

**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. Lee Smalley Edmon, Chair
Small Claims and Limited Cases Subcommittee
Hon. L. Thomas Surh, Chair
Anne M. Ronan, Committee Counsel, 415-865-8933,
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DATE: August 8, 2008

SUBJECT: Small Claims: *Proof of Service* (revise form SC-104)
(Action Required)

Issue Statement

The Judicial Council form *Proof of Service* (form SC-104), approved for optional use in small claims actions, would be revised to correct contradictory information regarding when a server must mail a copy of a document to the person being served. The revised form clarifies that mailing is required only for substituted service. It also clarifies that the *Proof of Service* must be filed in advance of the hearing.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2009, revise *Proof of Service* (form SC-104) to clarify the Instructions to Server section.

The text of the revised form SC-104 is attached at pages 4–5.

Rationale for Recommendation

Section 116.340 of the Code of Civil Procedure provides for service of small claims documents by several methods, including personal delivery or substituted service per Code of Civil Procedure section 415.20. Mailing a copy of the summons or other document to the served party is required in the event of substituted service under section 415.20 but is not required for personal service.

Section 2, Instructions to Server, in current form SC-104 tells the server to mail a copy of the document to the person served even when the party was personally served. The current section states as follows:

Follow these steps:

Give a copy of all the documents checked in ③ [section 3 of the form] to:

- The person in ① [section one of the form; i.e., the person being served],
or
- A competent adult (at least 18) living with, and at the home of the person in ①, *or*
- An adult (at least 18) who seems to be in charge at the usual workplace of the person in ①, *or*
- An adult (at least 18) who seems to be in charge where the person in ① receives mail, (but not a U.S. post office box), if there is no known physical address for the person in ①.

THEN,

- Mail a copy of the documents to the person in ①,
- Complete and sign this form, and
- Give or mail your completed form to the person who asked you to serve these court papers.

The back of the form, on the other hand, which the server must complete to show service, correctly requires a declaration of mailing only in the event of substituted service, as the statute requires. The proposed revision changes the Instructions to Server section of the form so that the instructions to mail a copy of the documents served applies only to substituted service, as the law requires, and not to personal service.

In addition to clarifying when mailing is required, the new text informs the server that the *Proof of Service* must be completed and returned in sufficient time for the litigant to file the form five or more days before the scheduled hearing. (See Code Civ. Proc., § 116.340(c).) This new language will also remind the plaintiff of the requirement that the proof of service be filed with the court before the hearing.

Following circulation of the proposed form, the committee identified a needed further modification to the Instructions to Server section: the text has been clarified to provide that substituted service may be made on the person in charge where the individual being served *usually* receives mail. (Code Civ. Proc., § 415.20(a).) The word “usually” has also been added to the statement on the back of the form concerning such service (item 4.b, Substituted Service).

Alternatives Actions Considered

The committee considered not making any revisions but believes that the correction is necessary so that the form correctly reflect the statutory requirements for service. The committee also considered completely revising the form, in light of the concerns of some committee members, echoed by one of the commentators, that the form, although in “plain language,” is so densely packed with information that it may confuse a self-represented litigant. The committee concluded that, while reconsideration of this and other plain language forms may be in order in the near future, the immediate goal is to correct the instructions on the form without further delay.

Comments From Interested Parties

The revised form was circulated for public comment in the spring 2008 comment cycle. Comments were received from eight individuals and organizations, including several courts.¹ Six agreed with the proposed revisions to the *Proof of Service*. An individual commentator, Tony Klein of the Process Server Institute, objected to the revision, arguing that it made the form even more dense and thus more difficult to read. The committee disagrees, believing that the revision clarifies and corrects the instructions.

The Committee on the Administration of Justice of the State Bar generally agreed with the proposal but suggested a further modification: adding lowercase letters a, b, and c to identify the substituted service options and then modifying the last sentence in the section on substituted service to reflect that change. (Comment 3.) The committee agrees and has modified the form as requested.

In addition, while reviewing the form in light of the comments received, the committee determined that the single line provided in item 1b, for entry of information regarding a business being served, is insufficient. The committee modified the form to add a second blank line to that item.

Implementation Requirements and Costs

Some minor costs will be incurred in making this form available to the public.

Attachments

¹ A chart summarizing the comments and the committee’s responses is attached at pages 6–8.

Use this form to serve a person, a business, or a public entity. To learn more about proof of service, read What Is "Proof of Service"?, Form SC-104B. To learn more about how to serve a business or entity, read How to Serve a Business or Public Entity, Form SC-104C.

To serve a business, you must serve one of the following people:

- Owner (for a sole proprietorship)
• Partner (for a partnership) or general partner (for a limited partnership)
• Any officer or general manager (corporation or association)
• Any person authorized for service by the business (corporation, association, general partnership, limited partnership)
• Any person authorized for service with the Secretary of State (corporation, association, limited liability company [LLC], limited liability partnership [LLP], limited partnership)

To serve a public entity, you must first file a claim with that entity, then serve one of the following people:

- Clerk (of a city or county)
• Chief officer or director (of a public agency)
• Any person authorized for service by the entity

1 a. If you are serving a person, write the person's name below:

b. If you are serving a business or entity, write the name of the business or entity, the person authorized for service, and that person's job title:

Business or Agency Name
Person Authorized for Service Job Title

2 Instructions to Server:

You must be at least 18 years old and not be named in this case. Follow these steps:

- 1. Give a copy of all the documents checked in 3 to the person in 1, or
2. Title of person you are serving (if you are suing a business or agency):
3. Give a copy of all the documents checked in 3 to one of the following people:
a. A competent adult (at least 18) living with, and at the home of the person in 1, or
b. An adult (at least 18) who seems to be in charge at the usual workplace of the person in 1, or
c. An adult (at least 18) who seems to be in charge where the person in 1 usually receives mail (but not a U.S. Post Office box), if there is no known physical address for the person in 1.
and mail a copy of the documents left with one of the adults in a, b, or c above to the person in 1.

THEN

- Complete and sign this form, and
• Give or mail your completed form to the person who asked you to serve these court papers, in time for the form to be filed with the court at least 5 days before the hearing.

3 I served the person in 1 a copy of the documents checked below:

- a. SC-100, Plaintiff's Claim and ORDER to Go to Small Claims Court
b. SC-120, Defendant's Claim and ORDER to Go to Small Claims Court
c. Order for examination (This form must be personally served. Check the form that was served):



Note: The court can issue a civil arrest warrant if the served party does not come to court only if the order for examination was personally served by a registered process server, sheriff, marshal, or someone appointed by the court.

- (1) SC-134, Application and Order to Produce Statement of Assets and to Appear for Examination
(2) AT-138/EJ-125, Application and Order for Appearance and Examination
d. Other (specify):

Clerk stamps date here when form is filed.

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NOT APPROVED
BY JUDICIAL
COUNCIL

Fill in court name and street address:

Superior Court of California, County of

Fill in case number, case name, hearing date, day, time, and department below:

Case Number:
Case Name:
Hearing Date:
Time: Dept.:

Case name: _____

4 Fill out "a" or "b" below:

a. **Personal Service:** I personally gave copies of the documents checked in ③ to the person in ①:

On (date): _____ At (time): _____ a.m. p.m. Zip: _____

At this address: _____

City: _____ State: _____ Zip: _____

b. **Substituted Service:** I personally gave copies of the documents checked in ③ (a, b, or d) to (check one):

A competent adult (at least 18) at the **home** of, and living with the person in ①, or

An adult who seems to be in charge where the person in ① usually **works**, or

An adult who seems to be in charge where the person in ① usually **receives mail**, or has a private post office box (not a U.S. Post Office box), if there is no known physical address for the person in ①.

I told that adult, "Please give these court papers to (name of person in ①)."

I did this on (date): _____ At (time): _____ a.m. p.m.

At this address: _____

City: _____ State: _____ Zip: _____

Name or description of the person I gave the papers to: _____

After serving the court papers, I put copies of the documents listed in ③ in an envelope, sealed the envelope, and put first-class prepaid postage on it. I addressed the envelope to the person in ① at the address where I left the copies.

I mailed the envelope on (date): _____ from (city, state): _____ by leaving it (check one):

a. At a U.S. Postal Service mail drop, or

b. At an office or business mail drop where I know the mail is picked up every day and deposited with the U.S. Postal Service, or

c. With someone else I asked to mail the documents to the person in ①, and I have attached that person's completed Form SC-104A.

5 Server's Information

Name: _____ Phone: _____

Address: _____

City: _____ State: _____ Zip: _____

Fee for service: \$ _____

If you are a registered process server:

County of registration: _____ Registration number: _____

6 I declare under penalty of perjury under California state law that I am at least 18 years old and not named in this case and that the information above is true and correct.

Date: _____

Type or print server's name



Server signs here after serving

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Paraphrased comments are indicated by an asterisk; all other comments are verbatim.

	Commentator	Position	Comment	Committee Response
1.	Tony Klein Process Server Institute San Francisco	N	<p>I have commented in years past about this form. The proposed change makes the form even denser, harder to read, and accomplished little in the way of clarity. I think it will generate more confusion, not less, and result in more questions at the filing window. These litigants just don't read these directives, because it's too much to read, and ask a clerk instead of reading it.</p> <p>Making a form worse, that results in more attention the filing clerk has pay to it, will affect everyone standing in line behind someone at the filing window, and the change doesn't accomplish its purpose.</p>	While the committee appreciates that the form is dense, this proposal is intended to clarify the instructions so that they correctly reflect the statutory requirements.
2.	Orange County Bar Association By Cathrine Castaldi, President	A	No specific comments.	Commentator's agreement is noted.
3.	State Bar of California, Committee on Administration of Justice By Saul Bercovitch, Staff Attorney San Francisco	AM	CAJ supports this proposal, with one suggestion for a clarification. Because the substituted service mailing requirement language appears immediately after the phrase describing substituted service at the location where the person receives mail, that placement may cause some confusion about mailing documents when substituted service is accomplished at the person's residence or usual work place. CAJ suggests that small letters a, b and c be used to identify the substituted service options and that the phrase at the end of that section, which on the proposed form reads "and mail a copy of the documents to the person in 1," be modified by inserting the	The form has been modified in response to this comment.

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

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	Commentator	Position	Comment	Committee Response
			phrase “left with one of the adults in a, b or c, above” immediately after the word “documents.”	
4.	Superior Court of Los Angeles County	A	No specific comments.	Commentator’s agreement is noted.
5.	Superior Court of Riverside County By David Gutknecht Supervising Management Analyst	A	The proposed revisions to the small claims Proof of Service form (SC-104) should be made to eliminate the contradictory information regarding when a server must mail a copy of a document to the person being served. The language informing the server that the proof of service must be completed and filed five or more days before the scheduled hearing would be most helpful; many small claims hearings are delayed because the proof of service has not been filed in a timely manner. This provision should promote the more efficient use of court time.	The committee agrees.
6.	Superior Court of San Bernardino County By Debra Meyers Director, Staff Counsel Services and Self-Help Division	A	No specific comments.	Commentator’s agreement is noted.
7.	Superior Court of San Diego County By Michael M. Roddy Executive Officer	A	No specific comments.	Commentator’s agreement is noted.
8.	Superior Court of Ventura County Self-Help Legal Access Center By Tina Rasnow	A	No specific comments.	Commentator’s agreement is noted.

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

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	Commentator	Position	Comment	Committee Response
	Senior Attorney/Coordinator			

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