



## JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688  
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

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### MEMORANDUM

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Date	Action Requested
January 31, 2018	Please review before subcommittee meeting on February 5
To	Deadline
Members of the Joint Appellate Technology Subcommittee	February 5, 2018
From	Contact
Christy Simons Attorney, Legal Services	Christy Simons Legal Services 415-865-7694 phone christy.simons@jud.ca.gov
Subject	
Rules modernization: bookmarking and volumes for exhibits	

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#### Introduction

Item 5 on the Appellate Advisory Committee's annual agenda, Modernize Appellate Court Rules for E-filing and E-business, includes considering whether to recommend rules for bookmarking electronic exhibits and for submitting electronic exhibits in electronic volumes. This is a priority 2 project with a completion date of January 1, 2019. This memo discusses issues and options for the subcommittee to consider.

#### Background

##### **Electronic bookmarks for exhibits**

##### **Trial court rules**

Phase II of the rules modernization project included amending trial court rules for civil proceedings to require that electronic bookmarks for electronic exhibits unless they are submitted by a self-represented litigant.

Rule 3.1110(f), as amended effective January 1, 2017, provides:

(f) Format of exhibits

(1) An index of exhibits must be provided. The index must briefly describe the exhibit and identify the exhibit number or letter and page number.

(2)-(3) \* \* \*

(4) Electronic exhibits must meet the requirements in rule 2.256(b). Unless they are submitted by a self-represented party, electronic exhibits must include electronic bookmarks with links to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit.

An Advisory Committee Comment for subdivision (f) was added to the rule, stating: “Under current technology, software programs that allow users to apply electronic bookmarks to electronic documents are available for free.”

The phase II project also amended rule 3.1113, which sets forth the requirements for a memorandum in support of a motion, to require electronic bookmarking where authorities or cases are lodged in electronic form as provided in rule 3.1110(f)(4).

Rule 8.1113(i), amended effective January 1, 2017, provides:

(i) Copies of authorities

(1) A judge may require that if any authority other than California cases, statutes, constitutional provisions, or state or local rules is cited, a copy of the authority must be lodged with the papers that cite the authority. If in paper form, the authority must be tabbed or separated as required by rule 3.1110(f)(3). If in electronic form, the authority must be electronically bookmarked as required by rule 3.1110(f)(4).

(2) If a California case is cited before the time it is published in the advance sheets of the Official Reports, the party must include the title, case number, date of decision, and, if from the Court of Appeal, district of the Court of Appeal in which the case was decided. A judge may require that a copy of that case must be lodged. If in paper form, the copy must be tabbed or separated as required by rule 3.1110(f)(3). If in electronic form, the copy must be electronically bookmarked as required by rule 3.1110(f)(4).

(3) \* \* \*

### **Appellate court local rules**

Pursuant to e-filing rules 8.72(a) and 8.74(b),<sup>1</sup> the Supreme Court and the District Courts of Appeal have adopted local rules to set forth their electronic filing requirements. All of these local rules include recommendations or requirements for electronic bookmarks. These rules are compiled in an attachment to this memorandum.

### **Submission of electronic exhibits in electronic volumes**

This suggestion was received from D’vora Tirschwell, a writ attorney at the First District Court of Appeal. In commenting on the 2016 appellate e-filing rules proposal, Ms. Tirschwell suggested creating a requirement that exhibits submitted in electronic form be submitted in electronic volumes rather than individually. Note that, at this time, the First District is considering amendments to its local rule on electronic filing. The amendments under consideration include an advisement that exhibits should be submitted in a single volume, if possible.

### **Discussion**

This subcommittee set aside the issue of bookmarking electronic exhibits in 2016 to give those courts new to e-filing (or not yet on e-filing) a chance to gain some experience with it before participating in a decision as to what to require. Now that all Courts of Appeal and the Supreme Court have implemented e-filing, and particularly in light of these court’s local rules that all contain provisions regarding bookmarking, both of these suggestions seem ripe for consideration by JATS.

If JATS is interested in adding either or both of these provisions regarding exhibits to the appellate rules, staff suggestion amending rule 8.74, which sets forth the responsibilities of an electronic filer. Subdivision (b) addresses the format of documents to be filed electronically. The benefit of adding provisions regarding exhibits to this rule, rather than adding provisions regarding exhibits to rules on separate subjects such as briefs, motions, original proceedings, and the record on appeal, is that these provisions would apply uniformly to exhibits in all of these contexts. Litigants would not have to scour the rules in various places to determine the requirements for electronic exhibits.

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<sup>1</sup> Rule 8.72(a) provides: “The court will publish, in both electronic and print formats, the court’s electronic filing requirements.” Rule 8.74(b) provides: “A document that is filed electronically with the court must be in a format specified by the court unless it cannot be created in that format,” and contains minimum requirements for those specifications.

The text of the suggested amendment below is based on the appellate courts' local rules, and in particular the draft language being considered by the First District. No other courts' local rules include exhibit volumes at this time.

Suggested amendment:

**Rule 8.74. Responsibilities of electronic filer**

(a)-(c) \* \* \*

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

(1)-(3) \* \* \*

**(4) Exhibits submitted electronically with the court must be in the following format:**

**(A) All exhibits must include an electronic bookmark to the first page of the exhibit, with the exhibit number or letter and a brief description of the exhibit included in the bookmark.**

**(B) All exhibits must be submitted in a single volume if possible, with multiple volumes permitted only to the extent necessary to meet file size limitations stated in the court's electronic filing requirements published pursuant to rule 8.72(a). Each volume of exhibits must have a cover stating the volume number and the page numbers included within that volume. Each volume of exhibits must include an index of contents with an electronic bookmark as set forth in (A).**

**Questions for the subcommittee:**

- Should bookmarking be limited, at least for now, to exhibits? Some of the courts' local rules provide for bookmarking of briefs, motions, etc.
- Should the proposed rule amendments apply to electronic exhibits generally in appellate proceedings, or should the provisions be limited to certain contexts? In other words, is the placement of these provisions in rule 8.74 appropriate?
- Should exhibit volumes be required for all exhibits, or are there circumstances in which exhibits are attached to other documents, such as motions or petitions?
- Should the rule contemplate multiple volumes, in which case a master index would be helpful?
- Should the rule spell out requirements for the cover, indexes, and pagination?
- Would it be helpful to specify that the index(es) be alphabetical and/or chronological?

#### Subcommittee task

The subcommittee's task is to analyze this proposal and:

- Approve the proposal as presented and recommend to the full advisory committees that they seek approval from RUPRO to circulate the proposal for public comment;
- Modify the proposal and recommend to the full advisory committees that they seek approval from RUPRO to circulate the modified proposal for public comment;
- Recommend to the full advisory committees that they reject the proposal; or
- Ask staff or committee members for further information/analysis.

#### Attachments

Proposed amended rule 8.74

Supreme Court and District Courts of Appeal local rules regarding electronic filing

1 **Title 8. Appellate Rules**

2  
3 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

4  
5 **Chapter 1. General Provisions**

6  
7 **Article 35. E-filing**

8  
9  
10 **Rule 8.74. Responsibilities of electronic filer**

11  
12 **(a) Conditions of filing**

13 Each electronic filer must:

- 14  
15  
16 (1) Comply with any court requirements designed to ensure the integrity of  
17 electronic filing and to protect sensitive personal information;  
18  
19 (2) Furnish information that the court requires for case processing;  
20  
21 (3) Take all reasonable steps to ensure that the filing does not contain computer  
22 code, including viruses, that might be harmful to the court's electronic filing  
23 system and to other users of that system;  
24  
25 (4) Furnish one or more electronic service addresses, in the manner specified by  
26 the court, at which the electronic filer agrees to accept service; and  
27  
28 (5) Immediately provide the court and all parties with any change to the  
29 electronic filer's electronic service address.

30  
31 *(Subd (a) amended effective January 1, 2011.)*

32  
33 **(b) Format of documents to be filed electronically**

- 34  
35 (1) A document that is filed electronically with the court must be in a format  
36 specified by the court unless it cannot be created in that format.  
37  
38 (2) The format adopted by a court must meet the following minimum  
39 requirements:  
40  
41 (A) The format must be text-searchable while maintaining original  
42 document formatting.  
43

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

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

6  
7 (3) The page numbering of a document filed electronically must begin with the  
8 first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2,  
9 3). The page number may be suppressed and need not appear on the cover  
10 page.

11  
12 (4) Exhibits submitted electronically with the court must be in the following  
13 format:

14  
15 (A) All exhibits must include an electronic bookmark to the first page of  
16 the exhibit, with the exhibit number or letter and a brief description of  
17 the exhibit included in the bookmark.

18  
19 (B) All exhibits must be submitted in a single volume if possible, with  
20 multiple volumes permitted only to the extent necessary to meet file  
21 size limitations stated in the court's electronic filing requirements  
22 published pursuant to rule 8.72(a). Each volume of exhibits must have  
23 a cover stating the volume number and the page numbers included  
24 within that volume. Each volume of exhibits must include an index of  
25 contents with an electronic bookmark as set forth in (A).

26  
27 (4)(5) If a document is filed electronically under the rules in this article and cannot  
28 be formatted to be consistent with a formatting rule elsewhere in the  
29 California Rules of Court, the rules in this article prevail.

30  
31 *(Subd (b) amended effective January 1, 2017.)*

32  
33 *Rule 8.74 amended and renumbered effective January 1, 2017; adopted as rule 8.76 effective July*  
34 *1, 2010; previously amended effective January 1, 2011.*

35

1 **Supreme Court Rules Regarding Electronic Filing**

2 *Amended and effective February 1, 2018*

3  
4 **Rule 1. Application; electronic filing system.**

5 These rules govern electronic filing in the Supreme Court under California Rules of Court, rules 8.70 – 8.79.  
6 The court’s electronic filing system (EFS) is operated by ImageSoft TrueFiling (TrueFiling).  
7  
8

9 **Rule 2. Documents subject to electronic filing**

10 Rules 3 and 4 identify the documents that must or may be filed electronically in the Supreme Court. No  
11 document other than those identified in rules 3 and 4 may be filed electronically in the Supreme Court.  
12  
13

14 **Rule 3. Mandatory electronic filing**

15  
16 **(a) Documents that attorneys must file electronically**

17 Pursuant to California Rules of Court, rule 8.71, effective September 1, 2017, unless the court grants a  
18 motion for an excuse under rule 6, all attorneys representing a party in a matter before the court must file  
19 the documents listed in this subdivision electronically through the court’s EFS.  
20

21 **(1) Documents in proceedings under rules 8.500-8.508**

22 All documents filed before the court issues its decision to grant or deny review, including:

- 23 (A) Petitions for review; answers, replies;
- 24 (B) Applications to permit the filing of a petition, answer, reply, or attachment that exceeds the  
25 length limits set by California Rules of Court, rule 8.504(d);
- 26 (C) Applications to extend the time to file an answer or reply;
- 27 (D) Motions for relief from default for failure to timely file a petition, answer, or reply;
- 28 (E) All other applications and motions in these proceedings filed before the court issues its  
29 decision to grant or deny review; and
- 30 (F) Any correspondence filed in connection with the documents in (A) – (E).
- 31 (G) Amicus curiae letters under California Rules of Court, rule 8.500(g) and requests for  
32 depublication and related documents under California Rules of Court, rule 8.1125. may be  
33 filed electronically on a voluntary basis. (See Rule 4.)  
34  
35

36  
37  
38 **(2) Documents in proceedings under rules 8.380-8.385**

39 **All documents filed before the court issues an order to show cause or its ruling on the petition,**  
40 **including:**

- 41 (A) **Petitions for writ of habeas corpus; informal responses, replies;**  
42  
43  
44  
45  
46  
47



- (B) Applications to permit the filing of a petition, informal response, reply, or attachment that exceeds the length limits set by California Rules of Court, rule 8.204(c);
- (C) Applications to extend the time to file an informal response or reply;
- (D) Motions for relief from default for failure to timely file an informal response, or reply;
- (E) All other applications and motions in these proceedings filed before the court issues an order to show cause or its ruling on the petition; and
- (F) Any correspondence filed in connection with the documents in (A) – (E).

(3) *Documents in matters arising from a judgment of death*

All documents filed in these matters. For purposes of this subdivision:

(A) Matters arising from a judgment of death include:

- (i) Automatic appeals under California Rules of Court, rules 8.600-8.642;
- (ii) Habeas corpus proceedings in the court under California Rules of Court, rules 8.380-8.388 that involve a challenge to the validity of the petitioner’s death judgment, including proceedings before any referee appointed by the court to conduct a hearing following the court’s issuance of an order to show cause; and;
- (ii) Other original writ proceedings in the court under California Rules of Court, rules 8.485-8.493 that relate to an automatic appeal or a habeas corpus proceeding challenging the validity of the death judgment, including proceedings on petitions for a writ of mandate under Penal Code section 1405, subdivision (k).

(B) Matters arising from a judgment of death do not include:

- (i) Habeas corpus proceedings on petitions challenging only a capital inmate’s conditions of confinement; and
- (ii) Proceedings under California Rules of Court, rules 8.500-8.552 that relate to an automatic appeal or a habeas corpus proceeding challenging the validity of the death judgment, including petitions for review from lower court decisions regarding Penal Code section 1054.9 motions. These proceedings are governed by subdivision (a)(1) of this rule.

(C) A superior court judge who is appointed by the court as a referee in a proceeding under (A)(ii) is not considered a trial court for purposes of exemption from mandatory e-filing under California Rules of Court, rule 8.71(c).

(3) *Other documents on order of the court*

Any other document on order of the court.

1 **(b) Application to new and pending cases**

2 Electronic filing of the documents listed in (a) is mandatory as of September 1, 2017, including  
3 documents filed in cases commenced before that date.

4 **Rule 4. Voluntary electronic filing**

5  
6 **(a) Individuals or entities exempt from mandatory electronic filing**

7 Pursuant to California Rules of Court, rule 8.71(b) and (c), electronic filing is voluntary for:

- 8  
9 (1) Self-represented litigants; and  
10  
11 (2) Trial courts.  
12

13 **(b) Amicus curiae letters and requests for depublication**

14 Amicus curiae letters under California Rules of Court, rule 8.500(g) and requests for depublication and  
15 related documents under California Rules of Court, rule 8.1125 may be filed electronically on a voluntary  
16 basis.  
17  
18

19 **Rule 5. Submission of paper copies of electronically filed documents**

20  
21 **(a) Documents in proceedings under rules 8.500-8.552**

22 Unless otherwise ordered by the court:

- 23  
24 (1) For each electronically filed document in these proceedings, the filer must also submit to the court  
25 one unbound paper copy of the document.  
26  
27 (2) The paper copy must be mailed, delivered to a common carrier, or delivered to the court within two  
28 court days after the document is filed electronically with the court. If the filing requests an  
29 immediate stay, the paper copy must be delivered to court by the close of business the next court  
30 day after the document is filed electronically.  
31

32 **(b) Documents in matters arising from a judgment of death**

33 Unless otherwise ordered by the court:

- 34  
35 (1) For each electronically filed document in these matters, the filer must also submit to the court one  
36 unbound paper copy of the document.  
37  
38 (2) The paper copy must be mailed, delivered to a common carrier, or delivered to the court within two  
39 court days after the document is filed electronically with the court.  
40  
41

42 **Rule 6. Excuse from electronic filing**

43  
44 **(a) Motion requesting excuse**

45 A party wanting to be excused from the requirement to file a document electronically must file a motion  
46 in the court requesting to be excused. The motion must comply with California Rules of Court, rule 8.54  
47 and must specify whether the party is requesting to be excused from electronically filing all documents or  
48 only a particular document or documents.

1  
2 **(b) Grounds for excuse**

3 Pursuant to California Rules of Court, rule 8.71(d), the court will grant an excuse on a satisfactory  
4 showing that:

- 5  
6 (1) The party will suffer undue hardship if required to file electronically;  
7  
8 (2) The party will suffer significant prejudice if required to file electronically; or  
9  
10 (3) It is not feasible for the party to convert a particular document to electronic form by scanning,  
11 imaging, or another means.  
12  
13

14 **Rule 7. Registration of electronic filers**

15  
16 **(a) Obligation to register**

17 Unless the court excuses the filer from this obligation under rule 6, every filer who is required or  
18 voluntarily chooses to file a document electronically under these rules must register as a TrueFiling user  
19 and obtain a username and password for access to TrueFiling. Registration with and access to the EFS is  
20 through the TrueFiling website at <https://www.truefiling.com>.  
21

22 **(b) Registered users' responsibilities**

23 A registered TrueFiling user is responsible for all documents filed under the user's registered username  
24 and password. The registered user must also comply with the requirements of California Rules of Court,  
25 rule 8.32 regarding the duty to provide address and other contact information, and notice of any changes.  
26  
27

28 **Rule 8. Signatures**

29 Use of a registered TrueFiling user's username and password to electronically file a document is the equivalent  
30 of placing the registered user's electronic signature on the document.  
31  
32

33 **Rule 9. Service**

34  
35 **(a) Electronic service**

36 In addition to the ways identified in California Rules of Court, rule 8.78 that a recipient may agree to  
37 accept electronic service, a recipient is deemed to have agreed to electronic service in a matter before this  
38 court if the recipient agreed to electronic service in the same matter in the Court of Appeal.  
39

40 **(b) Service by the court**

41 Documents prepared by the court will be served on EFS users through the EFS or by electronic  
42 notification.  
43

44 **(c) Service of paper copies**

45 When service of a document is required to be made on a person or entity that has not consented to  
46 electronic service, the server must comply with California Rules of Court, rule 8.25 regarding service of  
47 paper copies.  
48

1  
2 **Rule 10. Format and size of electronically filed documents**

3  
4 **(a) Format**

5  
6 (1) *Text searchable format*

7 All documents filed electronically must be in text-searchable PDF (portable document format), or  
8 other searchable format approved by the court, while maintaining original document formatting. If  
9 an electronic filer must file a document the filer possesses only in paper format, the filer must  
10 convert the document to an electronic document that complies with this rule by scanning or other  
11 means. It is the filer's responsibility to ensure that any document filed is complete and readable.  
12 Except as otherwise specified in this rule, electronically filed documents must comply with the  
13 content and form requirements of the California Rules of Court applicable to the particular  
14 document, with the exception of those provisions dealing exclusively with requirements for paper  
15 documents.  
16

17 (2) *Pagination*

18 The page numbering of document filed electronically must comply with California Rules of Court,  
19 rule 8.74(b)(3).  
20

21 (3) *Electronic Bookmarks*

22 Each document must include in the bookmarks panel of the electronic document a descriptive link  
23 (hereafter referred to as an electronic bookmark), to each heading, subheading and to the first page  
24 of any component of the document, including any table of contents, table of authorities, petition,  
25 verification, points and authorities, declaration, certificate of word count, certificate of interested  
26 entities or persons, proof of service, tab, exhibit, or attachment. Each electronic bookmark to a tab,  
27 exhibit, or attachment must include the letter or number of the tab, exhibit, or attachment and a  
28 description of the tab, exhibit, or attachment.  
29

30 **(b) Size**

31  
32 (1) An electronic filing may not be larger than 25 megabytes. This rule does not change the length  
33 limitations established by the California Rules of Court for petitions, answers, replies, briefs or any  
34 other document filed in the court.  
35

36 (2) If a document exceeds the size limitation in (1), a party must submit the document in multiple files.  
37

38 (A) These files must be paginated consecutively across all files in the document, including the  
39 cover pages required by (B).  
40

41 (B) Each file must have a cover page that includes the following information:  
42

43 (i) The total number of files constituting document;

44 (ii) The number of this file within the document;

45 (iii) The total number of pages in the document; and  
46  
47  
48

1 (iv) The page numbers of the document contained in this file.

2  
3 (C) The cover pages required by (B) must be included in the paper copies of the document  
4 submitted to the court under rule 5.  
5  
6

7 **Rule 11. Privacy Protection**  
8

9 **(a) Personal Identifiers**

10 Electronic filers must comply with California Rules of Court, rule 1.201 regarding exclusion or redaction  
11 of personal identifiers from all documents filed with the court. Neither TrueFiling nor the Clerk of the  
12 Court has any responsibility to review documents for compliance with these requirements.  
13

14 **(b) Sealed and Confidential Records**

15 Electronic filers must comply with California Rules of Court, rules 8.45-8.47 regarding sealed and  
16 confidential records, with the exception of those requirements exclusively applicable to paper filings.  
17  
18

19 **Rule 12. Fees**  
20

21 **(a) Collection of filing fees**

22 For electronic filings, TrueFiling is designated as the court's agent for collection of filing fees required by  
23 law and any associated credit card or bank charges or convenience fees.  
24

25 **(b) Vendor fees**

26 Pursuant to California Rules of Court, rule 8.73 and TrueFiling's contract with the court, in addition the  
27 filing fees required by law, TrueFiling will assess fees for each electronic filing in accordance with the  
28 schedule posted on the TrueFiling Web site, as approved by the court. These fees will be considered  
29 recoverable costs under rule 8.278(d)(1)(D).  
30

31 **(c) Exemption from vendor fees**

32 The following are exempt from the fees charged for electronic filing under (b):  
33

34 (1) *Parties with fee waivers*

35 A party who has been granted a fee waiver by the court who chooses to file documents  
36 electronically.  
37

38 (2) *Government officers and entities*

39 The persons and entities identified in Government Code section 6103.  
40  
41

42 **Rule 13. Technical Failure of Electronic Filing System**  
43

44 The court is not responsible for malfunctions or errors occurring in the electronic transmission or receipt of  
45 electronically filed documents. The initial point of contact for anyone experiencing difficulty with TrueFiling is  
46 the toll-free telephone number posted on the TrueFiling Web site. California Rules of Court, rule 8.77, governs  
47 if a filer fails to meet a filing deadline imposed by court order, rule, or statute because of a failure at any point

- 1 in the electronic transmission and receipt of a document. A motion under California Rules of Court, rule 8.77(d)
- 2 to accept the document as timely filed must comply with rule 8.54.

**LOCAL RULES OF THE COURT OF APPEAL  
FIRST APPELLATE DISTRICT**

Published pursuant to California Rules of Court, rule 10.1030

**As amended effective May 1, 2015**

**Rule 16. Electronic Filing**

Pursuant to California Rules of Court, rule 8.70, the Court will require all filings in this District, effective March 17, 2014, for all civil filings and effective April 14, 2014, for all criminal and juvenile filings, to be made through the Court's electronic filing system (EFS) operated by ImageSoft TrueFiling (TrueFiling). Use of the EFS system is mandatory for all attorneys filing in this District, unless an exemption is granted, and is voluntary for all self-represented litigants. A filing in electronic format will be accepted in lieu of any paper copies otherwise required under California Rules of Court, rule 8.44 and constitutes the official record of the Court.

**(a) [Registration]**

(1) **Obligation to Register.** Each attorney of record in any proceeding in this District is obligated to become an EFS user and obtain a user ID and password for access to the TrueFiling system. Self-represented litigants must register if they wish to e-file. Attorneys and self-represented litigants may register at:  
<[https://www.truefiling.com/\\_layouts/ElectronicFile.Main/SignUp.aspx](https://www.truefiling.com/_layouts/ElectronicFile.Main/SignUp.aspx)>

(2) **Obligation to Keep Account Information Current.** An EFS user is responsible for all documents filed under the user's registered ID and password. Registered users are required to keep their e-mail address current and may update their e-mail address online via the TrueFiling Web site.

**(b) [Format]**

(1) Documents filed electronically must be in PDF format, or readily capable of conversion to PDF format while maintaining original document formatting by TrueFiling to permit text searches and to facilitate transmission and retrieval. If the filer possesses only a paper copy of a document, it may be scanned to convert it to a searchable PDF format. It is the filer's responsibility to ensure that any document filed is complete and readable. No single document shall exceed a total file size of 25 MB.

(2) Electronic briefs must comply with the content and form requirements of California Rules of Court, rule 8.204, with the exception of those provisions

dealing exclusively with requirements for paper. Electronic bookmarks to each topic heading in the text (as listed in the table of contents) in briefs are recommended, and required for all briefs exceeding forty (40) pages.

(3) Motions and Original Proceedings. All motions and original proceedings must include electronic bookmarks to each section heading in the text (as listed in the table of contents), and to the first page of any exhibit(s), with the exhibit number or letter and a description of the exhibit included in the bookmark.

Pleadings and exhibits not properly formatted may be rejected.

**(c) [Signatures]** A TrueFiling user ID and password is the equivalent of an electronic signature for a registered attorney or party. Any document displaying the symbol “/s/” with the attorney’s or party’s printed name shall be deemed signed by that attorney/party.

**(d) [Trial Court Record]**

(1) Appendices, Agreed Statements, and Settled Statements. Parties must submit any appendix filed pursuant to California Rules of Court, rule 8.124, any agreed statement filed pursuant to California Rules of Court, rule 8.134, or any settled statement filed pursuant to California Rules of Court, rule 8.137 in electronic form. Appendices exceeding ten volumes may be delivered to the court on machine readable optical media in lieu of e-filing. Each part of the record submitted in any appendix or exhibit volume shall clearly state the volume and page numbers included within that part and include an index of contents, with a descriptive electronic bookmark including exhibit number or letter, to the first page of each indexed document (e.g., Exhibit 1 – First Amended Complaint).

(2) Administrative Records. In addition to any administrative record provided by the trial court pursuant to California Rules of Court, rule 8.123, the party or parties seeking review must submit a copy of the administrative record in electronic form. An administrative record may be delivered to the court on machine readable optical media in lieu of e-filing.

(3) Reporter’s Transcripts. Any party who orders a reporter’s transcript of proceedings pursuant to California Rules of Court, rule 8.130 must also request a copy of the transcript in computer-readable format, as provided in California Rules of Court, rule 8.130(f)(4), and submit an electronic copy to the Court.

Should the record of trial court proceedings exceed the TrueFiling size limitations, a party must either (a) submit the record in multiple parts, or



(b) provide the Court with the record in digital format on machine readable optical media.

(4) Submissions by the Trial Court. The trial court is encouraged, but is not required to, submit the clerk's transcript and/or the reporter's transcript(s) in searchable PDF format, either through the TrueFiling system or a court provided portal, in lieu of paper copies otherwise required under the California Rules of Court, and to make electronic versions available to parties willing to accept them in lieu of paper copies. Digital copies of clerk's transcripts and reporter's transcripts must comply with the content and form requirements set forth in the California Rules of Court with the exception of those provisions dealing exclusively with requirements for paper.

(e) **[Personal Identifiers and Privacy Issues]** To protect personal privacy, parties and their attorneys must not include, or must redact where inclusion is necessary, personal identifiers such as social security numbers, driver's license numbers, and financial account numbers from all pleadings and other papers filed in the Court's public file, whether filed in paper or electronic form, unless otherwise provided by law or ordered by the Court. (California Rules of Court, rule 1.20(b).) If an individual's social security number is required in a pleading or other paper filed in the public file, only the last four digits of that number shall be used. If financial account numbers are required in a pleading or other paper filed in the public file, only the last four digits of these numbers shall be used. Particularly sensitive confidential information such as medical records and proprietary or trade secret information should be filed only under seal as required by law or authorized pursuant to the California Rules of Court.

The responsibility for excluding or redacting identifiers from all documents filed with the Court rests solely with the parties and their attorneys. (California Rules of Court, rule 1.20(b)(3).) Neither TrueFiling nor the Clerk of the Court has any responsibility to review pleadings or other papers for compliance.

(f) **[Filing Deadlines]** Filing documents electronically does not alter any filing deadlines. In order to be timely filed on the day they are due, all electronic transmissions of documents must be completed (i.e., received completely by the Clerk of the Court) prior to midnight. Where a specific time of day is set for filing by Court order or stipulation, the electronic filing shall be completed by that time. Although EFS permits parties to submit documents electronically 24 hours a day, users should be aware that telephone or online assistance may not be available outside of normal Court business hours.

(g) **[Completion of Filing]** Electronic transmission of a document through TrueFiling in compliance with the California Rules of Court shall, upon confirmed

receipt of the entire document by the Clerk of the Court, constitute filing of the document for all purposes.

**(h) [Technical Failure/Motions for Late Filing]** If a filer fails to meet a filing deadline imposed by Court order, rule, or statute because of a failure at any point in the electronic transmission and receipt of a document, the filer may file the document on paper or electronically as soon thereafter as practicable and accompany the filing with a motion to accept the document as timely filed. For good cause shown, the Court may enter an order permitting the document to be filed nunc pro tunc to the date the filer originally sought to transmit the document electronically.

The Clerk of the Court shall deem the EFS system to be subject to a technical failure whenever the system is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon that day. Filings due on the day of a technical failure which were not filed solely due to such technical failure shall be due the next court day. Such delayed filings shall be accompanied by a declaration or affidavit attesting to at least two attempts by the filer to file electronically after 12:00 noon with each attempt at least one hour apart on each day of delay due to such technical failure. The initial point of contact for any practitioner experiencing difficulty filing a document into the EFS system shall be the toll-free number posted on the TrueFiling Web site.

The Court shall not be responsible for malfunction or errors occurring in electronic transmission or receipt of electronically filed documents.

**(i) [Manual Filing]** An EFS user may be excused from filing a particular document electronically if (1) it is not available in electronic format; (2) it must therefore be scanned to PDF; *and* (3) the file size of the scanned document exceeds the limit specified on the EFS Web site. Such a document instead shall be manually filed with the Clerk of Court and served upon the parties in accordance with the statutory requirements and the California Rules of Court applicable to service of paper documents. Parties manually filing a document shall file electronically a manual filing notification setting forth the reason why the document cannot be filed electronically.

**(j) [Service]** An attorney's registration with TrueFiling to participate in EFS constitutes consent to service or delivery of all documents by any other party in a case through the system. (California Rules of Court, rule 8.71.) Orders or other documents generated by the Court will be served only through the EFS or by e-mailed notification. Only self-represented litigants who are not registered EFS users will receive manual service or notification by other means.

**(k) [Filing fees]** TrueFiling is a private vendor under contract with the Court. TrueFiling will assess vendor fees for each filing in accordance with the schedule posted

on its Web site, as approved by the Court. E-filing fees will be considered recoverable costs under California Rules of Court, rule 8.278(d)(1)(D). TrueFiling is designated as the Court's agent for collection of Court imposed fees where required for any filing, and any associated credit card or bank charges or convenience fees (California Rules of Court, rule 8.78; Gov. Code, § 6159).

Self-represented parties are exempt from the requirement of electronic filing. However, should a self-represented party with a fee waiver opt to file documents electronically, that party is exempt from the fees and costs associated with electronic filing. The persons and entities identified in Government Code section 6103 also are exempt from the fees and costs associated with e-filing.

**(l) [Exemptions]** Self-represented parties may, but are not required to register for electronic filing, but must comply with this rule and the requirements of TrueFiling if they elect to register.

If this rule causes undue hardship or significant prejudice to any party, the party shall lodge the number of paper copies required by the California Rules of Court without regard to electronic filing, plus an additional unbound paper copy in lieu of the electronic copy, accompanied by a declaration setting forth facts that support the claim of hardship. Acceptance of the lodged papers for filing will be subject to further order of the Court. When it is not otherwise feasible for a party to convert a document to electronic form by scanning, imaging or other means, the document may be filed in paper form (California Rules of Court, rule 8.73(c)), together with a declaration setting forth the reasons that electronic filing was not feasible.

**(m) [Sanctions for Noncompliance]** Failure of counsel to timely register or otherwise comply with EFS filing requirements, unless exempted, shall subject counsel to sanctions as may be imposed by the Court.

**(n) [Posting and Publication]** The Clerk of the Court is directed to post a copy of this rule on the Court's Web site pursuant to California Rules of Court, rule 8.74(a), and to submit a copy to the Reporter of Decisions for publication pursuant to California Rules of Court, rule 10.1030(a).

***Electronic Formatting Requirements and Guidelines  
of the Second District***

*Pursuant to California Rules of Court  
rules 8.72(a) and 8.74(b)*

*Effective October 30, 2017*

**Formatting Requirements**

**1. Text-searchable format**

All documents must be text-searchable, in PDF (portable document format) while maintaining the original document formatting.

**2. Pagination**

The page numbering of a document filed electronically must begin with the first page or cover as page 1 and use only Arabic numerals (e.g., 1, 2, 3). Documents consisting of multiple files must be paginated consecutively across all files. The Adobe Page Counter number must match the consecutive page numbering.

**3. Electronic Bookmarks**

All briefs, original proceedings, motions and applications with attachments must include electronic bookmarks to each heading, subheading and component of the document. This includes such items as the table of contents, table of authorities, petition, verification, points and authorities, declaration, certificate of word count, certificate of interested entities or persons, and proof of service. Each bookmark to a tab, exhibit, or attachment must include the letter or number of the tab, exhibit or attachment and a description of the tab, exhibit or attachment. The required setting for all bookmarks is “Inherit Zoom” which retains the user’s currently selected zoom setting.

Any appendix filed electronically must have a separate electronic bookmark to the indexes and to the first page of each separate exhibit and attachment. Exhibits or attachments included within an exhibit or attachment must be separately bookmarked.

#### **4. Size**

No single PDF file may exceed 25 megabytes. Notwithstanding provisions to the contrary in the California Rules of Court, electronically filed documents may exceed the 300 page limit as long as the file size is 25 megabytes or smaller. If submitting multiple files in TrueFiling would cause undue hardship, any registered user may file an application in TrueFiling, requesting permission to provide the court with the filing in electronic format (e.g. on a flash drive, or alternatively on CD or DVD), explaining the reason for the manual filing. Please note any audio files must be submitted in .wav or mp3 format and any video files must be submitted in .avi or mp4 format.

#### **5. Documents consisting of multiple files**

A document consisting of multiple files must include on the cover page of each file, (i) the file number, (ii) the total number of files, (iii) the page numbers contained in that file, and (iv) the total number of pages for all the files. The first file must include a master chronological and alphabetical index stating the contents for all files. The remaining files must include a cover page, but an individual index is not required.

#### **6. Privacy Protection**

Electronic filers must comply with California Rules of Court, rule 1.201 regarding exclusion or redaction of personal identifiers from all documents filed with the court. Neither TrueFiling nor the Clerk of the Court has any responsibility to review documents for compliance with these requirements.

## Formatting Guidelines

Filers are encouraged, but not required, to follow these guidelines which are designed to improve the functionality and readability of documents filed with the court. (See [\*The Leap from E-Filing to E-Briefing, Recommendations and Options for Appellate Courts to Improve the Functionality and Readability of E-Briefs\*](#) (2017).)

### 1. Font Style

**A proportionally spaced serif face**, such as Century School Book, Century, Bookman Old Style, Book Antiqua, etc. Do not use Times New Roman.

### 2. Font size

**13 pt. text** (including footnotes).

### 3. Spacing

**1.2 (currently 1.5).** In terms of readability, ideal line spacing is closer to single spacing than double spacing. In Microsoft Word and WordPerfect, setting line spacing at 1.2x closely approximates the standard that is used in professionally published books and scholarly journals, as well as generally required for U.S. Supreme Court briefs, which is 2 points of leading between each line of text. See Sup. Ct. R. 33(1)(b). By contrast, so-called “double spacing” in Microsoft Word is equivalent to 2.23 spacing, and in WordPerfect is similar, which is almost twice the professional standard. (See Matthew Butterick, *Typography for Lawyers*, at 137-38 (2d ed. 2015).)

**[footnotes and quotations may be single spaced]**

#### 4. Margins

**1.5” on all sides.** An 8½” by 11” page is very large for a publication intended to be read, as distinguished from a reference book or the like that is typically not read for an extended period. Only the economy and convenience of using standard letter-size paper justifies such an oversized page. Letter-size paper avoids the complexities of booklet format, such as laying out signatures, trimming pages, saddle stitching the booklet, etc. *See* U.S. Government Printing Office Style Manual (30th ed. 2008).

#### 5. Alignment

**Left Aligned.** Left aligned text is easier to read than justified text. Like double spacing, justification is a relic of typesetting days, but many legal writers continue to use it out of habit, without thinking about the fact that it is less readable.

#### 6. Miscellaneous

Use “curly” or “smart” quotation marks and apostrophes (rather than “straight”) Boldface and Italics to be used instead of underlining. Do not use ALL CAPS. Emphasis is an effective tool when used well. In terms of readability, most experts prefer **boldface** and *italics*, and strongly disfavor underlining.

#### 7. File Formatting

Whenever possible **do not scan** documents. Convert to PDF format in a word processing program. Compile documents, e.g. appendices, using E-Copies rather than scanned copies with OCR.

#### 8. Hyperlink

**Hyperlinked Briefs.** Filers are encouraged to hyperlink their briefs and writs to legal citations and appendices or exhibits.

**LOCAL RULES OF THE COURT OF APPEAL  
THIRD APPELLATE DISTRICT**

Published pursuant to California Rules of Court, rule 10.1030

**Effective September 14, 2015  
Amended effective September 26, 2016  
Amended effective December 11, 2017**

**Rule 5. Electronic Filing**

**(a) Definitions**

As used in this local rule, unless the context otherwise requires:

- (1) “Court” means the Court of Appeal for the Third Appellate District.
- (2) “Electronic filing” is the electronic transmission to the court of a document in electronic form.
- (3) A “document” is:
  - (A) Any filing submitted to the court, including but not limited to a brief, a petition, an appendix, or a motion;
  - (B) Any document transmitted by a trial court to the court, including but not limited to a notice or a clerk’s or reporter’s transcript; or
  - (C) Any writing prepared by the court, including but not limited to an opinion, an order, or a notice.
- (4) A “file” is a unit of electronic information with a filename.
- (5) “TrueFiling” is the court’s electronic filing portal for registered users.
- (6) “Registered user” and “registered users” refer to a person or persons registered to use TrueFiling.
- (7) “EFS” means the court’s electronic filing system, which includes, but is not limited to, TrueFiling and the court’s file transfer protocol (FTP) server.
- (8) “EFS user” and “EFS users” refer to a user or users of the court’s electronic filing system.



**(b) Mandatory electronic filing**

Pursuant to the California Rules of Court, the court requires the electronic filing of all documents with the court unless this local rule provides otherwise. Electronic filing is mandatory for all attorneys filing with the court unless an exemption is granted; electronic filing is voluntary for all non-attorney self-represented litigants. This local rule applies in all cases, including pending cases in which paper documents have been filed before the effective date of this local rule. Except as provided in this local rule, an electronic filing will be accepted in lieu of any paper copies otherwise required by the California Rules of Court, and constitutes the official record of the court.

**(c) Registration**

(1) *Obligation to Register.* Each attorney in any proceeding in this court is obligated to become a registered user and obtain a username and password for access to TrueFiling unless an exemption is granted. Non-attorney self-represented litigants must become registered users if they wish to file electronically. Attorneys and non-attorney self-represented litigants may become registered users by registering at <<http://www.truefiling.com>>.

(2) *Responsibility; Obligation to Keep Account Information Current.* A registered user is responsible for all documents filed under the user’s registered username and password. The registered user must comply with the requirements of the California Rules of Court.

**(d) File Size Limitation; Documents Exceeding Limitation**

(1) *File Size Limitation.* The file size limitation is 25 megabytes.

(2) *Documents Exceeding File Size Limitation.* Any electronic document larger than 25 megabytes must be filed in multiple files, each less than 25 megabytes.

(3) *Filing of Document Consisting of More Than Five Files.*

(A) *Manual Filing.* When a registered user files an electronic document consisting of more than five files, the document shall not be filed through TrueFiling, but instead shall be filed with the court in electronic format on flash drive, or alternatively on CD (compact disc) or DVD. When a registered user files a flash drive, CD, or DVD with the court, the registered user shall also file, on the same day, a “manual filing notification” in TrueFiling notifying the court and the parties that one or more documents have been filed on flash drive, CD or DVD and explaining the reason for the manual filing.

(B) *Naming Convention and Format for Files on Flash Drive, CD, or DVD.* Each file on a flash drive, CD, or DVD shall be separately named so the court and the parties can see the following identifying information without opening the file: (1) the case number, (2) the type of partial document on the file, (3) the page numbers included in the file, and (4) the last

name of the filing party. In addition, each file must comply with the format requirements of this local rule.

(C) *Manual Service.* The flash drive, CD, or DVD shall be served on the parties in accordance with the applicable requirements and procedures for service of paper documents.

**(e) Format**

(1) *Text Searchable Format.* All electronic documents must be in electronic text-searchable PDF (portable document format), or other searchable format approved by the court, while maintaining original document formatting. If an EFS user possesses only a paper document, the user must scan the document and convert it to an electronic document complying with this local rule. It is the EFS user's responsibility to ensure that any document filed is complete and readable. Electronically filed documents must comply with the content and form requirements of the California Rules of Court, with the exception of those provisions dealing exclusively with requirements for paper or as otherwise specified in this local rule.

(2) *Pagination.* The page numbering of an electronic document must begin with the first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3) throughout the document. The page number need not appear on the cover page. Briefs may not contain more than one numbering system, e.g., they may not contain Roman numerals for the table of contents and Arabic numerals for the body of the brief. When a document, transcript, or record is filed in both paper format and electronic format, the pagination in both versions must comply with this subparagraph or the party must accurately cite to the correct page for both versions.

(3) *Documents Consisting of Multiple Files.* A document consisting of multiple files shall:

(A) Include on the cover page of each file (i) the file number for that file, (ii) the total number of files for that document, (iii) the page numbers contained in that file, and (iv) the total number of pages for that document. (Example: File 1 of 4, pp. 1-299 of 1198.)

(B) Contain its own table(s) and index stating the contents of that file.

(C) Be paginated consecutively across all files (e.g., if the first file ends on page 300, the cover of the second file shall be page 301).

(4) *Tabs.* Documents shall include tabs to the extent required by the California Rules of Court. A tab shall be a separate page identifying the content following the tab (such as a page stating "Exhibit A").

(5) *Electronic Bookmarks.* An electronic bookmark is a text link that appears in the bookmarks panel of an electronic document. An electronic bookmark is different from a hyperlink. Each document shall include an electronic bookmark to each heading, subheading and component of the document (such as a table of contents, table of authorities, petition, verification, points and authorities, declaration, certificate of word count, certificate of interested

entities or persons, or a proof of service if included within the document). Each document shall also include an electronic bookmark to the first page of each tab, exhibit, or attachment, if any. Each bookmark to a tab, exhibit, or attachment shall include the letter or number of the tab, exhibit, or attachment and a description of the tab, exhibit, or attachment.

(6) *Hyperlinks*. Hyperlinks are not required. However, if an EFS user elects to include hyperlinks in a document, the hyperlink may be active and should be formatted to standard citation format as provided in the California Rules of Court.

(7) *No Color*. Notwithstanding provisions to the contrary in the California Rules of Court, electronic documents shall not have color covers, color signatures, or other color components absent leave of court. This requirement does not apply to the auto-color feature of hyperlinks.

#### **(f) Signatures**

For registered users, a registered username and password is the equivalent of an electronic signature.

#### **(g) Superior Court Record**

(1) *Record of Administrative Proceedings*. In addition to any administrative record provided by the trial court pursuant to the California Rules of Court, registered users seeking review of an administrative determination must submit an electronic copy of the administrative record to the court in compliance with this local rule.

(2) *Appendix*. Any appendix filed pursuant to the California Rules of Court must be filed by EFS users in electronic format in compliance with this local rule.

(3) *Reporter's Transcript*. A registered user who orders a reporter's transcript of proceedings must also request a copy of the transcript in electronic format and must submit an electronic copy to the court in compliance with this local rule.

(4) *Transmissions by the Superior Court*. The court authorizes and encourages the superior courts within the Third Appellate District to engage in the electronic service and electronic filing of documents, including, but not limited to, the clerk's transcript and reporter's transcripts. If a superior court transmits electronic documents to the court in lieu of paper, the court will accept electronic documents complying with the California Rules of Court and this local rule. A superior court shall transmit electronic documents to the court through the court's FTP server using credentials provided by the court. If a superior court transmits electronic documents to the court, it shall also make the electronic documents available to the parties.

#### **(h) Personal Identifiers and Privacy Issues**

To protect personal privacy and other legitimate interests, parties and their attorneys must not include, or must redact where inclusion is necessary, personal identifiers such as Social

Security numbers, driver's license numbers, and financial account numbers from all documents filed as part of the court's public record, whether filed in paper or electronic format, unless otherwise provided by law or ordered by the court. If an individual's Social Security number or financial account number is required in a document filed as part of the court's public record, only the last four digits of the number shall be used.

The responsibility for excluding or redacting identifiers from all documents filed with the court rests solely with the parties and their attorneys. Neither TrueFiling nor the Clerk of the Court has any responsibility to review documents for compliance.

**(i) Sealed or Confidential Material**

Sealed or confidential material may be filed electronically. EFS users must comply with the California Rules of Court pertaining to sealed and confidential material, with the exception of those provisions pertaining exclusively with requirements for paper or as otherwise specified in this local rule.

**(j) Filing Deadlines**

Electronic filing does not alter any filing deadlines. An electronic filing not completely received by the court by 11:59 p.m. will be deemed to have been received on the next court day. If a specific time of day is set for filing by court order or stipulation, the electronic filing shall be completed by that time. Although the EFS permits users to transmit electronic documents 24 hours a day, EFS users should be aware that telephone or online assistance may not be available outside of normal court business hours, and requests for immediate relief made after the close of the court's normal business hours may not be addressed until the next court day.

**(k) Motion to Accept Filing as Timely Following TrueFiling Technical Failure**

If a registered user fails to meet a filing deadline imposed by court order, rule or law because of a TrueFiling failure, the registered user may file the document in electronic or paper format as soon thereafter as practicable and accompany the filing with a motion to accept the document as timely filed. A late submission that missed a jurisdictional deadline will be accepted for filing pursuant to this subparagraph only if the deadline was missed due to a TrueFiling failure. The initial point of contact for anyone experiencing difficulty with TrueFiling shall be the toll-free telephone number posted on the TrueFiling Web site.

The court is not responsible for malfunctions or errors occurring in the electronic transmission or receipt of electronically filed documents.

**(l) Service**

Registration with TrueFiling constitutes consent to receive service through the EFS. Documents prepared by the court will be served on EFS users through the EFS or by electronic notification.

Submission of a petition for review through TrueFiling that is accepted for filing by the Supreme Court constitutes service of a copy of the petition on this court in accordance with the California Rules of Court.

**(m) Filing Fees**

TrueFiling is operated by a vendor pursuant to a contract with the court. The vendor will assess fees for each electronic filing via TrueFiling in accordance with the schedule posted on the TrueFiling Web site, as approved by the court. TrueFiling fees will be considered recoverable costs under the California Rules of Court. The vendor is designated as the court's agent for collection of court-imposed fees where required for any electronic filing made by registered users, and any associated credit card or bank charges or convenience fees.

If a non-attorney self-represented litigant with a fee waiver chooses to file documents electronically, that litigant is exempt from the fees and costs associated with electronic filing. The persons and entities identified in Government Code section 6103 are also exempt from the fees and costs associated with the EFS.

**(n) Exemptions**

(1) Non-attorney self-represented litigants may, but are not required to, register for electronic filing. Non-attorney self-represented litigants who opt to register for electronic filing must comply with this local rule and the requirements of the EFS.

(2) When it is not feasible for a registered user to convert a document to electronic format by scanning, imaging or other means, the document may be filed in paper format with a declaration setting forth the reason that electronic filing was not feasible.

(3) If the requirements of this local rule cause undue hardship or significant prejudice to any registered user, the registered user may file a motion for an exemption from the requirements of this local rule.

**(o) Rejection of an Electronic Filing for Noncompliance**

The court will reject an electronic filing if it does not comply with the requirements of this local rule.

**(p) Sanctions for Noncompliance**

Failure of counsel to timely register, and failure of any registered user to comply with electronic filing requirements, unless exempted, may be subject to sanctions imposed by the court.

**(q) Original Documents**

The court may scan any paper document into an electronic format, in which case the electronic document will be deemed the original for purposes of the court record.

**(r) Posting and Publication**

The Clerk of the Court is directed to post a copy of this local rule on the court's Web site and submit a copy to the Reporter of Decisions for publication.

Dated: September 27, 2017

  
\_\_\_\_\_  
Presiding Justice

## **Formatting Guidelines for Exhibits to Petition**

To ensure that your exhibits to your petition are not rejected by the court, please comply with the following guidelines.

### **Pagination:**

Number pages consecutively beginning with the cover (first) page of the exhibits to the final page of the exhibits, using only the Arabic numbering system, as in 1, 2, 3. Do not use Roman Numerals or any other pagination method for tables or anywhere else within the exhibits.

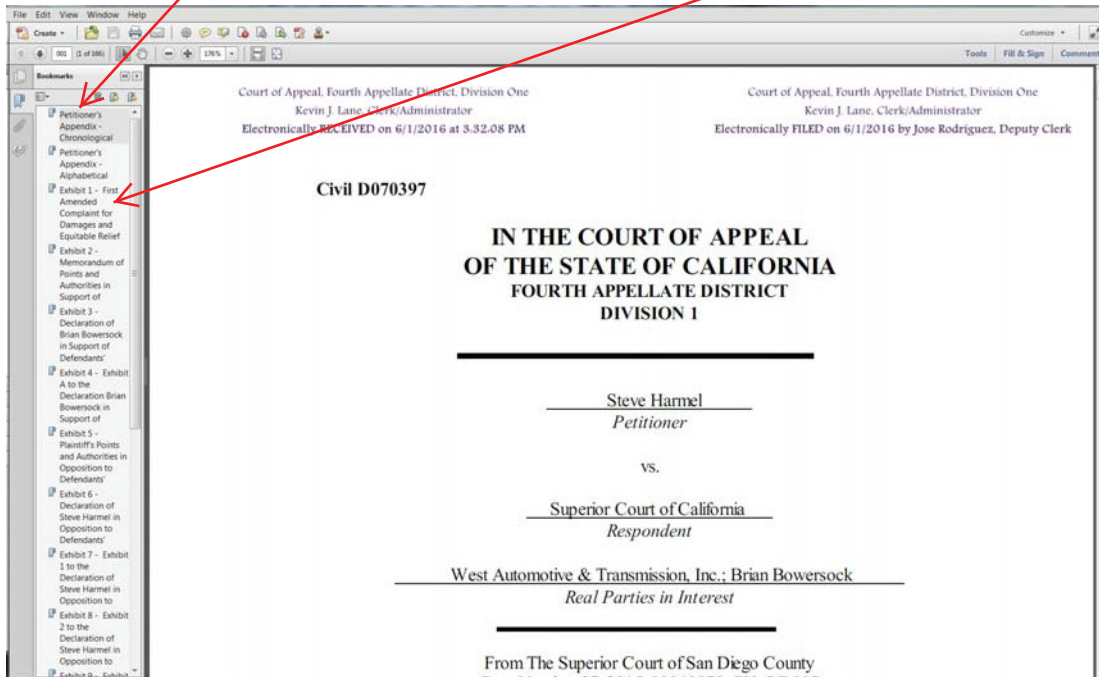
Ensure that page numbers listed in the Table of Contents or Indices match both the pages within the exhibits and the Adobe page counter. This allows the court and the parties to accurately locate the cited pages and ensures that page citations are consistent throughout the exhibits.

Notwithstanding California Rules of Court, rules 8.144(c)(1) and 8.486(c)(1)(A), electronically filed documents may exceed the 300-page limit as long as the file size is 25 megabytes or smaller. Exhibits that exceed 25 megabytes must be submitted in volumes of 25 megabytes or less. Each volume must be numbered consecutively from the first page of the first volume to the last page of the last volume, using only the Arabic numbering system, as in 1, 2, 3. Each volume must contain a cover page indicating the volume number and a table of contents.

**Bookmarks:**

The Table of Contents or Index must include an electronic bookmark for each heading corresponding to the heading in the text, including the heading “Table of Contents” or “Index.”

A bookmark is a text link that appears in the **Bookmarks Panel** of Adobe Reader and Adobe Acrobat. In this example, clicking on “Exhibit 1” would take the reader to that part of the document.





## LOCAL RULES OF THE COURT OF APPEAL FIFTH APPELLATE DISTRICT

### Local Rule 8. Electronic Filing

Pursuant to California Rules of Court, [rule 8.70](#), the Court will require all filings in this District be made through the Court's electronic filing system (EFS) operated by ImageSoft TrueFiling (TrueFiling). Use of the EFS system is mandatory for all attorneys filing in this District, unless an exemption is granted, and is voluntary for all self-represented litigants. A filing in electronic format will be accepted in lieu of any paper copies otherwise required under California Rules of Court, [rule 8.44](#) and constitutes the official record of the Court.

#### (a) [Registration]

(1) **Obligation to Register.** Each attorney of record in any proceeding in this District is obligated to become an EFS user and obtain a user ID and password for access to the TrueFiling system. Self-represented litigants must register if they wish to e-file.

Attorneys and self-represented litigants may register at:

<https://www.truefiling.com/layouts/ElectronicFile.Main/SignUp.aspx>

(2) **Obligation to Keep Account Information Current.** An EFS user is responsible for all documents filed under the user's registered ID and password. Registered users are required to keep their e-mail address current and may update their e-mail address online via the TrueFiling Web site. The user also must comply with the requirements of California Rules of Court, rule 8.32.

#### (b) [Format]

Documents filed electronically must be in PDF format, or readily capable of conversion to PDF format while maintaining original document formatting by TrueFiling to permit text searches and to facilitate transmission and retrieval. If the filer possesses only a paper copy of a document, it may be scanned to convert it to a searchable PDF format. It is the filer's responsibility to ensure that any document filed is complete and readable. No single document shall exceed a total file size of 25 MB. Document pages must be consecutively numbered beginning from the cover page of the document and using only the Arabic numbering system, as in 1, 2, 3.

Briefs must comply with the content and form requirements of California Rules of Court, [rule 8.204](#), with the exception of those provisions dealing exclusively with requirements for paper. Notwithstanding rule 8.204(b)(7), briefs may not have different numbering systems. The table of contents for each brief shall include electronic bookmarks to each heading in the text. All original proceedings must include electronic bookmarks from the table of contents for each heading in the text, and to the first page of any exhibit(s), with a description of the exhibit included in the bookmark.

#### (c) [Signatures]

A TrueFiling user ID and password is the equivalent of an electronic signature for a registered attorney or party. Any document displaying the symbol "/s/" with the attorney's or party's printed name shall be deemed signed by that attorney/party.

#### (d) [Trial Court Record]

(1) **Appendices, Agreed Statements, and Settled Statements.** Parties must submit any appendix filed pursuant to California Rules of Court, [rule 8.124](#), any agreed statement

filed pursuant to California Rules of Court, [rule 8.134](#), or any settled statement filed pursuant to California Rules of Court, [rule 8.137](#) in electronic form. Each part of the record submitted in any appendix shall clearly state the volume and page numbers included within that part and include an index of contents, with a descriptive electronic bookmark to the first page of each indexed document.

(2) Administrative Records. In addition to any administrative record provided by the trial court pursuant to California Rules of Court, [rule 8.123](#), the party or parties seeking review of a board case under California Rules of Court, [rule 8.498\(b\)](#) must submit a copy of the administrative record in electronic form.

(3) Reporter's Transcripts. Any party who orders a reporter's transcript of proceedings pursuant to California Rules of Court, [rule 8.130](#) must also request a copy of the transcript in computer-readable format, as provided in California Rules of Court, [rule 8.130\(f\)\(4\)](#), and submit an electronic copy to the Court.

**(e) [Personal Identifiers and Privacy Issues]**

To protect personal privacy, parties and their attorneys must not include, or must redact where inclusion is necessary, personal identifiers such as social security numbers, driver's license numbers, and financial account numbers from all pleadings and other papers filed in the Court's public file, whether filed in paper or electronic form, unless otherwise provided by law or ordered by the Court. (California Rules of Court, [rule 1.20\(b\)](#).) If an individual's social security number is required in a pleading or other paper filed in the public file, only the last four digits of that number shall be used. If financial account numbers are required in a pleading or other paper filed in the public file, only the last four digits of these numbers shall be used.

The responsibility for excluding or redacting identifiers from all documents filed with the Court rests solely with the parties and their attorneys. (California Rules of Court, [rule 1.20\(b\)\(3\)](#).) Neither TrueFiling nor the Clerk of the Court has any responsibility to review pleadings or other papers for compliance.

**(f) [Sealed or Confidential Material]**

All filers must comply with California Rules of Court, rules 8.46 and 8.47 pertaining to sealed and confidential material.

**(g) [Filing Deadlines]**

Filing documents electronically does not alter any filing deadlines. In order to be timely filed on the day they are due, all electronic transmissions of documents must be completed (i.e., received completely by the Clerk of the Court) prior to midnight. Where a specific time of day is set for filing by Court order or stipulation, the electronic filing shall be completed by that time. Although EFS permits parties to submit documents electronically 24 hours a day, users should be aware that telephone or online EFS assistance may not be available outside of normal Court business hours.

**(h) [Technical Failure/Motions for Late Filing]**

If a filer fails to meet a filing deadline imposed by Court order, rule, or statute because of a failure at any point in the electronic transmission and receipt of a document, the filer may file the document as soon thereafter as practicable and accompany the filing with a motion to accept the document as timely filed. (See Cal. Rules of Court, [rule 8.54\(a\)\(1\)&\(2\)](#).)

The Clerk of the Court shall deem the EFS system to be subject to a technical failure whenever the system is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon that day. Filings due on the day of a technical failure which were not filed solely due to

such technical failure shall be due the next court day. The initial point of contact for any practitioner experiencing difficulty filing a document into the EFS system shall be the toll-free number posted on the TrueFiling Web site.

The Court shall not be responsible for malfunction or errors occurring in electronic transmission or receipt of electronically filed documents.

**(i) [Service]**

An attorney's registration with TrueFiling to participate in EFS constitutes consent to service or delivery of all documents by any other party in a case through the system. (California Rules of Court, [rule 8.71](#).)

**(j) [Filing Fees]**

TrueFiling is a private vendor under contract with the Court. TrueFiling will assess vendor fees for each filing in accordance with the schedule posted on its Web site, as approved by the Court. E-Filing fees will be considered recoverable costs under California Rules of Court, [rule 8.278\(d\)\(1\)\(D\)](#). TrueFiling is designated as the Court's agent for collection of Court imposed fees where required for any filing, and any associated credit card or bank charges or convenience fees (California Rules of Court, [rule 8.78](#); Gov. Code, § 6159).

Should a self-represented party with a fee waiver opt to file documents electronically, that party is exempt from the fees and costs associated with electronic filing. The persons and entities identified in Government Code section 6103 also are exempt from the fees and costs associated with e-Filing.

**(k) [Exemptions]**

Self-represented parties may, but are not required to register for electronic filing, but must comply with this rule and the requirements of TrueFiling if they elect to register.

If electronic filing and/or service causes undue hardship or significant prejudice to any party, the party may file a motion for an exemption from the requirements of this rule. (See Cal. Rules of Court, [rule 8.54\(a\)\(1\)&\(2\)](#).) When it is not otherwise feasible for a party to convert a document to electronic form by scanning, imaging or other means, the document may be filed in paper form (California Rules of Court, [rule 8.73\(c\)](#)), together with a declaration setting forth the reasons that electronic filing was not feasible.

**(l) [Sanctions for Noncompliance]**

Failure of counsel to timely register or otherwise comply with EFS filing requirements, unless exempted, shall subject counsel to sanctions as may be imposed by the Court.

*(Effective May 11, 2015)*

## Formatting Guidelines

The Court encourages all electronic filers to comply with the following guidelines for briefs, motions, appendices, writ petitions and other documents filed in connection with appeals or original proceedings.

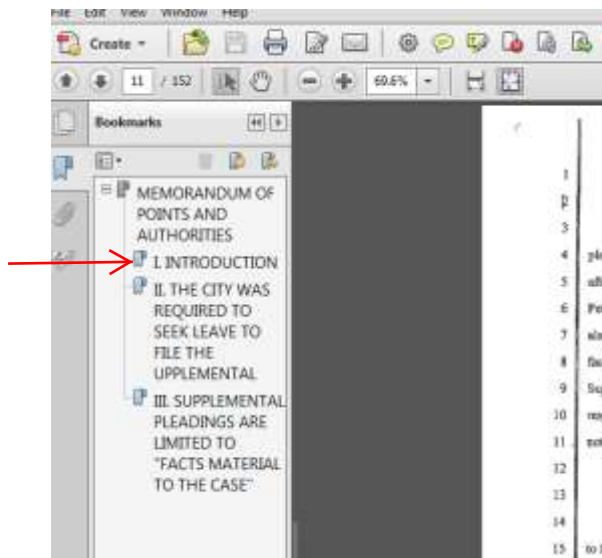
### Pagination:

Number pages consecutively *beginning with the cover page of the document*, using only the Arabic numbering system, as in 1, 2, 3. Do *not* use a separate pagination system for tables within the document. The page number does not need to appear on the cover page.

### Bookmarks:

Briefs, motions and petitions: In any document that contains a table of contents, the table should include an electronic bookmark for each heading to the corresponding heading in the text.

A bookmark is a text link that appears in the **Bookmarks Panel** of Adobe Reader and Adobe Acrobat. In this example, clicking on “INTRODUCTION” would take the reader to that part of the brief.



Appendices and exhibits: In any document that contains an index, including appendices and exhibits in support of writ petitions, the index should include an electronic bookmark from each descriptive document title to the first page of the corresponding document in the appendix or exhibits.

Where appendices or exhibits are submitted in multi-part electronic files, each separate file should have a table or index stating the contents of that file. The table or index should include the bookmarks as noted above.<sup>36</sup>



## JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688  
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

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### MEMORANDUM

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Date	Action Requested
January 31, 2018	Please read before February 5 subcommittee conference call
To	Deadline
Members of the Joint Appellate Technology Subcommittee	February 5
From	Contact
Ingrid Leverett Attorney, Legal Services	Ingrid Leverett (415) 865-8031 phone Ingrid.Leverett@jud.ca.gov
Subject	
Rules modernization: sealed and confidential records, lodged records	

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#### **Introduction**

Item 5 on the Appellate Advisory Committee's annual agenda, Modernize Appellate Court Rules for E-filing and E-business, includes considering whether to recommend rule amendments to the rules governing sealed and confidential records to establish procedures for handling materials that are submitted electronically, including the return of lodged electronic records. This is a priority 2 project with a completion date of January 1, 2019. This memo discusses recent modernization of parallel rules in the trial courts and presents options for the subcommittee to consider.

#### **Background**

The Rules Modernization Project is a collaborative effort led by the Information Technology Advisory Committee, working together with several advisory committees with subject matter expertise, to comprehensively review and modernize the California Rules of Court to be consistent with and foster modern e-business practices. Over a two-year period, this work resulted in technical rule amendments to address language in the rules that was incompatible

with statutes and rules governing electronic filing and service, and substantive rule amendments to promote electronic filing, electronic service, and modern e-business practices. These rule amendments took effect January 1, 2016, and January 1, 2017.

The Appellate Advisory Committee is continuing the work of modernizing the appellate court rules by considering suggestions to amend rules to establish or improve procedures relating to electronically submitted materials.

### **Trial court rules**

Rules 2.550 and 2.551 govern sealed records in the trial court. Amendments that took effect January 1, 2016 included:<sup>1</sup>

- Amending the rule regarding sealed records to define “record” to apply to records filed or lodged electronically (see rule 2.550(b)(1));
- Amending the rule for filing records under seal to accommodate records and notices that are transmitted electronically and kept by the court in electronic form (see rule 2.551; see also rule 3.1302 [regarding lodged material in law and motion proceedings]); and
- Amending rule 2.551 to provide for the return of materials lodged in electronic form.<sup>2</sup>

During the next year,<sup>3</sup> responding to concerns that the new rule language providing for the return of materials lodged in electronic form did not necessarily require deletion of electronic records maintained in a court’s document management system, the committees took up these rules again.

The committees revised rule 2.551(b)(6) to provide that, unless otherwise ordered, the moving party has 10 days following an order denying a motion or application to seal to notify the court that the lodged record is to be filed unsealed. The clerk must unseal and file the record upon receiving the notification. If the clerk does not receive notification within 10 days of the order, the clerk must return the lodged records if in paper form or permanently delete the lodged records if in electronic form. Based on comments received in response to the invitation to comment, the committees decided not to require that courts send a separate notice of destruction

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<sup>1</sup> The Judicial Council report dated September 16, 2015 describes the phase I rule amendments. The report is available at: <https://jcc.legistar.com/View.ashx?M=F&ID=4103509&GUID=4234BC37-DBCC-4795-A932-0DC9EEF95AFF>

<sup>3</sup> The phase II amendments are described in the Judicial Council report dated October 27, 2016. The report is available at: <https://jcc.legistar.com/View.ashx?M=F&ID=4103509&GUID=4234BC37-DBCC-4795-A932-0DC9EEF95AFF>

before destroying electronic lodged records. The court order denying the sealing motion was thought to provide sufficient notice to the moving party.<sup>4</sup>

The committees also revised rule 3.1302(b) to provide that courts may continue to maintain other lodged materials; however, if the court elects not to maintain them, they must be returned by mail if in paper form or permanently deleted after notifying the party lodging the material if in electronic form. The committees decided to require that a notice be sent before destruction of any electronic lodged records under rule 3.1302 because the submitting party would not otherwise have notice of the destruction.

The phase II proposal also involved technical amendments that had not been identified during phase I. These included:

- Amending rule 2.551(b)(3)(B) to replace language related to paper documents with language that is inclusive of electronic documents;
- Amending rule 2.551(f) to provide that if sealed records are in electronic form, the court must establish appropriate access controls to ensure that only authorized persons may access them.

### **Appellate court rules modernization**

The phase I rules modernization proposal included amendments to the appellate rules. As relevant here, the amendments:

- Added definitions of “attach or attachment,” “copy or copies,” “cover,” and “written or writing” to clarify their application to electronically filed documents (see renumbered and amended rule 8.803 and amended rule 8.10);
- Added new rule 8.11 and amended rule 8.800(b) to clarify that the rules are intended to apply to documents filed and served electronically;
- Replaced references to “mail” with “send” throughout;
- Replaced references to “file-stamped” with “filed-endorsed” throughout;
- Added language requiring that all confidential or sealed documents that are transmitted electronically must be transmitted in a secure manner (see amended rules 8.45(c), 8.46(d), 8.47(b) and (c), and 8.482(g)).

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<sup>4</sup> These amendments were also made to rule 2.577, which governs procedures for filing confidential name change records under seal.

## Discussion

In reviewing the appellate rules on sealed and confidential records, staff focused on differences between these rules and the trial court rules. The substantive amendments for the subcommittee's consideration are based on those differences and are intended to conform the appellate court rules to the trial court rules where appropriate. Attached to this memo is a document setting forth rules 8.46 and 8.47 with possible amendments highlighted. Rule 8.45 is also included for context; there are no proposed amendments to this rule.

The proposed amendments are discussed here, with issues or questions identified for the subcommittee.

### **Procedure for returning a lodged record**

The current procedure for returning a lodged record when the court denies a motion or application to seal fails to provide for lodged records in electronic form. The trial court rules account for this situation. (See rule 2.551(b)(6).)

Proposed amendment to rule 8.46(d)(7):

If the court denies the motion or application, the clerk must not place the lodged record in the case file but must return it to the submitting party unless that party notifies the clerk in writing that the record is to be filed. Unless otherwise ordered by the court, the submitting party must notify the clerk within 10 days after the order denying the motion or application the moving party may notify the court that the lodged record is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to seal, unless otherwise ordered by the court. On receipt of this notification, the clerk must unseal and file the record. If the moving party does not notify the court within 10 days of the order, the clerk must (1) return the lodged record to the moving party if it is in paper form, or (2) permanently delete the lodged record if it is in electronic form.

The same amendment is also proposed for rule 8.46(f)(3)(D) and rule 8.47(b)(3)(D) and (c)(2)(D). (See attached draft amended rules.) The subcommittee should review and consider the language of each of these four amendments. Differences in the motions or applications being addressed result in differences in the language of the amendments.

### **Transmission of lodged records**

Where it is necessary to disclose material contained in a conditionally sealed record in a filing (such as a brief or petition) in the reviewing court, the rules require that a public redacted version



be filed and that an unredacted version be lodged. Trial court rules include the requirement that the filing “must be transmitted in a secure manner that preserves the confidentiality of the filing being lodged.” (See rule 2.551(d)(1).)

The subcommittee should consider whether to include this requirement in rule 8.46(f)(3)(B). (See attached draft amended rule.) Note that this language is already included in rule 8.47(b)(3)(C)(ii) and (c)(2)(C)(ii).

### **Identify conditionally sealed material**

Rule 8.47(c)(2)(C)(ii) includes the requirement, for a lodged unredacted version of a filing, that conditionally sealed material disclosed in that version must be identified. This requirement is not included in rule 8.47(b)(3)(D). The subcommittee should consider whether to add this language.

### **Other amendments**

Other proposed amendments are minor changes in language and punctuation intended to clarify the rules. The subcommittee should review these suggestions and decide whether to recommend any of them.

### **Question for subcommittee**

Staff would like the subcommittee’s feedback on whether to add a section on lodged material to rule 8.54 which governs motions in the appellate courts. Rule 3.1302, which governs the place and manner of filing in support of notice motions, includes requirements for lodged materials:

#### **(b) Requirements for lodged material**

Material lodged physically with the clerk must be accompanied by an addressed envelope with sufficient postage for mailing the material. Material lodged electronically must clearly specify the electronic address to which a notice of deletion may be sent. After determination of the matter, the clerk may mail or send the material if in paper form back to the party lodging it. If the lodged material is in electronic form, the clerk may permanently delete it after sending notice of the deletion to the party who lodged the material.

### **Subcommittee’s task**

The subcommittee’s task is to review the draft rules and provide feedback. The subcommittee may choose to:

- Approve the proposal as presented and recommend to the full committees that they seek approval from RUPRO to circulate the proposal for public comment;

- Modify the proposal and recommend to the full committees that they seek approval from RUPRO to circulate the modified proposal for public comment;
- Recommend to the full committees that they reject the proposal; or
- Ask staff or committee members for further information/analysis.

#### Attachments

Rules 8.45-8.47, with proposed amendments

Rule 8.54, current version

1 Title 8. Appellate Rules

2  
3 Division 1. Rules Relating to the Supreme Court and Courts of Appeal

4  
5 Chapter 1. General Provisions

6  
7 Article 3. Sealed and Confidential Records

8  
9  
10 Rule 8.45. General provisions

11  
12 (a) Application

13  
14 The rules in this article establish general requirements regarding sealed and  
15 confidential records in appeals and original proceedings in the Supreme Court and  
16 Courts of Appeal. Where other laws establish specific requirements for particular  
17 types of sealed or confidential records that differ from the requirements in this  
18 article, those specific requirements supersede the requirements in this article.

19  
20 (b) Definitions

21  
22 As used in this article:

- 23  
24 (1) “Record” means all or part of a document, paper, exhibit, transcript, or other  
25 thing filed or lodged with the court by electronic means or otherwise.  
26  
27 (2) A “lodged” record is a record temporarily deposited with the court but not  
28 filed.  
29  
30 (3) A “sealed” record is a record that is closed to inspection by the public or a  
31 party by order of a court under rules 2.550–2.551 or rule 8.46.  
32  
33 (4) A “conditionally sealed” record is a record that is filed or lodged subject to a  
34 pending application or motion to file it under seal.  
35  
36 (5) A “confidential” record is a record that, in court proceedings, is required by  
37 statute, rule of court, or other authority except a court order under rules  
38 2.550–2.551 or rule 8.46 to be closed to inspection by the public or a party.  
39  
40 (6) A “redacted version” is a version of a filing from which all portions that  
41 disclose material contained in a sealed, conditionally sealed, or confidential  
42 record have been removed.  
43

1 (7) An “unredacted version” is a version of a filing or a portion of a filing that  
2 discloses material contained in a sealed, conditionally sealed, or confidential  
3 record.  
4

5 (*Subd (b) amended effective January 1, 2016.*)  
6

7 **(c) Format of sealed and confidential records**  
8

9 (1) Unless otherwise provided by law or court order, sealed or confidential  
10 records that are part of the record on appeal or the supporting documents or  
11 other records accompanying a motion, petition for a writ of habeas corpus,  
12 other writ petition, or other filing in the reviewing court must be kept  
13 separate from the rest of a clerk’s or reporter’s transcript, appendix,  
14 supporting documents, or other records sent to the reviewing court and in a  
15 secure manner that preserves their confidentiality.  
16

17 (A) If the records are in paper format, they must be placed in a sealed  
18 envelope or other appropriate sealed container. This requirement does  
19 not apply to a juvenile case file but does apply to any record contained  
20 within a juvenile case file that is sealed or confidential under authority  
21 other than Welfare and Institutions Code section 827 et seq.  
22

23 (B) Sealed records, and if applicable the envelope or other container, must  
24 be marked as “Sealed by Order of the Court on (*Date*).”  
25

26 (C) Confidential records, and if applicable the envelope or other container,  
27 must be marked as “Confidential (*Basis*)—May Not Be Examined  
28 Without Court Order.” The basis must be a citation to or other brief  
29 description of the statute, rule of court, case, or other authority that  
30 establishes that the record must be closed to inspection in the court  
31 proceeding.  
32

33 (D) The superior court clerk or party transmitting sealed or confidential  
34 records to the reviewing court must prepare a sealed or confidential  
35 index of these materials. If the records include a transcript of any in-  
36 camera proceeding, the index must list the date and the names of all  
37 parties present at the hearing and their counsel. This index must be  
38 transmitted and kept with the sealed or confidential records.  
39

40 (2) Except as provided in (3) or by court order, the alphabetical and  
41 chronological indexes to a clerk’s or reporter’s transcript, appendix,  
42 supporting documents, or other records sent to the reviewing court that are  
43 available to the public must list each sealed or confidential record by title, not

1 disclosing the substance of the record, and must identify it as “Sealed” or  
2 “Confidential”—May Not Be Examined Without Court Order.”

- 3
- 4 (3) Records relating to a request for funds under Penal Code section 987.9 or  
5 other proceedings the occurrence of which is not to be disclosed under the  
6 court order or applicable law must not be bound together with, or  
7 electronically transmitted as a single document with, other sealed or  
8 confidential records and must not be listed in the index required under (1)(D)  
9 or the alphabetical or chronological indexes to a clerk’s or reporter’s  
10 transcript, appendix, supporting documents to a petition, or other records sent  
11 to the reviewing court.

12

13 *(Subd (c) amended effective January 1, 2016.)*

14

15 **(d) Transmission of and access to sealed and confidential records**

- 16
- 17 (1) Unless otherwise provided by (2)–(4) or other law or court order, a sealed or  
18 confidential record that is part of the record on appeal or the supporting  
19 documents or other records accompanying a motion, petition for a writ of  
20 habeas corpus, other writ petition, or other filing in the reviewing court must  
21 be transmitted only to the reviewing court and the party or parties who had  
22 access to the record in the trial court or other proceedings under review and  
23 may be examined only by the reviewing court and that party or parties. If a  
24 party’s attorney but not the party had access to the record in the trial court or  
25 other proceedings under review, only the party’s attorney may examine the  
26 record.
- 27
- 28 (2) Except as provided in (3), if the record is a reporter’s transcript or any  
29 document related to any in-camera hearing from which a party was excluded  
30 in the trial court, the record must be transmitted to and examined by only the  
31 reviewing court and the party or parties who participated in the in-camera  
32 hearing.
- 33
- 34 (3) A reporter’s transcript or any document related to an in-camera hearing  
35 concerning a confidential informant under Evidence Code sections 1041–  
36 1042 must be transmitted only to the reviewing court.
- 37
- 38 (4) A probation report must be transmitted only to the reviewing court and to  
39 appellate counsel for the People and the defendant who was the subject of the  
40 report.
- 41

42 *Rule 8.45 amended effective January 1, 2016; adopted effective January 1, 2014.*

43

1 **Advisory Committee Comment**

2  
3 **Subdivision (a).** Many laws address sealed and confidential records. These laws differ from each  
4 other in a variety of respects, including what information is closed to inspection, from whom it is  
5 closed, under what circumstances it is closed, and what procedures apply to closing or opening it  
6 to inspection. It is very important to determine if any such law applies with respect to a particular  
7 record because where other laws establish specific requirements that differ from the requirements  
8 in this article, those specific requirements supersede the requirements in this article.

9  
10 **Subdivision (b)(5).** Examples of confidential records are records in juvenile proceedings (Welf.  
11 & Inst. Code, § 827 and California Rules of Court, rule 8.401), records of the family conciliation  
12 court (Fam. Code, § 1818(b)), fee waiver applications (Gov. Code, § 68633(f)), and court-ordered  
13 diagnostic reports (Penal Code, § 1203.03). This term also encompasses records closed to  
14 inspection by a court order other than an order under rules 2.550–2.551 or 8.46, such as situations  
15 in which case law, statute, or rule has established a category of records that must be closed to  
16 inspection and a court has found that a particular record falls within that category and has ordered  
17 that it be closed to inspection. Examples include discovery material subject to a protective order  
18 under Code of Civil Procedure sections 2030.090, 2032.060, or 2033.080 and records closed to  
19 inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior*  
20 *Court* (1974) 11 Cal.3d 531. For more examples of confidential records, please see appendix 1 of  
21 the *Trial Court Records Manual* at [www.courts.ca.gov/documents/trial-court-records-](http://www.courts.ca.gov/documents/trial-court-records-manual.pdf)  
22 [manual.pdf](http://www.courts.ca.gov/documents/trial-court-records-manual.pdf).

23  
24 **Subdivisions (c) and (d).** The requirements in this rule for format and transmission of and access  
25 to sealed and confidential records apply only unless otherwise provided by law. Special  
26 requirements that govern transmission of and/or access to particular types of records may  
27 supersede the requirements in this rule. For example, rules 8.619(g) and 8.622(e) require copies  
28 of reporters’ transcripts in capital cases to be sent to the Habeas Corpus Resource Center and the  
29 California Appellate Project in San Francisco, and under rules 8.336(g)(2) and 8.409(e)(2), in  
30 non-capital felony appeals, if the defendant—or in juvenile appeals, if the appellant or the  
31 respondent—is not represented by appellate counsel when the clerk’s and reporter’s transcripts  
32 are certified as correct, the clerk must send that counsel’s copy of the transcripts to the district  
33 appellate project.

34  
35 **Subdivision (c)(1)(C).** For example, for juvenile records, this mark could state “Confidential—  
36 Welf. & Inst. Code, § 827” or “Confidential—Juvenile Case File”; for a fee waiver application,  
37 this mark could state “Confidential—Gov. Code, § 68633(f)” or “Confidential—Fee Waiver  
38 Application”; and for a transcript of an in-camera hearing under *People v. Marsden* (1970) 2  
39 Cal.3d 118, this mark could say “Confidential—*Marsden* Hearing.”

40  
41 **Subdivision (c)(2).** Subdivision (c)(2) requires that, with certain exceptions, the alphabetical and  
42 chronological indexes to the clerk’s and reporter’s transcripts, appendixes, and supporting  
43 documents must list any sealed and confidential records but identify them as sealed or

1 confidential. The purpose of this provision is to assist the parties in making—and the court in  
2 adjudicating—motions to unseal sealed records or to provide confidential records to a party. To  
3 protect sealed and confidential records from disclosure until the court issues an order, however,  
4 each index must identify sealed and confidential records without disclosing their substance.  
5

6 **Subdivision (c)(3).** Under certain circumstances, the Attorney General has a statutory right to  
7 request copies of documents filed under Penal Code section 987.9(d). To facilitate compliance  
8 with such requests, this subdivision requires that such documents not be bound with other  
9 confidential documents.  
10

11 **Subdivision (d).** See rule 8.47(b) for special requirements concerning access to certain  
12 confidential records.  
13

14 **Subdivision (d)(1) and (2).** Because the term “party” includes any attorney of record for that  
15 party, under rule 8.10(3), when a party who had access to a record in the trial court or other  
16 proceedings under review or who participated in an in-camera hearing—such as a *Marsden*  
17 hearing in a criminal or juvenile proceeding—is represented by appellate counsel, the confidential  
18 record or transcript must be transmitted to that party’s appellate counsel. Under rules 8.336(g)(2)  
19 and 8.409(e)(2), in non-capital felony appeals, if the defendant—or in juvenile appeals, if the  
20 appellant or the respondent—is not represented by appellate counsel when the clerk’s and  
21 reporter’s transcripts are certified as correct, the clerk must send the copy of the transcripts that  
22 would go to appellate counsel, including confidential records such as transcripts of *Marsden*  
23 hearings, to the district appellate project.  
24

25 **Subdivision (d)(4).** This rule limits to whom a copy of a probation report is transmitted based on  
26 the provisions of Penal Code section 1203.05, which limit who may inspect or copy probation  
27 reports.  
28

## 29 **Rule 8.46. Sealed records**

### 30 **(a) Application**

31  
32  
33 This rule applies to sealed records and records proposed to be sealed on appeal and  
34 in original proceedings, but does not apply to confidential records.  
35

36 *(Subd (a) amended effective January 1, 2014; previously amended effective January 1,*  
37 *2006, and January 1, 2007.)*  
38

### 39 **(b) Record sealed by the trial court**

40  
41 If a record sealed by order of the trial court is part of the record on appeal or the  
42 supporting documents or other records accompanying a motion, petition for a writ  
43 of habeas corpus, other writ petition, or other filing in the reviewing court:

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(1) The sealed record must remain sealed unless the reviewing court orders otherwise under (e). Rule 8.45 governs the form and transmission of and access to sealed records.

(2) The record on appeal or supporting documents filed in the reviewing court must also include:

(A) The motion or application to seal filed in the trial court;

(B) All documents filed in the trial court supporting or opposing the motion or application; and

(C) The trial court order sealing the record.

*(Subd (b) amended and relettered effective January 1, 2014; adopted as subd (c); previously amended effective January 1, 2004, and January 1, 2007.)*

**(c) Record not sealed by the trial court**

A record filed or lodged publicly in the trial court and not ordered sealed by that court must not be filed under seal in the reviewing court.

*(Subd (c) relettered effective January 1, 2014; adopted as subd (d).)*

**(d) Record not filed in the trial court; motion or application to file under seal**

(1) A record not filed in the trial court may be filed under seal in the reviewing court only by order of the reviewing court; it must not be filed under seal solely by stipulation or agreement of the parties.

(2) To obtain an order under (1), a party must serve and file a motion or application in the reviewing court, accompanied by a declaration containing facts sufficient to justify the sealing. At the same time, the party must lodge the record under (3), unless good cause is shown not to lodge it.

(3) To lodge a record, the party must transmit the record to the court in a secure manner that preserves the confidentiality of the record to be lodged. The record must be transmitted separate from the rest of a clerk’s or reporter’s transcript, appendix, supporting documents, or other records sent to the reviewing court with a cover sheet that complies with rule 8.40(c) and labels the contents as “CONDITIONALLY UNDER SEAL.” If the record is in



1 paper format, it must be placed in a sealed envelope or other appropriate  
2 sealed container.

- 3
- 4 (4) If necessary to prevent disclosure of material contained in a conditionally  
5 sealed record, any motion or application, any opposition, and any supporting  
6 documents must be filed in a redacted version and lodged in a complete  
7 unredacted version conditionally under seal. The cover of the redacted  
8 version must identify it as “Public—Redacts material from conditionally  
9 sealed record.” In juvenile cases, the cover of the redacted version must  
10 identify it as “Redacted version—Redacts material from conditionally sealed  
11 record.” The cover of the unredacted version must identify it as “May Not Be  
12 Examined Without Court Order—Contains material from conditionally  
13 sealed record.” Unless the court orders otherwise, any party that had access to  
14 the record in the trial court or other proceedings under review must be served  
15 with a complete, unredacted version of all papers as well as a redacted  
16 version.
- 17
- 18 (5) On receiving a lodged record, the clerk must note the date of receipt on the  
19 cover sheet and retain but not file the record. The record must remain  
20 conditionally under seal pending determination of the motion or application.
- 21
- 22 (6) The court may order a record filed under seal only if it makes the findings  
23 required by rule 2.550(d)–(e).
- 24
- 25 (7) If the court denies the motion or application, ~~the clerk must not place the~~  
26 ~~lodged record in the case file but must return it to the submitting party unless~~  
27 ~~that party notifies the clerk in writing that the record is to be filed. Unless~~  
28 ~~otherwise ordered by the court, the submitting party must notify the clerk~~  
29 ~~within 10 days after the order denying the motion or application the moving~~  
30 ~~party may notify the court that the lodged record is to be filed unsealed. This~~  
31 ~~notification must be received within 10 days of the order denying the motion~~  
32 ~~or application to seal, unless otherwise ordered by the court. On receipt of~~  
33 ~~this notification, the clerk must unseal and file the record. If the moving party~~  
34 ~~does not notify the court within 10 days of the order, the clerk must (1) return~~  
35 ~~the lodged record to the moving party if it is in paper form, or (2)~~  
36 ~~permanently delete the lodged record if it is in electronic form.~~
- 37
- 38 (8) An order sealing the record must direct the sealing of only those documents  
39 and pages or, if reasonably practical, portions of those documents and pages,  
40 that contain the material that needs to be placed under seal. All other portions  
41 of each document or page must be included in the public file.
- 42

1 (9) Unless the sealing order provides otherwise, it prohibits the parties from  
2 disclosing the contents of any materials that have been sealed in anything that  
3 is subsequently publicly filed.  
4

5 *(Subd (d) amended effective January 1, 2016; adopted as subd (e); previously amended*  
6 *effective July 1, 2002, January 1, 2004, and January 1, 2007; previously amended and*  
7 *relettered as subd (d) effective January 1, 2014.)*  
8

9 **(e) Unsealing a record in the reviewing court**

10  
11 (1) A sealed record must not be unsealed except on order of the reviewing court.  
12

13 (2) Any person or entity may serve and file a motion, application, or petition in  
14 the reviewing court to unseal a record.  
15

16 (3) If the reviewing court proposes to order a record unsealed on its own motion,  
17 the court must send notice to the parties **stating the reason for unsealing the**  
18 **record**. Unless otherwise ordered by the court, any party may serve and file  
19 an opposition within 10 days after the notice is sent, and any other party may  
20 serve and file a response within 5 days after an opposition is filed.  
21

22 (4) If necessary to prevent disclosure of material contained in a sealed record, the  
23 motion, application, or petition under (2) and any opposition, response, and  
24 supporting documents under (2) or (3) must be filed in both a redacted  
25 version and a complete unredacted version. The cover of the redacted version  
26 must identify it as “Public—Redacts material from sealed record.” In juvenile  
27 cases, the cover of the redacted version must identify it as “Redacted  
28 version—Redacts material from sealed record.” The cover of the unredacted  
29 version must identify it as “May Not Be Examined Without Court Order—  
30 Contains material from sealed record.” Unless the court orders otherwise, any  
31 party that had access to the sealed record in the trial court or other  
32 proceedings under review must be served with a complete, unredacted  
33 version of all papers as well as a redacted version. If a party’s attorney but  
34 not the party had access to the record in the trial court or other proceedings  
35 under review, only the party’s attorney may be served with the complete,  
36 unredacted version.  
37

38 (5) In determining whether to unseal a record, the court must consider the  
39 matters addressed in rule 2.550(c)–(e).  
40

41 (6) The order unsealing a record must state whether the record is unsealed  
42 entirely or in part. If the order unseals only part of the record or unseals the  
43 record only as to certain persons, the order must specify the particular **parts**

1 of the records that are unsealed, the particular persons who may have access  
2 to the record, or both.

- 3  
4 (7) If, in addition to the record that is the subject of the sealing order, a court has  
5 previously ordered the sealing order itself, the register of actions, or any other  
6 court records relating to the case to be sealed, the unsealing order must state  
7 whether these additional records are unsealed.

8  
9 *(Subd (e) amended effective January 1, 2016; adopted as subd (f); previously amended*  
10 *effective January 1, 2004, and January 1, 2007; previously amended and relettered as*  
11 *subd (e) effective January 1, 2014.)*

12  
13 **(f) Disclosure of nonpublic material in public filings prohibited**

- 14  
15 (1) Nothing filed publicly in the reviewing court—including any application,  
16 brief, petition, or memorandum—may disclose material contained in a record  
17 that is sealed, lodged conditionally under seal, or otherwise subject to a  
18 pending motion to file under seal.
- 19  
20 (2) If it is necessary to disclose material contained in a sealed record in a filing in  
21 the reviewing court, two versions must be filed:
- 22  
23 (A) A public redacted version. The cover of this version must identify it as  
24 “Public—Redacts material from sealed record.” In juvenile cases, the  
25 cover of the redacted version must identify it as “Redacted Version—  
26 Redacts material from sealed record.”
- 27  
28 (B) An unredacted version. If this version is in paper format, it must be  
29 placed in a sealed envelope or other appropriate sealed container. The  
30 cover of this version, and if applicable the envelope or other container,  
31 must identify it as “May Not Be Examined Without Court Order—  
32 Contains material from sealed record.” Sealed material disclosed in this  
33 version must be identified and accompanied by a citation to the court  
34 order sealing that material.
- 35  
36 (C) Unless the court orders otherwise, any party who had access to the  
37 sealed record in the trial court or other proceedings under review must  
38 be served with both the unredacted version of all papers as well as the  
39 redacted version. Other parties must be served with only the public  
40 redacted version. If a party’s attorney but not the party had access to  
41 the record in the trial court or other proceedings under review, only the  
42 party’s attorney may be served with the unredacted version.
- 43

- 1 (3) If it is necessary to disclose material contained in a conditionally sealed  
2 record in a filing in the reviewing court:  
3
- 4 (A) A public redacted version must be filed. The cover of this version must  
5 identify it as “Public—Redacts material from conditionally sealed  
6 record.” In juvenile cases, the cover of the redacted version must  
7 identify it as “Redacted version—Redacts material from conditionally  
8 sealed record.”  
9
- 10 (B) An unredacted version must be lodged. The filing must be transmitted  
11 in a secure manner that preserves the confidentiality of the filing being  
12 lodged. If this version is in paper format, it must be placed in a sealed  
13 envelope or other appropriate sealed container. The cover of this  
14 version, and if applicable the envelope or other container, must identify  
15 it as “May Not Be Examined Without Court Order—Contains material  
16 from conditionally sealed record.” Conditionally sealed material  
17 disclosed in this version must be identified.  
18
- 19 (C) Unless the court orders otherwise, any party who had access to the  
20 conditionally sealed record in the trial court or other proceedings under  
21 review must be served with both the unredacted version of all papers as  
22 well as the redacted version. Other parties must be served with only the  
23 public redacted version.  
24
- 25 (D) If the court denies the motion or application to seal the record, the clerk  
26 must not place the unredacted version lodged under (B) in the case file  
27 but must return it to the party who filed the application or motion to  
28 seal unless that party notifies the clerk that the record is to be publicly  
29 filed, the party who filed the motion or application to seal may notify  
30 the court that the unredacted version lodged under (B) is to be filed  
31 unsealed. This notification must be received within 10 days of the order  
32 denying the motion or application to seal, unless otherwise ordered by  
33 the court. On receipt of this notification, the clerk must unseal and file  
34 the lodged unredacted version. If the party who filed the motion or  
35 application to seal does not notify the court within 10 days of the order,  
36 the clerk must (1) return the lodged unredacted version to the party who  
37 filed the motion or application to seal if it is in paper form, or (2)  
38 permanently delete the lodged unredacted version if it is in electronic  
39 form, as provided in (d)(7).  
40

41 *(Subd (f) amended and relettered effective January 1, 2014; adopted as subd (g);*  
42 *previously amended effective January 1, 2007.)*  
43

1 Rule 8.46 amended effective January 1, 2016; repealed and adopted as rule 12.5 effective  
2 January 1, 2002; previously amended and renumbered as rule 8.160 effective January 1, 2007;  
3 previously renumbered as rule 8.46 effective January 1, 2010; previously amended effective July  
4 1, 2002, January 1, 2004, January 1, 2006, and January 1, 2014.

5  
6 **Advisory Committee Comment**

7  
8 This rule and rules 2.550–2.551 for the trial courts provide a standard and procedures for courts to  
9 use when a request is made to seal a record. The standard is based on *NBC Subsidiary (KNBC-*  
10 *TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178. The sealed records rules apply to civil and  
11 criminal cases. They recognize the First Amendment right of access to documents used at trial or  
12 as a basis of adjudication. Except as otherwise expressly provided in this rule, motions in a  
13 reviewing court relating to the sealing or unsealing of a record must follow rule 8.54.

14  
15 **Rule 8.47. Confidential records**

16  
17 **(a) Application**

18  
19 This rule applies to confidential records but does not apply to records sealed by  
20 court order under rules 2.550–2.551 or rule 8.46 or to conditionally sealed records  
21 under rule 8.46. Unless otherwise provided by this rule or other law, rule 8.45  
22 governs the form and transmission of and access to confidential records.

23  
24 **(b) Records of *Marsden* hearings and other in-camera proceedings**

- 25  
26 (1) This subdivision applies to reporter’s transcripts of and documents filed or  
27 lodged by a defendant in connection with:  
28  
29 (A) An in-camera hearing conducted by the superior court under *People v.*  
30 *Marsden* (1970) 2 Cal.3d 118; or  
31  
32 (B) Another in-camera hearing at which the defendant was present but from  
33 which the People were excluded in order to prevent disclosure of  
34 information about defense strategy or other information to which the  
35 prosecution was not allowed access at the time of the hearing.  
36  
37 (2) Except as provided in (3), if the defendant raises a *Marsden* issue or an issue  
38 related to another in-camera hearing covered by this rule in a brief, petition,  
39 or other filing in the reviewing court, the following procedures apply:  
40  
41 (A) The brief, including any portion that discloses matters contained in the  
42 transcript of the in-camera hearing, and other documents filed or lodged  
43 in connection with the hearing, must be filed publicly. The requirement

1 to publicly file this brief does not apply in juvenile cases; rule 8.401  
2 governs the format of and access to such briefs in juvenile cases.

3  
4 (B) The People may serve and file an application requesting a copy of the  
5 reporter’s transcript of, and documents filed or lodged by a defendant  
6 in connection with, the in-camera hearing.

7  
8 (C) Within 10 days after the application is filed, the defendant may serve  
9 and file opposition to this application on the basis that the transcript or  
10 documents contain confidential material not relevant to the issues  
11 raised by the defendant in the reviewing court. Any such opposition  
12 must identify the page and line numbers of the transcript or documents  
13 containing this irrelevant material.

14  
15 (D) If the defendant does not timely serve and file opposition to the  
16 application, the reviewing court clerk must send to the People a copy of  
17 the reporter’s transcript of, and documents filed or lodged by a  
18 defendant in connection with, the in-camera hearing.

19  
20 (3) A defendant may serve and file a motion or application in the reviewing court  
21 requesting permission to file under seal a brief, petition, or other filing that  
22 raises a *Marsden* issue or an issue related to another in-camera hearing  
23 covered by this subdivision, and requesting an order maintaining the  
24 confidentiality of the relevant material from the reporter’s transcript of, or  
25 documents filed or lodged in connection with, the in-camera hearing.

26  
27 (A) Except as otherwise provided in this rule, rule 8.46(d) governs a motion  
28 or application under this subdivision.

29  
30 (B) The declaration accompanying the motion or application must contain  
31 facts sufficient to justify an order maintaining the confidentiality of the  
32 relevant material from the reporter’s transcript of, or documents filed or  
33 lodged in connection with, the in-camera hearing and sealing of the  
34 brief, petition, or other filing.

35  
36 (C) At the time the motion or application is filed, the defendant must:

37  
38 (i) File a public redacted version of the brief, petition, or other filing  
39 that he or she is requesting be filed under seal. The cover of this  
40 version must identify it as “Public—Redacts material from  
41 conditionally sealed record.” The requirement to publicly file the  
42 redacted version does not apply in juvenile cases; rule 8.401  
43 generally governs access to filings in juvenile cases. In juvenile

1 cases, the cover of the redacted version must identify it as  
2 “Redacted version—Redacts material from conditionally sealed  
3 record.”  
4

- 5 (ii) Lodge an unredacted version of the brief, petition, or other filing  
6 that he or she is requesting be filed under seal. The filing must be  
7 transmitted in a secure manner that preserves the confidentiality  
8 of the filing being lodged. If this version is in paper format, it  
9 must be placed in a sealed envelope or other appropriate sealed  
10 container. The cover of the unredacted version of the document,  
11 and if applicable the envelope or other container, must identify it  
12 as “May Not Be Examined Without Court Order—Contains  
13 material from conditionally sealed record.” Conditionally sealed  
14 material disclosed in this version must be identified.  
15

- 16 (D) If the court denies the motion or application to file the brief, petition, or  
17 other filing under seal, the clerk must not place the unredacted brief,  
18 petition, or other filing lodged under (C)(ii) in the case file but must  
19 return it to the defendant unless the defendant notifies the clerk in  
20 writing that it is to be filed. Unless otherwise ordered by the court, the  
21 defendant must notify the clerk within 10 days after the order denying  
22 the motion or application the defendant may notify the court that the  
23 unredacted brief, petition, or other filing lodged under (C)(ii) is to be  
24 filed unsealed. This notification must be received within 10 days of the  
25 order denying the motion or application to file the brief, petition, or  
26 other filing under seal, unless otherwise ordered by the court. On  
27 receipt of this notification, the clerk must unseal and file the lodged  
28 unredacted brief, petition, or other filing. If the defendant does not  
29 notify the court within 10 days of the order, the clerk must (1) return  
30 the lodged unredacted brief, petition, or other filing to the moving party  
31 if it is in paper form, or (2) permanently delete the lodged unredacted  
32 brief, petition, or other filing if it is in electronic form.  
33

34 *(Subd (b) amended effective January 1, 2016.)*  
35

36 **(c) Other confidential records**  
37

38 Except as otherwise provided by law or order of the reviewing court:  
39

- 40 (1) Nothing filed publicly in the reviewing court—including any application,  
41 brief, petition, or memorandum—may disclose material contained in a  
42 confidential record, including a record that, by law, a party may choose be

1 kept confidential in reviewing court proceedings and that the party has  
2 chosen to keep confidential.

3  
4 (2) To maintain the confidentiality of material contained in a confidential record,  
5 if it is necessary to disclose such material in a filing in the reviewing court, a  
6 party may serve and file a motion or application in the reviewing court  
7 requesting permission for the filing to be under seal.

8  
9 (A) Except as otherwise provided in this rule, rule 8.46(d) governs a motion  
10 or application under this subdivision.

11  
12 (B) The declaration accompanying the motion or application must contain  
13 facts sufficient to establish that the record is required by law to be  
14 closed to inspection in the reviewing court and to justify sealing of the  
15 brief, petition, or other filing.

16  
17 (C) At the time the motion or application is filed, the party must:

18  
19 (i) File a redacted version of the brief, petition, or other filing that he  
20 or she is requesting be filed under seal. The cover of this version  
21 must identify it as “Public—Redacts material from conditionally  
22 sealed record.” In juvenile cases, the cover of this version must  
23 identify it as “Redacted version—Redacts material from  
24 conditionally sealed record.”

25  
26 (ii) Lodge an unredacted version of the brief, petition, or other filing  
27 that he or she is requesting be filed under seal. The filing must be  
28 transmitted in a secure manner that preserves the confidentiality  
29 of the filing being lodged. If this version is in paper format, it  
30 must be placed in a sealed envelope or other appropriate sealed  
31 container. The cover of the unredacted version of the document,  
32 and if applicable the envelope or other container, must identify it  
33 as “May Not Be Examined Without Court Order—Contains  
34 material from conditionally sealed record.” Material from a  
35 confidential record disclosed in this version must be identified  
36 and accompanied by a citation to the statute, rule of court, case,  
37 or other authority establishing that the record is required by law  
38 to be closed to inspection in the reviewing court.

39  
40 (D) If the court denies the motion or application to file the brief, petition, or  
41 other filing under seal, the clerk must not place the unredacted brief,  
42 petition, or other filing lodged under (C)(ii) in the case file but must  
43 return it to the lodging party unless the party notifies the clerk in



1 writing that it is to be filed. Unless otherwise ordered by the court, the  
2 party must notify the clerk within 10 days after the order denying the  
3 motion or application the defendant may notify the court that the  
4 unredacted brief, petition, or other filing lodged under (C)(ii) is to be  
5 filed unsealed. This notification must be received within 10 days of the  
6 order denying the motion or application to file the brief, petition, or  
7 other filing under seal, unless otherwise ordered by the court. On  
8 receipt of this notification, the clerk must unseal and file the lodged  
9 unredacted brief, petition, or other filing. If the defendant does not  
10 notify the court within 10 days of the order, the clerk must (1) return  
11 the lodged unredacted brief, petition, or other filing to the moving party  
12 if it is in paper form, or (2) permanently delete the lodged unredacted  
13 brief, petition, or other filing if it is in electronic form.

14  
15 *(Subd (c) amended effective January 1, 2016.)*

16  
17 *Rule 8.47 amended effective January 1, 2016; adopted effective January 1, 2014.*

18  
19 **Advisory Committee Comment**

20  
21 **Subdivisions (a) and (c).** Note that there are many laws that address the confidentiality of  
22 various records. These laws differ from each other in a variety of respects, including what  
23 information is closed to inspection, from whom it is closed, under what circumstances it is closed,  
24 and what procedures apply to closing or opening it to inspection. It is very important to determine  
25 if any such law applies with respect to a particular record because this rule applies only to  
26 confidential records as defined in rule 8.45, and the procedures in this rule apply only “unless  
27 otherwise provided by law.” Thus, where other laws establish specific requirements that differ  
28 from the requirements in this rule, those specific requirements supersede the requirements in this  
29 rule. For example, although Penal Code section 1203.05 limits who may inspect or copy  
30 probation reports, much of the material contained in such reports—such as the factual summary  
31 of the offense(s); the evaluations, analyses, calculations, and recommendations of the probation  
32 officer; and other nonpersonal information—is not considered confidential under that statute and  
33 is routinely discussed in openly filed appellate briefs (see *People v. Connor* (2004) 115  
34 Cal.App.4th 669, 695–696). In addition, this rule does not alter any existing authority for a court  
35 to open a confidential record to inspection by the public or another party to a proceeding.

36  
37 **Subdivision (c)(1).** The reference in this provision to records that a party may choose be kept  
38 confidential in reviewing court proceedings is intended to encompass situations in which a record  
39 may be subject to a privilege that a party may choose to maintain or choose to waive.

40  
41 **Subdivision (c)(2).** Note that when a record has been sealed by court order, rule 8.46(f)(2)  
42 requires a party to file redacted (public) and unredacted (sealed) versions of any filing that  
43 discloses material from the sealed record; it does not require the party to make a motion or

1 application for permission to do so. By contrast, this rule requires court permission before  
2 redacted (public) and unredacted (sealed) filings may be made to prevent disclosure of material  
3 from confidential records.

1 Title 8. Appellate Rules

2  
3 Division 1. Rules Relating to the Supreme Court and Courts of Appeal

4  
5 Chapter 1. General Provisions

6  
7 Article 4. Applications and Motions; Extending and Shortening Time

8  
9  
10 Rule 8.54. Motions

11  
12 (a) Motion and opposition

- 13  
14 (1) Except as these rules provide otherwise, a party wanting to make a motion in  
15 a reviewing court must serve and file a written motion stating the grounds  
16 and the relief requested and identifying any documents on which the motion  
17 is based.  
18  
19 (2) A motion must be accompanied by a memorandum and, if it is based on  
20 matters outside the record, by declarations or other supporting evidence.  
21  
22 (3) Any opposition must be served and filed within 15 days after the motion is  
23 filed.

24  
25 *(Subd (a) amended effective January 1, 2007.)*

26  
27 (b) Disposition

- 28  
29 (1) The court may rule on a motion at any time after an opposition or other  
30 response is filed or the time to oppose has expired.  
31  
32 (2) On a party's request or its own motion, the court may place a motion on  
33 calendar for a hearing. The clerk must promptly send each party a notice of  
34 the date and time of the hearing.

35  
36 (c) Failure to oppose motion

37  
38 A failure to oppose a motion may be deemed a consent to the granting of the  
39 motion.

40  
41 *Rule 8.54 amended and renumbered effective January 1, 2007; repealed and adopted as rule 41*  
42 *effective January 1, 2005.*

43

**Advisory Committee Comment**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11

**Subdivision (a).** A party other than the appellant or petitioner who files a motion or opposition to a motion may be required to pay a filing fee under Government Code sections 68926 or 68927 if the motion or opposition is the first document filed in the appeal or writ proceeding in the reviewing court by that party. See rule 8.25(c).

**Subdivision (c).** Subdivision (c) provides that a “failure to oppose a motion” may be deemed a consent to the granting of the motion. The provision is not intended to indicate a position on the question whether there is an implied right to a hearing to oppose a motion to dismiss an appeal.



## JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688  
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

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### MEMORANDUM

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Date	Action Requested
January 26, 2018	Please review
To	Deadline
Members of the Joint Appellate Technology Subcommittee	February 5, 2018
From	Contact
Patrick O'Donnell, Principal Managing Attorney Jane Whang, Attorney Legal Services, Judicial Council	Patrick O'Donnell, 415-865-7665, patrick.o'donnell@jud.ca.gov
Subject	
Privacy Resource Guide: Draft Appellate Provisions	

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#### Executive Summary

The Information Technology Committee (ITAC) is in the process of developing a *Privacy Resource Guide* (PRG). This guide is designed to assist the trial and appellate courts in protecting the privacy interests of members of the public who become involved with the California Court system while providing the public with reasonable access to court records.

ITAC's Rules and Policy Subcommittee (R & P Subcommittee), which is leading this initiative, is very interested in receiving input, and if possible some direct assistance, from other advisory bodies in drafting and preparing the PRG. In particular, because the PRG will contain sections focused on the appellate courts, the R & P Subcommittee is asking the Joint Appellate Technology Subcommittee (JATS) to review and provide assistance in developing the PRG. This memorandum explains the purpose and scope of the PRG and identifies some of the specific matters on which the R & P Subcommittee seeks assistance from JATS.

## Privacy Resource Guide

The purpose of the *Privacy Resource Guide* is to assist the trial and appellate courts—and more generally the judicial branch—to protect the privacy interests of persons involved with the California court system while providing the public with reasonable access to the courts and the records to which they are entitled.<sup>1</sup>

The resource guide will provide assistance in two ways. First, it will provide information about the legal requirements that guide the courts' activities and operations relating to protecting the privacy of persons involved with the court system. Second, the guide will provide practical advice for courts on the best practices for carrying out their obligations to protect people's privacy.

The creation of the resource guide at this time is important, among other reasons, because of the major transition underway that is transforming the courts from a paper-based physical system to one that relies increasingly on electronic records and other forms of technology to conduct business. With this change, much information in the courts that was practically obscure can now be made available remotely in easily searchable format. It now requires careful analysis and the deliberate institution of new practices to ensure that proper privacy protections are in place.

## Table of Contents

The scope of the PRG is quite broad, as indicated in the attached draft Table of Contents.<sup>2</sup> Among the general topics covered are privacy in court records (confidential and sealed records), access to court records, financial privacy in civil and criminal cases, privacy in judicial administrative records, and the privacy of witnesses, jurors, and other non-parties. The discussion of these topics in the PRG focuses on the legal requirements that guide the courts' activities and operations relating to protecting the privacy of persons involved with the court system. Preliminary draft materials on many of these topics have already been prepared and will soon be ready for review.

Other proposed sections of the PRG will focus less on legal requirements and more on best practices that courts might implement to protect the privacy of persons involved with the court system. For example, these sections of the PRG will address issues such as information security, court management of protected private information, privacy protections for users of court websites, and privacy protection in court-related services. These sections are less well developed and will require more work in the future.

---

<sup>1</sup> See draft Introduction to the Privacy Resource Guide, Attachment 1 to this memorandum.

<sup>2</sup> See draft Table of Contents, Attachment 2 to this memorandum.

## Draft Appellate Sections

For JATS review, attached to this memorandum are two sets of preliminary draft materials relating to the appellate courts.<sup>3</sup>

The first of the attachments contains information to be placed in Section 2 of the PRG, Privacy in Court Records. The appellate materials in Section 2 are located in subsection 2.2, Confidential and Sealed Records in the Appellate Courts, and Section 2.3, Privacy in the Opinions of the Court of Appeal. As with much of the other materials in the PRG developed so far, these materials focus on rules of court: the appellate rules on confidentiality and sealed records (rules 8.45, 8.46, and 8.47) and the rules on privacy in appellate opinions (rules 8.90 and 8.401).

The second attachment contains information to be placed in Section 3 of the PRG, Access to Court Records. Section 3.2 is on the rules on public access to records in the appellate courts; it includes a discussion of the public access rules (rules 8.80-8.85).

## Next Steps

The present draft materials relating to the appellate courts principally concern legal and policy issues. JATS members are asked to review and comment upon the attached sections of the PRG.

However, these materials do not include any suggested best practices or other similar materials. If the members of JATS have any practical advice on protecting privacy in the appellate courts, they are encouraged to make suggestions and possibly prepare new materials to be added to the PRG.

## Attachments

1. Draft Introduction to the Privacy Resource Guide, at pp. 4-6
2. Draft Table of Contents to the Privacy Resource Guide, at pp. 7-14
3. Draft Appellate sections (part 1), at pp. 15-17
4. Draft Appellate sections (part 2), at pp. 18-21

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<sup>3</sup> See draft appellate Attachments 3 and 4.

# 1. Introduction

## 1.1 Background

Privacy is a fundamental right guaranteed by the California Constitution. (Cal. Const., art I, § 1; see *Westbrook v. County of Los Angeles* (1994) 27 Cal. App 157, 164–166.) To protect people’s privacy, numerous laws have been enacted that provide for the confidentiality of various kinds of personal information. In adjudicating cases, courts have a major role in enforcing these laws and protecting the privacy rights of citizens. Courts also are involved in protecting people’s privacy rights through their own day-to-day operations, including preserving the integrity of confidential and sealed records, ensuring that sensitive data is secure, and protecting private personal information.

On the other hand, access to information concerning the conduct of the public’s business is also a fundamental right of every citizen. (Cal. Const., art I, § 3(b); see *NBC Subsidiary (KNBC-TV) v. Superior Court of Los Angeles County* (1999) 20 Cal.4th 1178, 1217–1218 (substantive courtroom proceedings in ordinary civil cases are “presumptively open”).) Courts are obligated to conduct their business in an open and transparent manner. (See also Cal. Rules of Court, rule 10.500.) Similarly, court records are presumed to be open and must be made accessible to the public unless made confidential or sealed. (See Cal. Rules of Court, rule 5.550(c).)<sup>1</sup> Openness and accessibility are important to preserve trust and confidence in the judicial system; and they are necessary to carry on the regular, ongoing business of the courts.<sup>2</sup>

## 1.2 Purpose of the Privacy Resource Guide

The purpose of this resource guide is to assist the trial and appellate courts—and more generally the judicial branch—to protect the privacy interests of persons involved with the California court system while providing the public with reasonable access to the courts and the records to which they are entitled.

The resource guide provides assistance in two ways. First, it provides information about the legal requirements that guide the courts’ activities and operations relating to protecting the privacy of persons involved with the court system. Second, the guide provides practical advice for courts on the best practices for carrying out their obligations to protect people’s privacy.

The creation of the resource guide at this time is important, among other reasons, because of the major transition underway that is transforming the courts from a paper-based physical system to

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<sup>1</sup> All references to rules in this Resource Guide are to the California Rules of Court, unless otherwise indicated.

<sup>2</sup> In recognition of the special role that courts play in conducting the people’s business, the Legislature has in some instances exempted the courts from laws enacted to protect personal privacy. (See, e.g., Civ. Code, §1798.3(b)(1) [excluding from the definition of “agency” covered by the Information Privacy Act of 1977 “[a]ny agency established under Article VI of the California Constitution”—that is, the courts]).



one that relies increasingly on electronic records and other forms of technology to conduct business. With this change, much information in the courts that was practically obscure can now be made available remotely in easily searchable format. It requires careful analysis and the deliberate institution of new practices to ensure that proper privacy protections are now in place.

### **1.3 Key Definitions**

As used in this Resource Guide, unless the context or subject matter otherwise requires:

- (1) “Court record” means any document, paper, or exhibit filed by the parties to an action or proceeding; any order or judgment of the court; any item listed in Government Code section 68151, excluding any reporter’s transcript for which the reporter is entitled to receive a fee for any copy. The term does not include the personal notes or preliminary memoranda of judges or other judicial branch personnel. (Cal. Rules of Court, rule 2.502.)
- (2) “Electronic record” means a court record that requires the use of an electronic device to access. The term includes both a document that has been filed electronically and an electronic copy or version of a record that was filed in paper form. (See, e.g., Cal. Rules of Court, rule 8.82(2).)
- (3) "Adjudicative record" means any writing prepared for or filed or used in a court proceeding, the judicial deliberation process, or the assignment or reassignment of cases and of justices, judges (including temporary and assigned judges), and subordinate judicial officers, or of counsel appointed or employed by the court. (Cal. Rules of Court, rule 10.500(c)(1).)
- (4) “Confidential record” is a record that based on statute, rule, or case law is not open to inspection by the public.
- (5) "Judicial administrative record" means any writing containing information relating to the conduct of the people's business that is prepared, owned, used, or retained by a judicial branch entity regardless of the writing's physical form or characteristics, except an adjudicative record. The term "judicial administrative record" does not include records of a personal nature that are not used in or do not relate to the people's business, such as personal notes, memoranda, electronic mail, calendar entries, and records of Internet use. (Cal. Rules of Court, rule 10.500(c)(2).)
- (6) “Protected personal information” or “PPI” means any personal information or characteristics that may be used to distinguish or trace an individual’s identity, such as their name, Social Security Number (SSN), or biometric records. (32 CFR 701.101.)
- (7) “Rule” means a rule of the California Rules of Court.

- (8) "Sealed record" means a record that by court order is not open to inspection by the public. (See Cal. Rules of Court, rule 2.550(b)(2))
  
- (9) "Writing" means any handwriting, typewriting, printing, photographing, photocopying, electronic mail, fax, and every other means of recording on any tangible thing any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations, regardless of the manner in which the record has been stored. (Cal. Rules of Court, rule 10.500(c)(6).)

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## **2.2 Confidential and Sealed Records in the Appellate Courts**

For appeals and original proceedings in the Supreme Court and Courts of Appeal, specific rules have been adopted relating sealed and confidential records: rule 8.45 (general provisions), rule 8.46 (sealed records), and rule 8.47 (confidential records).

### **2.2.1 General provisions**

[Rule 8.45](#) provides general requirements for the handling of sealed and confidential records by a reviewing court. These records must be kept separate from the rest of the records sent to the court and must be kept in a secure manner that preserves their confidentiality. (Rule 8.45(c)(1).) The rule prescribes the format of sealed and confidential records, and states the manner in which these records are to be listed in alphabetical and chronological indexes available to the public. (Rule 8.45(c)(2).) It describes the special treatment required for records relating to a request for funds under Penal Code 987.9. (Rule 8.45(c)(3).)

Rule 8.45 also provides guidance on the transmission of and access to sealed and confidential records. For instance, unless otherwise provided by law, a sealed or confidential record that is part of the record on appeal must be transmitted only to the reviewing court and the party or parties who had access to the record in the trial court and may be examined only by the reviewing court and that party or parties. If a party's attorney but not the party had access to the record in the trial court, only the party's attorney may examine the record. (Rule 8.45(d)(1).)

### **2.2.2 Sealed records**

[Rule 8.46](#) is the basic rule on sealed records in the reviewing court. First, it provides that if a record sealed by order of the trial court is part of the record on appeal, the sealed record must remain sealed unless the reviewing court orders otherwise. The record on appeal or supporting documents must include the motion or application to seal in the trial court, all documents filed in the trial court supporting or opposing the motion or application to seal, and the trial court order sealing the record. (Rule 8.46(b)((1)–(2).)

Second, a record filed or lodged publicly in the trial court and not ordered sealed must not be filed under seal in the reviewing court. (Rule 8.46(c).)

Third, the rule prescribes the procedures for obtaining an order from a reviewing court to seal a record that was not filed in the trial court. (Rule 8.46(d).)

Fourth, a sealed record must not be unsealed except on order of the reviewing court. The rule prescribes the procedures for seeking to unseal a record in the reviewing court. (Rule 8.46(e).)

Fifth, the rule prohibits the public filing in a reviewing court of material that was filed under seal, lodged conditionally under seal, or otherwise subject to a pending motion to file under seal. (Rule 8.46(f).)

### **2.2.3 Confidential records**

[Rule 8.47](#) governs the form and transmission of and access to confidential records (as distinguished from records sealed by court order or filed conditionally sealed) in the appellate courts. (Rule 8.47(a).) The rule includes a subdivision specifically on how to handle reporter's transcripts and documents filed or lodged in *Marsden* hearings and other in-camera proceedings. (Rule 8.47(b).) It also contains general procedures for handling other confidential records. (Rule 8.47(c).)

## **2.3 Privacy in Opinions of the Courts of Appeal**

Based on concerns about the need for privacy protection, two rules of court have been adopted relating to the references to specific individuals in opinions and certain other records.

### **2.3.1 Privacy in appellate opinions**

[Rule 8.90](#), adopted effective January 1, 2017, provides guidance on the use of names in appellate court opinions, except for names in juvenile cases that are covered by rule 8.401 (discussed below). The rule states that, to protect personal privacy interests, the reviewing court should consider referring in opinions to people on the following list by first name and last initial or, if the first name is unusual or other circumstances would defeat the objective of anonymity, by initials only:

- (1) Children in all proceedings under the Family Code and protected persons in domestic violence–prevention proceedings;
- (2) Wards in guardianship proceedings and conservatees in conservatorship proceedings;
- (3) Patients in mental health proceedings;
- (4) Victims in criminal proceedings;
- (5) Protected persons in civil harassment proceedings under Code of Civil Procedure section 527.6;
- (6) Protected persons in workplace violence–prevention proceedings under Code of Civil Procedure section 527.8;
- (7) Protected persons in private postsecondary school violence–prevention proceedings under Code of Civil Procedure section 527.85;
- (8) Protected persons in elder or dependent adult abuse–prevention proceedings under Welfare and Institutions Code section 15657.03;
- (9) Minors or persons with disabilities in proceedings to compromise the claims of a minor or a person with a disability;

(10) Persons in other circumstances in which personal privacy interests support not using the person's name; and

(11) Persons in other circumstances in which use of that person's full name would defeat the objective of anonymity for a person identified in (1)–(10).

### **2.3.2 Confidentiality in juvenile records and opinions**

To protect the anonymity of juveniles involved in juvenile court proceedings, [rule 8.401](#), adopted effective January 1, 2012, provides:

- In all documents filed by the parties in juvenile appeals and writ proceedings, a juvenile must be referred to by first name and last initial; but if the first name is unusual or other circumstances would defeat the objective of anonymity, the initials of the juvenile may be used.
- In opinions that are not certified for publication and in court orders, a juvenile may be referred to either by first name and last initial or by his or her initials. In opinions that are certified for publication, a juvenile must be referred to by first name and last initial; but if the first name is unusual or other circumstances would defeat the objective of anonymity, the initials of the juvenile may be used.
- In all documents filed by the parties and in all court orders and opinions in juvenile appeals and writ proceedings, if use of the full name of a juvenile's relative would defeat the objective of anonymity for the juvenile, the relative must be referred to by first name and last initial; but if the first name is unusual or other circumstances would defeat the objective of anonymity for the juvenile, the initials of the relative may be used.

(Rule 8.401(a).)

Rule 8.401 also contains provisions regarding access to filed documents. In general, the record on appeal and documents filed by the parties in proceedings under this chapter may be inspected only by the reviewing court and appellate project personnel, the parties or their attorneys, and other persons the court may designate. Filed documents that protect anonymity as required by subdivision (a) may be inspected by any person or entity that is considering filing an amicus curiae brief. And access to records that are sealed or confidential under authority other than Welfare and Institutions Code section 827 is governed by rules 8.45–8.47 and the applicable statute, rule, sealing order, or other authority.

Rule 8.401 also allows the court to limit or prohibit admittance to oral argument. (Rule 8.401(c).)

## **3.2 Public Access to Records in the Courts of Appeal**

Appellate court records are assumed to be open unless they are confidential as a matter of law or are sealed by court order. Confidential and sealed records on appeal are described in section 2.2 on rules 8.46 (sealed records) and rule 8.47 (confidential records). This section addresses other rules on access to appellate court records that are intended to protect persons' privacy interests.

### **3.2.1. The transition to electronic court records in the courts of appeal**

Historically, paper records that are not confidential or sealed have been available at the appellate court for public inspection and copying. However, like the trial courts, the appellate courts are increasing relying on records created and maintained in electronic rather than paper form. These electronic records can be made available remotely to the extent feasible and permitted by law.

The paper records used in the past were costly to locate, inspect, and copy. The difficulties and expense involved in obtaining these paper records impeded public access but also provided an added level of privacy. This important practical effect of older business practices was reflected in the doctrine of "practical obscurity," which recognized that obscurity could serve positive purposes with respect to protecting privacy interests. But as the appellate courts are shifting to electronic records, protecting privacy interests is no longer a by-product of paper-based business practices, but rather is the result of deliberate policy choices to provide differential access to electronic records. These policy choices are reflected in the rules of court on remote access to records.

### **3.2.2 Public access to electronic appellate court records**

Public access to appellate court records are governed by rules 8.80–8.85:

- [Rule 8.80. Statement of purpose](#)
- [Rule 8.81. Application and scope](#)
- [Rule 8.82. Definitions](#)
- [Rule 8.83. Public access](#)
- [Rule 8.84. Limitations and conditions](#)
- [Rule 8.85. Fees for copies of electronic records](#)

These rules, adopted effective January 1, 2016, are intended to provide the public with reasonable access to appellate records that are maintained in electronic form while protecting privacy interests. (Rule 8.80(a).)

The rules on remote access to electronic appellate court records are not intended to give the public a right of access to any electronic record that they are not otherwise entitled to access in paper form, and do not create any right of access to records sealed by court order or confidential as a matter of law. (Rule 8.80(c).) These rules apply only to records of the Supreme Court and the Courts of Appeal and only to access to records by the public. They do not prescribe the access to court records by a party to an action or proceeding, by the attorney for a party, or by

other persons or entities that may be entitled to such access by statute or rule. (Rules 8.81(a)–(b).)

### **3.2.3 General right of access; access to the extent feasible**

Rule 8.83 provides that all electronic records must be made reasonably available to the public in some form, whether in electronic or paper form, except sealed or confidential records. (Rule 8.83(a).)

Under rule 8.83(b) to the extent feasible, appellate courts will provide, both remotely and at the courthouse, the following records provided they are not sealed or confidential:

- Dockets or registers of actions
- Calendars
- Opinions
- The following Supreme Court records:
  - Results from the most recent Supreme Court conference
  - Party briefs in cases argued in the Supreme Court in the preceding three years
  - Supreme Court minutes from at least the preceding three years

(Rule 8.83(b(1)).)

If an appellate court maintains records in electronic form in civil cases in addition to the records just listed, electronic access to these records must be provided both at the courthouse and remotely, to the extent feasible, except those records listed in section 3.2.4. (Rule 8.83(b)(2).)

### **3.2.4 Access by type of record**

By rule, access to the electronic records listed below must be provided at the courthouse to the extent it is feasible to do so, but remote electronic access may not be provided to those records:

- Any reporter's transcript for which the reporter is entitled to receive a fee; and
- Records other than those listed in rule 8.83(b)(1) in the following proceedings:
  - Proceedings under the Family Code, including proceedings for dissolution, legal separation, and nullity of marriage; child and spousal support proceedings; child custody proceedings; and domestic violence prevention proceedings;
  - Juvenile court proceedings;
  - Guardianship or conservatorship proceedings;
  - Mental health proceedings;
  - Criminal proceedings;
  - Civil harassment proceedings under Code of Civil Procedure section 527.6;
  - Workplace violence prevention proceedings under Code of Civil Procedure section 527.8;

- Private postsecondary school violence prevention proceedings under Code of Civil Procedure section 527.85;
- Elder or dependent adult abuse prevention proceedings under Welfare and Institutions Code section 15657.03; and
- Proceedings to compromise the claims of a minor or a person with a disability

(Rule 8.83(c).)

### **3.2.5 Remote electronic access permitted in extraordinary cases**

The appellate rules on remote access include a provision that allows the presiding justice, or a justice assigned by the presiding justice, to exercise discretion to permit remote access by the public to all or a portion of the public court records in an individual case if (1) the number of requests for access to documents is extraordinarily high and (2) responding to those requests would significantly burden the operations of the court. Unlike the comparable trial court records rule (see rule 2.503(c)) that is limited to extraordinary *criminal* cases, the appellate rule has no restriction on the type or types of cases to which it applies. (See rule 8.83(d).)

The appellate rule does provide: “An individual determination must be made in each case in which such remote access is provided.” (Id.) It also provides guidance on the relevant factors to be considered in exercising the court’s discretion to provide remote access, including “[t]he *privacy interests* of parties, victims, witnesses, and court personnel, and the ability to redact *sensitive personal information*. (Rule 8.83(d)(1)(emphasis added).)

In addition, the rule provides a specific list of the information that must be redacted from the records to which the court allows remote access, including driver's license numbers; dates of birth; social security numbers; Criminal Identification and Information and National Crime Information numbers; addresses, e-mail addresses, and phone numbers of parties, victims, witnesses, and court personnel; medical or psychiatric information; financial information; account numbers; and other personal identifying information. (Rule 8.83(d)(2).)

### **3.2.6 Other limitations on remote access**

Like the trial court rules, the appellate rules on remote access have certain additional safeguards that prevent remote access to court records from being used to thwart the privacy interests of individuals whose names appear in those records. Except for calendars, registers of action, and certain Supreme Court records, electronic access to records may be granted only if the record is identified by the number of the case, the caption of the case, the name of a party, the name of the attorney, or the date of oral argument, and only on a case-by-case basis. (Rule 8.83(e).) Also, bulk distribution is not permitted for most court records. (Rule 8.83(f).)

### **3.2.7 Retention of user access information**

[To be added. This might cross-reference website policy.]



**3.2.8 Preservation of data security in appellate court records**  
**[To be added. This might cross-reference general sections on data security]**