

California Rules of Court, Rules 2070 to 2076

Rule 2070. 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]** These rules are not intended to give the public a right of access to any record that they are not otherwise entitled to access.

Advisory Committee Comment

The rules 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 2070 adopted effective July 1, 2002.

Rule 2071. Authority and applicability

- (a) **[Authority]** The rules in this chapter are adopted under the authority granted to the Judicial Council by article VI, section 6 of the California Constitution and Code of Civil Procedure section 1010.6.
- (b) **[Applicability]** The rules in this chapter apply only to trial court records.
- (c) **[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 California Rules of Court.

Rule 2071 adopted effective July 1, 2002.

Rule 2072. Definitions

- (a) **[Court record]** As used in this chapter, “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 subdivision (a) of 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.
- (b) **[Electronic record]** As used in this chapter, “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.
- (c) **[The public]** As used in this chapter, “the public” is an individual, a group, or an entity, including print or electronic media, or the representative of an individual, a group, or an entity.
- (d) **[Electronic access]** “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 these rules.

Rule 2072 adopted effective July 1, 2002.

Rule 2073. 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 are made confidential by law.
- (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) Register of actions (as defined in Gov. Code, § 69845), calendars, and indexes; and
 - (2) All records in civil cases, except those listed in (c).

- (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):
- (1) Any record in a proceeding under the Family Code, including, but not limited to, proceedings for dissolution, legal separation, and nullity of marriage; child and spousal support proceedings; and child custody proceedings;**
 - (2) Any record in a juvenile court proceeding;**
 - (3) Any record in a guardianship or conservatorship proceeding;**
 - (4) Any record in a mental health proceeding;**
 - (5) Any record in a criminal proceeding; and**
 - (6) Any record in a civil harassment proceeding under Code of Civil Procedure section 527.6.**
- (d) [“Feasible” defined]** 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.
- (e) [Access only on case-by-case basis]** A 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 a calendar, register of actions, or index.
- (f) [Bulk distribution]** A court may provide bulk distribution of only its electronic calendar, register of actions, and index. “Bulk distribution” means distribution of all, or a significant subset, of the court’s electronic records.
- (g) [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.
- (h) [Off-site access]** Courts should encourage availability of electronic access to court records at public off-site locations.

Advisory Committee Comment

The rule allows a level of access 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) excludes certain records (those other than the register, calendar, and indexes) in specified types of cases 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.

Subdivisions (e) and (f) 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.

Rule 2073 adopted effective July 1, 2002.

Rule 2074. Limitations and conditions

- (a) [Means of access] A court must provide electronic access by means of a network or software that is based on industry standards or is in the public domain.
- (b) [Official record] Unless electronically certified by the court, a trial court record available by electronic access does not constitute the official record of the court.
- (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. A 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 any of these conditions of use.
- (d) [Notices to persons accessing records] A court must give notice of the following information to members of the public accessing its electronic records, in any manner it deems appropriate:

 - (1) The court staff member to contact 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. The notice should indicate that (A) use of such information 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 constitute the official records of the court. The notice should indicate the procedure and any fee required for obtaining a certified copy of an official record of the court.
- (4) 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.
- (e) **[Access policy]** A 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.

Rule 2074 adopted effective July 1, 2002.

Rule 2075. Contracts with vendors

A court's contract with a vendor to provide public access to its electronic records must be consistent with these rules 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. Any contract between a court and a vendor to provide public access to the court's records maintained in electronic form must specify that the court is the owner of these records and has the exclusive right to control their use.

Rule 2075 adopted effective July 1, 2002.

Rule 2076. Fees for electronic access

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

Rule 2076 adopted effective July 1, 2002.