

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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

Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Elihu M. Berle, Chair
Patrick O'Donnell, Committee Counsel
Small Claims and Limited Cases Subcommittee
Hon. Mary Thornton House, Chair
Cara Vonk, Subcommittee Counsel, 415-865-7669
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DATE: September 23, 2004

SUBJECT: Small Claims: *Proof of Service (Small Claims)* and Attachment to
Form SC-104: Proof of Mailing After Substituted Service
(Small Claims) (revise form SC-104; approve form SC-104A)
(Action Required)

Issue Statement

The optional small claims proof of service form should be revised to conform to recent legislation, make technical changes, and improve the form.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2005:

1. Revise the *Proof of Service (Small Claims)* (optional form SC-104) to:
 - a. Reorganize the substituted service methods on the form to include the recent amendment to Code of Civil Procedure section 415.20 that allows substituted service to be made on a person apparently in charge at a private post office box if the party's physical address is unknown, and to conform to format and style of the recently revised proof of service civil and family law forms POS-010 and FL-115;

- b. Delete “Subpena Duces Tecum” from the list of documents that are regularly served because a separate subpoena duces tecum form, SC-107, which has a proof of service on the reverse of the form, was adopted for mandatory use effective January 1, 2000; and
 - c. Add an instruction at the beginning of the form directing the parties to read *Information for the Small Claims Plaintiff* (form SC-150) before filling out the form—this information sheet gives detailed instructions on how to serve a claim; and
2. Approve *Attachment to Form SC-104: Proof of Mailing After Substituted Service (Small Claims)* (optional form SC-104A), to be completed by the person who mailed copies of the documents if they were mailed by someone other than the person who served the documents by substituted service.

Proposed forms SC-104 and SC-104A are attached at pages 5–7.

Rationale for Recommendation

The *Proof of Service (Small Claims)* (form SC-104) was adopted effective January 1, 1992. It has not been revised since then. Proposed form SC-104 is revised to conform to current Judicial Council format and style.

The revised form would incorporate a reorganized format for the methods of substituted service like that found on the recently revised general civil *Proof of Service of Summons* (form POS-010) and recently revised family law *Proof of Service of Summons (Family Law—Uniform Parentage—Custody and Support)* (form FL-115). It would also include the new method of substituted service on a person apparently in charge of a private post office box under Code of Civil Procedure section 415.20(a). A copy of the amended statute is attached at pages 15–16 for information.

The revised form would enable parties to comply with Small Claims Act proof of service requirements under Code of Civil Procedure section 116.340(a)(2) and (3). Parties are directed in the first line to read the *Information for the Small Claims Plaintiff* (form SC-150) before filling out the form. The instructions provide guidance on how to serve a small claims claim. The revised form SC-104 has been expanded from one to two pages to provide more space for information.

The list of documents that are regularly served in a small claims case would be updated to delete “Subpena Duces Tecum.” A mandatory stand-alone *Small Claims Subpoena and Declaration* (form SC-107), which has a proof of service on the reverse of the form, was adopted effective January 1, 2000, rendering the

subpoena duces tecum listing on form SC-104 unnecessary. Form numbers have been added in parentheses after each of the named documents to help the parties identify the documents.

Form SC-104A, *Attachment to Form SC-104: Proof of Mailing After Substituted Service (Small Claims)*, was developed by staff to implement item 5b(5) on form SC-104. Code of Civil Procedure section 415.20 requires that after documents have been served by substituted service, the documents be mailed to the person served at the place where copies of the summons and complaint were left. This method of substituted service without the need to attempt personal service on the defendant is authorized under the Small Claims Act. (Code Civ. Proc., §116.340(a)(3).) Form SC-104A would be completed when someone other than the person who served the documents, such as a secretary, mails them to the person served.

Form SC-104A was not circulated for comment, but it was reviewed and recommended for approval by the Civil and Small Claims Advisory Committee. The form attachment would help self-represented small claims parties properly document the mailing requirement of substituted service without having to draft their own supporting declaration.

Alternative Actions Considered

Although form SC-104 could be left unchanged, parties may be misled if the form is not revised to conform to current law. Revised form SC-104 is clearer and easier to use. Form SC-104A implements the mailing provision of substituted service.

Comments from Interested Parties

Of the 16 comments received, only one opposed revised form SC-104; however, no reason was given. Nine commentators agreed with the form as drafted, and the remaining 6 agreed with the form if further revised.

The committee agreed with most of the suggested changes and incorporated them in the form. These included adding a space for the court date in the caption of the form to assist several courts that use this information with their case management systems; clarifying in instructions that the court may issue a warrant for failure to appear at an order of examination only if the order was personally served by statutorily authorized persons; adding language to clarify the distinction between service on a party and a person served on behalf of a party; and inserting “and mailing” for the substituted service mailing requirement under items 4 and 5 following the various methods for serving someone on behalf of a party.

The committee did not agree that instructions should be placed directly on the form, which would likely increase the form to three pages. The instruction sheet for the small claims plaintiff can be easily obtained from the clerk and is also readily available on the California Courts Online Self Help Center Web site. Also, instructions would not be needed for frequent filers.

The chart of comments and committee responses is attached at pages 8–14.

Implementation Requirements and Costs

No special costs are required by these actions.

Attachments

PARTY <input type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT <i>(Name, street address and mailing address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____	FOR COURT USE ONLY <h2 style="margin: 0;">DRAFT 16</h2> <h2 style="margin: 0;">9/23/04</h2> <h3 style="margin: 0;">Not Approved by the Judicial Council</h3>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	CASE NUMBER: _____
PLAINTIFF <i>(name each):</i> _____ DEFENDANT <i>(name each):</i> _____	Ref. No. or File No.: _____
PROOF OF SERVICE (Small Claims)	HEARING DATE: _____ DAY: _____ TIME: _____ DEPT.: _____

(Before you fill out this form, read Information for the Small Claims Plaintiff (form SC-150) for instructions. A separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and **not a party to this action.**
2. I served copies of the following:
 - a. Plaintiff's Claim and ORDER to Go to Small Claims Court (form SC-100)
 - b. Defendant's Claim and Order to Plaintiff (Small Claims) (form SC-120)
 - c. Order of examination *(check the form that was served):*
 - (1) Application and Order To Produce Statement of Assets and to Appear for Examination (form SC-134)
 - (2) Application and Order for Appearance and Examination (form AT-138/EJ-125)*(The court may issue a warrant for failure to appear only if the order for examination is personally served by a registered process server, sheriff, marshal, or person specially appointed by the court—Code Civ. Proc., § 708.170.)*
 - d. Other *(specify documents):* _____
3. a. Party served *(specify name of party as shown on documents served):* _____
 - b. Person actually served: (1) party in item 3a (2) other *(specify name and relationship of the person served to the party named in item 3a):* _____
4. Address where service was made: _____
5. I served the party *(check all that apply):*
 - a. **by personal service.** I personally delivered the documents listed in item 2 to the party or to the person authorized to receive service of process for the party on *(date):* _____ at *(time):* _____
 - b. **by substituted service.** On *(date):* _____ at *(time):* _____ I left the documents listed in item 2a, b, or d with or in the presence of the person indicated in item 3b(2):
 - (1) **(business or public entity)** a person at least 18 years of age apparently in charge of the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.

AND MAILING

 - (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on *(date):* _____ from *(city):* _____

PLAINTIFF: DEFENDANT:	CASE NUMBER
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OR

5. b. (5) form SC-104A, *Attachment to Form SC-104: Proof of Mailing After Substituted Service (Small Claims)*, is attached. (If you did not mail copies of the documents in item 2, have the person who mailed them complete form SC-104A and attach.)

6. **Person who served papers.**

a. Name:

b. Address:

c. Telephone number:

d. The fee for service was \$

e. I am (check all that apply):

(1) not a registered California process server.

(2) exempt from registration under Business and Professions Code section 22350(b).

(3) a registered California process server:

(a) owner employee independent contractor

(b) Registration no.:

(c) County:

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

or

8. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date:

_____  _____
 (NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL) (SIGNATURE)

Small Claims Proof of Service
(revise form SC-104)
SPR04-14

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Mr. Greg Blevins Small Claims Advisor Blevins Law Firm Tulare, California	A	N	None.	No response needed.
2.	Ms. Naida Castro Division Chief, Superior Court of Los Angeles County Los Angeles, California	A	N	None.	No response needed.
3.	Ms. Linda Durand Court Program Manager—Senior Superior Court of Ventura County Ventura, California	A	N	None.	No response needed.
4.	Mr. Harold Garcia- Shelton Attorney Bay Area Legal Aid San Jose, California	A	N	None.	No response needed.
5.	Mr. Timothy Gee Management Analyst III Superior Court of San Mateo County Redwood City, California	AM	Y	The heading on the form should include space for the court date, which is missing in the proposed form. This information is captured by our case management system when the Proof of Service is entered into the system.	Agree. See revised form. See also comment 11.

Small Claims Proof of Service
(revise form SC-104)
SPR04-14

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
6.	Ms. Kim Hubbard President Orange County Bar Association Irvine, California	A	N	None.	No response needed.
7.	Judicial Assistant Small Claims Clerk Superior Court of Santa Barbara County Santa Barbara, California	N	N	None.	No response needed.
8.	Mr. Stephen V. Love Executive Officer Superior Court of San Diego County San Diego, California	AM	Y	The following comments were received from our court managers: This form should also include the mailing of the Acknowledgment of Receipt form that has been proposed in SPR14-07, as well as the Certified Mail process in LEG04-05.	Based on comments received in response to LEG04-05, the committee will no longer be recommending the Acknowledgment of Receipt or Certified Mail processes by small claims parties.
9.	Ms. Kathy Maderos Supervising Legal Clerk III Superior Court of Stanislaus County	A	N		No response needed.

Small Claims Proof of Service
(revise form SC-104)
SPR04-14

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
10.	Sharon Ngim Staff Liaison to the Standing Committee on the Delivery of Legal Services San Francisco, California	A	Y	We agree with the proposed changes. We believe the new form will be easier to use.	No response needed.
11.	Ms. Erica A. Ochoa Legal Process Supervisor Superior Court of San Joaquin County Stockton, California	AM	Y	The new form being submitted is very good. We only suggest that a space be provided where a court date may be placed. There is nowhere on the form where a court date can be noted.	Agree. See revised form. See also comment 5.
12.	Ms. Jody Patel Executive Officer Superior Court of Sacramento County	AM	Y	This proposal makes a number of changes to the form for proofs of service in small claims cases. We agree with all of the reasons behind the proposed changes, but feel there are a couple of things that could be improved in the language of the proposal. The use of “party” and/or “person” could be confusing if service is done by someone who is not a registered process server, as is usually the case in Small Claims matters. See notations and highlights below. <i>From the form:</i> (Read Information for the Small Claims Plaintiff (form SC-150) for instructions	

Small Claims Proof of Service
(revise form SC-104)
SPR04-14

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p><i>before you fill out this form. Separate proof of service is required for each party served.)</i></p> <p>...</p> <p>2. I served copies of the following:</p> <p>a. <input type="checkbox"/> Plaintiff’s Claim and Order (form SC-100)</p> <p>b. <input type="checkbox"/> Defendant’s Claim (form SC-120)</p> <p>c. <input type="checkbox"/> Order of Examination (form SC-134 form AT-137, EJ-125) (<i>Personal service may only be made by a registered process server, sheriff, marshal, or person specially appointed by the court—Code Civ. Proc. § 708.170.</i>)</p> <p>d. <input type="checkbox"/> Other (<i>specify documents</i>):</p> <p>3. a. Party served (<i>specify name of party as shown on documents served</i>):</p> <p>b. Person served <input type="checkbox"/> party in item 3a <input type="checkbox"/> other (<i>specify name and relationship to the party named in item 3a</i>): Believe the intent is to get the name of EITHER the party served or a person served on behalf of the party. But this is not clear here. Do both sections need to be completed if defendant is named</p>	<p>The form has been amended to clarify that the court may issue a warrant for failure to appear only if the order was personally served by these statutorily authorized persons. If served by any other method the court would not have authority to issue a bench warrant.</p> <p>Agree in principle. See revised form for revised language to clarify distinction between party and person served on behalf of the party. Multiple boxes on one line indicate that these are alternatives.</p>

Small Claims Proof of Service
(revise form SC-104)
SPR04-14

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p><i>individually and personally served?</i> <i>Confusing for pro se's. . . .</i></p> <p>4. Address where the party was served: <i>Note: If you made substitute service under 3b above or 5b below, you are not serving the party. Should this be “where the party or person” was served?</i></p> <p>5. I served the party (<i>check proper box</i>):</p> <p style="padding-left: 20px;">a. <input type="checkbox"/> by personal service. I personally delivered the documents listed in item 2 to the <input type="checkbox"/> party or person authorized to receive service of process for the party (1) on (<i>date</i>): at (<i>time</i>): I left the documents listed in item 2a, b, or d with or in the presence of (<i>name and title or relationship to person indicated in item 3b.</i>):</p> <p style="padding-left: 40px;">(1) (business or public entity) a person at least 18 years of age apparently in charge of the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.</p> <p style="padding-left: 40px;">(2) (home) a competent member of the household (at least 18 years of age) at the</p>	<p>Agree in principle. See revised form.</p> <p>Personal service may be accomplished by serving the party or person authorized to receive the papers. Therefore a box before “party” is not needed.</p>

Small Claims Proof of Service
(revise form SC-104)
SPR04-14

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.	
13.	Ms. Tina Rasnow SHLA Center Coordinator Superior Court of Ventura County Ventura, California	A	Y	I agree with the proposed changes. I think the form will be easier for people to use.	No response needed.
14.	Mr. Scott Reep Small Claims Legal Advisor Benicia, California		N	Para 2. Bold is consistent with other JC docs. Item 1, “not a party to this action” should be in bold. Item 5b, delete numbers, insert “and” before (4), which is the mailing requirement.	No response needed Agree. See revised form. Agree to insert “and.” The format is consistent with recently adopted general civil proof of service forms.
15.	Ms. Susan Sheehan Small Claims Advisor Sonoma County Legal Aid Santa Rosa, California	A	N	None.	No response needed.

Small Claims Proof of Service
(revise form SC-104)
SPR04-14

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
16.	Mr. Kent Vander Schuit Director, Public Law Center Superior Court of Nevada County Nevada City, California	AM	N	Agree with all, except having to refer to SC-150 form to get instructions for filling out SC-104. Should have its own instruction page.	Clerks can easily pull the instruction sheet for the self-represented small claims plaintiff. It is also readily available on the self-help Web site. An instruction sheet would likely make the form into a three-page form, and would not be needed for frequent filers.

BILL NUMBER: AB 418 CHAPTERED
BILL TEXT

CHAPTER 128
FILED WITH SECRETARY OF STATE JULY 28, 2003
APPROVED BY GOVERNOR JULY 27, 2003
PASSED THE ASSEMBLY JULY 14, 2003
PASSED THE SENATE JULY 10, 2003
AMENDED IN SENATE JULY 8, 2003
AMENDED IN SENATE JUNE 25, 2003
AMENDED IN ASSEMBLY MAY 29, 2003
AMENDED IN ASSEMBLY APRIL 22, 2003
AMENDED IN ASSEMBLY MARCH 20, 2003

INTRODUCED BY Assembly Member Pacheco

FEBRUARY 14, 2003

An act to amend Section 415.20 of, and to add Section 415.95 to, the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 418, Pacheco. Civil actions: service of summons.

Existing law establishes the procedures by which a person or business organization may be served a summons and complaint in a civil action.

This bill would revise and recast those provisions. The bill would, among other things, allow a summons and complaint to be served by leaving a copy of these documents either at the office of, or at the usual mailing address of the person to be served, followed thereafter by a mailed copy. The bill would additionally allow a business organization, form unknown, to be served by leaving a copy of the summons and the complaint with the person who is apparently in charge of the office of that organization and thereafter mailing a copy of the summons and complaint to the person to be served, except as specified. The bill would also make related changes to those provisions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 415.20 of the Code of Civil Procedure is amended to read:

415.20. (a) In lieu of personal delivery of a copy of the summons and complaint to the person to be served as specified in Section 416.10, 416.20, 416.30, 416.40, or 416.50, a summons may be served by leaving a copy of the summons and complaint during usual office hours in his or her office or, if no physical address is known, at

his or her usual mailing address, other than a United States Postal Service post office box, with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. When service is effected by leaving a copy of the summons and complaint at a mailing address, it shall be left with a person at least 18 years of age, who shall be informed of the contents thereof.

Service of a summons in this manner is deemed complete on the 10th day after the mailing.

(b) If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served, as specified in Section 416.60, 416.70, 416.80, or 416.90, a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

SEC. 2. Section 415.95 is added to the Code of Civil Procedure, to read:

415.95. (a) A summons may be served on a business organization, form unknown, by leaving a copy of the summons and complaint during usual office hours with the person who is apparently in charge of the office of that business organization, and by thereafter mailing a copy of the summons and complaint by first-class mail, postage prepaid, to the person to be served at the place where a copy of the summons and complaint was left. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

(b) Service of a summons pursuant to this section is not valid for a corporation with a registered agent for service of process listed with the Secretary of State.