



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: January 19–20, 2017

Title	Agenda Item Type
Forms: Technical Changes to Proof of Service Forms	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise forms POS-040, POS-040(P), POS-050/EFS-050, POS-050(P)/EFS-050(P), and EFS-020	February 1, 2017
Recommended by	Date of Report
Judicial Council Staff	December 22, 2016
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Executive Summary

Members of the public and Judicial Council staff have identified changes required for several proof of service forms as a result of previous rule amendments that remove the requirement that the time of service by fax or electronic service be stated on the forms. The staff to the Judicial Council recommends making the necessary corrections to avoid confusing litigants, clerks, and judicial officers.

Recommendation

The staff to the Judicial Council recommends that the council, effective February 1, 2017:

1. Revise *Proof of Service–Civil* (form POS-040) to delete item 5.c.(2), which requires entry of the time of service by fax.
2. Revise *Attachment to Proof of Service–Civil (Persons Served)* (form POS-040(P)) to delete the third column titled “Time of Service (Complete for service by fax transmission).”

3. Revise *Proof of Electronic Service* (form POS-050/EFS-050) to delete item 3.d., which requires entry of the time of electronic service.
4. Revise *Attachment to Proof of Electronic Service (Persons Served)* (form POS-050(P)/EFS-050(P)) to delete the references to time of service in the third column titled “Date and Time of Electronic Service.”
5. Revise *Proposed Order (Cover Sheet) (Electronic Filing)* (form EFS-020), page two, entitled “Proof of Electronic Service, *Proposed Order*,” to delete item 2.d., which requires entry of the time of electronic service.

The revised forms are attached at pages 3–10.

Previous Council Action

The Judicial Council has acted on these forms previously, but this proposal recommends only minor corrections to conform to recent rules of court amendments.

Rationale for Recommendation

At its October 2016 meeting, the Judicial Council approved amendments to several rules of court as part of the Rules Modernization effort led by the Information Technology Advisory Committee (ITAC), working together with the Civil and Small Claims Advisory Committee. Among other changes, rule 2.251(i)(1)(B)(ii) and rule 2.306(h)(1) of the California Rules of Court were amended to remove the requirement that the time of service of documents by fax or electronic means be stated on the proof of service. The forms were not included in the Rules Modernization proposal. The proposed revisions to these forms are technical in nature and necessary to conform to the amended rules that take effect January 1, 2017.

Comments, Alternatives Considered, and Policy Implications

These proposed revisions were not circulated for public comment because they are noncontroversial, involve technical revisions, and are therefore within the Judicial Council’s purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).) Because of the need to correct these forms as soon as possible, no alternatives were considered.

Implementation Requirements, Costs, and Operational Impacts

The forms are used by litigants, so any impact on the courts would be minimal.

Attachments and Links

1. Judicial Council forms POS-040, POS-040(P), POS-050/EFS-050, POS-050(P)/EFS-050(P), and EFS-020, at pages 3–10

CASE NAME:	CASE NUMBER:
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6. b. **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (*specify one*):
- (1) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (2) placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (*city and state*):
- c. **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.*)
- e. **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

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

Date:

(TYPE OR PRINT NAME OF DECLARANT)	▶	(SIGNATURE OF DECLARANT)
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(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

- By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (*date*):

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

Date:

(NAME OF DECLARANT)	▶	(SIGNATURE OF DECLARANT)
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INFORMATION SHEET FOR PROOF OF SERVICE—CIVIL

(This information sheet is not part of the official proof of service form and does not need to be copied, served, or filed.)

USE OF THIS FORM

This form is designed to be used to show proof of service of documents by (1) personal service, (2) mail, (3) overnight delivery, (4) messenger service, or (5) fax.

This proof of service form should **not** be used to show proof of service of a summons and complaint. For that purpose, use *Proof of Service of Summons* (form POS-010).

Also, this proof of service form should **not** be used to show proof of electronic service. For that purpose, use *Proof of Electronic Service* (form POS-050).

Certain documents must be personally served. For example, an order to show cause and temporary restraining order generally must be served by personal delivery. You must determine whether a document must be personally delivered or can be served by mail or another method.

GENERAL INSTRUCTIONS

A person must be over 18 years of age to serve the documents. The person who served the documents must complete the Proof of Service. **A party to the action cannot serve the documents.**

The Proof of Service should be typed or printed. If you have Internet access, a fillable version of this proof of service form is available at www.courts.ca.gov/forms.htm.

Complete the top section of the proof of service form as follows:

First box, left side: In this box print the name, address, and telephone number of the person for whom you served the documents.

Second box, left side: Print the name of the county in which the legal action is filed and the court's address in this box. The address for the court should be the same as the address on the documents that you served.

Third box, left side: Print the names of the plaintiff/petitioner and defendant/respondent in this box. Use the same names as are on the documents that you served.

Fourth box, left side: Check the method of service that was used. You should check only one method of service and should show proof of only one method on the form. If you served a party by several methods, use a separate form to show each method of service.

First box, top of form, right side: Leave this box blank for the court's use.

Second box, right side: Print the case number in this box. The case number should be the same as the case number on the documents that you served.

Third box, right side: State the judge and department assigned to the case, if known.

Complete items 1–6:

1. You are stating that you are over the age of 18.
2. Print your home or business address.
3. If service was by fax service, print the fax number from which service was made.
4. List each document that you served. If you need more space, check the box in item 4, complete the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)), and attach it to form POS-040.
5. Provide the names, addresses, and other applicable information about the persons served. If more than one person was served, check the box on item 5, complete the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)), and attach it to form POS-040.
6. Check the box before the method of service that was used, and provide any additional information that is required. The law may require that documents be served in a particular manner (such as by personal delivery) for certain purposes. Service by fax generally requires the prior agreement of the parties.

You must sign and date the proof of service form. By signing, you are stating under penalty of perjury that the information that you have provided on form POS-040 is true and correct.

SHORT TITLE:	CASE NUMBER:
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ATTACHMENT TO PROOF OF SERVICE—CIVIL (PERSONS SERVED)

(This attachment is for use with form POS-040.)

NAMES, ADDRESSES, AND OTHER APPLICABLE INFORMATION ABOUT PERSONS SERVED:

Name of Person Served

Where Served

(If the person served is an attorney, the party or parties represented should also be stated.)

(Provide business or residential address where service was made by personal service, mail, overnight delivery, or messenger service. For service by fax, provide fax number.)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;">DRAFT Not approved by the Judicial Council</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	CASE NUMBER:
PROPOSED ORDER (COVER SHEET)	JUDICIAL OFFICER:
	DEPT:

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:

2. Title of the proposed order:

3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding:
 - b. Date and time:
 - c. Place:

4. The proposed order was served on the other parties in the case.

 (TYPE OR PRINT NAME)



 (SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME:	CASE NUMBER:
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**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action.**

a. My residence or business address is *(specify)*:

b. My electronic service address is *(specify)*:

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On *(name of person served)* *(If the person served is an attorney, the party or parties represented should also be stated.)*:

b. To *(electronic service address of person served)*:

c. On *(date)*:

Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

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

Date:

(TYPE OR PRINT NAME OF DECLARANT)



 (SIGNATURE OF DECLARANT)