪ ***Mandatory E-Filing***

Prior to e-filing, the intake clerks kept a wooden box on a small table within reach just behind the counter, where copies of newly filed complaints were put. Members of the press corps would review the cases and take notes from public chairs in the clerk's office, within view of the intake staff. The result was complete same-day access to roughly 95% of the day's new filings. Subsequent to mandatory e-filing, which was undertaken after discussions with members of the media, newly e-filed complaints are immediately posted to public access terminals at the courthouse upon submission of the complaint by the filing attorney and before any processing has taken place. The federal court in the nation's capital has followed a tradition of press access, before and after e-filing, resulting in same-day access to nearly all new actions.

### **Wilmington (D. Delaware)**

#### ▪ ***Optional E-Filing***

Prior to e-filing, reporters reviewed new actions by asking for new complaints at the intake counter in the clerk's office. The new actions could be reviewed at a table in the intake area. The result was excellent, same-day access. Under optional e-filing, the same procedures are followed for paper-filed cases. If an additional new case is filed in paper form while a reporter is reviewing the new cases, a clerk will hand that new complaint to the reporter. E-filed complaints are reviewed on terminals at the courthouse, through an

electronic queue that uses a shell case number code. Both before and after transitioning to optional e-filing, the District of Delaware has provided the press with roughly 100% same-day access to newly filed actions.

# **Exhibit C**



Judicial Council of California · Administrative Office of the Courts

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

[www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)

---

## REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 14, 2010

---

**Title**

Court Administration: *Trial Court Records Manual*

**Agenda Item Type**

Information Only

**Date of Report**

November 9, 2010

**Submitted by**

William C. Vickrey,  
Administrative Director of the Courts

**Contact**

Patrick O'Donnell, 415-865-7665  
[patrick.o'donnell@jud.ca.gov](mailto:patrick.o'donnell@jud.ca.gov)

Marlene Hagman-Smith, 415-865-7617  
[marlene.smith@jud.ca.gov](mailto:marlene.smith@jud.ca.gov)

---

### Executive Summary

This report introduces the *Trial Court Records Manual*, the initial version of a manual that provides guidance and assistance to the courts in managing court records and modernizing those records. The manual is an important resource containing references to statutes, rules, industry standards, and best practices relating to records management. It implements Assembly Bill 1926 (Evans) and California Rules of Court, rule 10.854. The initial version of the manual (Version 1.0) is effective January 1, 2011.<sup>1</sup>

### Previous Judicial Council Action

The promulgation of the *Trial Court Records Manual* is the final step in a long-term project to modernize trial court records. Under the leadership of the Court Executives Advisory Committee, measures to modernize trial court records have been under way for a number of

---

<sup>1</sup> A copy of the *Trial Court Records Manual* (Version 1.0) is attached at pages 76–153. It will be distributed electronically to the courts and made available online before January 1, 2011.

years. In 2009, the Judicial Council approved sponsoring legislation to modernize court records.<sup>2</sup> That legislation contained in Assembly Bill 1926 was enacted and signed by the Governor in August 2010 and become effective January 1, 2011.<sup>3</sup>

To implement the legislation, the Court Executives Advisory Committee and the Court Technology Advisory Committee recommended that the Judicial Council adopt a rule requiring the Administrative Office of the Courts, in collaboration with trial court presiding judges and court executives, to prepare, maintain, and distribute to the trial courts a manual providing standards and guidelines for the creation, maintenance, and retention of trial court records. The rule proposal was adopted by the Judicial Council on October 29, 2010. The rules on court records management, including rule 10.854 that provides for the establishment of a trial court records manual, will be effective on January 1, 2011.<sup>4</sup>

The final step in this project is the promulgation of the *Trial Court Records Manual*. The manual is intended to assist the trial courts and the public to have complete, accurate, efficient, and accessible court records. Like the legislation and the rule, the manual will be effective on January 1, 2011.

### **About the Trial Courts Records Manual**

The purpose of the *Trial Court Records Manual* is twofold. First, it contains the statutory and rule requirements with which all trial courts must be in compliance to meet minimum standards to execute their important responsibilities pertaining to managing paper and electronic court records.

Second, the *Trial Court Records Manual* is intended to be a resource guide for court administrators and records staff to help them develop records management programs that best serve their local courts. The initial version of the manual includes a wide-ranging, though not exhaustive, list of topics that all courts are encouraged to address to ensure that they have comprehensive and effective local records management programs.

In addition to providing a resource that will contain all of the relevant statutes, rules, requirements, industry standards and many best practices for court records management, the *Trial Court Records Manual* will include a retention and destruction table for court records that is organized in a readable format and includes hyperlinks to the underlying authority for record retention in most case types.

The manual does *not require* any trial court to use new technologies or modify current practices. However, the next stage of court records management in California involves the transition from paper records to records that are created and exist only in electronic form. Some information in

---

<sup>2</sup> See the Judicial Council report at [www.courtinfo.ca.gov/jc/documents/reports/121509item2.pdf](http://www.courtinfo.ca.gov/jc/documents/reports/121509item2.pdf).

<sup>3</sup> The text of the bill may be viewed at [www.leginfo.ca.gov/pub/09-10/bill/asm/ab\\_1901-1950/ab\\_1926\\_bill\\_20100823\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1901-1950/ab_1926_bill_20100823_chaptered.pdf).

<sup>4</sup> See the Judicial Council report at [www.courtinfo.ca.gov/jc/documents/reports/20101029itema32.pdf](http://www.courtinfo.ca.gov/jc/documents/reports/20101029itema32.pdf).

the future will only exist in electronic form, and may consist only of data in fields of a case management system and not a form that is readily converted to paper. A comprehensive records management system must contemplate and enable the shift from paper to electronic records. The legislation, rules, and manual will facilitate that shift as it becomes feasible for the courts to implement it.

The manual will be periodically updated to reflect changes in technology that affect the creation, maintenance, and retention of court records. Except for technical changes or corrections or minor substantive changes unlikely to create controversy, proposed changes in the manual will be made available for comment from the trial courts before the manual is updated or changed. Under new rule 10.854(c) of the California Rules of Court, courts must be notified of any changes in standards or guidelines, including all those relating to the permanent retention of records.

Courts will benefit significantly from having a reference manual that highlights proven technologies and offers sample policies and procedures that can help them meet the challenges of effectively managing a huge volume of court records.

### **Comments and Responses**

The first draft of the manual was prepared by the Working Group on Records Management of the Court Executives Advisory Committee.<sup>5</sup> Before the manual was circulated for public comment, it was circulated to all trial court executives. The Court Executives Advisory Committee and the Court Technology Advisory Committee jointly reviewed the initial draft of the manual and recommended that it be circulated for public comment. The final version of the manual with this report was then approved by the Administrative Director of the Courts.

The *Trial Court Records Manual* was circulated for approximately two months in August and September 2010.<sup>6</sup> Eighteen comments were received on the draft. The commentators included nine superior courts, the California Judges Association, several media organizations, a television news producer, the editor of a news service, an accountant, and the State Bar's Committee on Administration of Justice. A chart summarizing the public comments and responses is attached.<sup>7</sup>

### **Technical or Stylistic Comments**

The public comments fall into several categories. First, a number of the comments were of an essentially *technical or stylistic* nature. (for example, comments 6 and 8) Many of these technical

---

<sup>5</sup> The working group was chaired by Kim Turner, Court Executive Officer of the Superior Court of Marin County. Its members included court executive and technology officers from superior courts in various counties including Monterey, Napa, Orange, Los Angeles and Santa Barbara, and an assistant clerk/administrator from the Court of Appeal, Fourth Appellate District.

<sup>6</sup> The invitation to comment on the manual is available at [www.courtinfo.ca.gov/invitationstocomment/documents/sp10-02.pdf](http://www.courtinfo.ca.gov/invitationstocomment/documents/sp10-02.pdf)

<sup>7</sup> The chart of comments is attached at pages 6–74. The Court Executives Advisory Committee reviewed all public comments and recommends the responses presented in the chart.



and stylistic changes suggested by the commentators were well-founded. The manual has been modified to reflect those comments.

### **Comments for future versions**

Second, some commentators made suggestions for materials to be added in future versions of the manual or recommended that current sections be developed further. (for example, comment 14.) When the manual was being drafted and prepared for circulation, it was recognized that the initial version of the manual would not be able to fully and comprehensively cover all topics relating to court records. So the invitation to comment expressly invited comments on certain topics on which it is anticipated that more information will need to be provided in the future. The comments received on these matters were very helpful. They will be considered when *future versions* of the manual are being developed.<sup>8</sup>

Third, a number of commentators used the comment process to make suggestions for changes to the law on court records and other matters. These suggestions are *beyond the scope* of the manual. The manual presents key information about the current law relating to trial court records and recommendations about best practices. The information in the manual is intended to assist the courts and the public in understanding how records are to be treated under existing law. The manual, however, is not the place for introducing changes in the law or for discussing and resolving such changes.<sup>9</sup> Commentators specific suggestions for changes in the law on court records will be referred by staff to the appropriate Judicial Council advisory committees for consideration.

### **Legislative Updates to the Manual**

In addition to the changes made in response to the comments, some recent changes in the law on court records that will become effective by January 1, 2011 have been included in the manual.

For instance, Senate Bill 1149, effective January 1, 2011, changes the law regarding access to records in unlawful detainer cases involving foreclosures of residential property. The relevant statutory changes in SB 1149 have been included in the part of section 10.3.1 of the manual that deals with confidential civil records and in Appendix 1, Chart of Records Confidential by Statute or Rule.<sup>10</sup>

---

<sup>8</sup> The working group particularly recognizes the importance of providing more guidance in future versions of the manual regarding the creation and maintenance of records in electronic form. (See comment 14.) Providing more guidance on this subject will be a priority in developing subsequent versions of the manual.

<sup>9</sup> This is not to say that many of the issues raised by the commentators are not important or that they should not be considered in another context. Commentators have raised a number of issues that warrant further discussion—such as whether the media should have special access to documents before they have been processed and filed by the court (comment 1) or whether court records that are remotely accessible should be provided to the public free of charge or for a nominal fee (comment 17). The point here is that the records manual is not the place to consider and resolve these controversial matters.

<sup>10</sup> The Office of Governmental Affairs also brought to the working group's attention Assembly Bill 2767, the civil omnibus bill, which clarifies that people allowed access to Uniform Parentage Act (UPA) files for inspection

The manual has also been updated to include a reference to newly adopted rule 1.51. This rule, effective January 1, 2011, clarifies that Judicial Council information forms used for submitting information to law enforcement through the California Law Enforcement Telecommunications System (CLETS) are confidential. The rule also specifies who may have access to the information on the forms and prescribes for how long the courts must retain the forms before they are destroyed.

In the future, it is anticipated that there will be additional legislation and rule changes relating to court records that will require the regular updating of the manual.

### **Implementation Requirements, Costs, and Operational Impacts**

The purpose of the manual is to assist the courts in managing trial court records. As indicated above, the manual does *not require* any trial courts to use new technologies or modify current practices. The manual provides a comprehensive source of references to the law relating to court records, whether in paper or electronic form. For courts seeking to modernize their records management practices, the manual provides very useful and important guidance. The manual will need to be updated periodically to reflect changes in the law and technology.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

The manual furthers the goal of modernization of management and administration (Goal III). It also advances the goal of providing branch wide infrastructure for service excellence (Goal VI) (see Objective 4, Desired Outcomes b (new statutes and rules of court to support increased electronic archiving of court records)).

### **Attachments**

1. Attachment A: Chart of the public comments and responses at pages 6–74.
1. Attachment B: Cal. Rules of Court, rules 10.850 and 10.854 at page 75.
3. Attachment C: *Trial Court Records Manual* (Version 1.0) at pages 76–153.

---

purposes may also copy those files. The bill amends Family Code section 7643. The manual does not currently contain a section on the copying of court records; however, if a future version of the manual includes a section on the copying of records, the new provision in section 7643 on copying UPA files should be included in that section.

Attachment A

SP10-02

Court Administration: Trial Courts Record Manual

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

Commentator	Position	Comment	Response
1. Californians Aware, California Newspaper Publishers Association, Courthouse News Service and First Amendment Coalition San Francisco By Rachel Matteo-Boehm Holme Roberts & Owen LLP	NI	<p>On behalf of the California Newspaper Publishers Association, the First Amendment Coalition, Californians Aware, and Courthouse News Service (collectively, the "Press Groups"), we are pleased to make this submission in response to the Judicial Council's invitation for written comments on the Trial Court Records Manual (the "Manual").</p> <p>The Press Groups have a particular interest in the aspects of trial court record creation and maintenance that affect the media's ability to access court records in a timely manner and therefore focus their comments on the court record creation process (Section 4.1), e-filing (Section 4.4), press access to court records (proposed new section within Chapter 10), and case numbering systems (Sections 4.2 and 4.3).</p> <p>[The remainder of the Press Group's comments, including the full text of its thirteen page letter and a thirteen page appendix, are attached at the end of this comment chart.]</p>	<p>The extensive comments provided by the Press Groups are appreciated. Access to public records by the public and the role that the press plays in making information about the courts available to the public are important. As the commentators note, the manual expressly recognizes the importance of creating and maintaining complete, accurate, and accessible court records. (Section 1.2, Purpose of Records Manual.)</p> <p>As indicated at the beginning of the Press Groups' comments, the commentators' particular interest is in the aspects of trial record creation and maintenance that affect the ability of the media to access court records in a timely manner. The commentators' focus is on sections of the manual that are planned for subsequent versions of the manual (section 4.1 on records creation) or will be expanded in the future (section 4.4 on e-filing). The comments also suggest creating a new section on press access to public records. Finally, the comments include some specific comments on case numbering systems (sections 4.2 and 4.3).</p> <p>The Court Records Creation process (section 4.10) is not yet included in the current version of the manual. The Press Groups'</p>

Commentator	Position	Comment	Response
			<p>comments will therefore be considered in preparing the section. In addition, there is currently no special section on press access to records. Including such a section will be considered in the future.</p> <p>Although it is premature to address most of the Press Group's comments, a few general observations may be appropriate at this time.</p> <p>Basically, the manual is intended to provide guidance to the courts on the current law on records management and the best practices that courts have developed to apply the law. Thus, the manual provides users with the statutes and rules relating to court records, including those that relate to access to records. On the other hand, the manual is not intended to be a means for changing the law or for resolving controversial legal issues.</p> <p><b>Access to Court Records</b></p> <p>The Press Groups' comments devote substantial attention to issues relating to access to court records. While some of these comments summarize existing law, the comments also advance a legal argument that members of the media are entitled not only to the same filed documents as the public under the law, but also to special access to pre-filed documents. The commentators argue that documents that have been received, but not yet processed for filing, should be made available to them immediately or on the same day that they are received, even before the documents have been processed.</p>

	Commentator	Position	Comment	Response
				<p>This argument for a change in the manner in which court records are made accessible poses many significant practical and legal issues. First, the trial courts have been facing major fiscal challenges for several years. The lack of resources has sometimes made it very difficult or impossible to process all documents that are submitted to the court so that they are filed on the same day that they are received. While the courts would certainly like to process all documents submitted expeditiously, their fiscal constraints do not always make this possible.</p> <p>Second, the circumstances of courts vary widely. Some still use entirely paper records, some scan in part or all of their records electronically, and some are beginning to receive and process documents through e-filing. Depending on individual courts' circumstances, including staffing, equipment, technology and other factors, courts have different capacities and abilities to process documents submitted for filing. There is no "one size fits all" method for processing documents received by the trial courts in California.</p> <p>Third, the manual provides information regarding the basic law on access to court records. (See sections 2.2 and 10.1 ) "Court records" are generally defined as consisting of documents that have been <i>filed</i> with the court. (See Government Code, § 68151(a).) This definition has been used in the manual. Furthermore, it is a reasonable interpretation of the laws on access to court records to mean that the laws on access apply to court records</p>

Commentator	Position	Comment	Response
			<p>that have been <i>filed</i>. Indeed, some of the Press Groups' own analysis and case citations support this interpretation. However, at other times, their comments seem to argue for special media access to pre-filed documents.</p> <p>The issue of whether the media should have special access to pre-filed documents before they have been properly filed and made available to the public is not one that it is appropriate to attempt to resolve in the context of developing the present court records manual. The purpose of the manual, as indicated above, it is to provide a statement of current law; it is not meant to be a vehicle for changing the law. Given all the substantial practical and legal issues involved, it would not be appropriate for the manual to mandate any particular times or methods for providing access to the media to court records. Particular media organizations are welcome to discuss with particular courts the best means to ensure timely and effective access to court records.</p> <p><b>E-Filing</b></p> <p>The section of the manual on e-filing will be expanded in the future to provide additional information. It will take into account the Press Groups' comments. However, the committee disagreed with the commentators' pessimistic evaluation of e-filing. It believes that e-filing not only can assist in making, but has been making possible greater and more expeditious access to court records for the public. It would be contrary to improving public access to hold back on the progress</p>

Commentator	Position	Comment	Response
			<p>that courts are making by introducing e-filing. Courts that are able to make e-filing possible should be encouraged to do so. The factors listed in section 4.1.1 should be helpful for the courts in assessing the advantages and disadvantages of e-filing.</p> <p><b>Case Numbering Systems</b></p> <p>Regarding the Press Groups' specific comments on the sections of the manual on courts records numbering system (section 4.2 and 4.3), the committee disagreed with the comments.</p> <p>Case numbering systems exist for the purpose of identifying and organizing filed cases. The numbering schemes already in place in the trial courts reflect local practices, case management system design and limitations, and the manner in which the courts organize their work. When all trial courts are deployed on the California Case Management System, there will be a uniform numbering scheme that will be adopted by all trial courts. Until that time, it is unlikely that courts will see the necessity to change their current practices, particularly because most of them are longstanding, in the area of case numbering systems.</p>
2. California Judges Association San Francisco, CA Jordan Posamentier, Esq., Legislative Counsel	NI	This letter responds to the Judicial Council's request for public comment on the draft Trial Court Records Manual ("the Manual"). The Manual is a good "first step" in providing a reference guide for the new statutory and rule requirements contained in the recently chaptered AB 1926. The California Judges Association approves of the Manual with the	The committee notes the California Judges Association's general approval of the manual as a "good first step."

Commentator	Position	Comment	Response
		<p>following comments and suggestions.</p> <p>It would be helpful if the Manual focused more on mandatory requirements for court recordkeeping management programs. To avoid confusion, it should include prefatory language explaining that, except as required by statute and court rules, the Manual contains recommendations that do not constitute directives or mandates to trial courts. Rather, the Manual seeks to explain current best practices in trial court records management.</p> <p>CJA believes the Manual would provide greater utility if the body of it was restricted to explaining mandatory requirements, with either an appendix or separate sections devoted to optional recommendations and less critical information. For example, there is minimal need to provide information about the various court records that every court likely already possesses. (See e.g., Section 5 (record classification).) Similarly, small courts benefit little from information addressing the transition from the current paper record system to an electronic record system.</p>	<p>The committee disagreed with this particular suggestion. It believes that the focus of the manual is balanced and appropriate. The committee decided to develop the manual as a resource guide and single reference source to help trial courts ensure that they are 1) meeting legal requirements, and 2) benefiting from initiatives that other courts have developed that are considered best industry practices.</p> <p>The committee also prefaced their intentions on page 1 of the manual to assist users to distinguish between mandatory requirements and optional features of court records management programs, by placing a light bulb icon before sections containing optional ideas, policies and programs, and best industry practices. Sections not preceded by this icon contain mandatory requirements. Sections containing mandatory requirements contain links to the relevant statutes or rules.</p> <p>The committee disagreed with this comment for the reasons noted above. The language in section 5 (Record Classification) was deliberately included in order to implement the goal of using the manual to broaden the conventional definition of records management to encompass the complete life cycle of court documents from initial filing and, classification to final storage and destruction.</p>



Commentator	Position	Comment	Response
		<p>Small courts probably do not have a "records manager," nor is there any realistic expectation of funding such a position. They would have limited success in attempting to transition on their own, and implementing on a piecemeal basis could be counterproductive. (For small courts, implementation probably should be initiated only after the entire system is designed – especially true if it is to interface in the future with CCMS – and with the assistance of a hands-on expert.) The mandatory requirements, in contrast, apply statewide to courts of all sizes.</p>	<p>The committee agreed that some courts may not benefit today from information addressing the transition from paper to electronic records storage. This first version of the manual was drafted with the current records management environment in mind, but it is contemplated that subsequent versions will reflect emerging records technologies as they are implemented in the trial courts. Initiatives are underway to using technology for document imaging for small courts as well as larger ones.</p>
		<p><b>Comment to 4.4 E-filing (electronic format filing protocols)</b></p> <p>Rule 4.4 outlines the advantages and disadvantages of courts converting to a paperless records system, including filings by the public.</p> <p>However, the Manual does not explain what type of software will be used or accepted by the court: e.g. MS Word 7 or some generic format. Also, how soon do the filers need to upgrade their software to be able to file court documents? Clarification of this would be important to court records managers and litigants.</p>	<p><b>Comment to 4.4 E-filing (electronic format filing protocols)</b></p> <p>The committee agreed with this comment. It plans to address these issues in future versions of the Trial Court Records Manual.</p>
		<p><b>Comment to 5.1 (standard record classifications)</b></p> <p>Rule 5.1 classifies cases according to category and type.</p> <p>Misdemeanors and infractions are all grouped together. It would seem that there should be an additional class of cases limited to traffic cases, as they comprise a large part of the caseload and should</p>	<p><b>Comment to 5.1 (standard record classifications)</b></p> <p>The committee disagreed with this suggestion. The manual references the same case categories and definitions to complement those found in the Judicial</p>

Commentator	Position	Comment	Response
		<p>be handled separate and distinct from misdemeanors and other infractions.</p> <p><b>Comment to 7.5 (death penalty exhibits)</b></p> <p>Rule. 7.5 discusses how long to retain exhibits in death penalty cases.</p> <p>A definition of "execution of sentence" should be identified. Death penalty cases can return to courts several times over long spans of time, and sometimes with new evidence (e.g., due to forensic improvements) introduced that dates back several decades.</p> <p><b>Comment to 11.4.1 Records Retention and Destruction Schedule under Government Code Sections 68152 and 68153</b></p> <p>Rule 11.4.1 charts retention periods based on case types.</p> <p>While Government Code Section 68152 authorizes the court to destroy domestic violence and harassment case records 60 days after expiration of the temporary protective or temporary restraining order, this is not necessarily the best practice. Individuals subject to the order might move to a new jurisdiction, which has no record of their past activity. A better practice might be to preserve these cases up to 3 years after the expiration of the order so that the new jurisdiction can refer to them if needed.</p>	<p>Branch Statistical Information System (JBSIS).</p> <p><b>Comment to 7.5 (death penalty exhibits)</b></p> <p>The committee agreed that there is limited guidance for death penalty exhibits for cases that span long periods of time. This topic will be addressed in future versions of the manual.</p> <p><b>Comment to 11.4.1 Records Retention and Destruction Schedule under Government Code Sections 68152 and 68153</b></p> <p>The committee disagreed with this suggestion, in part. Section 11.4.1 is a restatement of what is contained in Government Code section 68152. This section of the manual simply states the law. So as not to confuse users of the Trial Court Records Manual, this section is not intended to include best practices. However, the committee will consider whether there is another section in the TCRM in which this best practice might be included in the future. Over time, with the deployment of California Courts Protective Order Registry (CCPOR), many courts will have their domestic violence and harassment case data in a central repository, which will alleviate some cross-</p>

Commentator	Position	Comment	Response
		<p><b>Conclusion</b></p> <p>The Manual will serve as an outstanding resource for mandatory requirements. We look forward to seeing the final version.</p>	<p>jurisdictional concerns.</p> <p><b>Conclusion</b></p> <p>The committee appreciates the CJA's recognition of the usefulness of the manual.</p>
3.	Eugene M. Frank, CPA, MBA Records Retention, Audit and Control Specialist Winnetka, CA	<p>NI</p> <p>I'm a records retention, audit and control specialist. My area of interest is the preservation, retention, and maintenance of court records and the controls established over the destruction of court records. My specific interest is in the controls established over the records retention and destruction processes.</p> <p>It is my understanding that the main purposes of AB 1926 are to authorize, permit and promote the creation and maintenance of court records in electronic form to enable reduction in court administrative and storage costs, under standards and guidelines established by the Judicial Council. Furthermore, it is my understanding that AB 1926 does not change the substance of California Government Code Sections 68150-68153, Chapter 1.4. Management of Trial Court Records, other than to permit use of electronic records and conversion of non-electronic records into electronic form. Code Sections 68150-68153 are the codes governing the preservation, maintenance, retention and destruction of court records.</p> <p>The proposed rules would require that the Administrative Office of the Courts, in collaboration with trial court presiding judges and court executives, prepare, maintain, and distribute a manual providing standards and guidelines for the creation, maintenance, and retention of trial court records. Such standards and guidelines for the</p>	

Commentator	Position	Comment	Response
		<p>creation, maintenance, and retention of trial court records will be contained in the "Trial Court Records Manual" and must be consistent with Government Code, Sections 68150-68153.</p> <p>This letter is in response to the request for public comments.</p> <p><u>The major purpose of court records management, including the creation, preservation, retention and destruction of records, is to preserve and protect the appellate rights of defendants in accordance with their due process rights under the Sixth and Fourteenth Amendments to the United States Constitution.</u></p> <p>Our judicial process is based on an adversarial process that assumes equality of representation between the prosecution and defense and by that process truth and justice is served. That might be true for defendants with wealth to afford first-rate representation that offsets the infinite resources of the prosecution and can thwart judicial error. But it definitely is not true for defendants with modest or no financial means. The appellate process enables them to have a second and independent review of the trial proceedings. Accordingly, retention and availability of courts records is of extreme importance. The retention and destruction processes are of extreme importance. The manual I read belies their importance.</p> <p>That is why the statement on page 5, first paragraph of the manual, "...archiving and destruction is just the last, and perhaps least important step in the records management process" is repugnant, callous and uncaring for the due process rights of individuals. In felony cases, years after a trial</p>	<p>Providing a record on appeal is certainly one very important purpose of records management. There are also other purposes (see, for example, comment 5 below on the importance of court records to the public in a democracy.)</p> <p>The committee agreed that the statement in the draft manual was not appropriate. The manual is not intended in any way to demean the importance of safeguards pertaining to the</p>

Commentator	Position	Comment	Response
		<p>conviction, evidence might come to light that important testimony used to convict was false. Ability to retrieve the perjured testimony would become important to appeal and reverse conviction. But, what if the court records were destroyed? No, no, retention and control over the destruction of court records is of the utmost importance, not the least important in the records management process.</p> <p>Code Section 68151(a) defines "court record" as consisting of the following:</p> <ol style="list-style-type: none"> <li>(1) All filed papers and documents in the case folder.</li> <li>(2) Administrative records filed in an action or proceeding, depositions, exhibits, transcripts...</li> <li>(3) Other records listed under subdivision (j) of Section 68152.</li> </ol> <p>Other records includes (j)(7) court reporter notes, and (j)(8) electronic recordings made as the official record of the oral proceedings. Both of equal importance.</p> <p>Retention period of 75 years in non-capital felony cases includes which court records? That is not specified. I presume they include those mentioned in Code 68151(a)(1) and (a)(2). But, then I ask you, what if the court reporter notes (j)(7) or (j)(8) electronic recordings made as the official record have not been transcribed? Transcripts are retained for 75 years but other records (j)(7) or (j)(8) from which a transcript is made are retained for only ten years. Are such untranscribed "Other records" of less importance than if there was a transcript. They contain the same important trial proceedings, just in different forms. The State of Louisiana has it right. Court reporter</p>	<p>archiving and destruction of court records. This section of the manual has been revised.</p> <p>This comment appears to go beyond the scope of the manual. The manual is intended to provide information and guidance to the courts regarding the current law, including the law regarding records retention, preservation, and destruction. (See section 11.) This comment, however, suggests changes in the law regarding records retention, preservation, and destruction.</p>

Commentator	Position	Comment	Response
		<p>notes are retained until a full transcript is made or until the retention period for a transcript has been reached. The manual needs to better clarify the retention guidelines.</p> <p><u>The destruction process is probably the most important process in the records management cycle.</u></p> <p>Code Sections 68152 and 68153 require that five (5) conditions must be met before court records can be destroyed and two (2) conditions after destruction. Remember court records include those noted in Code Section 68151(a)(1), (a)(2) and (a)(3). Subsection 68151(a)(3) being "Other records identified in Code Section 68152(j). The manual fails to address this or clarify these definitions.</p> <p>The five conditions required by Code Sections 68152 and 68153 are as follows:</p> <ol style="list-style-type: none"> <li>1. The applicable retention time has expired. (Code Section 68152)</li> <li>2. After (there must be) final disposition of the case (defined in Code Section 68151). (Code Section 68152)</li> <li>3. Notice of destruction (intention) has been given. (Code Section 68152)</li> <li>4. There is no request and order for transfer of the records. (Code Section 68152)</li> <li>5. Upon the order of the presiding judge of the court (required by Code Section 68153).</li> </ol> <p>Where are these conditions stated in the manual? They should be clearly stated as requirements that must be met before court records may be destroyed. The manual should contain an example of a sign-off sheet requiring a signature or initial by each condition that each condition has been met. The document should be dated with supervisory</p>	<p>The manual provides direct links to each of the statutes referred to in this comment.</p> <p>The committee agreed with this comment. The manual has been revised to include these five conditions in section 11.</p>

Commentator	Position	Comment	Response
		approval. Code Section 68153 requires two conditions, after the destruction of records. 1. Notation of the date of destruction shall be made. 2. A list of the court records destroyed within the jurisdiction of the superior court shall be provided to the Judicial Council in accordance with the California Rules of Court. Where are these conditions stated in the manual? If they are, I missed it.	The committee agreed that these two conditions in Government Code section 68153 should be referenced in the manual.
		Question: Why isn't a corroborating witness of the destruction required with a sign-off that all conditions have been met, such as discussed above? That's how important the destruction process is and should be. To do otherwise, allows the courts to bend the rules with no oversight and no accountability! And, don't tell me that adherence to the destruction process is based on trust! Trust is not a control. Trust does not assure accountability! Trust does not ensure processes are followed! If allowed, courts will short-cut processes, particularly record retention and destruction processes. With no control, no oversight, court employees can violate destruction processes with impunity. For all these reasons, I find the manual inadequate, poorly written and more confusing than clarifying!	This question suggests there should be a change in existing law, which is beyond the scope of the manual.
		Finally, I strongly suggest eliminating Code Section 69955(e) regarding destruction of court reporter notes or emasculate it. It is archaic and without any oversight or control measures. It requires no accountability in the destruction of court records, no notice, no documentation of the destruction and no	This suggestion for the repeal of a code section is beyond the scope of the manual, which is intended to provide information for the courts about existing law. The suggestion for possible legislation should be addressed by staff to an appropriate Judicial Council

Commentator	Position	Comment	Response
		reporting of record destruction. It is bad record management at its worst! And, since 1994, Code Sections 68150-68153 have superseded it. Eliminate it!!	advisory committee for consideration.
4.	Bill Girdner Editor Courthouse New Service Pasadena, CA	<p>I write in response to the Judicial Council's invitation for written comments on the Trial Court Records Manual. I make these comments in my personal capacity as the founder and editor of a news service I started 20 years ago in Pasadena called Courthouse News Service. Courthouse News is submitting a separate set of comments, made in its organizational capacity and through its attorneys.</p> <p>I submit these comments in my personal capacity so that I may convey my personal observations, as a longtime journalist covering California's courts, on the Trial Court Records Manual as it relates to the press. I have worked as the editor of Courthouse News Service for the last 20 years, and worked as a journalist covering legal stories primarily for the Los Angeles Daily Journal, the Boston Globe and the New York Times for the preceding ten years.</p> <p>In that time, I have observed the many changes that have taken place in the ability of journalists to review the court's work and publish stories that fairly represent the great variety, difficulty, gravity and humor of the human events and conflicts that wind up in the trial courts for resolution.</p> <p>The first paragraph of Section 1.2 of The California Trial Court Records Manual, on the purpose of records management, is one that I emphatically</p>	<p>The committee agreed with the commentator that maintaining court records is not only a fundamental role of courts, but is also a fundamental principle of our democracy.</p> <p>Regarding the access issues raised below, there are existing procedures for access to court records in the trial courts. Courts are willing to work with the media on access issues. And legal recourse is available to the press if appropriate access to court records is denied. However, addressing all of these access issues is beyond the scope of this manual.</p>



Commentator	Position	Comment	Response
		<p>agree with – that keeping the court record is a “fundamental role” of the courts.</p> <p>I would go further. The record is a fundamental element of our democracy. It provides a window into the working of an open government and shows how decisions are made in a government that is, in the words memorized by high school students around our nation, “of the people, by the people and for the people.”</p> <p>The court record is not only a history of the court’s work but it is also a dynamic thing that changes and grows every day (except weekends, for the most part) and tells of controversies and decisions that are part of the fabric, the weave of our democracy.</p> <p>I say all this because that fundamental importance of the activity of the courts is what has caused newspapers to cover the courts, keep track of what is going in them and staff press rooms in courthouses around the state and over the years.</p> <p>Traditionally, part of a journalist’s courthouse beat was to cover precisely what the Judicial Council is describing as fundamental, the record. Journalists cover the record by checking what can best be described as a set of catch basins for documents, the new filings for that day, the subsequent filings for that day and the judgments or rulings.</p> <p>Over the last twenty years in California, the ability of journalists to check those catch basins has been squeezed in moves big and small by individual courts, limiting where journalists can go and the times they can check and what they can see. That drip-by-drip erosion of access includes kicking</p>	

	Commentator	Position	Comment	Response
			<p>journalists out from behind the counter, taking away grace periods at the end of the day that allow review of late matters, requiring that journalists review electronic images of paper-filed cases, then limiting the number of screens, requiring that journalists stand in long lines to see the record, limiting the number of documents they can see and then requiring that they go to the end of the line, charging search fees, attempting to close press rooms early, not including press rooms in new court buildings, and, most importantly, interposing processes that take a day or days, such as jacketing, docketing and scanning, before a journalist can see the record. The impediments to access have been compounded in a series of big courts in California by the adoption of a complex and time-consuming case management system that delays access even more, thus gutting the record's news value.</p> <p>The ongoing set of conflicts between the press and court administrators over access can be compared to a long-running battle where the administrators make incursions into press access and where the press fights back successfully in some cases but loses in more, with the overall outcome that press access in California's trial courts has deteriorated substantially.</p> <p>The result that I have observed is fewer news stories involving the trial courts, less information coming out of those courts to the public, less access not only to the documents but also to the judges and officials of the court, and a greatly more insular and less responsive bureaucracy within California's courts.</p> <p>The trend in the relationship between courts and the public and the press is symbolized by the architecture of more recent court construction in</p>	

	Commentator	Position	Comment	Response
			<p>which the areas where court personnel interface with the public consist of floor-to-ceiling walls with a thick glass dividers through which members of the public talk to their employees, as compared to the open counters that exemplify earlier court construction where public employees spoke face-to-face with members of the public, with lawyers and with journalists, across the counter. The courts are becoming fortresses.</p> <p>The drafting of the California Trial Courts Manual is an opportunity to reverse the long term degradation of press access to California's courts and make a clear statement that the record of the courts is indeed the public record and must be kept open and accessible to the press in a prompt and thorough manner.</p>	
5.	<p>KFMB News 8 San Diego By David Gotfredson News Producer San Diego, CA</p>	AM	<p>As a member of the media, I would like to comment on the availability of public court records which frequently are treated as confidential but, in fact, are open judicial records. As the Judicial Council transitions to electronic filing of court records, I feel strongly that procedures need to be established to give the public access to these two specific categories of records:</p> <p><b>1. Search Warrants.</b></p> <p>Under California law, a search warrant becomes a public record 10 days after it is executed. Some warrants get sealed by the judge, but most do not. Likewise, the search warrant log book is a public record, which is open to inspection.</p> <p>I would like to see some sort of electronic access to both the search warrant log and executed search warrants. The federal Pacer system currently has</p>	<p>The commentators' suggestions are not entirely clear. On the one hand, the California Rules of Court already require trial courts to provide reasonable access to all electronic records, except those sealed by court order or made confidential by law, to the extent it is feasible to do so. On the other hand, the rules provide for restrictions on <i>remote</i> public access to certain types of records, including criminal and juvenile records. (See Cal. Rules of Court, rule 2.503(a) and (c).) These restrictions were established for reasons of public policy.</p> <p>The records manual is intended only to state existing law. It is not intended as a means for changing the law. If the commentator would like to propose specific changes to the laws on remote access to criminal or juvenile records, the suggestions should be addressed</p>

Commentator	Position	Comment	Response
		<p>such a system in place. So, for example, when a search warrant is requested by law enforcement, the number could be entered into an online database. If the warrant is sealed, the word SEALED could be placed by the warrant number. After the warrant is executed, the address of execution could be entered into the index of the database. Simply click on that executed address link and the public could view the search warrant. Of course, if the warrant is returned un-served, the warrant would not be viewable. This sort of online search warrant database would not only allow public access to search warrants, but also offer a searchable address index of the executed warrants.</p> <p><b>2. Juvenile Records.</b></p> <p>As the draft California Trial Court Records Manual states:</p> <p>“There is also an exception to this rule of confidentiality for certain records in cases brought under Welfare and Institutions Code section 602, in which the minor is charged with one or more specified violent offenses. (Welf. &amp; Inst. Code § 676.) In such cases, the charging petition, the minutes, and the jurisdictional and dispositional orders are available for public inspection (Welf. &amp; Inst. Code, § 676, subd. (d)).”</p> <p>Would it be possible to track juvenile cases that meet the criteria above, and once the juvenile petition is sustained, make the specific public documents available online? Currently, obtaining juvenile records for such cases is virtually impossible, and for a member of the media, usually requires hiring an attorney and filing a motion. This, for juvenile records that are presumed to be public by law.</p>	<p>to the appropriate Judicial Council advisory committees.</p>

Commentator	Position	Comment	Response
		Please consider implementing an online system for granting public access to these juvenile records.	
6. San Diego County District Attorney By Bonnie M. Dumanis District Attorney San Diego, CA	NI	As a District Attorney of San Diego County I have reviewed and considered the <i>Trial Court Records Manual</i> with particular interest in the sections addressing criminal law. I offer the following observations and comments.  <i>Section 1.2 (page 3):</i> The Judicial Council may wish to incorporate a phrase in the 4th paragraph to explain that "the public must be able to see all the information the court considered in making its decision," <i>except that which has been sealed or is subject to rules protecting the confidentiality of the information.</i>  <i>Section 7.3.3 (page 25):</i> The Judicial Council may wish to consider that often times DNA evidence is obtained from evidence in this category and may thus be subject to Penal Code section 1417.9(a).  <i>Section 7.4.5 (page 27):</i> The Judicial Council may wish to clarify the scope of the mandate that harmful material be returned to the court by state agents. Does this include the city and county prosecutorial and law enforcement agencies? If so, this section is of significant concern to the local law enforcement as we routinely maintain harmful material which has ongoing evidentiary value for retrials after appeal and other post conviction litigation. Post conviction litigation is especially prevalent in child molest cases due to the long sentences imposed for those crimes. If indeed the Judicial Council does wish to include these parties, the section does not clearly put them on notice since it only refers to the "state."	  <b>Section 1.2 (page 3):</b> The committee agreed with this comment. The suggested language or language to that effect has been included in the manual.          <b>Section 7.3.3 (page 25):</b> The committee agreed with this comment. Section 7.3.3 has been revised to include a reference to the retention requirements of Penal Code 1417.9(a).          <b>Section 7.4.5 (page 27):</b> The language of Section 7.4.5 is taken from Penal Code § 1417.8, and makes no changes to the process described in that section. Section 7.4.5 is, therefore, a restatement of the current law. As such, the section does not make any substantive changes to the way courts are currently handling the harmful materials that are the subject of Penal Code § 1417.8.

Commentator	Position	Comment	Response
		<p><b>Section 10.2 (page 32):</b> The Judicial Council may wish to consider adding language to this section indicating that notice of intent to post web documents must be given by the court 5 days prior to posting, requesting and opposing parties must be provided with an opportunity to be heard, and certain factors must be weighed by the court under section 2.503(e) prior to publication. This will avoid premature publication of documents which may violate Marsy's law or create prejudice to the parties.</p>	<p><b>Section 10.2 (page 32):</b> The committee agreed with this comment. Section 10.2 has been revised to reference the notice requirements of California Rule of Court, rule 2.503(e)(3) as well as the factors the court must consider when making its determination. The second paragraph of Section 10.2 has been revised to read:</p> <p>“Under rule 2.503(e) of the California Rules of Court, the presiding judge or a designated judge may order the records of a high-profile criminal case to be posted on the court’s Web site to enable faster and easier access to these records by the media and public. This rule specifies several factors that judges must consider before taking such action. Prior to posting, staff should, to the extent feasible, redact any confidential information contained in the court documents in accord with California Rule of Court, rule 2.503(e)(2). In addition, five (5) days notice must be provided to the parties and the public before the court makes a determination to provide electronic access under this rule. Notice to the public may be accomplished by posting notice on the court’s Web site. Once issued, a copy of the order must also be posted on the Web site.”</p>
		<p><b>Section 10.3.1 (page 32-35):</b> The Judicial Council may want to consider adding a section into this chart under the “Criminal Case Records” section</p>	<p><b>Section 10.3.1 (page 32-35):</b> To clarify the section and aid the reader, the following sentence has been added to the end of the first</p>

Commentator	Position	Comment	Response
		<p>identifying as confidential, records that have been sealed by the court. This language can mirror the language in 10.3.2. It is problematic not to include such an important section in the body of the paragraph that deals specifically with criminal law records. Another solution would be to move section 10.3.2 in front of 10.3.1 and add in a sentence that indicates it applies to all records regardless of their nature (family, civil, criminal etc...). The problem is really one of perception and location. It appears that you have listed all of the "confidential" material and there is no reference to documents protected by Evidence Code section 1040 <i>et seq.</i> which are generally among the most sensitive and deserving of protection. One must read through several categories, which do not relate to criminal law, before happening upon the protection for sealed documents.</p> <p><i>Section 10.3.1 (page 34):</i> The Judicial Council may wish to include a sentence in section 2 regarding the exemption of judicially sealed search warrants from disclosure, which does extend until after the warrant is executed.</p> <p><i>Section 10.3.2 (page 44):</i> The Judicial Council may wish to clarify what is meant by "Felony, except capital felony, with court records the initial complain through the preliminary hearing or plea and for which the case file does not include final sentencing or other final disposition of the case because the case was bound over to the superior court." This is extremely confusing and with the merger of municipal and superior courts, appears to be extraneous. One would hope that these important records including change of plea would not be destroyed within 5 year as they are priorable and</p>	<p>paragraph of Section 10.3.1:</p> <p>"Sealed records, including those that fall under Evidence Code § 1040 <i>et seq.</i>, are discussed in Section 10.3.2, below."</p> <p><i>Section 10.3.1 (page 34):</i> Penal Code § 1534(a) provides that executed search warrants shall be open to the public:          "Thereafter, if the warrant has been executed, the documents and records shall be open to the public as a judicial record."</p> <p><i>Section 10.3.2 (page 44):</i> The committee disagreed with this comment. The quoted language is not present in Section 10.3.2, but is present on page 44, in Section 11.4.1. Here, the language referenced in the comment is a direct quote from the statute, specifically, Government Code § 68152(e)(3). Hence, it should not be changed in the TCRM, but should accurately reflect the language of the statute as it currently does.</p>

Commentator	Position	Comment	Response
		<p>should be treated differently than other felony cases. If this section has been misread, your consideration is requested in making the language more comprehensible.</p> <p><i>Section 10.3.2 (page 48):</i> The Judicial Council may wish to expand the length of time that court report notes (transcripts) are retained, especially in life cases as the post conviction writ proceedings generally continue for upwards of 20 years after conviction.</p> <p>I sincerely appreciate this opportunity to comment on this important manual and commend you on the work you have done thus far.</p>	<p><i>Section 10.3.2 (page 48):</i> Changes in the retention period for specific documents would require an amendment to Government Code § 68152, and are thus beyond the scope of the TCRM.</p>
7. Michael D. Schwartz Special Assistant District Attorney Ventura County District Attorney Ventura, CA	N	<p>Thank you for the opportunity to comment on the draft Trial Court Records Manual. My concern is with the minimum period of records retention listed in the chart on pages 42-44. Many misdemeanor and felony cases can be destroyed after only 5 or 10 years, and domestic violence restraining order may be destroyed 60 days after their expiration.</p> <p>These periods are too short given the frequent need for records beyond the time limits provided. For example, prior convictions may be alleged for enhancement purposes under Penal Code sections 666, 667, 667.5, etc. The documents needed to prove such priors would include the accusatory document (complaint, information or indictment), waiver of constitutional rights form, and minute orders. Prior convictions may be used in any criminal or civil cases to impeach the credibility of a witness, with the age of the conviction just one of several factors for the court to consider in terms of admissibility. Challenges to prior convictions by way of habeas corpus or petition for writ of error <i>coram nobis</i> may</p>	<p>This suggestion would require a change to existing law and is beyond the scope of the manual.</p>



Commentator	Position	Comment	Response
		<p>be made years after the conviction, at which time the court files are needed for the court to address the validity of the conviction. In criminal and civil cases of domestic violence, documentation of prior restraining orders may be essential to establish an ongoing pattern and history of violence.</p> <p>I recognize that these periods are dictated by Government Code section 68152. I request that the Judicial Council either seek legislation to increase the time periods, or that the Trial Court Records Manual provide that the records be maintained electronically for a longer period, e.g., 20 years after the paper files are destroyed.</p>	
<p>8. Superior Court of Marin County San Rafael, CA By Kim Turner, Court Operations Manager</p>	NI	<p><b>Page 43 – Paternity</b> Change: under Special Case Type Characteristics. <i>Delete the entire definition and replace:</i> Fam. Code 7643, subd. (a) Records in Uniform Parentage Act proceedings, except the final judgment are not open to the public.</p> <p>Pursuant to Fam. Code Section 7643 (b) Parties to the action, attorneys of record or upon written consent as defined can inspect the court file.</p> <p><b>Page 43 – Real Property other than Unlawful Detainer: under Minimum Retention Period.</b> <i>Change to:</i> Retain permanently if the action affects title or an interest in real property, otherwise 10 years.</p> <p><b>Page 44 – (new section) Dismissed Felony:</b> There currently is not a code section that addresses felonies that are dismissed. CARM – Court Administration Reference Manual 2005 Edition Section 14.80 Records Management. FAQ 4.0 Felony Cases: Retention for dismissed felonies</p>	<p><b>Page 43 – Paternity:</b> The committee agreed with this comment. This item has been revised to refer to both (a) and (b) of Family Code section 7643.</p> <p><b>Page 43 –Real Property other than Unlawful Detainer: under Minimum Retention Period.</b> The committee agreed with this comment and has revised the text.</p> <p><b>Page 44 – (new section) Dismissed Felony:</b> The committee agreed that a new section should be added on this subject. It has been added to the appendix.</p>

Commentator	Position	Comment	Response
		<p>should be have a retention of 75 years; the same as a felony under 68152(e)(2).  <a href="http://serranus.courtinfo.ca.gov/reference/carm/carm_manual.pdf">http://serranus.courtinfo.ca.gov/reference/carm/carm_manual.pdf</a>.</p> <p><i>Page 44</i> – (new section) There currently is not a code section that addresses felonies that are reduced to misdemeanors. CARM – Court Administration Reference Manual 2005 Edition Section 14.80 Records Management. FAQ 4.0 Felony Cases: Felonies reduced to misdemeanors should follow retention for applicable misdemeanor.  <a href="http://serranus.courtinfo.ca.gov/reference/carm/carm_manual.pdf">http://serranus.courtinfo.ca.gov/reference/carm/carm_manual.pdf</a></p> <p><i>Page 45</i> – Misd. Alleging a violation of the H&amp;S 11357 (b-e)</p> <p><i>Need Clarification:</i> The date of conviction or date of arrest if no conviction was confusing for some courts to determine when to calculate a destruction date.</p> <p><i>Change under Special Case Type Characteristics:</i>  OCG opinion from Arturo Castro on 6/14/10 – not a formal response. Should get a formal opinion. Can forward email at your request.</p> <p>Special Case Type Characteristics: <i>Add:</i> If all terms and conditions of probation have not been met and all fines have not been paid, the records should not be destroyed.</p> <p><i>Page 49</i> – Judgments in misd., infractions, limited judgments...  Change under: Special Case Type Characteristics: <i>Add:</i> Gov. Code Section 68152(k)(2)- retention of the court record to be extended: Upon application and order for renewal of the judgment to the</p>	<p><i>Page 44</i> – (new section):  The committee agreed that a new section should be added on this subject. It has been added to the appendix.</p> <p><i>Page 45</i> – Misd. Alleging a violation of the H&amp;S 11357 (b-e):  The committee agreed that a new section should be added on this subject. It has been added to the appendix.</p> <p><i>Page 49</i> – Judgments in misd., infractions, limited judgments.  The committee agreed and made this change.</p>

Commentator	Position	Comment	Response
		<p>extended time for enforcing the judgment.</p> <p><b>Page 50 – 11.4.2 “other case types”</b>  Add new records type <b>Subpoenaed Records (EC 1560(d))</b>. Discussion: this could go under court records designated confidential as well (appendix I) as a cross-reference:  <i>Add:</i> under Recommended Retention Period - Unless admitted as evidence or required as part of the record:</p> <ul style="list-style-type: none"> <li>• Original subpoenaed records should be returned to the custodian of records at the conclusion of trial/hearing</li> <li>• Copies of subpoenaed records should be destroyed at the conclusion of trial/hearing</li> </ul> <p><b>Page 53 – Court Records Designated Confidential</b>  by Statute...</p> <p>Add new records type:  Subpoenaed Records (EC 1560(d))  My suggestion is to add it under the heading “GENERAL” since subpoenaed records can be for any case type. <i>Add code section in second column:</i>  Evidence Code Section 1560 (d).  <i>Add specifics in third column:</i> Unless the parties to the proceeding otherwise agree, or unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or upon direction of the judge.</p> <p><b>Page 54 – Under Civil Law:</b>  Missing item 11 - Change the numbering sequence in first column.</p> <p><b>Page 58 –Under Criminal Law:</b>  Item 34 is blank.  Change the numbering sequence in first column.</p>	<p><b>Page 50 – 11.4.2 “other case types”</b>  The committee agreed with this comment and added this information.</p> <p><b>Page 53 – Court Records Designated Confidential by Statute or Rule:</b>  The committee agreed with this comment and added this information.</p> <p><b>Page 54 – Under Civil Law:</b>  The committee agreed with this comment and has fixed the chart.</p> <p><b>Page 58 – Under Criminal Law:</b></p>

	Commentator	Position	Comment	Response
				The committee agreed with this comment and has fixed the chart.
9.	Superior Court of Monterey County By Margaret Corioso, Operations Manager	A	<p><b>COMMENT 1:</b> Page 1, paragraph 2 states "the AOC, in collaboration with trial court presiding judges..... prepare, maintain and distribute a manual providing standards and guidelines, etc." However, on page 2, paragraph 4 it states "the Judicial Council shall adopt rules to establish standards and guidelines for the creation, maintenance, reproduction, and preservation of trial court records."</p> <p>For consistency purposes, it is recommended that the language be consistent as to who developed and published the document.</p> <p><b>COMMENT 2:</b> Page 4, Section 1.4: Our Court agrees and likes the information provided in this section.</p> <p><b>COMMENT 3:</b> Page 6, Section 1.5 Key Definitions: Court Record: What is definition of "filed"? How do courts determine what documents are filed vs. received?</p> <p><b>COMMENT 4:</b> Page 9, Section 3.1, first paragraph. Remove 'by staff' in the first sentence.</p> <p><b>COMMENT 5:</b> Page 9, Section 3.2. For consistency spell out trial court executive officer in last sentence of this paragraph.</p>	<p><b>COMMENT 1:</b> California Rules of Court, rules 10.850 and 10.854 were adopted by the Judicial Council as the constitutional body authorized to approve rules of court for trial court administration in California. The rules created the requirement to develop standards and guidelines for records management and creation, maintenance and reproduction and authorized the Administrative Office of the Courts to collaborate with the trial courts to produce the records manual. The Judicial Council did not develop or publish the manual, but created the requirement to do so.</p> <p><b>COMMENT 2:</b> The committee appreciates the support.</p> <p><b>COMMENT 3:</b> The committee agreed that finding common definitions of "filed" and "received" is difficult. The committee may seek to clarify this issue in future versions of the manual.</p> <p><b>COMMENT 4:</b> The committee agreed with this comment and made this change.</p> <p><b>COMMENT 5:</b> The committee agreed with this comment and made this change.</p>

	Commentator	Position	Comment	Response
10.	Superior Court of Placer County By Jake Chatters, Executive Officer	NI	<p>Thank you for the opportunity to review the proposed records manual. The development of a consolidated source of information for court records management is a worthwhile undertaking and it's obvious that great care was taken in constructing this initial version.</p> <p>The Committees specifically requested comment on potential existing training materials that may support Judicial Branch education. Although not a court-specific training, the Court Clerk's Association has developed and provides records management training classes for court staff. Staff who recently attended these sessions returned with extensive materials and training directly relevant to the specific job duties of our court records staff. Areas covered include: what is an official court record, organizing records, retrieving records, type of media records may be stored on, retention periods, destruction requirements, sampling methods, and confidential and sealed records.</p> <p>The Committee may wish to contact the Court Clerk's Association to request a full copy of their materials.</p> <p>Thank you again for the opportunity to comment.</p>	<p>The committee thanks the commentator for this suggestion. It is contemplated that future versions of the manual could include guidance or information on effective training programs. The Court Clerk's Association resources will be considered for inclusion at future manual updates.</p>
11.	Superior Court of Riverside County By Sherri R. Carter, Executive Officer	AM	<p>1. I would eliminate all parts of the manual that are not specifically procedural. For example, I don't think background information is necessary in a manual; it could be included in a cover memo. Why do we need to cover how new versions will be handled or the purpose of the manual? I also wonder why we need explanations of information related to e-filing (page 12) since this is a Records Manual and electronic records storage is part of 6.1.2.</p>	<p>1. The committee did not agree that the manual should be so narrowed, particularly for this first version. The background and other explanatory materials are useful because they place the specific sections of the manual in a broader context of records management. Also, particularly in this first version of the manual, it is important for court personnel and others reading the manual to understand how this version will</p>

Commentator	Position	Comment	Response
		<p>2. I would include various appendices at the end. Appendix 1 could be definitions, Appendix 2 could be the related CRC, Appendix 3 could be the court records designated confidential by statute or rule grid, Appendix 4 could be the schedule of records retention and destruction grid (both grids are very helpful and my favorite part, by the way!!).</p> <p>3. The procedural style used in Section 7 for Exhibits Management and Section 10.3 for Confidential and Sealed Records is more like a manual and I find it more helpful than the informational style in the earlier sections.</p> <p>You have done a wonderful job in developing the first Records Manual. Thank you very much for your hard work and effort. I hope my comments are helpful.</p>	<p>be expanded and updated over time.</p> <p>2. The Appendix has already been used, as noted, for providing a list of court records designated as confidential. Some of the other matters mentioned in the comment could be placed in the Appendix, but appear to fit more readily into the chapters on the topics involved. When the committee considers additional topics to include in future versions of the manual, it will also consider various configurations and formats for future iterations, based on comments received from manual users.</p> <p>3. This comment will be considered in connection with the revisions to Version 1 and subsequent versions of the manual.</p> <p>The commentator's remarks and comments are appreciated.</p>
12. Superior Court of Sacramento County By Chris Stewart, Director, CCMS Program Office	NI	<p>The Superior Court of California, County of Sacramento has reviewed the proposed Court Administration: Trial Court Records Manual (SP10-02) and has the following comment to submit:</p> <p>In response to the Draft Manual of the California Trial Court Records Manual (hereinafter "Draft Manual"), it is the position of the Sacramento Superior Court that while the Draft Manual provides</p>	<p>For the reasons explained in the Introduction to the manual (Section 1) and the response</p>

Commentator	Position	Comment	Response
		<p>an excellent source for the existing rules and statutes that have already been promulgated by the Legislature relating to records management, the contents relating to electronic case files and data are cause for significant and paramount concern.</p> <p>The comments herein are not made in respect to the previously enacted rules and statutes, but rather to the implied mandate that all 58 California courts must move to employing electronic court records and use CCMS to manage those electronic court records. The Draft Manual does not contemplate or address the impact on the individual courts, the fiscal ramifications, or the magnitude and degree of change that each of the 58 courts would face if each were compelled to employ electronic case files and/or data. Additionally, the Draft Manual does not address how a court could mitigate the multitude of changes that would be necessitated.</p>	<p>below, the committee thinks the commentator's concerns about the contents of the manual are misplaced.</p> <p>The comments are based on incorrect assumptions about the purpose and scope of the manual. The manual is intended to provide for all courts: 1) a statement of the current law relating to court records, and 2) useful guidelines and suggestions for best practices that may be used in the management of court records. The manual does not contain an "implied mandate." Although the manual recognizes that the next major stage of court records management involves a shift from paper to electronic records, and provides assistance and guidance to those courts making this shift, it does not mandate any particular timelines or steps that courts must pursue at this time. Those issues are beyond the scope of the manual.</p> <p>The court administrators who have prepared the manual are fully aware of and highly sensitive to the different fiscal and technical capacities of various local courts. The manual addresses these differences by articulating standards that apply to both to paper records and electronic records. The manual does not require any trial court to use new technologies or modify current practices. But for courts that are capable of and want to achieve the efficiencies that are available through technology, the manual provides assistance.</p>
		<p>Many courts do not have the capacity, financial means, or desire to move towards electronic records. This new, proposed methodology would create huge and unprecedented changes in existing business processes for many courts. For some courts, such as Sacramento, technology is part of our daily operation and we can use technology to create efficiencies. But many smaller courts do not utilize technology and have streamlined their manual processes to the point that technology would actually create more work than it would save and actually cost more money than their current streamlined processes do. These types of issues have not been contemplated or addressed in the Draft Manual.</p>	

Commentator	Position	Comment	Response
		<p>In addition, the role of the Administrative Office of the Courts (AOC) as to any court's effort and solution as to records management has not been addressed. Even with the implementation of CCMS, as mentioned in the Draft Manual, the impact and level of change that would be thrust upon the courts by a mandate requiring electronic case files may well be so significant and onerous that such would substantially outweigh any benefit of converting to electronic case files.</p> <p>The sheer time devoted to crafting this Draft Manual should mandate the necessity of clearly understanding the impact these changes would create in the individual courts. To that end, Sacramento Superior Court recommends the following:</p> <ul style="list-style-type: none"> <li>• Create a working group comprised of court experts from small, medium, and large courts, appointed by the courts' Presiding Judges, to analyze the impact of moving courts to electronic records.</li> </ul>	<p>The commentator is correct that the manual does not attempt to address the specific issues that apply to small courts' decisions to adopt particular records management practices or the AOC's role in courts' efforts and solutions as to court records management. These and many other similar matters are beyond the scope of the manual.</p> <p>With respect to the superior court's three specific recommendations:</p> <ul style="list-style-type: none"> <li>• The superior court's suggestion that a working group appointed by the Presiding Judges be formed to analyze the impact of moving to electronic records is beyond the scope of the manual and should be addressed by staff to the Trial Court Presiding Judges Advisory Committee. If any such initiative is undertaken, it would be appropriate also to have the Court Executives Advisory Committee involved.</li> <li>• In preparing the manual, efforts have been made to ensure the guidelines are consistent with the technology that is being developed in CCMS. Additional consultation with the CCMS Executive Committee is a good idea.</li> <li>• This suggestion is beyond the scope of the manual. If the superior court wants to raise</li> </ul>



	Commentator	Position	Comment	Response
			<p>records and determine if the AOC believes that it is going to provide a statewide technical solution to all of the courts.</p> <p>Thank you for providing us with an opportunity to review the proposed changes and submit comments.</p>	<p>such issues with the AOC, it should do so directly.</p>
13.	<p>Superior Court of San Diego County</p> <p>By Michael Roddy, Executive Officer</p>	AM	<p><b>Page 19:</b> For the definition of juvenile delinquency cases, our court recommends language such as "A broad classification of cases filed against a minor for a violation of the law".</p> <p><b>Page 36, Family and Juvenile Court Records, Records that are confidential, Paragraph 1:</b> There is no "therefor" contained in Welfare and Institutions Code section 827(a)(1)(P), but it has been included in the quote from this section. Also, the citation to "Welf. &amp; Inst. Code § 676" is missing a comma.</p> <p><b>Page 37, Paragraph 4:</b> This paragraph appears to contain an erroneous citation to statutory authority. Paragraph 3 refers to the confidentiality of a child custody evaluator's report and correctly cites to Family Code section 3025.5 and Family Code section 3111. Paragraph 4 specifically refers to the confidentiality of a recommendation as to custody of or visitation with a child submitted by a mediator and correctly cites to Family Code section 3025.5 but incorrectly cites to Family Code section 3111. A report by an evaluator and a recommendation by a mediator are two different documents. While both are made confidential pursuant to Family Code section 3025.5, the statutory authority for each is separate and distinct. Family Code section 3111</p>	<p><b>Page 19:</b> The committee agreed with this comment. The definition of "Juvenile Delinquency Cases" shall be changed as suggested to "A broad classification of cases filed against a minor for a violation of the law."</p> <p><b>Page 36:</b> The committee agreed with this comment. The extraneous "therefor" has been removed. In addition, the citations in this paragraph have been corrected.</p> <p><b>Page 37, Paragraph 4:</b> The committee agreed with this comment. Paragraph 4 of this section has been revised as suggested, to replace the reference to Family Code § 3111 with a reference to Family Code § 3183.</p>

Commentator	Position	Comment	Response
		<p>pertains only to child custody evaluator's reports while the statutory authority for recommendations by a mediator is Family Code section 3183. Therefore, the reference to Family Code section 3111 at the end of paragraph 4, on page 37, should be revised by deleting section 3111 and replacing it with section 3183.</p> <p>Our court would also suggest that the manual include a new paragraph between paragraphs 4 and 5 stating as follows:</p> <p>"Written statements of issues and contentions by counsel appointed for child: These written statements must be kept in the confidential portion of the family law file and are only available to the court, the parties, their attorneys, federal or state law enforcement, judicial officers, court employees or family court facilitators for the county in which the action was filed (or employee or agent of facilitator), counsel for the child and any other person, upon order of the court, for good cause. (Fam. Code, §§ 3025.5, 3151(b))."</p>	<p>The committee agreed with this comment. The suggested paragraph has been added between current paragraphs 4 and 5.</p> <p><b>Page 38:</b> The committee agreed with the proposed changes 1-3. The suggested corrections and additions have been included in the appendix of the TCRM on confidential records.</p>
		<p><b>Page 38:</b> The Probate confidential records list on pages 38 should be revised. Although it is not an exhaustive list, the list should include some of the frequently seen confidential documents as follows:</p> <ol style="list-style-type: none"> <li>1. Form GC-312 is the Confidential Supplemental Information Form required by Probate Code section 1821, not the Confidential Screening Form noted in item #2 as both GC-314 and 312. In order to avoid confusion, the forms should be listed separately.</li> <li>2. There are a few other reports that should be noted in item #3 in addition to the initial</li> </ol>	

Commentator	Position	Comment	Response
		<p>conservatorship investigation reports under Probate Code section 1826. These reports include review investigation reports under Probate Code section 1851(e) and limited conservatorship investigation reports under Probate Code section 1827.5.</p> <p>3. Item #3 also addresses guardianship reports. That section needs to include the guardianship status report that is required annually per Probate Code section 1513.2 and California Rules of Court, rule 7.1003.</p> <p>4. Finally, the section should include the confidential financial statement under Probate Code section 2620(c)(7) that requires accounting exhibits and attachments with personal information to be kept in a confidential envelope. This is often missed and can expose personal financial information to the public.</p> <p><b>Page 58:</b> This page should be modified incorporating the changes recommended for page 38 so the reference lists match.</p> <p><b>Page 46:</b> The summary of Welfare &amp; Institutions Code section 827 is a bit simplistic. It does not clearly define who may view the file and does not mention that some of them may also receive copies of the file. Also, a Welfare &amp; Institutions Code section 602 file may never be sealed or destroyed if the minor committed any of a number of specified offenses. (Welf. &amp; Inst. Code, §§ 781, 826.) If the minor did not commit one of the specified offenses, the file "shall be destroyed by order of the court" when the person who is the subject of the file reaches the age of 38 years unless for good cause the court determines that the juvenile record shall be</p>	<p><b>Page 58:</b> The changes have been incorporated into the appendix.</p> <p><b>Page 46:</b> Welfare &amp; Institutions Code section 827 is too long to include in its entirety in the TCRM's record retention schedule. Accordingly, the following sentence will be added to the "Special Case Type Characteristics" entry for the relevant categories: "Please refer to Welfare &amp; Institution Code, section 827, for details regarding access to these records."</p> <p>The categories to be revised are:</p> <ul style="list-style-type: none"> <li>• (1) Dependent (Section 300 of the Welfare and Institutions Code)</li> </ul>



Commentator	Position	Comment	Response
		<p><b>Feedback on specific sections</b></p> <p><b>1. Section 4.2: Number Schematic for Court Records</b></p> <p>This section provides several suggestions for creating a case numbering system. However, since all courts already have long established case numbering systems which are tightly integrated into their operational processes and case management systems, the applicability, usefulness, and practicality of the suggestions is unlikely.</p> <p><b>Recommendation:</b> Begin section 4.2 with an acknowledgement that all Courts already have a case numbering system in place. Mention that if any Courts are considering a change or enhancement to their numbering system, then the following section provides some suggested guidelines. Without this acknowledgement, the suggestions come across as disconnected from the existing court environment.</p> <p><b>2. Section 4.4: Electronic Format Filing Protocols</b></p> <p>Although this section is intended to discuss e-filing protocols and standards, the majority of the content covers the advantages and disadvantages of e-filing. Only at the end of the section, is there a link to the "NCSC Technology Standards"</p> <p><b>Recommendation:</b> Change the heading on Section 4.4.1 "E-Filing Standards" to "E-Filing Overview". Add a heading Section 4.4.2 "E-Filing Standards" which precedes the link to the "NCSC Technology Standards".</p> <p><b>3. Section 4.5 Court Record Location Tracking</b></p>	<p><b>Feedback on specific sections</b></p> <p><b>1. Section 4.2: Number Schematic for Court Records</b></p> <p>The committee agreed with the proposed changes. Based on other comments, it might also be useful to note that any court considering changing their case numbering system should consider waiting or adopting the numbering system used in CCMS (which might be described more completely in the manual).</p> <p><b>2. Section 4.4: Electronic Format Filing Protocols</b></p> <p>The committee agreed with the proposed changes and made the recommended changes.</p> <p><b>3. Section 4.5 Court Record Location</b></p>

Commentator	Position	Comment	Response
		<p>The section describing "RFID Technology" is technically incorrect.</p> <p><u>Recommendation:</u> Please see Attachment A at the end of this document for suggested changes.</p>	<p><b>Tracking</b></p> <p>The committee agreed with the proposed changes and made the recommended changes.</p>
		<p><b>4. Section 6.1.2 Electronic Records</b></p> <p>One of the major benefits of the changes in the legislation for modernizing the management of court records that will become effective on January 1, 2011 is to replace antiquated records management practices and recommendations with ones that reflect the utilization of new technologies and methods.</p> <p>However Section 6.1.2 "Electronic Records", which should be the showcase of the "Trial Court Records Manual" only consists of a bulleted list of eight technology options for record storage. This falls extremely short of the potential value that this document could provide.</p>	<p><b>4. Section 6.1.2 Electronic Records</b></p> <p>The committee agreed that section 6.1.2 on electronic records needs to contain much more extensive materials in the next version of the manual.</p>
		<p><b>Recommendation:</b> Version 2.0 of the "Trial Court Records Manual" should include much more extensive materials in this section that cover topics such as the following:</p> <ul style="list-style-type: none"> <li>• Recommendations and best practices for electronic file back-up, storage, and preservation.</li> <li>• Recommendations for specific file formats that should be used for case files to ensure current and future compatibility within the trial courts and when exchanging data with justice partners.</li> <li>• Recommendations for technology monitoring</li> </ul>	<p>The committee agreed with these future topics of consideration for inclusion in subsequent versions of the manual.</p>

Commentator	Position	Comment	Response
		<p>and refresh to ensure that existing electronic files will be retrievable and viewable in the future and that there is careful consideration regarding the continual migration from obsolete technology to current supported technology.</p> <p>The Superior Court of California, County of Santa Clara would be willing to work closely with the AOC and other trial courts in the creation of the recommendations for section 6.1.2.</p> <p><b>5. Section 11.1.1 Court Records Sampling Program</b>  California Rules of Court 10.855 (f) (2) requires that the Courts preserve a "subjective sample" of court records but does not provide any guidance on how to select that sample.</p> <p><b>Recommendation:</b> The "Trial Court Records Manual" should include some suggestions and best practices for how to identify and select the "subjective sample" of court records to comply with this requirement.</p> <p><b>6. Section 1, Introduction</b>  The last paragraph of the introduction states "...this icon will precede sections containing optional ideas, policies and programs..." Typically "policies" are not optional.</p>	<p>The committee appreciates the offer of assistance and cooperation in developing section 6.1.2.</p> <p><b>5. Section 11.1.1 Court Records Sampling Program</b>  The committee agreed with this comment. Section 11.1.1 will be revised to include additional information on sampling techniques, reporting requirements, notice requirements and the Records Management Clearinghouse located at the AOC. In addition, the committee plans to solicit public comments on suggested practices for identifying and selecting "subjective samples" of court records in connection with subsequent versions of the manual.</p> <p><b>6. Section 1, Introduction</b>  The committee agreed with the proposed changes and made the recommended changes.</p>

Commentator	Position	Comment	Response
		<p><b>Recommendation:</b> Remove the word "policies" from that sentence.</p> <p><b>Conclusion</b>  We are pleased to see this first version of the "Trial Court Records Manual". It is currently a very good comprehensive consolidation of important records management statutes and Rules of Court. It has the potential to be a very important reference and strategy document if major sections that could not be included in Version 1.0 can be included in Version 2.0 in a timely manner.</p> <p style="text-align: center;"><b>Attachment A</b></p> <p>Below are suggested changes for the "RFID Technology" overview in section 4.5.1 Paper Record Tracking. Deletions are in <del>strikethrough</del>. Additions are in <b>bold and underlined</b>.</p> <p><b>RFID Technology</b>  Radio frequency identification device systems are a "high tech" and more expensive method for locating and tracking files. Like bar code technology, RFID tags are created and attached to file folders. RFID tags are <del>intelligent</del> <b><u>"active"</u></b> bar codes that can <del>talk</del> <b><u>to exchange information with a networked system</u></b> to track every file. RFID tracking solutions save time by providing <del>continuous</del> automatic tracking of files and other items as they move around the courthouse <del>and pass through an area where an RFID reader is present. Like a traditional barcode an RFID tag must be read. However an RFID tag does not need to be physically scanned. It can be detected and read as it passes by a reader which can be mounted on a wall and up to 25 feet away. Staff members are relieved of the</del></p>	<p>The suggested changes have been made to the "RFID Technology" overview in the manual.</p>



Commentator	Position	Comment	Response
		<p>responsibility to scan files as they are automatically monitored at all times by the technology, and their locations are typically updated in real time. Records staff can locate files at any time by checking the tracking database on line.</p> <p>This technology has been cost prohibitive in the past, but in recent years the cost has been coming down. If <u>In situations where it is affordable</u>, this technology <u>is ideal could be beneficial for small to medium and</u> large court systems with <del>multiple locations</del>.</p>	
<p>15.</p> <p>Superior Court of Siskiyou County</p> <p>By Larry Gobelman Executive Officer</p>	<p>NI</p>	<p>I wish to thank the Records Committee, CEAC, and COCE for their work on the Records Manual. In particular, I appreciate the change from prior drafts designating the sections that are "Standards" for mandatory compliance by trial courts, as contrasted with sections that are ideas, policies and programs, and best practices. I would recommend that the RM have a separate section for "Standards" to make it more usable for trial courts in complying with mandatory requirements and to thus lessen the possibility of overlooking a mandatory requirement. Ideally, I would prefer a manual that is strictly constructed to address only "standards and guidelines" per what appears to be the intent of CRC 10.854 rather than including extraneous materials for ideas and programs. However, should the Judicial Council not agree with this interpretation/recommendation, then, at a minimum, an index referencing the sections that are mandatory requirements or "standards" for the trial courts to be considered to be in compliance with CRC 10.850 is requested.</p> <p>Thank you for the opportunity to provide a response.</p>	<p>The committee disagreed with this comment. The committee decided to develop a resource guide and single reference manual to help trial courts ensure that they are 1) meeting legal requirements, and 2) benefitting from initiatives that other courts have developed that are considered best industry practices. The committee also prefaced their intentions on page 1 of the manual to assist users distinguish between mandatory requirements and optional features of court records management programs, by placing a light bulb icon before sections containing optional ideas, policies and programs and best industry practices. Sections not preceded by this icon contain mandatory requirements. Sections containing mandatory requirements contain links to the relevant statutes or rules.</p>

	Commentator	Position	Comment	Response
16.	Superior Court of Ventura County By Cheryl Kanatzar, Deputy Executive Officer	A	No specific comment.	No specific response required.
17.	The State Bar of California, Committee on Administration of Justice San Francisco By Saul Bercovitch, Legislative Counsel	NI	<p>The State Bar of California's Committee on Administration of Justice (CAJ) supports the drafted sections of the <i>Trial Court Records Manual</i> (TCRM) as a valuable compendium of standards and guidelines which will assist the courts and the public to have complete, accurate, and accessible court records.</p> <p>In response to the request for input on Fee and Fee Waiver Guidelines for Requested Records (Section 10.4) and the Court Record Creation Process (Section 4.1), CAJ believes that modernization of public records should not be attained at the expense of the public's accessibility to court records. CAJ recognizes there are costs involved in, and savings to be derived from, electronic filing and electronic access to court records and CAJ considers it essential that a policy promoting public access be foremost in the development of the guidelines and standards for court record creation and fee and fee waiver guidelines. For example, during development of these guidelines, CAJ recommends consideration of whether it is feasible to make electronic indices of court records accessible to the public remotely, free of charge, or for a nominal fee (where access to those records is not restricted by law).</p> <p>CAJ looks forward to having the opportunity to review any proposed substantive changes and additions to the TCRM, including a draft of version 2.0 of the TCRM.</p>	17.

	Commentator	Position	Comment	Response
18.	Wei C. Wong	NI	<p>Spending money for uniform California system is probably a better use of money.</p> <p>Eliminate all these local rules and county rules.</p>	No specific response is required.

**Pages 47-153 of the November 9, 2010 Report to the Judicial Council have been omitted for space and are available upon request.**

Pages 47-74            Press Groups' Comments on Trial Court Records Manual (Item SP10-02)

Page 75                Cal. Rules of Court, rules 10.850 and 10.854

Pages 76 -153        Trial Court Records Manual (Version 1.0)



Rachel Matteo-Boehm  
Direct: 415-268-1996  
Fax: 415-430-4396  
rachel.matteo-boehm@bryancave.com

February 13, 2013

**VIA E-MAIL; CONFIRMATION VIA HAND DELIVERY**

Camilla Kieliger  
Judicial Council of California  
Administrative Office of the Courts  
455 Golden Gate Ave  
San Francisco, CA 94102

Re: Joinder of Bay Area News Group and The Press Democrat Media Company  
in Press Groups' Comments on Mandatory E-Filing:  
Uniform Rules To Implement Assembly Bill 2073 (Item W13-05)

Dear Ms. Kieliger:

Bay Area News Group and The Press Democrat Media Company write to join in the comments submitted on January 25, 2012 by California Newspaper Publishers Association, the First Amendment Coalition, Californians Aware, and Courthouse News Service (the "Press Groups") in response to the invitation for comments on "Mandatory E-Filing: Uniform Rules To Implement Assembly Bill 2073."

Although the official window for submitting comments closed on January 25, Bay Area News Group and The Press Democrat Media Company wish to alert the Judicial Council and its Court Technology and Civil and Small Claims Advisory Committees that they share the Press Groups' concerns about the potential impact of the proposed mandatory e-filing rules.

**Bay Area News Group** covers the Bay Area with an array of print and digital products, including The San Jose Mercury News, the Oakland Tribune, the Contra Costa Times, the Marin Independent Journal, San Mateo County Times, East County Times, San Ramon Valley Times, The Daily News, The Pacifica Tribune, and Santa Cruz Sentinel. Bay Area News Group is powered by MediaNews group, one of the largest newspaper companies in the United States, operating nearly 60 daily newspapers in 13 states with combined daily and Sunday circulation of approximately 2.6 million and 2.9 million, respectively.

The **Press Democrat Media Company** publishes The Press Democrat, whose readership of approximately 250,000 adults makes it the largest newspaper between San Francisco and the Oregon border, and web sites including PressDemocrat.com, Petaluma360.com, NorthBayBusinessJournal.com, and WatchSonomaCounty.com.

Bryan Cave LLP  
560 Mission Street, 25th Floor  
San Francisco, CA 94105-2994  
Tel (415) 268-2000  
Fax (415) 268-1999  
www.bryancave.com

**Bryan Cave Offices**

Atlanta  
Boulder  
Charlotte  
Chicago  
Colorado Springs  
Dallas  
Denver  
Frankfurt  
Hamburg  
Hong Kong  
Irvine  
Jefferson City  
Kansas City  
London  
Los Angeles  
New York  
Paris  
Phoenix  
San Francisco  
Shanghai  
Singapore  
St. Louis  
Washington, DC

**Bryan Cave  
International Consulting**  
A TRADE AND CUSTOMS CONSULTANCY  
www.bryancaveconsulting.com  
Bangkok  
Jakarta  
Kuala Lumpur  
Manila  
Shanghai  
Singapore  
Tokyo

Judicial Council of California  
February 13, 2013  
Page 2

Bryan Cave LLP

Bay Area News Group and The Press Democrat Media Company join the Press Groups in urging the Judicial Council to eliminate the "officially filed" language in the proposed changes to Rules 2.250(b)(7) and 2.259(c) and proposed new Rule 2.253(b)(7) and to postpone the adoption of mandatory e-filing rules until the pilot program in Orange County Superior Court has been evaluated, including its impact on access to newly filed court records.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rachel E. Boehm", with a long horizontal line extending to the right.

Rachel Matteo-Boehm

On Behalf of Bay Area News Group and The Press Democrat Media Company

# Los Angeles Times

February 14, 2013

202 West First Street  
Los Angeles, CA 90012  
213 237-3760  
Fax: 213 237-3800  
Pgr: 800 79-LATIMES  
1388901@skytel.com  
E-mail: karlene.goller@latimes.com

## VIA OVERNIGHT MAIL

Camilla Kieliger  
Judicial Council of California  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102

Karlene W. Goller  
Vice President and  
Deputy General Counsel

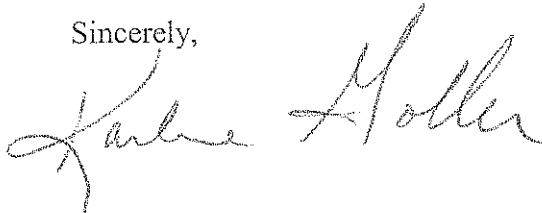
Re: Uniform Rules To Implement Assembly Bill 2073 (Item W-13-05)

Dear Ms. Kieliger:

Los Angeles Times Communications LLC, which publishes the Los Angeles Times, joins in the concerns raised by the California Newspaper Publishers Association and other media about the proposed changes to California Rule of Court 2.250(b)(7), and proposed Rule 2.253(b).

As discussed at length in the letter submitted by CNPA and others to the Judicial Council on January 25, 2013, the suggestion that the public's and press' ability to access judicial records can be delayed until a document is deemed to be "officially" filed is inconsistent with well-established constitutional principles. Consequently, The Times joins in the request that the Council eliminate the "officially filed" language from the proposed Rule changes.

Sincerely,



cc: Rachel Boehm