

## RESOLUTION 11-03-2016 (As Amended)

### DIGEST

#### Documents: Electronic Signatures

Amends California Rules of Court, rule 2.305, to treat scanned and faxed signatures in the same way.

### TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that the Judicial Council amend California Rules of Court, rule 2.305 to read as follows:

#### Rule 2.305

- 1 (a) Possession of original document  
2 A party who files or serves a signed faxed or electronically imaged document ~~by fax~~  
3 under the rules in this chapter represents that the original signed document is in the party's  
4 possession or control.  
5 (b) Demand for original; waiver  
6 At any time after filing or service of a signed ~~fax~~ faxed or electronically imaged  
7 document, any other party may serve a demand for production of the original physically signed  
8 document. The demand must be served on all other parties but not filed with the court.  
9 (c) Examination of original  
10 If a demand for production of the original signed document is made, the parties must  
11 arrange a meeting at which the original signed document can be examined.  
12 (d) Fax and scanned signature as original  
13 Notwithstanding any provision of law to the contrary, including Evidence Code sections  
14 255 and 260, a signature produced by fax transmission or by scanning or imaging a document to  
15 create a digital image is deemed to be an original.

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

**PROPONENT:** Bar Association of San Francisco

### STATEMENT OF REASONS

The Problem: Technology has evolved such that many litigants review documents and then sign from a location other than their attorney's office. Facsimile is an outdated method for such signed pages to be transmitted to counsel (or to a court filing service). Rather, more commonly documents are scanned or otherwise imaged, and then transmitted by electronic mail. However, court clerks are not permitted to accept such signatures for filing.

The Solution: This Resolution seeks to bring the Rules of Court current with today's technology, by providing that an electronic signature may be treated as an original.

### IMPACT STATEMENT

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

**CURRENT OR PRIOR RELATED LEGISLATION**

Not known.

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**RESPONSIBLE FLOOR DELEGATE:** Michelene Insalaco

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**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends California Rules of Court, rule 2.305, to treat scanned and faxed signatures in the same way. This resolution should be approved in principle because electronic filing and service is increasingly being used and there is no reason to treat a scanned signature differently than one sent by fax.

Courts have been permitted since 2000 to adopt rules permitting electronic filing and service of documents (Code Civ. Proc., § 1010.6), and some counties, such as Orange and San Francisco, now require electronic filing and service of certain documents. Scanned and emailed documents have become far more common than faxes.

The Judicial Council of California has submitted a proposal for comment which addresses many of the issues raised by this increased use of electronic filing and service. ([courts.ca.gov/documents/LEG16-10.pdf](http://courts.ca.gov/documents/LEG16-10.pdf).) It would add Code of Civil Procedure section 1013b and amend Code of Civil Procedure sections 664.5, 1010.6 and 1011. These changes would authorize the use of electronic signatures made under penalty of perjury, and consolidate mandatory electronic filing provisions by codifying various provisions in trial court rules. The amendments to sections 664.5 and 1010.6 would permit electronic service whenever service could be done by mail or fax.

Given the increased acceptance and codification of electronic filing and service, there is no reason to treat a faxed signature differently from an electronic signature. This resolution ensures they are treated in the same way.