

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

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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Elihu M. Berle, Chair
Case Management Subcommittee
Hon. Robert B. Freedman, Chair
Patrick O'Donnell, Committee Counsel, 415-865-7665,
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DATE: October 6, 2006

SUBJECT: *Proof of Service of Summons* (revise form POS-010) (Action Required)

Issue Statement

Proof of Service of Summons (POS-010) is a mandatory Judicial Council form that is used to show that a party has completed service of a summons and complaint. Item 3b in the form has been a source of confusion. Although it does not always need to be completed on the current form, it currently appears that it must be. More generally, the purpose of 3b is not expressly stated on the form.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2007, revise *Proof of Service of Summons* (form POS-010) to modify item 3b to clarify that this item needs to be completed only in certain specified circumstances.

Revised form POS-010 is attached at pages 4–5.

Rationale for Recommendation

Proof of Service of Summons (form POS-010) is a mandatory form used to show that service of a summons and complaint has been made. Some confusion has arisen about whether item 3b must be checked. Item 3b currently reads as follows:

- b. Person served:
 party in item 3a. other (*specify name and relationship to the party named in item 3a*):

The purpose of 3b is to enable the person preparing the proof of service to indicate that a person has been served either in a representative capacity (such as a corporate officer) or as an agent authorized to accept service. In such a situation, the process server needs to distinguish on the proof of service between the party served (identified in item 3a) and the person served for a party (in item 3b). If a person has been served on behalf of an entity or as an authorized agent for service, that person should be identified in item 3b.

But on the current form, the purpose of item 3b is unclear. It is not specifically identified as being for the purposes just described. The absence of a box at the beginning of item 3b has led some persons to conclude that this item must always be completed. Also, confusion sometimes arises about the difference between the person indicated in item 3b (served for an entity or as an agent) and the person in item 5b (on whom substitute service was made).

To clarify this form, item 3b should be revised. The proposed revision would change the item to include an optional box at the beginning and to delete the option of indicating that the person in item 3a was served. Item 3b would read as follows:

- b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (*specify name and relationship to the party named in item 3a*):

To reflect this change in item 3b, the reference in the parenthesis in item 5b would be changed from “item 3b” to simply “item 3” because both the party in 3a and the person in 3b may be served by substitute service.

The intent of this proposal is to revise item 3b to be clearer. No other changes to form POS-010 are proposed.

Comments From Interested Parties

This proposal was circulated for public comment in spring 2006. Eleven comments were received on this proposal. The commentators included an appellate court justice, several court administrators, two attorneys, and a professional process server. A chart summarizing the comments and the committee’s responses is attached at pages 6–8. All the comments were favorable.

The committee reviewed the comments. It discussed a suggestion to add to item 3a the additional words “even if actual service has been made on the representative of a party or an authorized agent.” It concluded that this was not necessary: the term “Party served” is sufficiently clear, particularly after all the other revisions are made.

Alternative Actions Considered

Although the form could be left unchanged, it appears desirable to revise it to eliminate ambiguity.

Implementation Requirements and Costs

Courts will incur minor costs in making the revised form available to the public.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.:

(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:
 - a. summons
 - b. complaint
 - c. Alternative Dispute Resolution (ADR) package
 - d. Civil Case Cover Sheet *(served in complex cases only)*
 - e. cross-complaint
 - f. other *(specify documents):*
3. a. Party served *(specify name of party as shown on documents served):*

 b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) *(specify name and relationship to the party named in item 3a):*
4. Address where the party was served:
5. I served the party *(check proper box)*
 - a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on *(date):* _____ (2) at *(time):* _____
 - b. **by substituted service.** On *(date):* _____ at *(time):* _____ I left the documents listed in item 2 with or in the presence of *(name and title or relationship to person indicated in item 3):*

 - (1) **(business)** a person at least 18 years of age apparently in charge at 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.
 - (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):* _____ or a declaration of mailing is attached.
 - (5) I attach a **declaration of diligence** stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
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5. c. **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on *(date)*: _____ (2) from *(city)*: _____
- (3) with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgement of Receipt.*) (Code Civ. Proc., § 415.30.)
- (4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. **by other means** (*specify means of service and authorizing code section*):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. as an individual defendant.
- b. as the person sued under the fictitious name of (*specify*):
- c. as occupant.
- d. On behalf of (*specify*):

under the following Code of Civil Procedure section:

- | | |
|---|---|
| <input type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. **Person who served papers**

- a. Name:
- b. Address:
- c. Telephone number:
- d. **The fee** for service was: \$
- e. I am:
- (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:
- (i) owner employee independent contractor.
- (ii) Registration No.:
- (iii) County:

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

or

9. **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)

SPR06-15

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Debra J. Albin-Riley Chair Litigation Section Los Angeles County Bar Association Los Angeles	A	Y	No specific comments.	No response required.
2.	Hon. Roger W. Boren Administrative Presiding Justice Court of Appeal, Second Appellate District Los Angeles	AM	N	I suggest revising item 3a to read: Party served (specify name of party as shown on documents served <u>even if actual service has been made on a representative of the party or an authorized agent</u>): Reason: This amendment to (a) further clarifies item 3 in its entirety.	The committee did not think the additional language is necessary. It believes that the term “Party served” is sufficiently clear, particularly after all the other revisions are made.
3.	Ms. Cydney Fowler Court District Supervisor Superior Court of California, County of San Bernardino Big Bear Lake	A	N	This looks like a good clarifying change.	No response required.
4.	Ms. Janet Garcia Manager Planning and Research Unit Superior Court of California, County of Los Angeles Los Angeles	A	N	No specific comments.	No response required.
5.	Ms. Tressa S. Kentner and Ms. Debra Meyers Executive Officer and Chief of	A	N	No specific comments.	No response required.

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	Staff Counsel Services Superior Court of California, County of San Bernardino San Bernardino				
6.	Mr. Tony Klein Process Server Institute Attorney Service of San Francisco San Francisco	A	N	This will go a long way to clarify this form for process servers and court clerks.	No response required.
7.	Ms. Kathy Maderos and Ms. Angie Gonzalez Supervisor II and Supervisor I Superior Court of California, County of Stanislaus	A	N	No specific comments.	No response required.
8.	Ms. Julie M. McCoy Orange County Bar Association Irvine	A	N	No specific comments.	No response required.
9.	Ms. Pam Moraida Civil/Small Claims Program Manager Superior Court of California, County of Solano Fairfield	A	N	This proposal would make things much clearer for both the process service and clerk (who is filing the paperwork or taking default).	No response required.
10.	Ms. Tina Rasnow Senior Attorney/Coordinator Superior Court of California, County of Ventura Ventura	A	N	No specific comments.	No response required.

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	Commentator	Position	Comment on behalf of group?	Comment	Subcommittee Response
11.	Mr. Michael M. Roddy Executive Officer Superior Court of California, County of San Diego San Diego	A	N	No specific comments.	No response required.