

Chapter 2. Public Access to Electronic Trial Court Records

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Rule 2.500. Statement of purpose

(a) Intent

The rules in this chapter are intended to provide the public with reasonable access to trial court records that are maintained in electronic form, while protecting privacy interests.

(b) Benefits of electronic access

Improved technologies provide courts with many alternatives to the historical paper-based record receipt and retention process, including the creation and use of court records maintained in electronic form. Providing public access to trial court records that are maintained in electronic form may save the courts and the public time, money, and effort and encourage courts to be more efficient in their operations. Improved access to trial court records may also foster in the public a more comprehensive understanding of the trial court system.

(c) No creation of rights

The rules in this chapter are not intended to give the public a right of access to any record that they are not otherwise entitled to access. The rules do not create any right of access to records that are sealed by court order or confidential as a matter of law.

(Subd (c) amended effective January 1, 2007.)

Rule 2.500 amended and renumbered effective January 1, 2007; adopted as rule 2070 effective July 1, 2002.

Advisory Committee Comment

The rules in this chapter acknowledge the benefits that electronic court records provide but attempt to limit the potential for unjustified intrusions into the privacy of individuals involved in litigation that can occur as a result of remote access to electronic court records. The proposed rules take into account the limited resources currently available in the trial courts. It is contemplated that the rules may be modified

to provide greater electronic access as the courts' technical capabilities improve and with the knowledge gained from the experience of the courts in providing electronic access under these rules.

Rule 2.501. Application and scope

(a) Application

The rules in this chapter apply only to trial court records.

(Subd (a) amended and relettered effective January 1, 2007; adopted as subd (b) effective July 1, 2002.)

(b) Access by parties and attorneys

The rules in this chapter apply only to access to court records by the public. They do not limit access to court records by a party to an action or proceeding, by the attorney of a party, or by other persons or entities that are entitled to access by statute or rule.

(Subd (b) amended and relettered effective January 1, 2007; adopted as subd (c) effective July 1, 2002.)

Rule 2.501 amended and renumbered effective January 1, 2007; adopted as rule 2017 effective July 1, 2002.

Rule 2.502. Definitions

As used in this chapter, the following definitions apply:

- (1) "Court record" is any document, paper, or exhibit filed by the parties to an action or proceeding; any order or judgment of the court; and any item listed in Government Code section 68151(a), 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.
- (2) "Electronic record" is a computerized court record, regardless of the manner in which it has been computerized. 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. The term does not include a court record that is maintained only on microfiche, paper, or any other medium that can be read without the use of an electronic device.
- (3) "The public" means an individual, a group, or an entity, including print or electronic media, or the representative of an individual, a group, or an entity.
- (4) "Electronic access" means computer access to court records available to the public through both public terminals at the courthouse and remotely, unless otherwise

specified in the rules in this chapter.

Rule 2.502 amended and renumbered effective January 1, 2007; adopted as rule 2072 effective July 1, 2002.

Rule 2.503. Public access

(a) General right of access

All electronic records must be made reasonably available to the public in some form, whether in electronic or in paper form, except those that are sealed by court order or made confidential by law.

(Subd (a) amended effective January 1, 2007.)

(b) Electronic access required to extent feasible

A court that maintains the following records in electronic form must provide electronic access to them, both remotely and at the courthouse, to the extent it is feasible to do so:

- (1) Registers of actions (as defined in Gov. Code, § 69845), calendars, and indexes in all cases; and
- (2) All records in civil cases, except those listed in (c)(1)–(6).

(Subd (b) amended effective January 1, 2007; previously amended effective July 1, 2004.)

(c) Courthouse electronic access only

A court that maintains the following records in electronic form must provide electronic access to them at the courthouse, to the extent it is feasible to do so, but may provide remote electronic access only to the records governed by (b):

- (1) Records in a proceeding under the Family Code, including proceedings for dissolution, legal separation, and nullity of marriage; child and spousal support proceedings; and child custody proceedings;
- (2) Records in a juvenile court proceeding;
- (3) Records in a guardianship or conservatorship proceeding;
- (4) Records in a mental health proceeding;
- (5) Records in a criminal proceeding; and

- (6) Records in a civil harassment proceeding under Code of Civil Procedure section 527.6.

(Subd (c) amended effective January 1, 2007; previously amended effective July 1, 2004.)

(d) “Feasible” defined

As used in this rule, the requirement that a court provide electronic access to its electronic records “to the extent it is feasible to do so” means that a court is required to provide electronic access to the extent it determines it has the resources and technical capacity to do so.

(Subd. (d) amended effective January 1, 2007.)

(e) Remote electronic access allowed in extraordinary criminal cases

Notwithstanding (c)(5), the presiding judge of the court, or a judge assigned by the presiding judge, may exercise discretion, subject to (e)(1), to permit electronic access by the public to all or a portion of the public court records in an individual criminal case if (1) the number of requests for access to documents in the case is extraordinarily high and (2) responding to those requests would significantly burden the operations of the court. An individualized determination must be made in each case in which such remote electronic access is provided.

- (1) In exercising discretion under (e), the judge should consider the relevant factors, such as:
- (A) The privacy interests of parties, victims, witnesses, and court personnel, and the ability of the court to redact sensitive personal information;
 - (B) The benefits to and burdens on the parties in allowing remote electronic access, including possible impacts on jury selection; and
 - (C) The burdens on the court in responding to an extraordinarily high number of requests for access to documents.
- (2) The court should, to the extent feasible, redact the following information from records to which it allows remote access under (e): driver license numbers; dates of birth; social security numbers; Criminal Identification and Information and National Crime Information numbers; addresses and phone numbers of parties, victims, witnesses, and court personnel; medical or psychiatric information; financial information; account numbers; and other personal identifying information. The court may order any party who files a document containing such information to provide the court with both an original unredacted version of the document for filing in the court file and a redacted version of the document for remote electronic access. No juror names

or other juror identifying information may be provided by remote electronic access. This subdivision does not apply to any document in the original court file; it applies only to documents that are available by remote electronic access.

- (3) Five days' notice must be provided to the parties and the public before the court makes a determination to provide remote electronic access under this rule. Notice to the public may be accomplished by posting notice on the court's Web site. Any person may file comments with the court for consideration, but no hearing is required.
- (4) The court's order permitting remote electronic access must specify which court records will be available by remote electronic access and what categories of information are to be redacted. The court is not required to make findings of fact. The court's order must be posted on the court's Web site and a copy sent to the Judicial Council.

(Subd (e) amended effective January 1, 2007; adopted effective January 1, 2005.)

(f) Access only on a case-by-case basis

The court may only grant electronic access to an electronic record when the record is identified by the number of the case, the caption of the case, or the name of a party, and only on a case-by-case basis. This case-by-case limitation does not apply to the court's electronic records of a calendar, register of actions, or index.

(Subd (f) amended effective January 1, 2007; adopted as subd (e) effective July 1, 2002; previously relettered effective January 1, 2005.)

(g) Bulk distribution

The court may provide bulk distribution of only its electronic records of a calendar, register of actions, and index. "Bulk distribution" means distribution of all, or a significant subset, of the court's electronic records.

(Subd (g) amended effective January 1, 2007; adopted as subd (f) effective July 1, 2002; previously relettered effective January 1, 2005.)

(h) Records that become inaccessible

If an electronic record to which the court has provided electronic access is made inaccessible to the public by court order or by operation of law, the court is not required to take action with respect to any copy of the record that was made by the public before the record became inaccessible.

(Subd (h) relettered effective January 1, 2005; adopted as subd (g) effective July 1, 2002.)

(i) Off-site access

Courts should encourage availability of electronic access to court records at public off-site locations.

(Subd (i) relettered effective January 1, 2005; adopted as subd (h) effective July 1, 2002.)

Rule 2.503 amended and renumbered effective January 1, 2007; adopted as rule 2073 effective July 1, 2002; previously amended effective July 1, 2004, and January 1, 2005.

Advisory Committee Comment

The rule allows a level of access by the public to all electronic records that is at least equivalent to the access that is available for paper records and, for some types of records, is much greater. At the same time, it seeks to protect legitimate privacy concerns.

Subdivision (c). This subdivision excludes certain records (those other than the register, calendar, and indexes) in specified types of cases (notably criminal, juvenile, and family court matters) from remote electronic access. The committee recognized that while these case records are public records and should remain available at the courthouse, either in paper or electronic form, they often contain sensitive personal information. The court should not publish that information over the Internet. However, the committee also recognized that the use of the Internet may be appropriate in certain criminal cases of extraordinary public interest where information regarding a case will be widely disseminated through the media. In such cases, posting of selected nonconfidential court records, redacted where necessary to protect the privacy of the participants, may provide more timely and accurate information regarding the court proceedings, and may relieve substantial burdens on court staff in responding to individual requests for documents and information. Thus, under subdivision (e), if the presiding judge makes individualized determinations in a specific case, certain records in criminal cases may be made available over the Internet.

Subdivisions (f) (g). These subdivisions limit electronic access to records (other than the register, calendars, or indexes) to a case-by-case basis and prohibit bulk distribution of those records. These limitations are based on the qualitative difference between obtaining information from a specific case file and obtaining bulk information that may be manipulated to compile personal information culled from any document, paper, or exhibit filed in a lawsuit. This type of aggregate information may be exploited for commercial or other purposes unrelated to the operations of the courts, at the expense of privacy rights of individuals.

Courts must send a copy of the order permitting remote electronic access in extraordinary criminal cases to: Secretariat, Executive Office Programs Division, Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, CA 94102-3688 or secretariat@jud.ca.gov.

Rule 2.504. Limitations and conditions

(a) Means of access

A court that maintains records in electronic form must provide electronic access to those records by means of a network or software that is based on industry standards or is in the public domain.

(Subd (a) amended effective January 1, 2007.)

(b) Official record

Unless electronically certified by the court, a trial court record available by electronic access is not the official record of the court.

(Subd (b) amended effective January 1, 2007.)

(c) Conditions of use by persons accessing records

A court may condition electronic access to its records on:

- (1) The user's consent to access the records only as instructed by the court; and
- (2) The user's consent to the court's monitoring of access to its records.

The court must give notice of these conditions, in any manner it deems appropriate. The court may deny access to a member of the public for failure to comply with either of these conditions of use.

(Subd (c) amended effective January 1, 2007.)

(d) Notices to persons accessing records

The court must give notice of the following information to members of the public accessing its records electronically, in any manner it deems appropriate:

- (1) The identity of the court staff member to be contacted about the requirements for accessing the court's records electronically.
- (2) That copyright and other proprietary rights may apply to information in a case file, absent an express grant of additional rights by the holder of the copyright or other proprietary right. This notice must advise the public that:
 - (A) Use of such information in a case file is permissible only to the extent permitted by law or court order; and
 - (B) Any use inconsistent with proprietary rights is prohibited.
- (3) Whether electronic records are the official records of the court. The notice must describe the procedure and any fee required for obtaining a certified copy of an official record of the court.
- (4) That any person who willfully destroys or alters any court record maintained in electronic form is subject to the penalties imposed by Government Code section 6201.

(Subd (d) amended effective January 1, 2007.)

(e) Access policy

The court must post a privacy policy on its public-access Web site to inform members of the public accessing its electronic records of the information it collects regarding access transactions and the uses that the court may make of the collected information.

(Subd (e) amended effective January 1, 2007.)

Rule 2.504 amended and renumbered effective January 1, 2007; adopted as rule 2074 effective July 1, 2002.

Rule 2.505. Contracts with vendors

(a) Contract must provide access consistent with rules

The court's contract with a vendor to provide public access to its electronic records must be consistent with the rules in this chapter and must require the vendor to provide public access to court records and to protect the confidentiality of court records as required by law or by court order.

(Subd (a) amended and lettered effective January 1, 2007; adopted as part of unlettered subd effective July 1, 2002.)

(b) Contract must provide that court owns the records

Any contract between the court and a vendor to provide public access to the court's electronic records must provide that the court is the owner of these records and has the exclusive right to control their use.

(Subd (b) amended and lettered effective January 1, 2007; adopted as part of unlettered subd effective July 1, 2002.)

Rule 2.505 amended and renumbered effective January 1, 2007; adopted as rule 2075 effective July 1, 2002.

Rule 2.506. Fees for electronic access

(a) Court may impose fees

The court may impose fees for the costs of providing public access to its electronic records, under Government Code section 68150(h). On request, the court must provide the public with a statement of the costs on which these fees are based.

(Subd (a) amended and lettered effective January 1, 2007; adopted as part of unlettered subd effective July 1, 2002.)

(b) Fees of vendor must be reasonable

To the extent that public access to a court's electronic records is provided exclusively through a vendor, the court must ensure that any fees the vendor imposes for the costs of providing access are reasonable.

(Subd (b) lettered effective January 1, 2007; adopted as part of unlettered subd effective July 1, 2002.)

Rule 2.506 amended and renumbered effective January 1, 2007; adopted as rule 2076 effective July 1, 2002.

Rule 2.507. Electronic access to court calendars, indexes, and registers of actions

(a) Intent

This rule specifies information to be included in and excluded from the court calendars, indexes, and registers of actions to which public access is available by electronic means under rule 2.503(b). To the extent it is feasible to do so, the court must maintain court calendars, indexes, and registers of actions available to the public by electronic means in accordance with this rule.

(Subd (a) amended effective January 1, 2007.)

(b) Minimum contents for electronically accessible court calendars, indexes, and registers of actions

(1) The electronic court calendar must include:

- (A) Date of court calendar;
- (B) Time of calendared event;
- (C) Court department number;
- (D) Case number; and
- (E) Case title (unless made confidential by law).

(2) The electronic index must include:

- (A) Case title (unless made confidential by law);
- (B) Party names (unless made confidential by law);
- (C) Party type;

- (D) Date on which the case was filed; and
 - (E) Case number.
- (3) The register of actions must be a summary of every proceeding in a case, in compliance with Government Code section 69845, and must include:
- (A) Date case commenced;
 - (B) Case number;
 - (C) Case type;
 - (D) Case title (unless made confidential by law);
 - (E) Party names (unless made confidential by law);
 - (F) Party type;
 - (G) Date of each activity; and
 - (H) Description of each activity.

(Subd (b) amended effective January 1, 2007.)

(c) Information that must be excluded from court calendars, indexes, and registers of actions

The following information must be excluded from a court's electronic calendar, index, and register of actions:

- (1) Social security number;
- (2) Any financial information;
- (3) Arrest warrant information;
- (4) Search warrant information;
- (5) Victim information;
- (6) Witness information;
- (7) Ethnicity;

- (8) Age;
- (9) Gender;
- (10) Government-issued identification card numbers (i.e., military);
- (11) Driver's license number; and
- (12) Date of birth.

(Subd (c) amended effective January 1, 2007.)

Rule 2.507 amended and renumbered effective January 1, 2007; adopted as rule 2077 effective July 1, 2003.