

*"The Unified Voice of Legal Services" !*



January 23, 2013

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

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

To Whom It May Concern:

I am writing on behalf of the Legal Aid Association of California (LAAC) to provide public comment to the Judicial Council as it considers the recommendations of the Mandatory E-filing Working Group.

Thank you for taking the time to consider the effects of mandatory e-filing on California's civil litigants. The AB2073 Mandatory E-Filing Working Group took its charge seriously and has weighed many of the benefits and vulnerabilities of a mandatory e-filing requirement.

I am the Directing Attorney of LAAC. Founded in 1984, LAAC is a non-profit organization created for the purpose of ensuring the effective delivery of legal services to low-income and underserved people and families throughout California. LAAC is the statewide membership organization for almost 100 legal services nonprofits in the state.

The attorneys at our member programs represent low-income clients in matters in California's civil courts. These civil cases frequently involve critically important access to life's basic necessities, such as food, safe and affordable housing, freedom from violence, health care, employment, economic self-sufficiency, and access to the legal system.

These low-income Californians are court users who rely on the civil court system to protect and enforce their rights in ways that are critically important

to these individuals, their families, and ultimately to our society as a whole. If not for our member organizations, most, if not all, of these represented court users would be self-represented litigants. Our member organizations also work closely with their local courts through partnerships with Self-Help Centers and Offices of the Family Law Facilitator. Without fully accessible courts, including the local Self-Help Centers and Family Law Facilitators, our members' clients and self-represented litigants would be unable to safeguard rights that many Californians take for granted. Based on this larger context of the importance of access to the courts, LAAC provides the following comments to the working group's specific questions in the Request for Specific Comments and with additional thoughts.

### **Threshold Question**

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

##### **Answer:**

Self-represented parties should be exempt from mandatory e-filing, but should be allowed to opt-in by electronically filing documents. LAAC echoes the concerns of the working group that self-represented litigants may not have access to computers and may have difficulty filing documents electronically. Allowing self-represented parties to be exempt addresses many of the concerns about barriers to justice and the courts.

Self-represented parties who do not have the means to hire an attorney may be prohibited from having their cases heard fairly because of their inability to access a computer or other required equipment such as a scanner, a printer, a modem, software to "save as" pdfs, etc., discomfort with composing and sending private personal information via a public library or court terminal, and a misunderstanding of how to send and confirm transmittal of an electronic document. Many self-represented litigants may have to rely on public computer portals that do not protect privacy, may have time limits for use, or may not allow saving of documents for later editing. Many self-represented litigants also do not have access to an email address, or access to an email address that they can check regularly.

If a self-represented litigant opts in, there should be an opportunity to opt out later if the litigant discovers that electronic services of documents is not appropriate for that person. Accessing electronically served documents via public libraries, borrowed computers, smart phones, or via dial-up internet all creates additional barriers to accessing court files and may lead to additional confusion.

LAAC suggests that the opt-in form offer two options when a litigant chooses to file a document electronically: an opt-in for the remainder of the case and an opt-in only for the one particular filing. This is important in cases where a litigant may learn of a required filing while in court and need to file that same day. The litigant may want to opt-in for that filing only, or may choose to opt-in later when she gains reliable access to the internet.

### **Other Questions**

All other questions below are only relevant if the Judicial Council does not adopt an exemption. If there is an opt-out, rather than an opt-in exemption, each court will have to ensure that all litigants' access to the courts is protected. Requiring an opt-out procedure further complicates litigants' experience with the courts as self-represented litigants must understand when to file a request before they've missed early deadlines.

Requiring an opt-out procedure will increase the burden on the courts because self-represented litigants will inevitably require individualized assistance and review or analysis. Additionally, some protections for self-represented litigants may need to be implemented, for example, tolling the time to file an answer while the litigant requests an opt-out.

LAAC is concerned about what may happen to the litigants' filing while the request to opt-out is pending. It must be considered filed as of the day of filing, otherwise a self-represented litigant would be required to file early and to approximate how long it would take the court to review and grant or deny the opt-out request.

#### **Question:**

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

#### **Answer:**

LAAC strongly urges the Judicial Council to adopt an exemption for self-represented parties. If self-represented litigants are not exempt, the procedure must be simple and easy to complete. LAAC recommends, as one procedural option, that any party who files for and is granted a fee waiver be exempt from mandatory electronic filing. Additionally, parties who are not eligible for a fee waiver should still be able to request an exemption through the sample document "Request for Exemption From Electronic Filing and Service."

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

**Question:**

**Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something simpler-such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed-be all that is required for self-represented litigants?**

**Answer:**

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

Separate forms and procedures should be available for e-filing and e-service. It may be possible for someone to e-file as a one-time or occasional occurrence, but that litigant may not have ready access to an email account. Libraries have time-limited access to computers and litigants may not have computer or internet at home.

**Question:**

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

**Answer:**

LAAC agrees with the recommendation of the working group to include the suggested language in rule 2.253(b) regarding permitting the court to charge only actual costs and requiring reasonable fees of the electronic filing service provider. Additionally, LAAC agrees that the fees must be waived when deemed appropriate by the court. This means that, if mandatory e-filing is required, the court must provide a free way to file documents or require electronic filing service providers to allow for no-fee transmissions.

Many self-represented litigants qualify for fee waivers and truly cannot afford the costs of litigation. If an attorney is able to represent them pro bono, it is important to keep the costs low despite the presence of an attorney. Pro bono clients remain responsible for the costs and passing on the cost of e-filing to

the client could mean that litigation is cost prohibitive for some legal services' poorest clients.

### **Additional concerns**

#### **Access for People with Disabilities:**

LAAC is aware that Disability Rights Education and Defense Fund and other organizations have submitted a comment addressing accessibility issues. LAAC defers to the expertise of those groups in this area and reiterate four major concerns for e-filing and people with disabilities: (1) need to protect confidentiality of disability-related information, (2) need to include check-boxes for disability accommodation, (3) need to be compatible with specific access considerations, (4) need for coordination with California Rule of Court 1-100, which established procedures for persons with disabilities to request accommodation; and (5) need to recognize that there are physical and policy access implications, as well as technology implications, for users who rely on shared public computers.

#### **Language Access:**

LAAC is also aware that the Legal Aid Foundation of Los Angeles and others plan to submit a comment addressing concerns with e-filing and litigants with limited English proficiency. LAAC would like to reiterate that mandatory e-filing for self-represented litigants means a large number of people with limited English may face an additional hurdle to accessing justice in California.

Any e-filing programs would ideally be provided in the primary languages spoken in California, including Spanish, Vietnamese, Korean, Mandarin/Cantonese, and Tagalog. At a minimum, the notice of the requirement to opt-in/opt-out must be provided in each of those languages so that litigants are aware of the requirement and can take steps to complete the proper form.

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

LAAC recommends that the Judicial Council encourage a phasing in of mandatory e-filing throughout the state, allowing only a certain number of courts per year. This rolling out would allow courts to learn from each other and learn how to structure support for self-represented litigants who may choose to opt-in.

### **E-Service Concerns**

As mentioned earlier, there must be an easy way for self-represented litigants to opt out of electronic service even after electronically filing early papers. Many self-represented litigants may have help filing out judicial council forms at a legal services limited scope clinic and may electronically file documents at that clinic. However, those litigants must be able to state in that process that they are not consenting to electronic service of all documents related to the case.

If a litigant does not opt-in to e-filing or opts out of it, service cannot be electronically; it must be “manually,” even if an email is provided. The opt-out form should allow a litigant to opt-out of everything.

One suggestion is to change the opt-out form to have a #2, that allows the litigant to “opt-in” to certain things, such as only for filing or only for service or only for receipt of service, with an explanation for “receipt of service” that says “If I check this box, I understand that I must provide a valid email address, I must be able to check that email address regularly and I will not have additional time to respond to filings.”

### **Pro Bono Clients and Legal Services Clients**

In addition to self-represented parties, parties represented pro bono and legal services attorneys should also be allowed to “opt-out” or to qualify for a waiver of the cost of filing. The clients represented by pro bono attorneys are essentially in the same situation as self-represented parties financially and added expenses may prevent access to the courts even for parties represented by pro bono attorneys.

LAAC respectfully requests that the Judicial Council recognize the potential impact on the public and vulnerable Californians as the implementation of Mandatory E-Filing is analyzed.

Thank you for your consideration,

Salena Copeland  
Directing Attorney  
Legal Aid Association of California