

**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. Robert B. Freedman, Chair  
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DATE: October 6, 2006

SUBJECT: Preliminary Rules: Service (amend Cal. Rules of Court, rule 1.21)  
(Action Required)<sup>1</sup>

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Issue Statement

The expression “serve and file” appears in numerous places in the California Rules of Court. A new, general definition based on the existing rules is located in new rule 1.21 in title 1 of the reorganized rules. However, the definition of “serve and file” in rule 1.21 is hard to understand and, in some respects, is inaccurate or misleading. This definition should be revised.

Proofs of service sometimes list the names of several attorneys who are representing parties but fail to indicate which party each attorney is representing. To avoid confusion, proofs of service should indicate which party or parties each attorney served is representing. However, no rule currently requires this information to be included on proofs of service of documents served and filed in the trial courts. Such a provision should be added to rule 1.21.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2007, amend rule 1.21 of the California Rules of Court to:

1. Provide an improved definition of “serve and file;” and

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<sup>1</sup> Rule 1.21 is a new rule in title 1 of the reorganized California Rules of Court approved by the Judicial Council on June 30, 2006, and effective on January 1, 2007. This proposal would amend rule 1.21 when it becomes effective on January 1, 2007.

2. Include a provision requiring a proof of service to identify which party each attorney served is representing.

The text of amended rule 1.21 is attached at page 4.

### Rationale for Recommendation

#### *Service*

Rule 1.21 (Service), which is part of new title 1 (Rules Applicable to All Courts) in the reorganization of the California Rules of Court, contains a provision relating to service on a party or, if the party is represented, on the party's attorney. (See rule 1.21(a).) Subdivision (a), which is based on current rules, contains references to giving "notice." The rule would be simpler and clearer if the references to "notice" were eliminated and the rule were to focus exclusively on "service"; hence, the references to giving "notice" should be deleted.

Also, the expression "serve and file" is used extensively in the California Rules of Court. It is currently defined in several places in the rules. (See Cal. Rules of Court, rules 200.1(10) and 5.10(e).) Under the reorganized rules of court adopted by the Judicial Council, this definition is placed in new rule 1.21(b) in title 1. The definition in rule 1.21 is the same as in the existing rules. The current definition states that "serve and file" means that "a document filed in a court must be accompanied by a proof of service, in a manner permitted by law, of one copy of the document on the attorney for each party separately represented and on each self-represented party." (See rule 1.21(b).)

The current definition is difficult to understand and is not completely accurate. To make it clearer and more precise, the definition of "serve and file" should be changed. Specifically, rule 1.21 should be amended to state that "[a]s used in these rules, unless a statute or rule provides for a different method for filing or service, a requirement to 'serve and file' a document means that a copy of the document must be served on the attorney for each party separately represented, on each self-represented party, and on any other person or entity when required by statute, rule, or court order, and that the document and a proof of service of the document must be filed with the court."

#### *Proof of service*

New rule 1.21 refers to proof of service. However, like some of the rules on which it is based, it does not require that a proof of service on multiple attorneys indicate which party each of the attorneys served is representing. To make proofs of service clearer, a new subdivision (c) should be added to rule 1.21. This subdivision would include the following requirement: "If the proof of service names attorneys for separately represented parties, it must also state which party

or parties each of the attorneys served is representing.” This provision will ensure that proofs of service identify the party that each attorney represents.

#### Comments From Interested Parties

This rule proposal was circulated in spring 2006. Thirteen comments were received on this proposal. The commentators included an appellate justice, court administrators, the manager of a court planning and research unit, a professional process server, the State Bar’s Committee on the Administration of Justice, and California Defense Counsel. A chart summarizing the comments and the committee’s responses is attached at pages 5–9. Based on the comments, the committee recommends several additional modifications to rule 1.21.

First, the committee agreed with Justice Roger W. Boren that rule 1.21(a) should be revised to refer to “document” instead of “paper.” This is consistent with the terminology used elsewhere in the rule.

Second, the committee agreed with the State Bar’s Committee on Administration of Justice (CAJ) that the rule should not require that the filed document be “accompanied by a proof of service,” as provided in the version of the rule that was circulated for comment. Sometimes proofs are filed separately, and this may be appropriate. Therefore, the last phrase in rule 1.21(b) has been changed to read: “the document and a proof of service of the document must be filed with the court.” The committee also agreed with the CAJ that the word “original” modifying “document” should be deleted.

The committee recommends that rule 1.21 be amended with these additional modifications.

#### Alternative Actions Considered

Rule 1.21 could be left unchanged; however, for the reasons explained in this memorandum and the comments, it is preferable to amend it.

#### Implementation Requirements and Costs

There should not be any significant implementation requirements or costs if the proposed amendments to this rule are adopted.

Attachments

Rule 1.21 of the California Rules of Court is amended, effective January 1, 2007, to read:<sup>2</sup>

1 **Rule 1.21. Service**

2  
3 **(a) Service on a party or attorney**

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5 Whenever a ~~notice or other paper~~ document is required to be served on ~~or~~  
6 ~~given to~~ a party, the service ~~or notice~~ must be made on the party's attorney if  
7 ~~there is one~~ the party is represented.

8  
9 **(b) Proof of Service “Serve and file”**

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11 As used in these rules, unless a statute or rule provides for a different method  
12 for filing or service, a requirement to “serve and file” a document means that  
13 a document filed in a court must be accompanied by a proof of service, in a  
14 manner permitted by law, of one a copy of a the document must be served on  
15 the attorney for each party separately represented, and on each self-  
16 represented party, and on any other person or entity when required by statute,  
17 rule, or court order in a manner permitted by law, and that the document and  
18 a proof of service of the document must be filed with the court.

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20 **(c) “Proof of service”**

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22 As used in these rules, “proof of service” means a declaration stating that  
23 service has been made as provided in (a) and (b). If the proof of service  
24 names attorneys for separately represented parties, it must also state which  
25 party or parties each of the attorneys served is representing.

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38 <sup>2</sup> The proposed amendments are made to the rule adopted by the Judicial Council at its June 30,  
39 2006, meeting and reflect the text that will become effective on January 1, 2007. Any amendments  
40 adopted as part of this proposal will be incorporated into the text of the rule that goes into effect on  
41 January 1, 2007.

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**Service (amend Cal. Rules of Court, rule 1.21)**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Ms. Debra J. Albin-Riley Chair Litigation Section Los Angeles County Bar Association Los Angeles	A	Y	No comments.	No response required.
2.	Ms. Sandy Almansa Supervising Legal Clerk II Superior Court of California, County of Stanislaus Modesto	A	N	No comments.	No response required.
3.	Hon. Roger W. Boren Administrative Presiding Justice Court of Appeal Second Appellate District Los Angeles	AM	N	<p><u>Rule 1.21(a)</u>  This subdivision should be revised to read:  (a) Service on a party or attorney  Whenever a <del>notice or other paper document</del>  is required to be served on <del>or given to</del> a  party, the service <del>or notice</del> must be made on  the party's attorney if <del>there is one</del> <u>the party</u>  is represented.</p> <p>Reason: Rule 1.21(b) states that “as used in these rule,... to ‘serve and file’ a <i>document</i> means...” Currently, the rules speak about service and filing of “any document” (rule 40.1 or “any record, brief, or other document” (rules 46 and 80). As there does not appear to be any reason for use of the word “paper” in subdivision (a), it should be changed to “document.”</p>	<p>The committee agreed.</p> <p>The committee agreed with rationale.</p>

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4.	Committee on Administration of Justice The State Bar of California San Francisco	AM	Y	CAJ opposes the proposed language in subdivision (b) that would require the document filed with the court to be “accompanied by the proof of service.” A requirement to simultaneously file the document and the proof of service is problematic and seems unnecessary. In one typical scenario, a messenger may be sent to opposing counsel’s office to personally serve a document. At the same time, a different messenger may be sent to the court to file that same document. This is a perfectly legitimate way of proceeding, when both service and filing must be accomplished on the same day. Requiring the document to be filed at the same time as the executed proof of service (i.e., one declaring that the messenger already served the document) could easily result in a logistical impossibility, particularly, if there are timing issues and opposing counsel’s office is a distance away from the serving counsel’s office. CAJ is not aware of any problems that have arisen with other provisions that allow for a proof of service to be filed after a document is filed (e.g., rule 3.1300 (formerly 317(c))), so long as the filed proof of service is available in the	The committee agreed. The rule has been modified to reflect this comment.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
				<p>event any issues concerning service arise.</p> <p>CAJ also questions the need to require that the “original” document be filed with the court.</p>	The committee agreed, The word “original” has been deleted.
5.	Ms. Janet Garcia Manager Planning and Research Unit Superior Court of California, County of Los Angeles Los Angeles	A	N	No comments.	No response required.
6.	Ms. Tressa S. Kentner and Ms. Debra Meyers Executive Officer and Chief of Staff Counsel Services Superior Court of California, County of San Bernardino San Bernardino	A	N	No comments.	No response required.
7.	Mr. Tony Klein Process Server Institute Attorney Services of San Francisco San Francisco	AM	N	It makes sense to associate which counsel with which part, but requiring that the proof of service accompany the documents is problematic. It is permissible to file a proof of service separately? The change in the rule is not a departure from the current rule. Opposition counsel services are frequently served late in the day, often in distant cities with multiple servers. Requiring a proof of service to accompany the documents would	The committee agreed. The rule has been modified to reflect this comment.

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				give the clerk a reason to reject the filing because it did not accompany a proof of service. What will happen is the server will be forced to sign a proof of service under penalty of perjury that service was completed before it is actually completed.	
8.	Ms. Kathy Maderos and Ms. Angie Gonzalez Supervisor II and Supervisor I Superior Court of California, County of Stanislaus	A	N	No comments.	No response required.
9.	Mr. Wayne Maire President California Defense Counsel Sacramento	A	Y	No comments.	No response required.
10.	Ms. Julie M. McCoy Orange County Bar Association Irvine	A	N	No comments.	No response required.
11.	Ms. Pam Moraida Civil/Small Claims Program Manager Sueprior Court of California, County of Solano Fairfield	A	N	No comments.	No response required.
12.	Ms. Tina Rasnow Senior Attorney/Coordinator	A	N	It is much easier to understand especially for pro pers.	The committee agreed.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
	Superior Court of California, County of Ventura Ventura				
13.	Mr. Michael M. Roddy Executive Officer Superior Court of California, County of San Diego San Diego	A	N	No additional comments.	No response required.