



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 24, 2019

Title

Criminal Procedure: Proof of Service in
Criminal Record Clearing Requests

Agenda Item Type

Action Required

Effective Date

January 1, 2020

Rules, Forms, Standards, or Statutes Affected

Approve forms CR-106 and CR-106-INFO

Date of Report

September 24, 2019

Recommended by

Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

Contact

Sarah Fleischer-Ihn, 415-865-7702
Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends approval of a new optional form and an accompanying information sheet for petitioners to use with requests for a court to review a criminal record for dismissal, vacatur, resentencing, reduction, sealing, or other record clearing remedies. The new forms will help self-represented petitioners meet requirements for service on the prosecuting agency and other relevant parties.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2020, approve:

1. *Proof of Service—Criminal Record Clearing* (form CR-106), which can be used by petitioners to provide proof of service of a criminal record clearing request; and
2. *Information on How to File a Proof of Service in Criminal Record Clearing Requests* (form CR-106-INFO), which provides general information and directions on how to use and file form CR-106.

The new forms are attached at pages 5–8.

Relevant Previous Council Action

The Judicial Council has taken no previous action on this proposal.

Analysis/Rationale

In recent years, the Legislature has passed multiple bills authorizing petitions for dismissal, sealing, or other related criminal record clearing relief in an increasing number of circumstances.¹ Many petitioners seeking relief are self-represented because these petitions are generally filed after the criminal case or inquiry has concluded. While developing forms to implement Penal Code section 851.91 (see Link A), the Criminal Law Advisory Committee discussed whether to develop an accompanying proof of service form. It determined instead to develop a single, optional proof of service form that could be used with several different record clearing requests. Such a form would help self-represented petitioners meet requirements for service on the prosecuting agency and other relevant parties, as set forth in the statutes that authorize the various forms of relief. (For example, under Penal Code section 851.91(b)(1)(D), a petition to seal arrest records must be served on the law enforcement agency that arrested petitioner.)

Policy implications

The committee intends for form CR-106 to reduce procedural barriers for self-represented petitioners seeking criminal record clearing.

Comments

This proposal circulated for comment from April 11 to June 10, 2019. Eight comments were received. Four commenters agreed with the proposal, one agreed with the proposal if modified, and three did not indicate a position but suggested changes. The committee revised the forms in response to the comments.

Several comments recommended making the forms more user-friendly by improving readability, simplifying language, and adding more information about electronic service. The committee agreed with the recommendations and incorporated them into the proposed forms.

One commenter recommended that the committee develop additional resources—such as step-by-step checklists—to guide self-represented litigants with record clearing requests. The committee declined to develop additional resources at this time.

The committee requested specific comments on whether it was confusing to have one proof of service form for use with a variety of record clearing requests arising from different statutes with different procedural requirements. Although one commenter stated that one form could be confusing, four commenters stated that a single form would not be confusing. The committee

¹ For example, [Pen. Code, § 236.14](#) (vacatur relief for human trafficking victims meeting designated factors), [Pen. Code, § 851.91](#) (sealing of arrest and related records), [Pen. Code, § 1170.22](#) (recall or dismissal of conviction for violation of former Pen. Code, § 647f), and [Pen. Code, § 1170.91](#) (resentencing of current or former members of the U.S. military who may be suffering from designated conditions).

decided that a single proof of service form for use with many types of record clearing requests was more efficient.

Two commenters requested clarification on whether the proof of service form was intended for limited use—only in conjunction with the optional Judicial Council forms listed in CR-106-INFO²—or whether the proof of service form could be used with any record clearing request. The committee determined that it would be helpful to petitioners and the courts for the form to be used broadly, including with Proposition 64 forms and petitions for writs of habeas corpus. Accordingly, the list of optional Judicial Council forms on form CR-106-INFO was updated to include *Petition/Application (Health and Safety Code, § 11361.8)* (form CR-400) and *Petition for Writ of Habeas Corpus* (form HC-001).

When developing the proposal, the committee discussed whether form CR-106 should track the requirements outlined in Code of Civil Procedure sections 1011 and 1013a, requiring service by mail or personal delivery to be accomplished by a person who is not a party to the case. No equivalent sections address service by mail or personal delivery in the Penal Code. The committee determined that these sections of the Code of Civil Procedure are likely inapplicable in record clearing actions, and there is no authority in the Penal Code for requiring that the server *not* be a party to the case.³

The committee requested specific comments on whether there were policy reasons for the server not to be a party to the action. One commenter stated that allowing a petitioner to serve copies of his or her own petition would reduce barriers for self-represented litigants. Another commenter stated that the policy reasons for nonparty service in a civil case did not seem to apply because, in the civil context, servers may need to be called as witnesses to establish proper service for ongoing court proceedings, whereas the main issue in criminal record clearing petitions is that service occurred, and the server would declare that service occurred under penalty of perjury. Two other commenters responded that there were no policy reasons for the server not to be a

² The following six petitions were listed in the circulated version of form CR-106-INFO: *Petition for Dismissal* (form CR-180), dismissals under Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, and 1203.49, and reductions under Penal Code sections 17(b) and 17(d)(2); *Petition for Dismissal (Military Personnel)* (form CR-183), dismissals under Penal Code section 1170.9(h), and reductions under Penal Code section 17(b); *Motion to Vacate Conviction or Sentence* (form CR-187), vacating convictions under Penal Code sections 1016.5 and 1473.7; *Petition/Application for Resentencing and Dismissal* (form CR-404), resentencing and dismissal under Penal Code section 1170.22; *Petition to Seal Arrest and Related Records* (form CR-409), sealing under Penal Code section 851.91; and *Petition for Resentencing Based on Health Conditions From Military Service Listed in Penal Code Section 1170.91(b)* (form CR-412/MIL-412). In response to the comments, the committee added *Petition/Application (Health and Safety Code, § 11361.8)* (form CR-400) and *Petition for Writ of Habeas Corpus* (form HC-001) to form CR-106-INFO.

³ See *People v. Glimps* (1979) 92 Cal.App.3d 315, 325, fn. 6 (section 1011, specifying methods for service, does not apply in criminal actions because the statute appears in part 2 of the Code of Civil Procedure [“of Civil Actions”] and is not referenced in the Penal Code); *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 729 (“only those procedural provisions of the Code of Civil Procedure that expressly are made applicable to penal actions apply in criminal cases”).

party to the action. Based on these comments, the committee recommends that the proof of service form reflect that petitioners may serve their own petitions.

Alternatives considered

When developing the proposal, the committee discussed whether to develop a generic proof of service form for use in all criminal proceedings. It determined that narrowing the form for use with record clearing requests would serve a more useful purpose. It noted that in many instances these requests are filed by self-represented petitioners, and the corresponding statutes require service on the prosecuting agency and other government agencies. The committee believed that an optional proof of service for use in these types of criminal proceedings would assist self-represented petitioners to better meet statutory notification and service requirements.

Fiscal and Operational Impacts

The proposed forms are optional. Expected costs would be limited to the production of forms, training, and possible case management system updates.

Attachments and Links

1. Forms CR-106 and CR-106-INFO, at pages 5–8
2. Chart of comments, at pages 9–19
3. Link A: Pen. Code, § 851.91,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=851.91.&lawCode=PEN

Clerk stamps date here when form is filed.

**DRAFT
Not approved by
the Judicial Council**

Instructions

- Before using this form, read *Information on How to File a Proof of Service in Criminal Record Clearing Requests* (form CR-106-INFO).
- This form is only for providing proof that a document or form was served (delivered) in a case requesting that a court review a criminal record for dismissal, vacatur, resentencing, reduction, sealing, or other **record clearing remedy**.
- The person who serves (delivers) a document or form in this case and who fills out this form must be at least 18 years old.
- This form is for proof of service by mail or personal delivery. For proof of electronic service, use *Proof of Electronic Service* ([form POS-050/EFS-050](#)).
- A completed form should be filed with the court. Keep a copy of this form for your records.

Fill in court name and street address:

Superior Court of California, County of

Fill in criminal case number and case name:

Case Number:

Case Name:

People of the State of California

v.

① At the time I served the document or form listed below, I was at least 18 years old.

② My home business address is:

Street City State Zip

③ I mailed or personally delivered the following document or form (fill in the name of the document you are serving and complete ④ or ⑤):

④ **Service by mail**



(a) I put one copy of the document or form in an envelope addressed to each agency (and person, if applicable) listed below, sealed the envelope, and put first-class postage on the envelope.

(b) The envelope or envelopes were addressed as follows:

(1) Name of agency served (and person, if applicable):
Address on envelope:

Street City State Zip

(2) Name of agency served (and person, if applicable):
Address on envelope:

Street City State Zip

Check here if you mailed copies of the document or form to more people or agencies. Attach a separate page listing the names and addresses on each additional envelope you mailed. Write "CR-106, Item 4" on the top of the page.

(c) I mailed the envelope or envelopes on (date): from (city): (state):
by depositing the envelope or envelopes (check one):

(1) With the U.S. Postal Service.

(2) At an office or business mail drop where I know the mail is picked up every day and deposited with the U.S. Postal Service.



5 Service by Personal Delivery



I personally gave one copy of the document or form to each of the following:

(a) Name of person and agency served:

(1) Address where you gave the document or form to this person:

Street City State Zip

(2) Date when you gave the document or form to this person:

(3) Time when you gave the document or form to this person:

(b) Name of person and agency served:

(1) Address where you gave the document or form to this person:

Street City State Zip

(2) Date when you gave the document or form to this person:

(3) Time when you gave the document or form to this person:

Check here if you gave copies of the document or form to more people. Attach a separate page listing the names of each of these people, the address where you gave each of them the document or form, and the date and time you gave them the document or form. Write "CR-106, Item 5" on the top of the page.

6 I declare under penalty of perjury under California state law that the information above is true and correct.

Date:

Type or print server's name

Server signs here after serving

1 What does this information sheet cover?

This information sheet tells you how to use and fill out *Proof of Service—Criminal Record Clearing* form CR-106. This information sheet does not need to be copied, served (delivered), or filed.

2 What is proof of service?

- A “proof of service” is a form used in legal cases.
- If you want a judge to look at your case, you or someone who is helping you has to file certain documents in court.
- You also have to give or mail copies of those documents to the other party in the case, usually the prosecutor.
- The proof of service has spaces for you or someone who is helping you to write in when, where, and how the other party got the documents.
- Once the proof of service is filled out and filed with the court, it shows the court that the other party got the documents.

3 What is record clearing?

- Record clearing is a process that allows you to ask a court to improve your criminal record.
- For example, a court may be able to change some convictions from felonies to misdemeanors.
- You can start the process of record clearing by filing certain documents or forms called “applications,” “petitions,” or “motions.”

4 Who do I need to serve when I ask a court to clear my criminal record?

Most record clearing laws say you have to let the prosecuting agency (usually the district attorney) know about the record clearing request. Sometimes you also have to let law enforcement (like the police or sheriff) or other parties know about your request. You can do so by “serving” (delivering) a copy of the papers you filed with the court on the prosecuting agency or other parties. Read the record clearing law you are basing your request on carefully to see who needs to know about your record clearing request. Those are the parties who must be served.

5 Why do I need to file a proof of service?

Filing a proof of service shows the court that you have let the other parties know about the record clearing request by giving them a copy of the document or form you are using to make a record clearing request to the court.

6 When can I use *Proof of Service—Criminal Record Clearing* (form CR-106)?

Proof of Service—Criminal Record Clearing (form CR-106) is intended to be widely used with **any** record clearing request that requires notification or service of the request to the prosecuting agency and other parties, such as the following optional Judicial Council forms for record clearing:

- *Petition for Dismissal* ([form CR-180](#)), dismissals under Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, and 1203.49, and reductions under Penal Code sections 17(b) and 17(d)(2)
- *Petition for Dismissal (Military Personnel)* ([form CR-183](#)), dismissals under Penal Code section 1170.9(h), and reductions under Penal Code section 17(b)
- *Motion to Vacate Conviction or Sentence* ([form CR-187](#)), vacating convictions under Penal Code sections 1016.5 and 1473.7
- *Petition/Application (Health and Safety Code, § 11361.8)* ([form CR-400](#)), relief under Proposition 64 for specified marijuana-related convictions
- *Petition/Application for Resentencing and Dismissal* ([form CR-404](#)), resentencing and dismissal under Penal Code section 1170.22
- *Petition to Seal Arrest and Related Records* ([form CR-409](#)), sealing under Penal Code section 851.91
- *Petition for Resentencing Based on Health Conditions From Military Service Listed in Penal Code Section 1170.91(b)* (form CR-412/MIL-412)
- *Petition for Writ of Habeas Corpus* ([form HC-001](#))

DRAFT

Not approved by the Judicial Council



7 Who can serve the petition or motion?

- In most cases, the law allows you (the person who is filing the record clearing request) to serve the document or form.
- You can also ask someone else to serve the document or form.
- The person who serves a document or form for record clearing and fills out the *Proof of Service—Criminal Record Clearing* (form CR-106) must be at least 18 years old.
- Read the record clearing law you are basing your request on carefully to see if it sets any other requirements for who can serve the request.

8 When are the other parties served, and when do I file a proof of service?

- **Ask the court clerk if any local filing rules apply.**
- In most cases, the other parties should be served *after* the original document or form is filed with the court. That way, the court may add helpful information to the document or form, such as a hearing date.
- Some courts require that the document or form is first served on the other parties, and then the original document or form is filed with the court, along with a completed and signed proof of service.
- When you file the document or form with the court, take the original plus at least two copies of your documents.
 - The court will keep the original.
 - The clerk will stamp your copies “Filed” and return them to you. Keep one copy for your records.
 - The other parties can be served with a copy of your court-stamped document or form, and then you should file the proof of service with the court after the parties are served.

9 How should the petition or motion be served?

There are three main ways to serve documents: by **mail**, **personal delivery**, or **electronic service**. *Proof of Service—Criminal Record Clearing* (form CR-106) can be used to prove service by mail or personal delivery.

If serving electronically:

- Do not use *Proof of Service—Criminal Record Clearing* (form CR-106).
- Carefully read and follow the requirements in California Rules of Court, [rule 2.251](#), and use *Proof of Electronic Service* ([form POS-050/EFS-050](#)).

If someone else is serving documents on your behalf, make sure to provide them with the name of the agency that must be served (for example, San Francisco County District Attorney), the agency’s address, and a copy of the document or form.

If serving by mail:

- The server should put one copy of the document or form in an envelope addressed to the agency, seal the envelope, and place first-class postage on the envelope; and
- The server should mail the document or form by depositing the envelope at a post office or mailbox or by depositing the envelope at an office or business mail drop where the server knows mail is picked up every day by the postal service.

If serving by personal delivery:

- The server should give the document or form to a person with the agency and note the name of the person, as well as the address, date, and time of the service.

Once the document or form has been served on the other parties by mail or personal delivery, the server should fill out and sign the proof of service form.

10 What do I do with *Proof of Service—Criminal Record Clearing* (form CR-106) once it is filled out?

You should file a completed proof of service with the court where you filed your document or form. Ask the court clerk if any local filing rules apply.

SPR19-19

Proof of Service in Record Clearing Requests (CR-106 and CR-106-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Bay Area Legal Aid by Stacey Guillory Regional Reentry Coordinator	NI	<p>Bay Area Legal Aid writes in response to your request for public comment concerning Judicial Council proposed forms CR-106 and CR-106-INFO. In concept, the form could achieve the stated purpose. It has the potential to empower individuals filing pro per to complete the entire process on their own. The term “record clearance” is a helpful signifier of relevancy for individuals seeking relief to diminish the impact of an arrest or criminal conviction.</p> <p>We recommend streamlining the informational page and emphasizing key text for ease of reading (e.g., by using bold type). The use of modifiers such as “sometimes” or “in most cases” may make it more challenging to determine the appropriate course of action. The form and information sheet should be written in a way that would be understandable to a typical self-represented client who may more readily understand colloquial terms (e.g. felony reduction to a misdemeanor) rather than Penal Code sections or form titles.</p> <p>Having one proof of service for such a variety of record clearing requests can be confusing because of the differences in procedural requirements for each criminal record remedy. If the Judicial Council believes that it is important to keep the proof of service for all record clearing requests to a singular form, we advise revising the form so that it walks an individual through each record clearing</p>	<p>No response required.</p> <p>The committee agrees with the suggestion to make changes to the information form to improve readability and has incorporated them into the proposed form that it is recommending for approval.</p> <p>The committee declines to develop additional resources at this time, but may in the future.</p>

SPR19-19

Proof of Service in Record Clearing Requests (CR-106 and CR-106-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>process step by step. The information page should offer clear guidance on which process or procedure is required to remove any guesswork.</p> <p>We suggest five specific revisions to make form CR-106 easier for a self-represented individual to fill out. First, add checklists for: 1) the criminal record remedies a pro per litigant is filing; and 2) the documents they are filing. Second, highlight the service options under sections (4) and (5) as mutually exclusive. Third, in 4(c) include a line under the blank space to indicate information is needed for the date, city and state. Fourth, consider listing “District Attorney’s Office served” and “Police Department served,” if applicable, with a line under each blank space that needs to be filled out. Finally, we recommend using plain language in section 5(a) “name of person and agency:” with a line under each blank space that needs to be filled out.</p>	<p>The committee declines to develop additional resources at this time, but may consider these suggestions in the future. Regarding the suggestion to add lines under each blank space, the fillable version of the form has a fillable space for petitioners to indicate information in #4(c) for the date, city, and state, and in #5(a) for the name of person and agency.</p>
2.	<p>Community Legal Aid SoCal by Kellen Russoniello Staff Attorney Santa Ana, California</p>	A	<p><i>In response to whether “Record Clearing” is an appropriate term:</i> Yes, this term is appropriate and adequate. Other commonly used terms are “expungement” and “cleaning up your record.” Record clearing should be sufficient to notify people seeking to file on their own.</p> <p><i>In response to whether a petitioner should be allowed to serve copies of his/her own petition:</i> This would reduce a barrier to filing in pro per,</p>	<p>No response required.</p> <p>No response required.</p>

SPR19-19

Proof of Service in Record Clearing Requests (CR-106 and CR-106-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
		A	<p>and for this reason should be allowed. An issue may arise if a party that needed to be served raises a problem with service, in which case the petitioner would need to demonstrate that they complied with the service requirements. This will probably not be a big enough occurrence to outweigh the benefit of allowing the petitioner to serve the other parties.</p> <ul style="list-style-type: none"> • The Superior Court in Orange County requires that service be completed before filing the petition and that the completed/signed proof of service be filed at the same time as the petition. • Consider adding “People v.” in the Case Name box. This may help people filing on their own who may not know what the case name is. • Will this form be available for use with petitions not listed (e.g., Prop 47 and Prop 64 petitions) or where a separate proof of service form exists (e.g., Prop 64, CR-401)? If not, this should be stated. For petitions where a separate proof of service form exists, this form should state, either on the form itself or in the INFO sheet, that the person must/may check if there is another proof of service form specifically for that petition. • In Section 8 of the draft INFO sheet, the last clause of the last sentence should be amended to read, “along with a completed and signed proof of service.” 	<p>The committee appreciates the comment. Form CR-106-INFO notes that this is the preferred process for some courts.</p> <p>The committee agrees with this suggestion and has incorporated it into the proposed form that it is recommending for approval.</p> <p>The committee intends for the form to be broadly used with all record clearing requests, including Prop. 47 and Prop. 64 petitions. The committee has incorporated changes reflecting this intention into the proposed forms that it is recommending for approval.</p> <p>The committee agrees with this suggestion and has incorporated it into the proposed form that it is recommending for approval.</p>

SPR19-19

Proof of Service in Record Clearing Requests (CR-106 and CR-106-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
3.	<p>Los Angeles County Public Defender by Ricardo D. Garcia, Public Defender</p> <p>Los Angeles County Alternate Public Defender by Erika Anzoategui, Acting Alternate Public Defender</p>	N/I	<p>The proposal addresses the stated purpose of providing self-represented litigants with a streamlined proof of service, and instructions on how to use it.</p> <p>The proof of service form itself, CR-106, is understandable; one bullet point should be added informing the person who is filing to keep a copy for his or her records (see below).</p> <p>The information sheet, CR-106-INFO is less clear; we propose several changes below. It is not confusing to have one proof of service form for different record-clearing requests, and, particularly in this context, there is no policy reason why the server should not be a party to the case. It would in fact be helpful if this form could be used in all criminal proceedings.</p> <p>In the Clara Shortridge Foltz Criminal Justice Center in downtown Los Angeles, most documents that are filed in the main clerk’s office must be served first, and proof of service must be included when the document is filed. If a litigant choses to file in a courtroom, the document can be filed with the judicial assistant and then served on the opposing party.</p> <p>Suggested Changes to Proposed Language:</p> <p>CR-106 Instructions Add final bullet point:</p>	<p>No response required.</p> <p>The committee agrees with this suggestion and has incorporated it into the proposed form that it is recommending for approval.</p> <p>The committee declines to extend the form for use with all criminal proceedings at this time.</p> <p>The committee appreciates the comment. Form CR-106-INFO notes that this is the preferred process for some courts.</p>

SPR19-19

Proof of Service in Record Clearing Requests (CR-106 and CR-106-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none"> You should keep a copy of the form for your records. <p>CR-106-INFO</p> <p>2. What is proof of service? A “proof of service” is a form used in legal cases. If you want a judge to review your case, you or someone who is helping you has to file certain documents in court. You also have to give or mail copies of those documents to the prosecutor on your case. The proof of service has spaces for you to write in when and where you gave the prosecutor the documents. Once you have filled it out and signed it, the proof of service shows the court that the prosecutor got the documents.</p> <p>3. What is record-clearing? Record-clearing is a process that allows you to ask a court to improve your criminal record. For example, a court may be able to change some charges from felonies to misdemeanors. You can start the process of record-clearing by filing certain documents called “applications,” “petitions,” or “motions.”</p>	<p>The committee agrees with this suggestion and has incorporated it into the proposed form that it is recommending for approval.</p> <p>The committee agrees with this suggestion, with minor alterations, and has incorporated it into the proposed form that it is recommending for approval.</p> <p>The committee agrees with this suggestion, with minor alterations, and has incorporated it into the proposed form that it is recommending for approval.</p>
4.	Orange County Bar Association by Deirdre Kelly, President	A	<p><i>Does the proposal appropriately address the stated purpose of responding to greater numbers of record clearing requests and providing tools for self-represented parties?</i></p> <p>Yes. The two forms provide a user-friendly option for self-represented defendants who wish to clear prior cases.</p>	<p>No response required.</p>

SPR19-19

Proof of Service in Record Clearing Requests (CR-106 and CR-106-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p><i>Is there another better term for “record clearing?”</i> “Record clearing” seems like the appropriate terminology.</p> <p><i>Are the two items written in an understandable way? Yes. Based on a review of the code sections for which the form and information sheet apply, they appear to clearly and accurately describe the purpose and procedures.</i></p> <p><i>Is it confusing to have one form to address multiple statutes with different procedural requirements?</i> Providing multiple forms to achieve this purpose would arguably be more confusing.</p> <p><i>Should the use be even broader?</i> Using the proposed form and information sheet solely for record clearing, and not more broadly, seems like a correct first step. Should the Judicial Council want to consolidate further, that could be considered later.</p> <p><i>Is it ok that the service requirements don’t mirror Civil Code Section 1011 and 1013a?</i> There are no explicit requirements in the criminal code sections related to record clearing that service be by a non-party for these actions. Also, the policy reasons for non-party service in the context of a civil action (Civil Code section 1011 and 1013a) do not seem to apply here. In those contexts, the servers may need to be called as witnesses to establish proper service for</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

SPR19-19

Proof of Service in Record Clearing Requests (CR-106 and CR-106-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>ongoing court proceedings. The main issue here is that service occurs, and the party declares under penalty of perjury that this is true.</p> <p><i>Comments on different practices on timing of filing with the court?</i> We defer to the courts' input on this issue, although it does seem like a universal practice might be preferable.</p>	<p>No response required.</p>
5.	Superior Court of Los Angeles County	A	<p><i>Does the proposal appropriately address the stated purpose?</i> Yes, the proposal addresses the stated purpose.</p> <p><i>The proposed form and information sheet use the term "record clearing" to refer to dismissals, vacatur, resentencing, reduction, sealing, and other remedies intended to diminish the impact of an arrest or criminal conviction. Is another term more accurate or appropriate?</i> This term is appropriate.</p> <p><i>Are the form and information sheet written in a way that would be understandable to a typical self-represented court user?</i> Yes, the forms are understandable.</p> <p><i>Is it confusing to have one proof of service form for use with a variety of record clearing requests that arise from different statutes with different procedural requirements?</i> No, this is not confusing.</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

SPR19-19

Proof of Service in Record Clearing Requests (CR-106 and CR-106-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p><i>Are there policy reasons for the server not to be a party to the action, similar to the requirements for service by mail or personal delivery in civil proceedings under Code of Civil Procedure sections 1011 and 1013a?</i> No, we do not believe there are policy issues.</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i> We do not anticipate cost savings.</p> <p><i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i> Implementation requirements would be minimal.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes, three months would be sufficient.</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p>
6.	Superior Court of Orange County	N/I	<p><i>Does the proposal appropriately address the stated purpose?</i> Yes, this proof of service form is to be only used in petitions/motions requesting for court to review a criminal record for dismissal, vacatur, resentencing, reduction, sealing, or other record clearing remedy which can include expungements.</p>	<p>No response required.</p>

SPR19-19

Proof of Service in Record Clearing Requests (CR-106 and CR-106-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p><i>The proposed form and information sheet use the term “record clearing” to refer to dismissals, vacatur, resentencing, reduction, sealing, and other remedies intended to diminish the impact of an arrest or criminal conviction. Is another term more accurate or appropriate?</i></p> <p>Yes, expungement, motion to vacate conviction or sentence</p> <p><i>Are the form and information sheet written in a way that would be understandable to a typical self-represented court user?</i></p> <p>No, the form sounds a bit vague in the beginning. It says the person who serves (delivers). It should state specifically, “The person who serves the document to the other party or parties by mail or in person. As a typical self-represented individual for the first time reading the CR-106 form with the option of proof of service electronically, I wouldn’t know what or how to file that. The CR-106-INFO should provide a brief overview of filing a proof of service electronically and provide the answers as to what, how, where, and when. We have to remember the people reading and using this form, the majority, maybe self-represented. The information and instruction should be specific.</p> <p><i>Is it confusing to have one proof of service form for use with a variety of record clearing requests that arise from different statutes with different procedural requirements?</i></p>	<p>The committee believes that “record clearing” is a useful term to refer to these remedies as a whole.</p> <p>The committee prefers the proposed language.</p> <p>The committee agrees with this suggestion, in part, and has incorporated a reference to California Rules of Court, rule 2.251, into the information form.</p>

SPR19-19

Proof of Service in Record Clearing Requests (CR-106 and CR-106-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>No, I think the form is very clear that its purpose is for only criminal record clearing requests. I think the CR-106 Proof of service form should be attached with the petitions dealing with record clearing. It would save time looking for the form when it's already attached.</p> <p><i>Is there a need for a proof of service form for broader use in criminal proceedings, not just limited to criminal record clearing requests?</i> There is none that comes to mind at this moment.</p>	<p>No response required.</p> <p>No response required.</p>
7.	Superior Court of San Bernardino County	A	<p><i>Would the proposal provide cost savings?</i> No.</p> <p><i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i> The implementation requirements to the court would be to train clerk's office staff, judicial officers, and judicial assistants; creating procedures; possibly creating new codes in the case management system.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes.</p> <p><i>How well would this proposal work in courts of different sizes?</i></p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

SPR19-19

Proof of Service in Record Clearing Requests (CR-106 and CR-106-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			The procedure would work, with the biggest impact being volume based on the number of filings at each district.	No response required.
8.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	<p>CR-106, states in the bulleted instructions as follows: “This form is only for providing proof that a document or form was served (delivered) in a case requesting that a court review a criminal record for dismissal, vacatur, resentencing, reduction, sealing, or other record clearing remedy.”</p> <p>There is a risk that pro per defendants will construe the aforementioned language broadly and use this form when filing habeas petitions or other motions for resentencing or reductions in their sentence, or to vacate a conviction or sentence for a whole variety of reasons.</p> <p>Although the information form, in section 6, does give a more limiting list of when the form can be used, in order to avoid the confusion and overuse of the form, it may be beneficial to reference the list in CR-106 itself.</p>	The committee intends for the form to be broadly used with all record clearing requests. The committee has incorporated changes reflecting this intention into the proposed forms that it is recommending for approval.