

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
Case Management Subcommittee, Hon. Arthur E. Wallace, Chair
Patrick O'Donnell, Committee Counsel, 415-865-7665,
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DATE: October 1, 2004

SUBJECT: Proofs of Service (approve forms POS-020, POS-020(D), POS-020(P),
POS-030, POS-030(D), POS-030(P), POS-040, POS-040(D), and
POS-040(P)) (Action Required)

Issue Statement

Many Judicial Council forms contain proofs of service attached to, and specifically designed for, those particular forms. The Judicial Council has also approved proof of service forms for use in family law cases. But no general forms have been approved for proof of service in civil cases. It would be helpful for practitioners, and especially self-represented litigants, to have such forms available.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2005, approve the following new proof of service forms for general use in civil cases:

1. *Proof of Personal Service–Civil* (form POS-020);
2. *Attachment to Proof of Personal Service–Civil (Documents Served)* (form POS-020(D));
3. *Attachment to Proof of Personal Service–Civil (Persons Served)* (form POS-020(P));
4. *Proof of Service by First-Class Mail–Civil* (form POS-030);

5. *Attachment to Proof of Service by First Class Mail–Civil (Documents Served)* (form POS-030(D));
6. *Attachment to Proof of Service by First Class Mail–Civil (Persons Served)* (form POS-030(P));
7. *Proof of Service–Civil* (form POS-040);
8. *Attachment to Proof of Service–Civil (Documents Served)* (form POS-040)(D);
and
9. *Attachment to Proof of Service–Civil (Persons Served)* (form POS-040(P)).

The forms are attached at pages 5–17.

Rationale for Recommendation

The Code of Civil Procedure requires that various legal documents be served on the parties in a civil lawsuit. Before considering motions and other papers, courts need to determine whether the documents have been properly served; hence, proofs of service must be filed.

Presently, parties for the most part prepare their own proofs of service. Also, some Judicial Council forms have proofs provided on them. Some courts have developed local forms for proof of service. And the Judicial Council, effective January 1, 2003, approved two basic proofs of service—by personal delivery and by mail—for use in family law cases.¹ But until now, no official proof of service forms for general use in civil cases have been approved.

Three new general-purpose forms for proof of service, in the standard Judicial Council forms format would fill this gap.² They are form POS-020 for proof of service by personal delivery, form POS-030 for proof of service by mail, and form POS-040 for proof of service by various methods. These forms would be optional.

Proof of Personal Service—Civil (form POS-020)

Form POS-020 is a form for proof of service by personal delivery. This form is similar to family law form FL-330. Optional attachments POS-020(D) and POS-020(P) have been developed for use with this form. The attachments would be used to show service of multiple documents or on multiple persons when the space on the form is insufficient.

¹ These two forms (FL-330 and FL-335) served as models for forms POS-020 and POS-030, which would be available for use in all civil cases.

² These forms are not to be used for service of a summons and complaint. A separate form (POS-010) has previously been adopted for that purpose.

Proof of Service by Mail—Civil (form POS-030)

Form POS-030 is a simple proof of service by mail only. It is similar to form FL-335, a form approved for proof of service of documents by mail in family law cases. Optional attachments POS-030(D) and POS-030(P) would be available for use when multiple documents or parties are served.

Proof of Service—Civil (form POS-040)

Form POS-040 is a general, multi-service form that may be used to show proof of service by various methods. By checking the appropriate boxes, a person serving documents may indicate whether service was by (1) personal delivery, (2) mail, (3) overnight delivery, (4) messenger service, (5) facsimile, or (6) e-mail/electronic transmission. Optional attachments POS-040(D) and POS-040(P) would be available for use when multiple documents or parties are served.

This third form is very versatile. It provides a method for proving service by several other methods besides mail or personal delivery, such as by fax, e-mail, or messenger service. However, this form is not for all purposes nor is it designed for everyone. Like the other forms in this proposal, it may not be used for service of a summons and complaint.³ Also, the form may be too long and complicated to use in situations where a simpler one-page form, such as the *Proof of Personal Service* (form POS-020) or the *Proof of Service by Mail* (form POS-030), is sufficient.

The last page of each form contains instructions on its use. The instructions page is not intended to be part of the official form, and does not need to be copied, served, or filed.

Alternative Actions Considered

It could be left to the individuals to prepare their own forms or to the courts to develop local proofs of service forms. However, it seems desirable for the Judicial Council to approve optional statewide forms for this purpose in civil cases, as is already done for family law cases. These forms will be particularly helpful for self-represented litigants.

Comments From Interested Parties

The proposed new proof of service forms were circulated for public comment in the spring of 2004. Eight comments were received. The commentators included attorneys, court administrators, and a legal publisher. A chart summarizing the comments and the committee's responses is attached at pages 18–20.

The commentators generally supported the approval of the new proof of service forms either as they were circulated or with modifications. One commentator observed that

³ For service of a summons and complaint, a party in an ordinary civil action must use form POS-010 and a party in a family law proceeding must use form FL-115.

forms POS-020 and POS-030 might not be necessary if form POS-040 were approved. A second suggested approving only forms POS-020 and POS-030. And a third asked whether all three forms could be combined.

The committee concluded that it would be best for the council to approve the proposed set of three forms. These forms are designed for different situations and meet different needs. Like family law forms FL-330 and FL-335, new forms POS-020 and POS-030 would be available for persons to use to prove service by either personal delivery and by mail. These forms should be easily usable by self-represented litigants. New form POS-040 would be available for persons to prove service by other methods as well. This form would be useful for attorneys and self-represented litigants who possess more extensive knowledge about proof of service. The committee recommends that all three types of proof of service forms be approved for optional use.

Two commentators provided detailed, annotated comments on the forms that were circulated. The committee reviewed these comments and agreed that most of the proposed modifications should be made to improve the forms.

Finally, to address the situation where multiple persons or numerous documents have been served that cannot be listed on a form, standard attachments have been developed for use with each form.

Implementation Requirements and Costs

Courts will incur some costs in making the proof of service forms available. However, some courts already bear the cost of providing local forms for this purpose. Making standardized proof of service forms available statewide will be of substantial benefit to the court system and to the public, especially self-represented litigants.

Attachments

INFORMATION SHEET FOR PROOF OF PERSONAL SERVICE—CIVIL

(This information sheet is not a part of the Proof of Service form and does not need to be copied, served, or filed.)

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

Use these instructions to complete the *Proof of Personal Service* (form POS-020).

A person at least 18 years of age or older must serve the documents. There are two main ways to serve documents: (1) by personal delivery and (2) by mail. Certain documents must be personally served. You must determine whether personal service is required for a document.

The person who personally served the documents must complete a proof of service form for the documents served. **You cannot serve documents if you are a party to the action.**

INSTRUCTIONS FOR THE PERSON WHO SERVED THE DOCUMENTS

The proof of service should be printed or typed. If you have Internet access, fillable versions of the form are available at www.courtinfo.ca.gov/forms.

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

First box, left side: In this box print the name, address, and phone 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 on the documents that you served.

Third box, left side: Print the names of the Petitioner/Plaintiff and Respondent/Defendant in this box. Use the same names as are listed on the documents that you served.

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 number should be the same as the case number on the documents that you served.

Complete all applicable items on the form:

1. You are stating that you are over the age of 18 and that you are not a party to this action.
2. List the name of each document that you delivered to the person. If you need more space, check the box in item 2, complete the *Attachment to Proof of Personal Service—Civil (Documents Served)* (form POS-020(D)), and attach it to form POS-020.
3. Provide the name of each person served, the address where you served the documents, and the date and time of service. If you served more than one person, check the box in item 3, complete the *Attachment to Proof of Personal Service—Civil (Persons Served)* (form POS-020(P)), and attach it to form POS-020.
4. Check the box that applies to you. If you are a private person serving the documents for a party, check box "a."
5. Print your name, address, and telephone number. If applicable, include the county in which you are registered as process server and your registration number.
6. You must check this box if you are not a California sheriff or marshal. You are stating under penalty of perjury that the information you have provided is true and correct.
7. Do not check this box unless you are a California sheriff or marshal.

At the bottom, fill in the date on which you signed the form, print your name, and sign the form at the arrow. By signing, you are stating under penalty of perjury that all the information that you have provided on form POS-020 is true and correct.

INFORMATION SHEET FOR PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL

(This information sheet is not part of the Proof of Service and does not need to be copied, served, or filed.)

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

Use these instructions to complete the *Proof of Service by First-Class Mail—Civil* (form POS-030).

A person over 18 years of age must serve the documents. There are two main ways to serve documents: (1) by personal delivery and (2) by mail. Certain documents must be personally served. You must determine whether personal service is required for a document. Use the *Proof of Personal Service—Civil* (form POS-020) if the documents were personally served.

The person who served the documents by mail must complete a proof of service form for the documents served. **You cannot serve documents if you are a party to the action.**

INSTRUCTIONS FOR THE PERSON WHO SERVED THE DOCUMENTS

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

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 on the documents that you served.

Third box, left side: Print the names of the Petitioner/Plaintiff and Respondent/Defendant in this box. Use the same names as are on the documents that you served.

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.

Complete items 1–5 as follows:

1. You are stating that you are over the age of 18 and that you are not a party to this action. You are also stating that you either live in or are employed in the county where the mailing took place.
2. Print your home or business address.
3. Provide the date and place of the mailing and list the name of each document that you mailed. If you need more space to list the documents, check the box in item 3, complete the *Attachment to Proof of Service by First-Class Mail—Civil (Documents Served)* (form POS-030(D)), and attach it to form POS-030.
4. For item 4:
 - Check box a if you personally put the documents in the regular U.S. mail.
 - Check box b if you put the documents in the mail at your place of business.
5. Provide the name and address of each person to whom you mailed the documents. If you mailed the documents to more than one person, check the box in item 5, complete the *Attachment to Proof of Service by First-Class Mail—Civil (Persons Served)* (form POS-030(P)), and attach it to form POS-030.

At the bottom, fill in the date on which you signed the form, print your name, and sign the form. By signing, you are stating under penalty of perjury that all the information you have provided on form POS-030 is true and correct.

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): <hr/> <p style="text-align: center;">TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____</p> <p>E-MAIL ADDRESS (<i>Optional</i>): _____</p> <p>ATTORNEY FOR (<i>Name</i>): _____</p>	FOR COURT USE ONLY <h1 style="margin: 0;">Draft 9 9/22/04</h1>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:	CASE NUMBER:
<p style="text-align: center;">PROOF OF SERVICE—CIVIL</p> <p>Check method of service (<i>only one</i>):</p> <p> <input type="checkbox"/> By Personal Service <input type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Facsimile <input type="checkbox"/> By E-Mail/Electronic Transmission </p>	JUDGE: DEPT.:

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. At the time of service I was over 18 years of age and **not a party to this action**.

2. My address is (*specify one*):

a. Business: _____ b. Residence: _____

3. On (*date*): _____ I served the following **documents** (*specify*):

The documents are listed in the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)).

4. I served the documents on the **persons** below, as follows:

a. Name of person served:

b. Address of person served:

c. Fax number or e-mail address of person served, if service was by fax or e-mail:

d. Time of service, if personal service was used:

The names, addresses, and other applicable information about the persons served is on the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)).

5. The documents were served by the following means (*specify*):

a. **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 4.
 (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

CASE NAME	CASE NUMBER:
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- 5 b. **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 4 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 4. 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 4 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 4. 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.
- f. **By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed in item 4. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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)

(If item 5d 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 4. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less 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)

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

Note: 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).

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, (5) facsimile, or (6) e-mail/electronic transmission.

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.courtinfo.ca.gov/forms.

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 Petitioner/Plaintiff and Respondent/Defendant 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 1–5:

1. You are stating that you are over the age of 18 and that you are not a party to this action.
2. Print your home or business address.
3. List each document that you served. If you need more space, check the box in item 3, complete the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)), and attach it to form POS-040.
4. Provide the names, addresses, and other applicable information about the persons served. If more than one person was served, check the box on item 4, complete the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)), and attach it to form POS-040.
5. 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 transmission or e-mail 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 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:

<u>Name of Person Served</u>	<u>Address (business or residential), Fax, or E-mail (as applicable) Where Served</u>	<u>Time of Service (for personal service)</u>
		Time: _____

SPR04-08
Proof of Service Forms
(approve forms POS-020, POS-030, and POS-040)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Naida Castro Division Chief Superior Court of California, County of Los Angeles Los Angeles, California	AM	N	<u>POS-020</u> –POS (Personal Delivery) and <u>POS-030</u> – POS by Mail may not be necessary since POS-040 may also be used for the same purpose. <u>POS-040:</u> Item 4–It appears that the person serving may submit one proof of service for more than one person [served]. I don’t think this is a good idea, especially when the form of service is different for each person served. This would be confusing.	The committee disagreed. It believes that each of the three forms would be useful for different purposes and different users. The committee thought that the form should be able to be used to serve more than one person, and created an attachment (form POS-040(P)) for this purpose. However, it agreed that a single form should not be used for more than one type of service, and an instruction was added to the caption indicating this.
2.	Julie Goren Lawdable Press Sherman Oaks, California	AM	N	Annotated versions of the forms were sent as comments.	Many of the notations on the forms were incorporated into the final version of the forms.
3.	Kevin Lane Assistant Clerk/Administrator Court of Appeal, Fourth Appellate District San Diego, California	A	N	Each form appears to be sufficient for service. I’d recommend approving only forms POS-020 and POS-030. The forms are easier to review and complete and reflect the primary methods of service used.	The committee disagreed. It thought that each of the three forms would be useful for different purposes and different users.
4.	Stephen V. Love Executive Officer Superior Court of California, County of San Diego San Diego, California	AM	Y	The following comments were received from our court managers: This will be very confusing and it is anticipated that litigants (especially pro pers) will submit the proof of service on the wrong form. Is there any way to combine the three forms in to one? Use POS-040 and add check boxes.	The committee did not think further condensing the forms would be desirable. Self-represented litigants will most often use either form POS-020 or POS-030. In more complicated or unusual situations,

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

SPR04-08
Proof of Service Forms
(approve forms POS-020, POS-030, and POS-040)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>If these forms are to be used, then it is recommended that the verbiage be bolded and enlarged (under the form caption “(This Proof of Service is not to be used to show Service of a Summons and Complaint).”</p>	<p>form POS-040 is available. It will probably be used more by professionals, but will be available for everyone.</p> <p>The committee agreed. Also, the instructions on this point have been relocated to the top of the page to highlight it.</p>
5.	Martha McLaughlin CSA IV Superior Court of California, County of Ventura Ventura, California	AM	N	<p>The warning needs correction. It should read: “This Proof of Service should not be used to show service of a Summons and Complaint.”</p> <p>It should approve all three (forms) with changes notated. (Additional technical comments and suggestions were contained on the forms submitted.)</p>	<p>The committee agreed; this instruction has been revised to be clearer on all three forms. It now states: “Do not use this Proof of Service to show service of a Summons and Complaint.”</p> <p>The committee reviewed the notations and made some corresponding changes.</p>
6.	Adrienne M. McMillan Staff Attorney Superior Court of California, County of San Francisco– ACCESS San Francisco, California	A	N	Agree with proposed changes.	No response required.
7.	Patti Morua-Widdows Court Proram Manager Superior Court of California County of Ventura Ventura, California	AM	N	<p>On form POS-020, add the word “to”: “(This Proof of Service is not <u>to</u> be used to show Service of Summons and Complaint.)”</p> <p>The instructions in parentheses also should be larger and/or in bold.</p>	<p>The committee agreed. This instruction has been revised as stated in the response to comment 5.</p> <p>The committee agreed and placed them in bold. Also, the instructions on this point</p>

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

SPR04-08
Proof of Service Forms
(approve forms POS-020, POS-030, and POS-040)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					have been relocated to the top of the page to highlight them.
8.	Leonard Sacks Attorney Granada Hills, California	A	N	Is it good to have a form for <u>miscellaneous</u> ?	It is desirable for the public to have proof of service forms available for service of miscellaneous documents that are not covered by specific Judicial Council forms; otherwise, persons—including self-represented persons—would have to develop their own forms for this purpose.