

**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
Patrick O'Donnell, Committee Counsel, 415-865-7665,
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DATE: October 6, 2006

SUBJECT: Authorization for Computer-Generated or Typewritten Forms for Proof of Service of Summons and Complaint (amend Cal. Rules of Court, rule 2.150) (Action Required)¹

Issue Statement

The California Rules of Court contain a rule authorizing persons to use computer-generated or typewritten forms for proof of service of summons instead of the mandatory *Proof of Service of Summons* (form POS-010). This rule permits process servers and others to prepare and file their own shortened version of form POS-010 containing only the information relevant to show the method of service that they used. However, the rule is not presently clear that such modification of POS-010 is authorized.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2007, amend rule 2.150 to clarify that a computer-generated or typewritten version of form POS-010 only must include text on the form that describes the particular method by which service was made.

The text of amended rule 2.150 is attached at page 4.

¹ At the June 30, 2006 meeting, the Judicial Council approved the reorganization and renumbering of the California Rules of Court and the Standards of Judicial Administration, effective January 1, 2007. Under the reorganization, rule 982.9 has been renumbered as rule 2.150 and reformatted. Hence, the proposed amendments to rule 982.9 that were circulated for comment are shown in this proposal as amendments to rule 2.150, which will become effective January 1, 2007.

Rationale for Recommendation

A principal purpose of rule 2.150 is to enable process servers to prepare computer-generated proof of service forms based on form POS-010 that contain only the text relevant to show that service has been made by the particular method used in that case. This saves paper and simplifies the proof of service.

From the current language of rule 2.150, it is not clear that the rule gives persons permission to use computer-generated or typewritten versions of form POS-010 that omit certain information on the form that is not relevant to show the particular type of service used. To clarify the rule, the Civil and Small Claims Advisory Committee recommends that subdivision (a)(3) be amended to state:

The title and all the text of form POS-010 that is not accompanied by a check box must be copied word for word except for any instructions, which need not be copied. In addition, the optional text describing the particular method of service used must be copied word for word, except that the check boxes must not be copied. Any optional text not describing such service need not be included.

In addition, the Judicial Council's Rules and Projects Committee recommends that an Advisory Committee Comment be added to rule 2.150. It would state: "This rule is intended to permit process servers and others to prepare their own shortened versions of *Proof of Service of Summons* (form POS-010) containing only the information that is relevant to show the method of service used."

The amendment and advisory committee comment should clarify the purpose and operation of rule 2.150.

Alternative Actions Considered

The rule might be left unchanged; however, the amendments clarify the application of the rule.

Comments From Interested Parties

Twelve comments were received on this proposal. The commentators included court administrators, an attorney, and a professional process server. The commentators supported the changes, although several thought the rule was still unclear. A chart summarizing the comments and the committee's responses is attached at pages 5–8.

The committee reviewed the comments and agreed that the version of the amended rule that was circulated for comment could be further clarified; hence, it recommends the version of amended rule 2.150 described in this report. The

council's Rules and Projects Committee recommends further clarifying the rule by adding the comment.

Implementation Requirements and Costs

No significant implementation requirements or costs are anticipated.

Attachments

Rule 2.150 of the California Rules of Court is amended, effective January 1, 2007, to read:²

1 **Rule 2.150. Authorization for computer-generated or typewritten forms for**
2 **proof of service of summons and complaint**

3
4 **(a) Computer-generated or typewritten forms; conditions**

5
6 Notwithstanding the adoption of mandatory form *Proof of Service of*
7 *Summons* (form POS-010), a form for proof of service of a summons and
8 complaint prepared entirely by word processor, typewriter, or similar process
9 may be used for proof of service in any applicable action or proceeding if the
10 following conditions are met:

11
12 (1)–(2) * * *

13
14 (3) The title and all the text of form POS-010 that is not accompanied by a
15 check box must be copied word for word except for any instructions,
16 which ~~must need~~ not be copied. ~~In addition, All the relevant optional~~
17 ~~text describing that is optional (that is, accompanied by a check box) the~~
18 particular method of service used must be copied word for word, except
19 that the check boxes must not be copied. Any optional text not
20 describing such service need not be included.

21
22 (4)–(9) * * *

23
24 **(b) * * ***

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26 **Advisory Committee Comment**

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28 This rule is intended to permit process servers and others to prepare their own shortened versions
29 of *Proof of Service of Summons* (form POS-010) containing only the information that is relevant
30 to show the method of service used.

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39 ² The amendments are shown as made to the version of this rule adopted by the Judicial Council at its June
40 30, 2006, meeting and reflect the text that will be in effect on January 1, 2007. The amendments adopted
41 under this proposal will be incorporated into the text of the rule that goes into effect on January 1, 2007.

SPR06-08

**Authorization for Computer-Generated or Typewritten Forms for Proof of Service of Summons and Complaint
(amend Cal. Rules of Court, rule 2.150 [circulated as rule 982.9])**

| | 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 comment. | No response required. |
| 2. | Ms. Cydney Fowler Court District Supervisor Superior Court of California, County of San Bernardino Big Bear Lake | AM | N | <p>When a non-Judicial Council form is used, it is sometimes difficult for the intake clerks to identify the required information on a proof of service since there are many variations on the rendition of the proof of service form. Any change that can assist the clerk with identifying/finding the required details for entering a valid proof in the computer and file would be appreciated.</p> <p>The language is a little uncertain as to optional text versus check boxes. It says the check boxes must not be copied. I am not sure what is meant by that.</p> <p>Clerks mainly need to know the following minimum information: what documents were served, who was served (named defendant, and is subserved, who took the service for the named defendant and in what capacity if an agent for example), by what</p> | <p>The committee has recommended some further changes to the rule to further clarify it.</p> <p>On Judicial Council forms, items that are optional begin with a check box. Under the rule, the check boxes need not be copied.</p> <p>Form POS-010 provides this information. The rule authorizes process servers to file a version of POS-010 containing only the necessary and relevant information, which includes all</p> |

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|----|--|-----------------|------------------------------------|---|--|
| | | | | <p>method (personal, subservice, etc.), time and date of service and if due diligence and/or mailing was done, that the due diligence declaration is attached and what date and location was the mailing done.</p> <p>Language in the rule specifically listing the required information in order to have a valid proof of service may be helpful. Of course, the other information provided on the form could be used if there is a questionable service, but from the intake clerk's viewpoint, the above is needed to input the proof at the time of filing.</p> | the information identified by the commentator. |
| 3. | 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. |
| 4. | 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. |

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| | Commentator | Position | Comment on behalf of group? | Comment | Committee Response |
|-----|---|-----------------|------------------------------------|---|--|
| 5. | Ms. Cheryl Kanatzar Deputy Executive Officer Superior Court of California, County of Ventura Ventura | A | N | No comments. | No response required. |
| 6. | Mr. Tony Klein Process Server Institute Attorney Service of San Francisco San Francisco | AM | N | This further clarifies the intent of the rule that was introduced in 1987. | Agreed. |
| 7. | Mr. Bill Malloy Chair CSDA Judicial Council Forms Subcommittee | AM | Y | The committee recommends correcting paragraph (a)(3) to read "...relevant to show that service has been made by the particular method..." | The sentence has been extensively revised. |
| 8. | Ms. Kathy Maderos and Ms. Angie Gonzalez Supervisor II/Supervisor I Superior Court of California, County of Stanislaus | A | N | No comments. | No response required. |
| 9. | Ms. Julie M. McCoy Orange County Bar Association Irvine | A | N | No comments. | No response required. |
| 10. | Ms. Pam Moaida Civil and Small Claims Program Manager Superior Court of California, County of Solano | A | N | No comments. | No response required. |

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| | Commentator | Position | Comment on behalf of group? | Comment | Committee Response |
|-----|---|-----------------|------------------------------------|---|--|
| | Fairfield | | | | |
| 11. | Ms. Tina Rasnow Senior Attorney/Coordinator Superior Court of California, County of Ventura Ventura | AM | N | The proposed revision language is confusing in that rule 2.150 (formerly rule 982.9) appears to prohibit copying instructions or check boxes instead of allowing copying word-for-word of POS-010, but stating instructions and check boxes need not be copied. | The purpose of the rule is to allow shortened versions of POS-010 to be filed. The rule explains the manner in which this is to be done. The committee and the Judicial Council's Rules and Projects Committee have recommended some additional changes to further clarify the rule. (See report.) |
| 12. | Mr. Michael M. Roddy Executive Officer Superior Court of California, County of San Diego San Diego | A | N | No additional comments. | No response required. |