

RESOLUTION 03-05-2014

DIGEST

Civil Procedure: Electronic Signatures and Court Use of Electronic Signatures

Amends Code of Civil Procedure sections 17, 581d, 582, and 1003 to allow electronic signatures and to permit court use of electronic signatures on orders and judgments.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure sections 17, 581d, 582, and 1003 to allow electronic signatures and to permit court use of electronic signatures on orders and judgments. This resolution should be approved in principle because it provides clarity regarding the effectiveness of orders and judgments that the court signs by electronic means and it codifies some courts' current practice of affixing electronic signatures to court prepared orders, party prepared orders and judgments.

This resolution seeks to codify some courts' practice of affixing electronic signatures to tentative rulings, party prepared orders and judgments, and defines 'electronic signature' as "an electronic image of a person's signature" in the proposed amendment to Code of Civil Procedure section 17.

The Code of Civil Procedure does not provide for electronic signatures by judges, even though many judges already affix electronic signatures to orders/judgments, particularly on electronically filed documents. As the proponent points out, while there are statutes that require the court's signature for the order/judgment to be effective (e.g. Code Civ. Proc., § 581d), the Code of Civil Procedure does not indicate the type of signatures permitted. While California Rules of Court, rule 3.1590(1) provides for court signatures on judgments where required, the rule does not specify the manner in which the court may sign the judgment. Yet, the California Rules of Court, rule 2.257(e) permits judges to affix electronic signatures to orders "in any manner permitted by law," even though the law does not provide for electronic signatures by judges. Therefore, whether judges may affix electronic signatures to orders/judgment, and how they may do so is unclear at this time. This resolution clarifies the present state of confusion, permitting judges to affix electronic signatures to orders/judgments, and provides a definition of such electronic signatures.

As the resolution points out, with the advent of electronic filing and the ability to use electronic signatures, some courts are already affixing electronic signatures to tentative rulings, party prepared orders and judgments. This resolution codifies this practice.

As a consequence of this resolution, the proposed definition of the term 'electronic signature' in the proposed amendment to Code of Civil Procedure section 17 will override all of the definitions for this term presently found in the Rules of Court, rule 2.257. Notably, the proposed amendment to Code of Civil Procedure section is narrower than the definition of 'electronic signature' currently in California Rules of Court, rule 2.257. Where there is a conflict between the Rules of Court and the Code of Civil Procedure, the Code of Civil Procedure prevails. (See e.g. *Wilburn v. Oakland Hospital* (1989) 213 Cal.App.3d 1107, 1110.)

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to add amend Code of Civil Procedure sections 17, 581d, 582, and 1003 to read as follows:

§ 17

1 (a) Words used in this code in the present tense include the future as well as the present;
2 words used in the masculine gender include the feminine and neuter; the singular number
3 includes the plural and the plural the singular; the word “person” includes a corporation as well
4 as a natural person; the word “county” includes “city and county”; writing includes printing and
5 typewriting; oath includes affirmation or declaration; and every mode of oral statement, under
6 oath or affirmation, is embraced by the term “testify,” and every written one in the term
7 “depose”; signature or subscription includes an electronic signature, and, when the person cannot
8 write, a mark, when the person cannot write, with his or her name being written near it by a
9 person who writes his or her own name as a witness; provided, that when a signature is by mark
10 it must, in order that the same may be acknowledged or may serve as the signature to any sworn
11 statement, be witnessed by two persons who must subscribe their own names as witness thereto.
12 An electronic signature is an electronic image of a person’s signature.

13 [The balance of this section remains unchanged.]
14

15 § 581d

16 A written dismissal of an action shall be entered in the clerk’s register and is effective for
17 all purposes when so entered.
18 All dismissals ordered by the court shall be in the form of a written order signed by the court and
19 filed in the action and those orders when so filed shall constitute judgments and be effective for
20 all purposes, and the clerk shall note those judgments in the register of actions in the case. An
21 electronic signature by the court shall be effective as an original signature.
22

23 § 582

24 In all other cases judgment shall be rendered on the merits. The judgment shall be signed
25 by the court. An electronic signature by the court shall be effective as an original signature.
26

27 § 1003

28 Every direction of a court or judge, made or entered in writing, and not included in a
29 judgment, is denominated an order. Where any section of this Code requires the court sign an
30 order, an electronic signature shall be effective as an original signature. An application for an
31 order is a motion.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: With the advent of electronic filing and the ability to use electronic signatures, the current practice of some courts is to affix an electronic signature of the judge onto minute orders, party prepared orders and judgments. However, the Code contains no provisions allowing the use of electronic signatures by the court on orders and judgments. The problem is exemplified by Code of Civil Procedure section 581d which specifies that an order of dismissal by the court must be signed by the court to be effective. (See *Powell v. County of Orange* (2011) 197 Cal.App.4th 1573, 1578 [unsigned minute order of dismissal was ineffective].) However, Section 581d is silent as to the manner in which the court must sign the order of dismissal thereby calling into question the validity of dismissal orders with a digital signature. Likewise, while California Rules of Court, rule 3.1590(l), provides for court signatures on judgments where required, the rule does not specify the manner in which the court may sign the judgment.

The Solution: This resolution codifies current practice of the use of electronic signatures by amending Code of Civil Procedure section 17's identification of signature to include an electronic version of a person's signature. It further amends Code of Civil Procedure sections 581d, 582, and 1003 to authorize the court's use of electronic signatures on dismissal orders, judgments, and orders.

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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