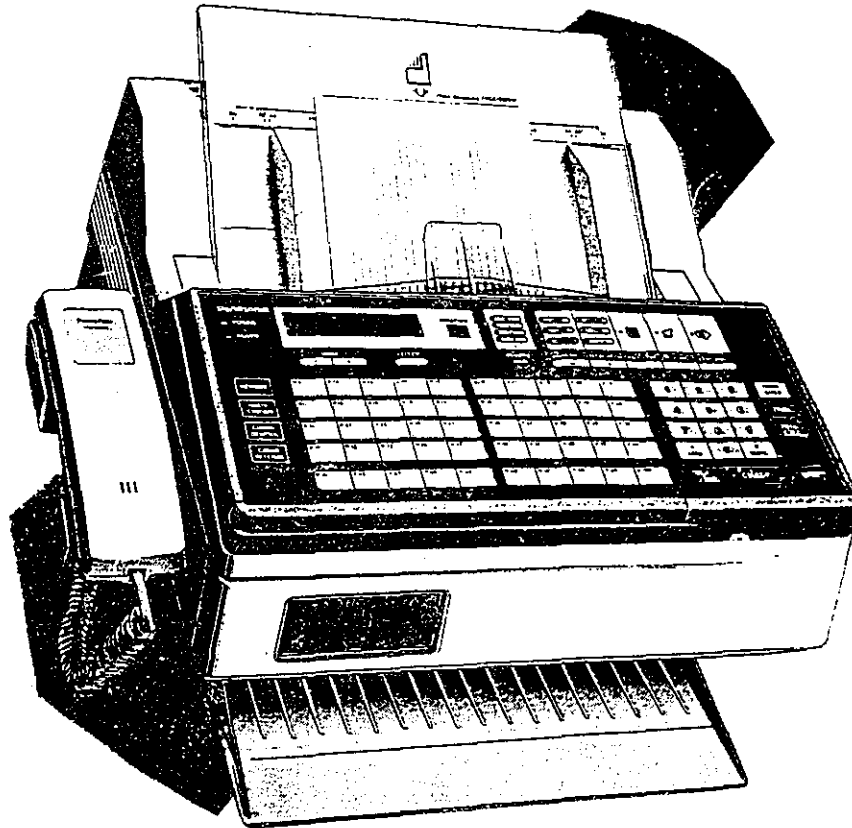


FAXED DOCUMENTS

SUGGESTED GUIDELINES FOR USE BY ELECTIONS ADMINISTRATORS IN CALIFORNIA



Issued by:
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APRIL 1993

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INTRODUCTION

With the increased use of the FAX machine as a prompt method of communicating, questions have arisen with respect to what, if any, election-related documents could be filed via FAX. These questions and concerns resulted in the creation of a subcommittee of the County Clerks Association's Legislation Committee. Initially chaired by Russ Harlan, formerly of Placer County and now in Washington state, and then chaired by Janice Atkinson of Sonoma County, the "FAXED THINGS" subcommittee developed some initial guidelines based on survey responses from California's county election officials, legal opinions from Los Angeles County's County Counsel, and documents provided by various courts which have established FAX guidelines. These suggested rules were then presented to the Secretary of State's Elections Division for review, and ultimate issuance to local election offices.

This document is presented with the subcommittee's report and suggested guidelines in narrative form, followed by a chart of the guidelines for ready reference, acknowledgements, additional areas for election officials to consider (designed by the Secretary of State's Elections Division), the beginnings of a list of identified "inappropriate" FAX users (also developed by the Elections Division), and an appendix with several legal opinions and related references. While the report and guidelines have been edited and expanded upon by the Elections Division of the Secretary of State's Office, the substance remains essentially the same as presented by the subcommittee.

In providing the following guidelines, you are reminded that they are only suggestions -- they do not carry the force or effect of law or regulation, nor do they take precedence over judicial rulings. Election officials are encouraged to consult their own legal counsels when questions arise about filing documents via FAX.

It is extremely important that jurisdictions which choose to accept election filings transmitted by FAX make every effort to stress to candidates and campaign organizations that allowing the filing by FAX is a COURTESY and CONVENIENCE not mandated by law and, as such, inability to get through on the designated FAX line, illegible or faulty transmission of the document, and similar problems which occur with this technology will NOT SUFFICE as excuses for late or incomplete filings. The responsibility for timely filing remains firmly with the filers, and election officials are not responsible for the filer's unsuccessful attempt to FAX documents.



DEFINITIONS

Facsimile Machine -- a machine, also known as a FAX, that can send a facsimile transmission using the international standard for scanning, coding and transmission established for Group 3 machines by the Consultative Committee of International Telegraphy and Telephone of the International Telecommunications Union, in regular resolution. Simply defined, it is a machine which uses telephone lines to communicate printed matter from a sending to a receiving FAX machine.

Facsimile transmission -- the transmission of a document by a system that encodes a document into electrical signals, transmits these electrical signals over a telephone line, and reconstructs the signals to print a duplicate of the original document at the receiving end.

Transmission record -- the document printed by the sending FAX machine stating the telephone number of the receiving machine, the number of pages sent, the transmission time and date, and an indication of any errors in transmission. Receiving FAX machines may also produce transmission records to note the corresponding information at the recipient's end.

Timely filed FAXed election-related document -- the document should be deemed timely filed if the transmission of the document has begun prior to the deadline hour AND that transmission is continuous (ie. not interrupted) until completion, even if not completed until after the filing deadline time has passed.

REPORT OF THE
CALIFORNIA COUNTY CLERKS
LEGISLATIVE COMMITTEE
"FAXED THINGS" SUBCOMMITTEE

With the advent of the FAX machine into nearly every election office throughout California, some basic guidelines regarding the transmission of election related documents via FAX were needed.

Several issues have surfaced related to the FAXing of election documents, necessitating last-minute decisions regarding the acceptance of the documents. Nomination papers were FAXed to one county after the close of business hours on the last day of the nomination period, but the time stamp had been changed (on the sending FAX machine) to show a timely filing. Staff present at the receiving end certified the correct time of the FAXed papers.

In another instance, a ballot argument was being FAXed to a county a few minutes prior to 5 p.m. on the deadline date. The sender's FAX machine broke down and they had to transfer to another location to complete the FAX transmission, which did not occur until after 5 p.m. The local press and opponents of the issue all waited for county counsel's opinion, which stated that since the transmission started prior to the closing time, the argument was acceptable as timely filed.

Suggested Guidelines

The following guidelines have been compiled to provide a source of information regarding election related items and the acceptance of those items by FAX. It is suggested that each election official consult with its own legal counsel and establish a "policy" to be used in accepting FAXed election documents. Development of policies should help avoid any future problems, a likelihood as more and more FAX machines are introduced into the election environment.

Part of this report is based upon a county counsel opinion from Los Angeles County. Of course, that is an opinion from one county, but a county from which we all can learn, considering the amount of resources upon which the Los Angeles Registrar-Recorder/County Clerk can draw.

The last part of this report deals with an area that will become more and more controversial as time progresses -- the FAXing of official ballots and the receiving of FAXed voted ballots. Again, consult with legal counsel before establishing a policy dealing with this issue.

ITEMS NOT ACCEPTABLE FOR FILING BY FAX

1. Nomination Documents. The committee felt that **NO** items dealing with the nomination process would be acceptable by FAX. This includes, but is not limited to, the following:
 - a. Declaration of Intent. Filing requires payment of the filing fee or Signatures-in-Lieu, subscription to oath, signers. (EC §§6490, 6491, 6493, 23301, 25500)
 - b. Declaration of Candidacy. Filing requires more than a simple signature; it includes ballot designations and signature for Oath of Office required, as well as sponsors' signatures (signers). (EC §§6491, 6493)
 - c. Signatures-in-Lieu petitions. Filing requires checking of numerous signatures, and verification of circulator information. The sheer volume would prevent any comparison to originals for accuracy, preclude adequate signature comparison, exhaust FAX supplies, etc.
 - d. Nomination Papers. Any nomination papers. Problems could include: incomplete/missing information, more or less signers than required, paying of filing fees, inappropriate transmission of originals to the Secretary of State for state offices, etc. (EC §§6495, 6497, 6500, 6505)
 - e. Candidate's Statement of Qualifications (CSQ's). Same problems as with nomination papers--CSQ's received with too many words, need to include the required pre-payment for printing, may arrive in the wrong format (submitted in all caps or all lower case letters, for example, etc.), (EC §§10012, 10012.1, 10013.5, 10015)
2. Voter Registration Cards. Penalty of perjury statement required, with original signature (or mark). Inappropriate because of potential for missing information, missing original document, etc.
3. Campaign Filings. Any forms requiring an original signature are not acceptable for receiving by FAX. (See item number 6 under acceptable items, below, for exceptions.) (Also see Appendix "C").

ITEMS ACCEPTABLE FOR FILING BY FAX

1. Ballot Measure Material. Includes direct arguments for/against, rebuttals, impartial analyses.
 - a. Condition(s): Signature(s) on such document must appear on the same page as the item FAXed (no separate signature page). Originals must be presented to the elections official within 48 hours of transmission, or the item(s) will not be considered as filed (weekends and holidays excepted).

FAXed item(s) requiring a date/time filing period must at least be started to be FAXed prior to the legal deadline. Any changes between the timely received FAXed material and the timely filed originals will result in nothing being accepted as filed. (See issue on timely filing of originals, below.)

2. Resolutions Calling Elections. Acceptable for filing, as original usually filed with Board of Supervisors and forwarded to Registrar of Voters/County Clerks. Same with resolutions requesting election services, list of offices up for election, etc., from school/special districts. Hard copy follow-up from districts required.
3. Absentee Ballot Requests. Acceptable, either on approved form or voter-written letter request. Signature comparison on the returned voted ballot is the major concern. It is felt that FAXing an absentee request should be allowed in emergencies, or to better serve a particular condition in a remote area of a county. Suggest not "publishing" this service, as the volume could become a major administrative problem. It is suggested that the elections official watch for candidates or measure campaign(s) using this and take action to prevent possible abuse.
4. Recall Papers. Same as provisions for ballot measure materials, except format review should generally not be performed against a FAXed petition draft. The signed recall petition itself is not acceptable by FAX.
5. Initiative Filings. Same as provisions for ballot measure material. Do not allow FAX of the initiative petition itself.
6. Campaign Filings. Only those filings that are not required to bear an original signature. Any candidate/committee statements, such as 420/490, should not be accepted. Acceptable filings would be late contributions that must be reported within 24 hours of time made by the contributor and within 24 hours from the time received by the recipient. (See April 19, 1990 opinion letter from the FPPC to Campaign California, and the basis of the Secretary of State Political Reform Division FAX policy, attached as Appendix C.) Included in this section as acceptable would be all late contribution and expenditure reports, Statements of Organization or their amendments.

TIMELY FILING

The issue of timely filing of FAXed materials is of prime importance. Experience has shown that the time on the top of most received FAXed documents is the time that the sending FAX machine is set to, not the time to which the receiving machine is set. A test of your FAX machine can determine how your particular unit works. To be considered "timely" the FAXed documents must be started prior to the close of normal office hours.

This may require staff to wait until the material being FAXed is fully received, and then time stamped for future reference. Staff may need to sign a declaration that as of 5 p.m. on a deadline date, no documents were being FAXed as proof that someone's material was not received by the deadline. Remember, the time on top of the document may not be of any use in determining actual time of the FAX transmission.

ABSENTEE BALLOTS

This is broken down into two areas: the FAXing out of absentee ballots and the receipt of those voted absentee ballots. This procedure could be used for overseas voters or voters falling under Elections Code §1017 provisions.

It is cautioned that any of the following procedures should be discussed with legal counsel to prepare to handle the issues that may arise from these practices.

- a. FAXing out of absentee ballots. Acceptable to FAX out a copy of an AV ballot, to the voter, not to a campaign headquarters. Such FAX would be of the actual ballot that would be issued to the voter (make a photocopy of the ballot card(s) to FAX), including the voter's stub with the ballot number, which should be entered on that voter's record. It is suggested that election officials include the warning statement about penal provisions of Elections Code §§29500, 29501.

- b. FAXing back of voted absentee ballots. Two possible acceptable methods:
 1. Accept the FAXed voted AV ballot from the voter and duplicate for counting. Use same procedures as with processing AV's and ballot duplication. Election officials may want to consider a waiver statement that the voter could sign acknowledging that the secrecy of their ballot is being waived as a result of the FAX transmission.

 2. When FAXing the AV ballot to the voter, include instructions for the acceptable return (from the voter) by mail in a regular envelope of the voted FAXed ballot, which would be duplicated for counting. Return envelope must have some statement written and signed by the voter, similar to current AV envelope statements. Front of return envelope should have some indication as to contents, i.e.: "ABSENTEE BALLOT ENCLOSED."

This may require staff to wait until the material being FAXed is fully received, and then time stamped for future reference. Staff may need to sign a declaration that as of 5 p.m. on a deadline date, no documents were being FAXed as proof that someone's material was not received by the deadline. Remember, the time on top of the document may not be of any use in determining actual time of the FAX transmission.

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 1. Accept the FAXed voted AV ballot from the voter and duplicate for counting. Use same procedures as with processing AV's and ballot duplication. Election officials may want to consider a waiver statement that the voter could sign acknowledging that the secrecy of their ballot is being waived as a result of the FAX transmission.

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SUGGESTED GUIDELINES FOR ACCEPTANCE OF DOCUMENTS TRANSMITTED BY FAX

The following guidelines have been compiled to provide a source of information regarding election related items and the acceptance of those items by FAX. It is suggested that each election officials consult with his/her own legal counsel and establish a "policy" to be used in accepting FAXed election-related documents in order to avoid any future problems, problems which are destined to grow as more and more FAX machines are introduced into the election environment.

These guidelines rely, in part, on a Los Angeles County County Counsel's opinion on the acceptance of FAXed documents. It should be noted, however, that this opinion is based, to a significant degree, on whether documents simply require a signature, or whether they require "proof of certain facts established by affidavit or declaration under penalty of perjury....". Complicating the issue, however, is the 1990 amendment to the Elections Code which requires that printed Absentee Ballot Applications be signed under penalty of perjury (there is no requirement that voter-initiated written requests be signed under penalty of perjury). What effect this change in legislation will have in the acceptance of FAXed absentee ballot requests or other documents remains to be seen.

DOCUMENT	ACCEPTABLE	NOT ACCEPTABLE	LOCAL OPTION	COMMENTS
Nomination Documents				
Declaration of Intention		X		Requires payment of fee or sigs-in-lieu, subscription to oath.
Declaration of Candidacy		X		Requires ballot designation, subscription to Oath of Office, review by staff.
Ballot Designation Negotiations/substantiation	X			May wish to consider original follow-up requirement within 48 hours of receipt, or other time frame.
Signature in Lieu petitions		X		Requires checking of numerous signatures, affidavits of circulator.

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DOCUMENT	NOT ACCEPTABLE	LOCAL ACCEPTABLE	OPTION	COMMENTS
Nomination petitions		X		Requires sponsors signatures, affidavit of circulator, review by staff.
Statement of Qualifications		X		Must be filed with Nomination Papers (see above); requires prepayment, review by staff.
Campaign Filings				
Statements of Organization and Amendments thereto	X			
Campaign Statements		X		May not be filed by FAX if an original signature is required.
Late Contribution Reports, Late Independent Expenditure Reports, Late Payment Reports from Slate Mailer Organizations	X			Must be filed with 24 hours of expenditure, do not require signature.
Ballot Measure Material				
Analyses	X			

**FAX GUIDELINES
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DOCUMENT	ACCEPTABLE	NOT ACCEPTABLE	LOCAL OPTION	COMMENTS
Full Text	X			
Tax Rate Statements	X			
Arguments, Rebuttals			X	Optional Conditions: Originals must be presented to the election officials within a prescribed time period (suggest 24-28 hours), or the item(s) will not be considered as filed. FAXed items requiring a date/time period must have been started to be transmitted prior to the legal deadline.
Resolutions Calling Elections	X			Includes lists of offices up for election, etc. from school/special districts. Hard copy follow-up from districts required.
Requesting Services/Consolidation Elections Code §§ 22003, 23302.1 Government Code §36512 Education Code §5005	X			Includes lists of offices up for election, etc. from school/special districts. Hard copy follow-up from districts required.

**FAX GUIDELINES
APRIL 1993**

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DOCUMENT	ACCEPTABLE	NOT ACCEPTABLE	LOCAL OPTION	COMMENTS
Recall Documents				
Notice of Intent, Answer, Proof of Publication pursuant to Elections Code §27031.5	X			Approval and proof of publication pursuant to Elections Code §27031.5 may be conducted via FAX. Should be followed up with hard copy for files.
Pre-Circulation Petition Format Review			X	Caution recommended if election official chooses to review petition format from a FAXed draft, since type size and margins are part of what's to be approved before circulation.
Petitions		X		Petition signatures should be verified against original documents.
Initiative Documents				
Notice of Intent			X	May depend on whether jurisdiction requires fee pursuant to Elections Code §3702.
Petitions		X		Petition signatures should be verified against original documents.

**FAX GUIDELINES
APRIL 1993**

**OFFICE OF THE SECRETARY OF STATE
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DOCUMENTS	ACCEPTABLE	NOT ACCEPTABLE	LOCAL OPTION	COMMENTS
Voter Registration				
Affidavit of Registration		X		Requires penalty of perjury statement and original signature.
Absentee Ballots				
Requests/Applications	X			While Elections Code §1006 requires pre-printed applications to include a penalty of perjury statement, individually-submitted and sample ballot application forms are not required to similarly contain such an attestation. The Secretary of State believes absentee ballot applications transmitted via FAX may be legally processed if the information contained thereon is legible. Election officials may wish to discuss this issue with their legal advisors.
Unvoted Absentee Ballots Sent to Voters			X	When FAXing the absentee ballot to voter, include instructions for return of the voted absentee ballot by mail in a regular envelope.

**FAX GUIDELINES
APRIL 1993**

**OFFICE OF THE SECRETARY OF STATE
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DOCUMENT	NOT ACCEPTABLE	LOCAL ACCEPTABLE	OPTION	COMMENTS
				Envelope must contain statement similar to that on a regular absentee envelope, signed by the voter. The front of the envelope should prominently identify the contents with a statement such as "Absentee Ballot Enclosed". Election officials should duplicate the voted absentee ballot upon mail return for purposes of counting votes. A photocopy of an official ballot should generally be FAXed ONLY to the voter applicant; absentee ballots should not be FAXed to campaign headquarters. It would be appropriate to include the language from Elections Code §29500 and 29501 when FAXing absentee ballots.
Voted Absentee Ballots Returned from Voters			X	Voter would have to waive his/her constitutional right to secret ballot, raising potential legal issues. Discuss with county counsel. If jurisdiction decides to accept voted ballots via FAX, should require a waiver statement signed by the voter, such as "The secrecy of my ballot is being waived in order to transmit it via FAX." Election official should duplicate the ballot for counting purposes.

ACKNOWLEDGEMENTS

The subcommittee that worked on this report is to be thanked for their time in reviewing the opinions and material obtained to compile the finished product. We hope election officials find it useful in developing a policy they can work with in the handling of FAXed documents, particularly election-related items that are increasing each year.

Persons who worked on this report were: Delphina Franco, Riverside County; Janice Atkinson, Sonoma County; Dwight Beattie, Santa Clara County; Bruce Bolinger, Nevada County; Marion Carlson, Sacramento County; Donna Campbell formerly from Yolo County; Tony Bernhard, Yolo County; Don Tanney, Orange County; Hugh Denton, Kern County; Caren Daniels-Meade, Secretary of State's Office, Elections Division; and Russ Harlan, formerly from Placer County.

Attachments: (See Appendix)

Election Documents, County of Los Angeles, County Counsel opinion.

Recorder Documents, County of Los Angeles, County Counsel opinion.

Campaign Reports, Secretary of State notice and FPPC informal assistance opinion.

FAX Survey, results of 42 counties on FAX fees and policies.

Guide to Safe FAX, (not included in Secretary of State issued version)

Trial Court Special Rules for FAX Filing and Service.

ADDITIONAL AREAS FOR ELECTION OFFICIALS' CONSIDERATION

While these guidelines do **not** address these areas, the Secretary of State suggests election officials should ponder, and establish policies about, such questions as:

Paper size - should there be a standard size required?

Advance arrangements - must FAXing entity arrange, in advance, a set time or other procedures before FAXing documents for filing?

Fees - will FAXing entities have to pay to utilize this service? If so, advance payment recommended. Establish pre-pay accounts, accept credit card, etc.?

Mandatory cover sheet? If so, should there be a specially designed form for election officials to supply to filer to use?? Should jurisdiction design a form specific to election filings and require its use for acceptance of FAX documents? If so, what specific information should be required?

Print out and attach transmission record to each document upon completion? Set a policy to establish audit trails for receipt of FAXed documents; consider logs, print-outs, etc.

Do you want to prominently advertise the fact that you'll accept specific filings by FAX? If so, publish the FAX number?

Continuous transmission vs. what if a break in transmission partway through the filing? These guidelines suggest requirement of continuous transmission, but what if the interruption is due to machine or operator error at election office end of FAX process?

APPROPRIATE/INAPPROPRIATE FAX USERS

Inappropriate Users

Campaign intermediaries should not FAX absentee ballot applications that were returned to them by voters. Election officials are strongly urged to discourage this practice.

Candidates, generally.

Appropriate Users

Individual voters, proponents/opponents of ballot measures, generally.

County Counsels, City Attorneys, Legislative Counsel, Legislative Analyst, Attorney General, School/Special Districts.

Recall and Initiative Proponents FAXing preliminary documents (not petitions)

NOTE: Election officials are encouraged to add their own "users" to this list based on advice from legal counsel.

APPENDIX



COUNTY OF LOS ANGELES

OFFICE OF THE COUNTY COUNSEL

648 HALL OF ADMINISTRATION

300 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

DE WITT W. CLINTON, COUNTY COUNSEL

September 24, 1990

TELEPHONE (213) 974-1821

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90 SEP 25 1990

COUNTY OF LOS ANGELES
REGISTER

Charles Weissburd
Registrar-Recorder
of the County of Los Angeles
5557 Ferguson Drive
Los Angeles, California 90022

Re: Facsimile Election Filings

Dear Mr. Weissburd:

You have asked our opinion whether certain election documents may be received by your office via facsimile transmission (FAX).

In our opinion, documents which merely require a signature may be received by FAX within established statutory deadlines.

Absent legislation authorizing receipt of FAX documents which are required to be supported by affidavit or declaration under penalty of perjury, however, we believe that only an original may be accepted.

Analysis

A. Statutory Provisions

We begin by reviewing the pertinent provisions of the Elections Code relating to the specific documents you have identified.

1. Voter Registrations. Section 500(j) provides that an affidavit of registration must be signed by the affiant who "...shall certify the content of the affidavit as to its truth and correctness, under penalty of perjury, with the signature of his or her name and if affiant is unable to write he or she shall sign with a mark or a cross."

¹ All statutory references are to sections of the Elections Code unless otherwise indicated.

2. Absent Voter Ballot Applications. Section 1002 provides that an application for an absent voter's ballot "...shall be signed by the applicant...." Section 1451(5), relating to permanent absentee voter applications, contains the same requirement, i.e., "[t]he signature of the applicant." Absentee ballots and permanent absentee voter applications are available to any registered voter. (See, Sections 1003, 1450.)

3. Candidate Nomination Papers. Section 6489 provides that "'nomination documents' means declarations of candidacy and nomination papers."

a. Declarations of Candidacy. Section 6491 sets forth the general form of the declaration of candidacy, which is to be provided to prospective candidates by the county clerk.² Section 6491 requires, among other things, that the candidate sign his or her declaration before a notary public (or under penalty of perjury) attesting to the truth of the statements made therein. Section 6490.5 provides that the declaration must be signed by the candidate in the office of the county clerk or, if another person is designated to receive the declaration on the candidate's behalf, that a written statement to that effect be signed and dated by the candidate, and retained by the clerk. The executed declaration must be filed with the county clerk in accord with mandatory statutory deadlines. (See, Sections 6490 - 6490.4.)

b. Nomination Papers. Section 6494 sets forth the general form of the "nomination paper" to be provided by the county clerk, requiring each signator to sign his or her name, and requiring the circulator to sign before a notary public (or under penalty of perjury) attesting that the signatures were properly obtained. Nomination papers must be delivered to the county clerk within the same mandatory deadlines applicable to declarations of candidacy. The county clerk shall not accept any nomination paper for filing

² In counties which have a registrar of voters, such as Los Angeles County, references in the Elections Code to the county clerk refer to the registrar. (Government Code Section 26802.)

unless all blanks in the certificate are filled. (Section 6497.) Before the nomination document is filed, the county clerk must verify "...the signatures and the political affiliations of the signers...with the [voter] registration on file...." (See, Section 6496.)

4. Resolutions Calling Elections. Resolutions calling elections refer, for the most part, to resolutions from districts, cities and other political subdivisions pursuant to Section 23302 requesting the board of supervisors to consolidate a local election with a statewide election to be conducted by the county. In addition, cities and districts may, by resolution, request the board to authorize the county clerk to provide specific election services pursuant to Section 22003. In each instance, the resolution is directed to the board.

5. Ballot Arguments and Rebuttals. Sections 3782-3787 regulate ballot arguments and rebuttals concerning county measures. Section 3785 provides that arguments for or against a county measure "...shall not be accepted [by the county clerk] unless accompanied by the name or names of the person or persons submitting it, ..." and that "[n]o more than five signatures shall appear with any argument submitted...." In addition, if the text of the argument includes the name of a person other than the author, the argument shall not be accepted without that person's signed consent. Rebuttals may be filed with the county clerk within 10 days after the final date for filing direct arguments. (Section 3787.)

B. Facsimile Filings

In a previous opinion to the Superior Court dated September 28, 1988, a copy of which is attached for your convenience, we concluded that Code of Civil Procedure Section 446 did not prohibit the Court from

³ Section 23302 provides that the resolution "...shall, at least 88 days prior to the date of the election, [be] filed with the board of supervisors, and a copy with the county clerk."

accepting facsimile documents for filing.⁴ Citing In Re Walker (1895) 110 Cal. 387, we noted that statutory requirements that documents be "subscribed" or signed have been liberally construed in those instances which, in the words of the Walker court, "...the requirement of a statute...calls merely for subscription or signing." (Id., at p. 391; emphasis added.) We cautioned, however, that "[t]his conclusion does not mean that facsimile signatures may be acceptable for all purposes," and suggested the adoption of a local court rule regulating facsimile filings.

In the absence of legislation expressly authorizing the receipt of facsimile election documents, we believe the same approach to be applicable here.

With respect to those election documents which merely require a signature, i.e., absent voter applications, ballot arguments and rebuttals, and argument consent forms, we see no legal bar to receipt of those documents by FAX.⁵ We note in this regard that on occasion your office has, with our verbal concurrence, accepted FAX requests for absentee ballots provided a signed original is later received to verify the voter's signature upon return of the voted ballot. We see no reason why this practice may not be continued or extended to ballot arguments and rebuttals, and argument consent forms.

⁴ Section 446 requires every pleading to be "subscribed" by the party or his attorney.

⁵ We note that since the release of our opinion to the Superior Court, the Legislature has adopted legislation to test procedures for service and filing of judicial facsimile documents. (Code of Civil Procedure Section 1012.5.)

⁶ As previously noted, resolutions calling elections are filed with the board, with a copy to the county clerk. Since a facsimile is itself a copy, there is no question that a facsimile is acceptable.

Charles Weissburd
Page 5

With respect to voter registrations, declarations of candidacy and nomination papers, however, we are of the opinion that an original document should be required within the statutory filing or delivery deadline, absent legislation permitting otherwise. These documents require more than a mere signature. They require proof of certain facts established by affidavit or declaration under penalty of perjury as a prerequisite to the legal sufficiency of the underlying document. (Dodge v. Free (1973) 32 Cal. App. 3d 436.) Without clear legislative authority, we cannot say that other than an original signature on such documents, filed or delivered within the proscribed statutory time frame, is acceptable.

If you determine that legislation in this area would be helpful to the operations of your department, we would be happy to work with your staff in determining what is necessary.

Very truly yours,

DE WITT W. CLINTON
County Counsel

By 
HALVOR S. MELOM
Principal Deputy County Counsel

APPROVED AND RELEASED:


DE WITT W. CLINTON
County Counsel

HSM:md

4HSM:anlysis

COUNTY OF LOS ANGELES

OFFICE OF THE COUNTY COUNSEL

648 HALL OF ADMINISTRATION

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December 12, 1990

(213) 626-2108

COUNTY OF LOS ANGELES REGISTER

Charles Weissburd
Registrar-Recorder
of the County of Los Angeles
5557 Ferguson Drive
Los Angeles, California 90012

Re: Acceptance by Recorder
of Documents Submitted
for Recording Via Facsimile

Dear Mr. Weissburd:

You have asked whether, as County Recorder, your office may accept documents submitted via facsimile transmission (FAX) for recording. Absent statutory authorization, I do not advise that you do so.

As Recorder, you are potentially liable if your office records "... any instrument, paper, or notice, willfully or negligently, untruly, or in any manner other than that prescribed by this chapter." (Government Code Section 27203; see, Section 27203.5). Chapter 6 of the Government Code in which this provision appears does not authorize recordation of FAX (i.e., copied) documents.

I am advised by Richard Hughes of your office that, to his knowledge, all recorders in the State require originally signed documents. Given the liability uncertainties, this seems to be the prudent course absent enabling legislation. As you may recall, the courts sought and obtained similar legislation last year. (See, Code of Civil Procedure Section 1012.5).

You also ask whether, as Recorder, you may provide the public with certified copies via FAX. While your signature may be a facsimile, the certified document itself must contain the original seal of your office. (Government Code Section 27210). Thus, a FAX copy would be of no value as a certified record.

Charles Weissburd
December 12, 1990
Page 2

Please let me know if I can be of further
assistance to you in this regard.

Very truly yours,

DE WITT W. CLINTON
County Counsel

By 

HALVOR S. MELOM
Principal Deputy County Counsel

HSW:md

c: Richard Hughes

clinton3.13r

Appendix "C"



March Fong Eu
Secretary of State

1230 J Street
P.O. Box 1467
Sacramento, California 95807

POLITICAL REFORM DIVISION
(916) 322-4880

late?
MAY, 1991?

NOTICE TO FILERS OF LATE CONTRIBUTION REPORTS

YOU MAY NOW FAX THEM!

For filers who must submit late contribution reports to the Secretary of State's Office, a new service is being offered. Now late contribution reports may be sent by facsimile transmission.

Our FAX Number Is:

(916) 322-2060

This new service is limited to late contribution reports and certain other reports and statements which must be filed within 24 hours of reportable activity during the 16 days immediately preceding the November 6, 1990 election. The late reporting period this year extends from October 21 through November 5, 1990.

PLEASE NOTE: Only reports that are NOT required to bear an original signature may be sent by FAX. Candidate and committee statements, such as Forms 420 and 490, will not be accepted.

Reports that may be FAXed (or filed by telegram, mailgram, guaranteed overnight delivery service or personal delivery) include Late Contribution Reports, Late Independent Expenditure Reports, Late Payment Reports (slate mailer organizations), Statements of Organization, and Statement of Organization Amendments.

Authority

The FPPC has concluded that any report or statement which is not required to bear an original signature may be sent by facsimile transmission equipment provided the filing officer has the ability to receive and is willing to accept this means of transmission.

Affected Documents

The Government Code prescribes 24-hour filing requirements for the documents listed below. The information may be reported by mailgram or telegram and, therefore, no original signature is required.

<u>Document</u>	<u>Government Code Section</u>	<u>Projected Number Filed Per June or November Election</u>
Late Contribution Report	84203(b)	2,500
Late Independent Expenditure Report	84204	150
Late Payment Report (Slate Mailer Organization)	84220	150
Statements of Organization (Recipient Committee)	84101(b)	15
Statements of Organization (Slate Mailer Organization)	84108	10
Statement of Organization Amendments	84103(b)	10

Equipment

Relevant factors regarding equipment include:

1. Would probably require the use of multiple machines to accommodate incoming volume of documents so 24-hour disclosure is not delayed due to equipment limitations.
2. One additional machine should be designated for sending exception notices and receiving amendments.
3. Each machine must have a dedicated telephone line. Suggest regular machines run off one number using a rotary system and the exception/amendment machine have a separate number.
4. Rent all machines once for a trial. If the trial is successful, purchase one machine for use year round during special and regular elections and rent additional machines on an as-needed basis for peak filing periods.
5. Machines must have automatic reception and memory feed features.

Factors to Consider

1. Paper used in facsimile machines does not always feed well through the automatic document handlers on photocopy machines. This could slow down the processing function considerably if documents must be fed manually, impacting information access by the public and rapid computer entry.
2. If a facsimile service is offered by the agency, a regulation should be prepared for Commission adoption requiring that facsimile notices contain the telephone number of the filer's facsimile machine. This will facilitate the filer exception or liability notification process for erroneous, incomplete, or late documents.



California Fair Political Practices Commission

April 19, 1990

Claudine Campbell Zender
Administrative Assistant
Campaign California
926 J Street, Suite 300
Sacramento, CA 95814

RE: Your Request for Informal
Assistance
Our File No. I-90-236

Dear Ms. Zender:

This is in reply to your letter to Bob Steele, Secretary of State's Political Reform Division, requesting informal assistance concerning the campaign provisions of the Political Reform Act.^{1/} Mr. Steele has referred your letter to the Commission.

QUESTION

CONCLUSION

If the filing officer has the ability to receive and is willing to accept this means of transmission, late contribution reports may be filed by facsimile transmission.

ANALYSIS

Section 84203(a) requires each candidate or committee that makes or receives a late contribution, as defined in Section 82306, to report the late contribution to each office with which the candidate or committee is required to file its campaign statements pursuant to Section 84215.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

Informal Assistance does not provide the requestor with the immunity provided by an opinion or formal written advice (Government Code Section 83114; 2 Cal Code of Regs. Sections 18000(c)(3)).

Claudine Campbell Zender
Page 2

Section 84203(b) states that a late contribution must be reported by mailgram, telegram, guaranteed overnight mail through the United States Postal Service, or personal delivery. The late contribution must be reported within 24 hours of the time it is made in the case of the candidate or committee that makes the contribution and within 24 hours of the time it is received in the case of the recipient.

Although the law specifies the manner in which a late contribution report must be sent, the intent of Section 84203(b) can be met by use of facsimile transmission equipment as long as all of the information required by Section 84203(a) is provided in a timely manner.

However, the Commission cannot adopt regulations requiring state and local filing officers to accept late contribution reports filed in this manner. Some filing officers may not have facsimile equipment available to them or easily accessible, and the Commission has no authority to require such officials to purchase the equipment. Therefore, unless each filing officer with whom you are required to file a late contribution report has agreed to accept facsimile transmissions, late contribution reports must be sent in the manner specified in Section 84203(b).

With regard to other reports and statements filed pursuant to the Act, the foregoing advice may also be applied to any other report or statement which is not required to bear an original signature (e.g., late independent expenditure reports). However, facsimile transmission may not be used for any report or statement which is required to contain the filer's original signature.

If you have any questions regarding this matter, please feel free to contact me at (916) 322-5662.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Linda Moureaux
Political Reform Consultant



March Fong Eu
Secretary of State

1230 J Street
P.O. Box 1487
Sacramento, California 95807

POLITICAL REFORM DIVISION
(916) 322-4880

March 20, 1990

Ms. Claudine Campbell Zender
Administrative Assistant
Campaign California
926 J Street, Suite 300
Sacramento, CA 95814

Dear Ms. Zender:

Thank you for your letter suggesting Political Reform Division purchase a fax machine, which will improve the conditions for filing LCRs and LIEs. Bob Steele has asked me to respond directly to you.

The use of a fax machine to make Late Contribution Reports may provide reporting benefits. However, prior to the purchase of a fax machine for the Political Reform Division, an equipment request must be approved by the State control agencies during the budget approval process. The earliest date a fax machine would be purchased, if approved, would be for the 1991-92 fiscal year.

The Fair Political Practices Commission (FPPC) promulgates regulations which establish guidelines for disclosure under the Political Reform Act. I am forwarding your letter to the FPPC for their review. If the FPPC approves regulations permitting the fax reporting of Late Contributions Reports, this approval would be used by the Political Reform Division in support of the request for fax equipment.

Thank you for your effort in trying to improve the filing process. If you have any further suggestions which you feel may enhance our procedures, please contact me at 322-4883.

Sincerely,

A handwritten signature in cursive script that reads "Deona Vastine".

DEONA VASTINE, Analyst
Political Reform Division

DV:cj

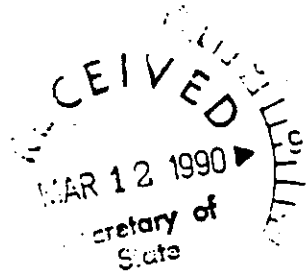
cc: Fair Political Practices Commission, Technical Assistance Division

CAMPAIGN CALIFORNIA



March 9, 1990

Bob Steele
Assistant Chief
Political Reform Division
Secretary of State
P.O. Box 1467
Sacramento, CA 95807



Dear Mr. Steele:

I would like your office to research regulations regarding filing of Late Contribution Reports by fax machine.

In the past I have been responsible for filing Late Contribution Reports by overnight mail and mailgram, and believe the current methods for filing of Late Contribution Reports are time-consuming and extremely costly.

I believe the public would better be served by permitting timely fax transmission of Late Contribution Reports, as these reports would be received virtually instantaneously by a clerk's office, rather than having to wait for mail delivery on the day following preparation of the report.

I have spoken with several county clerks' offices regarding this method of reporting, and all concede it makes sense. One clerk said she would inquire with the FPPC regarding their opinion on the matter, and reported that she was told Late Contribution Reports require an original document be filed.

I believe a fax transmission would meet this requirement, as it would be dated and timed by the machine in the clerk's office (either county or Secretary of State). Records of documents and the numbers to which they are sent are kept by the sending fax machine.

Extending regulations to permit filing of faxed Late Contribution Reports may require the purchase of fax machines by some county and state offices, but I believe many (if not most) government offices already have this equipment.

STATE OFFICE
926 J Street, Suite 300
Sacramento, California 95814
(916) 447-8950

BAY AREA REGIONAL OFFICE
1095 Market Street, Suite 705
San Francisco, California 94103
(415) 863-5050

LOS ANGELES REGIONAL OFFICE
227 Broadway, Suite 301
Santa Monica, California 90401
(213) 393-3701

SANTA CLARA VALLEY REGIONAL OFFICE
40 S. First Street
San Jose, California 95113
(408) 285-2850

Page Two
March 9, 1990

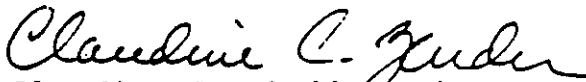
Campaign California recently sent letters to the county clerk's offices in all 58 counties, and noted with interest that approximately half of the responses arrived via our fax machine.

I might also note that for many stock market, banking and real estate transactions, faxed signatures are considered as valid on documents.

Could your office please research this matter and advise me as to whether this change in regulations could be considered by your office?

Thank you for your prompt attention to my request.

Sincerely,


Claudine Campbell Zuder
Administrative Assistant

F A X FEE SURVEY

County _____ Person completing survey _____

Phone () _____ Title _____

Elections Department: Send me the final "FAX" report.

1. Do you charge a fee for fax'ing a document? Yes No
2. If Yes, how much per: _____ page _____ document
3. Do you charge for a cover page? Yes No
4. Any limit on the number of pages you will fax?
 Yes, _____ pages No
5. In lieu of charging, do you allow customers to "poll" your fax machine for documents they want? Yes No
6. Do you charge for receiving fax'ed documents? Yes No
7. If Yes, how much do you charge and how do you collect?

8. If you do charge for receiving fax, do you charge other government agencies? Yes No

County Clerk's Department: (if you are the Clerk & ROV)

1. Do you charge a fee for fax'ing a document? Yes No
2. If Yes, how much per: _____ page _____ document
3. Do you charge for a cover page? Yes No
4. Any limit on the number of pages you will fax?
 Yes, _____ pages No
5. In lieu of charging, do you allow customers to "poll" your fax machine for documents they want? Yes No
6. Do you charge for receiving fax'ed documents? Yes No
7. If Yes, how much do you charge and how do you collect?

8. If you do charge for receiving fax, do you charge other government agencies? Yes No

Recorders Department: (if you are the Clerk/Recorder/ROV)

1. Do you charge a fee for fax'ing a document? Yes No
2. If Yes, how much per: _____ page _____ document
3. Do you charge for a cover page? Yes No
4. Any limit on the number of pages you will fax?
 Yes, _____ pages No
5. In lieu of charging, do you allow customers to "poll" your fax machine for documents they want? Yes No
6. Do you charge for receiving fax'ed documents? Yes No
7. If Yes, how much do you charge and how do you collect?

8. If you do charge for receiving fax, do you charge other government agencies? Yes No



OFFICE OF

PLACER COUNTY CLERK - RECORDER -
REGISTRAR OF VOTERS

Election Division • 11544 C Avenue • Auburn, CA 95603 • (916) 889-7088
Mailing: P.O. Box 5278 • Auburn, CA 95604-5278
FAX: (916) 889-7087

MARY ANN HULSE
Clerk-Recorder-Registrar

RUSS HARLAN
Assistant Registrar
of Voters

July 1992

F A X FEE SURVEY RESULTS

The FAX fee survey (dated April 22, 1992), which was mailed out to all 58 counties, resulted in 42 replies. Thanks to all who took the time to respond.

Attempting to understand all the answers was, at times, "interesting". However, the data should help in assisting those us who do not charge any fax fees (as an example) to determine a fax fee rate that would work in your particular county.

Apparently some of the questions were not very clear on the survey, or not understood, as the total of some "yes and no" responses does not add up to the total of the counties who responded to the survey. With that in mind, the following represents the latest data available from 42 counties dealing with fax.

ELECTIONS -

Replies: 37

Question 1: Yes = 12 No = 25

Question 2: Range of fees charged:

\$.04/page plus \$.68/document handling to \$8.00/1st page plus \$1.00 additional pages for out of state faxing.

Examples of individual fees:

- * \$5/st page + \$1/additional pages
- * \$1/page or \$4/document
- * \$1/1st + \$.50/additional
- * \$.18/page
- * \$2/1st + \$.50/additional
- * \$.50/page or \$2/document

- * 1-3 pages: \$3 + \$.25/page
- 3+ pages: \$1.25/page
- * Actual phone charges
- * Estimated phone charges

Average: \$1.00-\$2.00/page for in state fax'ing.

- Question 3: Yes = 8 No = 4
- Question 4: Yes = 5 No = 26 (5 yes: 4 limit to 10 pages, 1 limits to 3 pages)
- Question 5: Yes = 2 No = 35
 (Confusion here: "polling" is allowing a person who wants you to fax an item to them to "poll" [or call, if you will] your fax machine and "read" the document they want from your machine. You simply insert the document into your machine, they call your fax number and enter a code that allows their machine to read the document. In this manner, they pay for the call, not you.)
- Question 6: Yes = 1 No = 35
- Question 7: \$.18/page
- Question 8: Yes = 1 No = 5

COUNTY CLERK -

- Replies: 24
- Question 1: Yes = 9 No = 15
- Question 2: Basically, same as elections.
- Question 3: Yes = 5 No = 4
- Question 4: Yes = 1 No = 20 (1 yes: limit to 10 pages)
- Question 5: Yes = 0 No = 21
- Question 6: Yes = 6 No = 18
- Question 7: NONE
- Question 8: Yes = 1 No = 3

RECORDERS -

- Replies: 20
- Question 1: Yes = 6 No = 8
- Question 2: Range of fees charged:
 A few the same as fees charged for elections, some court documents \$15 plus \$1/page.
- Question 3: Yes = 3 No = 3
- Question 4: Yes = 1 No = 12 (1 yes: limit to 10 pages)
- Question 5: Yes = 0 No = 13
- Question 6: Yes = 1 No = 12
- Question 7: \$1/page. Charge to credit card or sent up an account. For public to send, \$3/1st. page plus \$1/additional pages.
- Question 8: Yes = 0 No = 2

SPECIAL RULES FOR TRIAL COURTS

DIVISION VI. RULES FOR FAX FILING AND SERVICE

Adopted by the Judicial Council of California Effective March 1, 1992

Former Rules 2001 to 2011 Repealed Effective March 1, 1992

Table of Rules

Table listing rules 2001-2009 with their respective titles: Authority, Applicability, Definitions, Compliance, Filing Through Fax Filing Agency, Direct Filing, Signatures, Service of Papers by Facsimile Transmission, Facsimile Transmission Cover Sheet.

RULE 2001. AUTHORITY

The rules in this division are adopted pursuant to Code of Civil Procedure section 1012.5 and the authority granted to the Judicial Council by the Constitution, article VI, section 6. Adopted, eff. March 1, 1992.

RULE 2002. APPLICABILITY

These rules apply to civil, probate, and family law proceedings in all trial courts. Notwithstanding any provision in these rules, no will, codicil, bond, or undertaking shall be filed by fax nor shall a court issue by fax any document intended to carry the original seal of the court. Adopted, eff. March 1, 1992.

RULE 2003. DEFINITIONS

As used in this division, unless the context requires otherwise:

- (1) "These rules" means the rules in this division.
(2) "Facsimile transmission" is the transmission of a document by a system that encodes a document into electrical signals, transmits these electrical signals over a telephone line, and reconstructs the signals to print a duplicate of the original document at the receiving end.
(3) "Facsimile machine" means a machine that can send a facsimile transmission using the international standard for scanning, coding, and transmission established for Group 3 machines by the Consultative Committee of International Telegraphy and Telephone of the International Telecommunications Union (CCITT), in regular resolution. Any

facsimile machine used to send documents to a court under rule 2006 must send at an initial transmission speed of no less than 4800 baud and be able to generate a transmission record. Facsimile machine includes, but is not limited to, a facsimile modem that is connected to a personal computer.

(4) "Facsimile filing" or "filing by fax" means the facsimile transmission of a document to a court that accepts such documents.

(5) "Service by fax" means the transmission of a document to a party or the attorney for a party pursuant to these rules.

(6) "Transmission record" means the document printed by the sending facsimile machine stating the telephone number of the receiving machine, the number of pages sent, the transmission time and date, and an indication of any errors in transmission.

(7) "Fax" is an abbreviation for "facsimile," and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.

(8) "Fax filing agency" means an entity that receives documents by fax for processing and filing with the court.

* Recommendations T.4 and T.30, Volume VII—Facsimile VII.3, CCITT Red Book, Malaga-Torremolinos, 1984, U.N. Bookstore Code ITU 6731.

Adopted, eff. March 1, 1992.

RULE 2004. COMPLIANCE WITH RULES 201 AND 501

The document used for transmitting a fax shall comply with rule 201 or 501 and any applicable local rules regarding form or format of papers. Any

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exhibit that exceeds 8½ by 11 inches shall be reduced in size to not more than 8½ by 11 inches before it is transmitted. The court may require the party to file the original of an exhibit that has been filed by fax.

Adopted, eff. March 1, 1992.

RULE 2005. FILING THROUGH FAX FILING AGENCY

(a) [Transmission of document for filing] A party may transmit a document by fax to a fax filing agency for filing with any trial court. The agency acts as the agent of the filing party and not as an agent of the court.

(b) [Duties of fax filing agency] The fax filing agency that receives a document for filing shall:

(1) Prepare the document so that it complies with rule 201 or 501 and any other requirements for filing with the court;

(2) Physically transport the document to the court; and

(3) File the document with the court, paying any applicable filing fee.

(c) [Requirement of advance arrangements] A fax filing agency shall not be required to accept papers for filing from any company unless appropriate arrangements for payment of filing fees and service charges have been made in advance of any transmission to the agency. If an agency receives documents from a person with whom it does not have prior arrangements, the agency may, without notice to the sending party, discard the document.

(d) [Confidentiality] A fax filing agency shall keep all documents transmitted to it confidential except as provided in these rules.

(e) [Certification] A fax filing agency, by filing a document with the court, certifies that it has complied with these rules and that the document filed is the full and unaltered facsimile-produced document received by it. No additional certification shall be required of the agency.

(f) [Notation of fax filing] Each document filed by a fax filing agency shall contain the phrase "By fax" immediately below the title of the document.

Adopted, eff. March 1, 1992.

RULE 2006. DIRECT FILING

(a) [Courts in which applicable] A party may file by fax directly to any court that, by local rule, has provided for direct filing. The local rule shall state that direct filing may be made pursuant to these rules and shall provide the fax telephone number for filings and specific telephone numbers for any departments to which fax filings should be

made directly. The court shall also accept agency filings under rule 2005.

(b) [Mandatory cover sheet] A facsimile filing shall be accompanied by the Judicial Council Facsimile Filing Cover Sheet specified by rule 2009. The cover sheet shall be the first page transferred, to be followed by any special handling instructions needed to ensure that the document will comply with local rules. Neither the cover sheet nor the special handling instructions shall be filed in the case. The court shall ensure that any credit card information on the cover sheet shall not be publicly disclosed. The court shall not be required to keep a copy of the cover sheet.

(c) [Notation of fax filing] Each document transmitted for direct filing with the court shall contain the phrase "By fax" immediately below the title of the document.

(d) [Presumption of filing] A party filing by fax shall cause the transmitting facsimile machine to print a transmission record of each filing by fax. If the facsimile filing is not filed with the court because of (1) an error in the transmission of the document to the court which was unknown to the sending party or (2) a failure to process the facsimile filing when received by the court, the sending party may move the court for an order filing the document nunc pro tunc. The motion shall be accompanied by the transmission record and a proof of transmission in the following form:

"At the time of transmission I was at least 18 years of age and not a party to this legal proceeding. On (date) _____ at (time) _____, I transmitted to the (court name) _____ the following documents (name) _____ by facsimile machine, pursuant to California Rules of Court, rule 2006. The court's fax telephone number that I used was (fax telephone number) _____. The facsimile machine I used complied with rule 2003 and no error was reported by the machine. Pursuant to rule 2006 I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

"I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct."

(e) [Payment of fees by credit card]

(1) [Visa or Mastercard account] A Visa or Mastercard account may be used to pay for filing fees on facsimile filings made directly with the court. The cover sheet for these filings shall include (1) the Visa or Mastercard account number to which the fees shall be charged, (2) the signature of the cardholder authorizing the charging of the fees, and (3) the expiration date of the credit card. Notwithstanding Government Code section 6159(c), a court does not need the consent of the county board

of supervisors to permit the use of credit cards to pay filing fees in filings covered by these rules.

(2) [*Rejection of charge*] If the charge is rejected by the issuing company, the court shall proceed in the same manner as under Code of Civil Procedure section 411.20 relating to returned checks. This provision shall not prevent a court from seeking authorization for the charge before the filing and rejecting the filing if the charge is not approved by the issuing company.

(3) [*Amount of charge*] The amount charged shall be the applicable filing fee plus any fee or discount imposed by the card issuer or draft purchaser.

(f) [*Filing fee accounts*] If a court so provides in its local rule establishing a direct filing program, an account may be used to pay for documents filed by fax by an attorney or party who has established an account with the court before filing a paper by fax. The court may require the deposit in advance of an amount not to exceed \$1,000 or the court may agree to bill the attorney or party not more often than monthly.

(g) [*Facsimile filing fee*] In addition to any other fee imposed by law, a party filing a document by fax directly with a court shall pay a fee of \$1 for each page of the document.

Adopted, eff. March 1, 1992.

RULE 2007. SIGNATURES

(a) [*Possession of original document*] A party who files or serves a signed document by fax pursuant to Code of Civil Procedure section 1012.5 and these rules represents that the original signed document is in his or her possession or control.

(b) [*Demand for original; waiver*] At any time after filing or service of a signed facsimile document, any other party may serve a demand for production of the original physically signed document. The demand shall be served on all other parties but shall not be filed with the court.

(c) [*Examination of original*] If a demand for production of the original signed document is made, the parties shall arrange a meeting at which the original signed document can be examined.

(d) [*Fax signature as original*] Notwithstanding any provision of law to the contrary, including sections 255 and 260 of the Evidence Code, a signature produced by facsimile transmission is an original.

Adopted, eff. March 1, 1992.

RULE 2008. SERVICE OF PAPERS BY FACSIMILE TRANSMISSION

(a) [*Transmission of papers by court*] A court may serve any notice by fax in the same manner that litigants may serve papers by fax.

(b) [*Service by fax*] Service by facsimile transfer shall be permitted only if the parties agree and a written confirmation of that agreement is made. The notice or other paper must be transmitted to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number as last given by that person on any document which he or she has filed in the cause and served on the party making service. The service is complete at the time of transmission, but any prescribed period of notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after the service of such document served by facsimile transmission shall be extended by two court days, but such extension shall not apply to extend the time for filing notice of intention to move for new trial.

(c) [*Availability of fax*] A party or attorney agreeing to accept service by fax shall make his or her fax machine generally available for receipt of documents between the hours of 9 a.m. and 5 p.m. on days that are not court holidays under Code of Civil Procedure section 136. This provision does not prevent the attorney from sending documents by means of the fax machine or providing for normal repair and maintenance of the fax machine during these hours.

(d) [*When service complete*] Service by fax is complete upon receipt of the entire document by the receiving party's facsimile machine. Service that occurs after 5 p.m. shall be deemed to have occurred on the next court day. Time shall be extended as provided by this rule.

(e) [*Proof of service by fax*] Proof of service by fax may be made by any of the methods provided in Code of Civil Procedure section 1013a, except that:

(1) The time, date, and sending facsimile machine telephone number shall be used in lieu of the date and place of deposit in the mail;

(2) The name and facsimile machine telephone number of the person served shall be used in lieu of the name and address of the person served as shown on the envelope;

(3) A statement that the document was transmitted by facsimile transmission and that the transmission was reported as complete and without error shall be used in lieu of the statement that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid; and

(4) A copy of the transmission report shall be attached to the proof of service and the proof of service shall declare that the transmission report was properly issued by the transmitting facsimile machine.

Adopted, eff. March 1, 1992.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):		TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (Name):		FAX.:	
COURT NAME:			
PETITIONER/PLAINTIFF:			
RESPONDENT/DEFENDANT:			
FACSIMILE TRANSMISSION COVER SHEET			CASE NUMBER:

TO THE COURT:

1. Please file the following transmitted documents in the order listed below:

<u>Document name</u>	<u>No. of pages</u>
----------------------	---------------------

2. Processing instructions consisting of: _____ pages are also transmitted.

3. Fee required Filing fee Fax fee (rule 2007(e))

a. Credit card payment (Nevada County Municipal, Oakland-Piedmont Municipal, San Bernardino Superior, Santa Clara Superior, South Bay Municipal, and Ventura Superior Courts—rule 2007(b)). I authorize the above fees and any amount imposed by the card issuer or draft purchaser to be charged to the following account:

VISA MASTERCARD Account No. _____ Expiration date: _____

.....
(TYPE OR PRINT NAME OF CARDHOLDER)

(SIGNATURE OF CARDHOLDER)

b. Attorney account (Modoc Superior and Visalia Municipal Courts—rule 2007(c)).
Please charge my account No. _____

c. Fee to be mailed (Crest Forest Justice, Monterey County Municipal, and Ventura Superior Courts—rule 2007(d)).

4. If the filing is in the Crest Forest Justice, Modoc Superior, or Monterey County Municipal Court, the filing party must insert in the box below the name and address to which the copy of this cover sheet shall be mailed.

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Form Adopted by Rule 2011
Judicial Council of California
2011 (New July 1, 1990)

**FACSIMILE TRANSMISSION
COVER SHEET
(Fax Filing)**

Code of Civil Procedure, § 1012.5
Cal. Rules of Court, rule 2005(d)

2011 Facsimile Transmission Cover Sheet. Adopted for mandatory use July 1, 1990.

Statutory References

- Service of documents by facsimile transmission: Deering's CCP § 1012.5.
- Rules for fax filing in pilot project counties: Deering's CRC Rules 2001 et seq.
- "Facsimile machine" defined: CRC Rule 2003(3).
- FAX filing agency: CRC Rules 2005(b), 2008.
- Proof of transmission by fax: CRC Rule 2010.

Collateral References

- Cal Civil Practice Filing by Facsimile Transmission §§ 14:20 et seq.

Practice Guides

The facsimile transmission cover sheet is mandatory [CRC Rule 2005(d)].

CRC Rules 2001-2011 implement CCP § 1012.5, which establishes pilot projects for the service and filing of documents by facsimile trans-

mission (FAX). The rules apply to civil (except small claims), probate, and family law proceedings [CRC Rule 2002]. The complete text of Rules 2001-2011 is published in Pamphlet No. 17 (June 21, 1990) of the California Official Reports.

The legislation required pilot projects in at least three superior courts, and three municipal and justice courts. However, as promulgated by the Judicial Council, the rules permit all California courts to voluntarily participate in this project [CRC Rule 2002].

The designated superior courts are Los Angeles, Marin, Modoc, Orange, San Bernardino, Santa Clara, and Ventura Counties. Also participating are the Monterey, Nevada, Oakland-Piedmont-Emerlyville, South Bay (Los Angeles) and Visalia Municipal Courts, and the Crest Forest Justice Court (San Bernardino County) [CRC Rule 2002].

Direct FAX filing is available in all pilot courts except Los Angeles, Marin, and Orange County Superior Courts. Those courts will permit filing through FAX filing agencies [CRC Rule 2008(a)]. Documents received in whole or in part by a machine after 5:00 P.M., as indicated by the court's receiving machine, are deemed received on the next court day [CRC Rule 2005(c)].

Chapter 13 Facsimile Filing

2011

Facsimile Transmission Cover Sheet

Editor's Note—The constitutionality of the legislation under which these forms were promulgated, Deering's Health & Safety Code § 25958, was challenged in *American Academy of Pediatrics v Van de Kamp*, San Francisco Superior Court No. 884574. On December 28, 1987, Judge Murton Colvin issued a preliminary injunction harring enforcement of § 25958 until trial can be had on its constitutionality. The judge found that plaintiffs had shown a reasonable likelihood of prevailing at trial on their claim that the law violates teenage girls' state constitutional privacy rights. The state applied to both the Court of Appeal and the California Supreme Court for writs to overturn the stay of enforcement of the statute, which were denied. On appeal to the First District, the state argued that the superior court had abused its discretion in granting the preliminary injunction. On October 19, 1989, the Court of Appeal held that it did not, and returned the matter to the superior court for further proceedings. (*American Academy of Pediatrics v Van de Kamp* (1989) 214 Cal App 3d 831, 263 Cal Rptr 46.

Practice Guides

Amendments to the FAX Filing Pilot Project Rules (CRC Rules 2001-2011):

Prohibit the filing of a will, codicil, bond, or undertaking by fax
Prohibit the transmission to the court by fax of a document to be issued by the court

Require the date be part of any transmission record created by the sending fax machine

Provide for the inclusion of an attorney's State Bar membership number on a document

Permit the sending of a document without the physical signature, if the signed original document is in the sender's possession or control

Provide that the filing of a document by a fax filing agency constitutes a certification of it that (1) the fax filing rules have been complied with and (2) the document filed is full and unaltered

Provide that proof of transmission include the time and date of the transmission

Require that an exhibit that exceeds 8 1/2 by 11 inches must be reduced to 8 1/2 by 11 inches before it is transmitted

The following FAX telephone numbers have been in effect since January 1, 1990. Check with your local courts for the most recent numbers.

Crest Forest Justice Court: (714) 337-2101

Modoc County Superior Court: (916) 233-2434

Monterey County Municipal Court:

Salinas Division: (408) 755-5483

Monterey Division: (408) 647-7883

Nevada County Municipal Court (916) 265-1676

Oakland-Piedmont Municipal Court (510) 268-7807

San Bernardino County Superior Court:

Central District (714) 387-4428

Desert District (619) 243-8768

East Desert District (619) 366-4162

North Desert District (619) 256-4711

West District (714) 945-4428

Santa Clara County Superior Court:

Main Office (408) 298-9251

Family Court Branch (408) 287-5316

Palo Alto Branch (415) 325-2813

South Bay (L.A.) Municipal Court (213) 787-9014

Ventura County Superior Court: (805) 654-5110

Visalia Municipal Court (209) 730-2676

Fax filing through Fax filing agencies is available in the following court:

Alameda Superior Court (by local rule pursuant to CRC Rule 2002)

Contra Costa Superior Court (by local rule pursuant to CRC Rule 2002)

Los Angeles County Superior Court

Marin County Superior Court

Orange County Superior Court