

**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: Court Technology Advisory Committee
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Rules Subcommittee
Hon. Terence L. Bruiniers, Chair
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DATE: September 15, 2009

SUBJECT: Electronic Filing and Service: Forms for Proof of Electronic Service
(approve forms POS-050/EFS-050, POS-050(D)/EFS-050(D), and
POS-050(P)/EFS-050(P); and revise form POS-040) (Action Required)

Issue Statement

California courts have begun to use electronic filing and service and will be using them more in the years ahead. This proposal recommends the approval of new optional forms to help persons provide proof of electronic service. The proposal also recommends the revision of the current multipurpose proof of service form to reflect a proposed amendment to rule 2.260(f)(1)(D) on proof of electronic service that was circulated at the same time as these forms.

Recommendation

The Court Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2010:

1. Approve *Proof of Electronic Service* (form POS-050/EFS-050);
2. Approve *Attachment to Proof of Electronic Service (Documents Served)*(form POS-050(D)/EFS-050(D);

3. Approve *Attachment to Proof of Electronic Service (Persons Served)* (form POS-050(P)/POS-050(P); and

4. Revise *Proof of Service—Civil* (form POS-040).

Copies of the new and revised forms are attached at pages 5-10.

Rationale for Recommendation

Various proof of service forms have previously been approved by the Judicial Council. These include a multipurpose form that provides the option of being used as a proof of electronic service.¹ However, the multipurpose form is complicated, difficult to use, and more than one page.

New Forms for Proof of Electronic Service

This proposal recommends the approval of a single-purpose Judicial Council form to show proof of electronic service of documents and the approval of attachments for that form, as described more specifically below.

The *Proof of Electronic Service* (form POS-050/EFS-050) is a new form designed to be used by persons serving documents electronically to show proof of service. It is a simple, one-page form. It contains all the information and statements required on proofs of electronic service under rule 2.260(f).² It would be optional.

Attachment to Proof of Electronic Service (Documents Served) (form POS-050(D)/EFS-050(D)) would make it easy for persons using the *Proof of Electronic Service* form to list additional documents served. *Attachment to Proof of Electronic Service (Persons Served)* (form POS-050(P)/EFS-050(P)) would make it easy for persons using the *Proof of Electronic Service* form to identify additional parties served and indicate the dates and times of service. The attachments would be optional.

Revision of Current Proof of Service Form

This proposal recommends the revision of the multipurpose proof of service form, which includes a proof of electronic service. *Proof of Electronic Service—Civil* (form POS-040) would be revised to delete from the end of item 6.f (on electronic service) the following sentence: “I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.” This

¹ See *Proof of Service—Civil* (form POS-040).

² The new proof of electronic service form does not include a statement that the “the transmission was reported as complete and without error,” as currently required under rule 2.260(f)(1)(D). The reason is that this language would no longer be required in proofs of electronic service under a proposed amendment to rule 2.260 that is being recommended in a separate rules proposal that is circulating at the same time as this forms proposal.

sentence should be deleted to reflect the recommended amendment of rule 2.260(f)(1)(D), which is contained in a separate proposal.

Alternative Actions Considered

Instead of approving the proposed new forms, parties might be left to develop their own forms for proof of electronic service. However, it appears better to provide optional forms for this purpose. This will assist self-represented litigants and infrequent electronic filers. The forms will also help standardize the practices in the new area of electronic filing and service.

Comments From Interested Parties

Six comments were received on this forms proposal.³ The commentators included a court administrator, court personnel, a local bar association, and two companies that operate as electronic filing and service providers. The commentators either supported the forms proposal or supported it if modified.

Two commentators agreed with the proposal, without any specific comments. A third recommended some technical changes to form POS-050 to clarify item 3. Based on the comment and related considerations, the committee has changed item 3.a-b from:

3. I electronically served documents listed in 2 as follows:

a. On *(Name of person served. If the person served is an attorney, the party or parties should also be stated):*

b. To *(electronic notification address):*

to:

3. I electronically served the documents listed in 2 as follows:

a. Name of person served:

On behalf of *(name or names of parties represented, if the person served is an attorney):*

b. Electronic notification address of person served:

In additional, a local bar association recommended that the rule on electronic service (rule 2.260) be changed so that the forms on proof of electronic service would identify

³ A chart summarizing the comments and the committee's responses is attached at pages 11-13.

the format of each document served. This proposal would require a change in the rule on electronic service, so it is beyond the scope of the present forms proposal. The committee may consider this suggestion separately in the future.

Finally, two electronic filing and service providers suggested that form POS-050 be modified so it can be used as a proof of service for such providers and their clients. The committee recommends against modifying the form POS-050 for this purpose. Form POS-050/EFS-050 is designed to be a simple, optional form for use by persons conducting their own electronic service and who need a proof of service form. Electronic filing and service providers will be able to develop and use their own proofs of electronic service for themselves and their clients. To add provisions to form POS-050 so that they and their clients can also use this form would unnecessarily complicate it.

Implementation Requirements and Costs

The approval of these two optional forms should impose no significant implementation requirements or costs. The forms will assist parties to show proof of electronic service on other parties and the courts. The forms should increase compliance with the rules on electronic service and reduce the costs of litigation. They should not impose any costs on the judicial branch other than the costs, if any, incurred in making the forms available at the courthouse or online. Attorneys, however, will generally obtain these forms from other sources.

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: JUDICIAL OFFICER:
PROOF OF ELECTRONIC SERVICE	DEPT.:

1. I am at least 18 years old and **not a party to this action.**

- a. My residence or business address is *(specify):*

- b. My electronic notification address is *(specify):*

2. I electronically served the following documents *(exact titles):*

The documents served are listed in an attachment. *(Form POS-050(D)/EFS-050(D) may be used for this purpose.)*

3. I electronically served the documents listed in 2 as follows:

- a. Name of person served:
 On behalf of *(name or names of parties represented, if person served is an attorney):*

- b. Electronic notification address of person served:

- c. On *(date):*

- d. At *(time):*

The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment. *(Form POS-050(P)/EFS-050(P) may be used for this purpose.)*

Date:

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

_____ _____
 (TYPE OR PRINT NAME OF DECLARANT) (SIGNATURE OF DECLARANT)

SHORT TITLE:	CASE NUMBER:
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ATTACHMENT TO PROOF OF ELECTRONIC SERVICE (PERSONS SERVED)

(This attachment is for use with form POS-050/EFS-050.)

NAMES, ADDRESSES, AND OTHER APPLICABLE INFORMATION ABOUT PERSONS SERVED:

<u>Name of Person Served</u> <i>(If the person served is an attorney, the party or parties represented should also be stated.)</i>	<u>Electronic Notification Address</u>	<u>Date and Time of Electronic Service</u>
		Date: _____ Time: _____

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> <hr style="width:10%; margin-left:0;"/> 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:
<p style="text-align: center;">PROOF OF SERVICE—CIVIL</p> <p>Check method of service (only one):</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 Fax <input type="checkbox"/> By Electronic Service	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 residence or business address is:

3. The fax number or electronic notification address from which I served the documents is *(complete if service was by fax or electronic service):*
4. 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)).

5. I served the documents on the **person or persons** below, as follows:
 - a. Name of person served:
 - b. *(Complete if service was by personal service, mail, overnight delivery, or messenger service.)*
 Business or residential address where person was served:

 - c. *(Complete if service was by fax or electronic service.)*
 (1) Fax number or electronic notification address where person was served:

(2) Time of service:

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

6. 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 5. (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, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

(Continued on next page)

CASE NAME	CASE NUMBER:
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6. b. **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 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 5. 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 5 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 5. 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 electronic service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed in item 5.

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 6d 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 5. (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, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger 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) fax, or (6) 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 plaintiff/petitioner and defendant/respondent 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 1–6:

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. If service was by fax service or electronic service, print the fax number or electronic notification address from which service was made.
4. List each document that you served. If you need more space, check the box in item 4, complete the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)), and attach it to form POS-040.
5. Provide the names, addresses, and other applicable information about the persons served. If more than one person was served, check the box on item 5, complete the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)), and attach it to form POS-040.
6. 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 or electronic transmission 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 form POS-040 is true and correct.

SPR09-28**Electronic Filing and Service: Forms for Proof of (approve forms POS-050/EFS-050, POS-050(D)/EFS-050(D), and POS-050(P)/EFS-050(P); and revise form POS-040))**

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Superior Court of Orange County By Meri Fischer Family Law Analyst	AM	POS-050/EFS-050, item 3a: Replace subsection “a” with “Name of Person Served:” On second line reflect: “On behalf of:”	Agreed. Also agreed. However, to clarify what is meant by “On behalf of,” a parenthetical statement should be added after ‘On behalf of’ stating “(name or names of parties represented, if the person served is an attorney)”. Also, for greater clarity, staff recommends in item 3b replacing the word “To” with “Electronic notification address of person served:” and deleting the parenthetical statement.
2.	Superior Court of San Diego County Mike Roddy, Executive Officer	A	No specific comments.	No specific response required.
3.	Orange County Bar Association Michael G. Yoder, President	AM	These forms are sufficient. However with regard to the <i>Proof of Electronic Service</i> forms, it is recommended that the rule require the document format to be listed along with the full name of the document, so the court can see how the document was served should it become an issue later (e.g., “Opposition to Plaintiff’s Motion.pdf” instead of simply “Opposition to Plaintiff’s Motion”). We can envision a case with a contentious party intentionally serving the other side with a document in a format they know the receiving party cannot open or read and these additions to the forms would provide more accountability.	The rules on proof of electronic service do not presently require the identification of the format of the document served. (See rule 2.260.) Hence, the proposed forms for proof of electronic service do not include such a requirement. The comment is beyond the scope of the present forms proposal; however, the committee may consider this matter at a future time.

SPR09-28**Electronic Filing and Service: Forms for Proof of (approve forms POS-050/EFS-050, POS-050(D)/EFS-050(D), and POS-050(P)/EFS-050(P); and revise form POS-040))**

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
4.	CT Corporation and One Legal Pia Angelikis San Francisco	AM	<p>Regarding form POS-050/EFS-050, I agree with the proposed new form if modified. Specifically, the Judicial Council may want to consider modifying form POS-050/EFS-050 to include an additional option that reads: Via [<i>insert electronic service provider name here</i>] by causing a true and correct copy of the document(s) listed in 2 to be sent via electronic transmission through [<i>insert electronic service provider's system name here</i>] to the person(s) at the address(es) set forth below.</p> <p>When electronic service is permitted, a party may electronically serve the respective documents directly or through an electronic service provider. It follows that the electronic proof of service should include the alternative method of electronic service through the use of an electronic service provider, particularly since electronic service providers do not have direct access to court eFiling systems in order to file proofs of service directly. This would simplify and clarify the steps necessary for filing a proof of service when accomplished via an electronic service provider.</p>	The proposed revision is not necessary. The form is optional. Electronic filing and service providers (EFSPs) will be able to develop and use their own proofs of electronic service for themselves and their clients. Proposed form POS-050/EFS-050 is designed to be a simple form for use by persons conducting their own electronic service and who need a proof of service form. To add provisions so that EFSPs and their clients can also use this form would unnecessarily complicate it.
5.	Kern County Superior Court of Kern County Christina Rodriguez Assistant Court Supervisor (FL)	A	No specific comments.	No specific comments required.
6.	One Legal LLC Robert T. DeFilippis, President Novato	NI	<p><u>POS-050</u> Outside the comments made in SPR09-27 as to the language, "I am resident of or employed in the county where the electronic service took place.", we'd like to see a provision made for</p>	<p><u>POS-050</u> The comments on SPR09-27 are responded to separately in that proposal. On the proposal to revise form POS-050 to be</p>

SPR09-28**Electronic Filing and Service: Forms for Proof of (approve forms POS-050/EFS-050, POS-050(D)/EFS-050(D), and POS-050(P)/EFS-050(P); and revise form POS-040))**

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>service via an electronic filing service provider as allowed under 2.260(c). Many lawyers today have crafted language for their proof of service templates allowing support staff to quickly indicate service was effected by their service provider. In essence, this is more akin to ‘I caused to be served’ vs ‘I served’.</p> <p>Subsequently, as described in comments to SPR09-26, service providers then generate a proof of service for the requesting party and the court. POS-050 as drafted, does not allow an individual to use this form when they utilize a service provider for electronic service.</p> <p><u>POS-040</u> See comments relating to POS-050, specifically as to the absence of a provision allowing service to be effected via an electronic filing service provider.</p>	<p>used in connection with service by EFSPs, see response to comment 4 above.</p> <p><u>POS-040</u> See response to comments on POS-050.</p>