

**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: Policy Coordination and Liaison Committee  
Hon. Marvin R. Baxter, Chair  
Civil and Small Claims Advisory Committee  
Hon. Elihu M. Berle, Chair  
Patrick O'Donnell, Committee Counsel  
Small Claims and Limited Cases Subcommittee  
Hon. Mary Thornton House, Chair  
Cara Vonk, Subcommittee Counsel, Office of the General Counsel  
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DATE: October 25, 2004

SUBJECT: Small Claims: Proof of Service of Claim and Order (Code Civ. Proc.,  
§ 116.340) (Action Required)

Issue Statement

A uniform statewide procedure requiring small claims plaintiffs to file proof of service of the claim several days before the hearing would help courts manage their small claims trial calendars and avoid confusion for parties who file small claims actions in multiple courts around the state.

Recommendation

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend that the Judicial Council sponsor legislation to require that proof of service of a small claim and notice of hearing be filed with the small claims court at least five days before the hearing.

The text of the proposed legislation is attached at pages 3–4.

Rationale for Recommendation

Some courts have established a local policy requiring small claims plaintiffs to file proof of service of the claim several days before the hearing. This helps the court manage its

trial calendar and prepare for cases that will, in fact, go to trial. Because the small claims defendant does not file a responsive pleading but instead is directed to appear in court on the date of trial, small claims courts do not have any other method to determine which of the scheduled cases may actually go to trial.

The committee circulated an invitation to comment on proposed legislation that would require a small claims plaintiff to file proof of service with the small claims court at least three days before the hearing.

#### Alternative Actions Considered

Although the procedure could be left unchanged, parties may be misled by small claims proof of service filing requirements that differ from court to court.

#### Comments From Interested Parties

Three comments were received on the issue of time for Filing Proof of Service. Two of these — one on behalf of several court managers — suggested that proof of service should be filed sooner than three days before the hearing. One of the commentators proposed at least seven days before the hearing, and the other proposed at least five. The committee changed the recommended deadline to five days before the hearing. A five-day filing requirement would mesh with the committee's other legislative proposal — that the hearing date be scheduled 20 to 70 days after service of the claim. For an in-county defendant, the claim must be served at least 15 days before the hearing. Five days would be added for filing proof of service with the court, which would bring to 20 the total number of days from service to hearing.

A chart of the comments and the committee's responses is attached at pages 5–6. Comments related to a withdrawn proposal have been deleted.

#### Implementation Requirements and Costs

The Judicial Council form *Proof of Service (Small Claims)* (form SC-104) would continue to be filed and would not need to be amended should the proposed legislation be enacted. However, the Judicial Council small claims form SC-150, *Information for the Small Claims Plaintiff*, and the California Courts Online Self-Help Center would be updated to reflect the revised statute. Other publications, including the California Judges' Benchbook *Small Claims Court and Consumer Law*, would also be updated.

Attachments

Code of Civil Procedure section 116.340 would be amended to read:

1 **§ 116.340**

2  
3 (a) Service of the claim and order on the defendant may be  
4 made by any one of the following methods:

5  
6 (1) The clerk may cause a copy of the claim and order to be mailed  
7 to the defendant by any form of mail providing for a return receipt.

8  
9 (2) The plaintiff may cause a copy of the claim and order to be  
10 delivered to the defendant in person.

11  
12 (3) The plaintiff may cause service of a copy of the claim and  
13 order to be made by substituted service as provided in subdivision  
14 (a) or (b) of Section 415.20 without the need to attempt personal  
15 service on the defendant. For these purposes, substituted service as  
16 provided in subdivision (b) of Section 415.20 may be made at the  
17 office of the sheriff or marshal who shall deliver a copy of the  
18 claim and order to any person authorized by the defendant to receive  
19 service, as provided in Section 416.90, who is at least 18 years of  
20 age, and thereafter mailing a copy of the claim and order to the  
21 defendant's usual mailing address.

22  
23 (4) The clerk may cause a copy of the claim to be mailed, the order to be  
24 issued, and a copy of the order to be mailed as provided in subdivision (b)  
25 of Section 116.330.

26  
27 (b) Proof of service of the claim and order must be filed with the small claims court at  
28 least five days before the hearing.

29  
30 ~~(b)~~ (c) Service of the claim and order on the defendant shall be  
31 completed at least 15 days before the hearing date if the defendant  
32 resides within the county in which the action is filed, or at least  
33 20 days before the hearing date if the defendant resides outside the  
34 county in which the action is filed.

35  
36 ~~(e)~~ (d) Service by the methods described in subdivision (a) shall be  
37 deemed complete on the date that the defendant signs the mail return  
38 receipt, on the date of the personal service, as provided in Section  
39 415.20, or as established by other competent evidence, whichever  
40 applies to the method of service used.

1     ~~(e)~~ (e) Service shall be made within this state, except as provided in  
2             subdivisions ~~(e)~~ (f) and ~~(f)~~ (g).

3  
4     ~~(e)~~ (f) The owner of record of real property in California who resides  
5             in another state and who has no lawfully designated agent in  
6             California for service of process may be served by any of the methods  
7             described in this section if the claim relates to that property.

8  
9     ~~(f)~~ (g) A nonresident owner or operator of a motor vehicle involved in  
10            an accident within this state may be served pursuant to the  
11            provisions on constructive service in Sections 17450 to 17461,  
12            inclusive, of the Vehicle Code without regard to whether the  
13            defendant was a nonresident at the time of the accident or when the  
14            claim was filed. Service shall be made by serving both the Director  
15            of the California Department of Motor Vehicles and the defendant, and  
16            may be made by any of the methods authorized by this chapter or by  
17            registered mail as authorized by Section 17454 or 17455 of the  
18            Vehicle Code.

19  
20    ~~(g)~~ (h) If an action is filed against a principal and his or her  
21            guaranty or surety pursuant to a guarantor or suretyship agreement, a  
22            reasonable attempt shall be made to complete service on the  
23            principal. If service is not completed on the principal, the action  
24            shall be transferred to the court of appropriate jurisdiction.

**Small Claims: Service of Claim and Order  
(amend Code Civ. Proc., §116.340)\***

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
1.					
2.					
3.					
4.					
5.					
6.	Mr. Stephen V. Love Executive Officer Superior Court of San Diego County	AM	Y	The following comments were received from our court managers: 1. On section number 3 – it is recommended that the plaintiff file the proof of service of the claim and notice with the court at least seven days before the hearing (not three). With the extra time that is being given in the new setting guidelines, there is more than enough time for the plaintiff to return the proof of service to the court.	The committee recommends a compromise of five days for filing proof of service. See comments 8, 13, and 14.
7.					
8.	Ms. Patti Morua-Widdows Court Program Manager Superior Court of Ventura County	AM	N	CCP116.340B), Proof of service should be filed 5 days before the hearing instead of 3.	Agree. See revised proposal. See also comments 13 and 14.
9.					
10.	Sharon Ngim Staff Liasion to the Standing Committee on the Delivery of Legal Services San Francisco, California	A	Y	We support . . . . .requiring proof of service with the signed receipt to be filed with the court no later than the third day before the hearing, . . . . .	The committee recommends a compromise of five days for filing proof of service. See comments 8, 13, and 14.

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

\*Only comments addressing the time for filing proof of service have been retained. Comments concerning an unrelated and withdrawn proposal have been deleted.

**Small Claims: Service of Claim and Order  
(amend Code Civ. Proc., §116.340)\***

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
11.					
12.	Ms. Tina Rasnow SHLA Center Coordinator Ventura County Superior Court Ventura, California	AM	N	<b>I support</b> . . . . . to require proof of service with the signed receipt to be filed with the court no later than the third day before the hearing, . . . . .	The committee recommends a compromise of five days for filing proof of service. See comments 8, 13, and 14.
13.	Mr. Scott Reep Small Claims Advisor Contra Costs County Superior Court Benicia, California		N	Require filing of POS at least 5 days before the hearing.	Agree. See revised proposal.
14.	Ms. Susan Sheehan Small Claims Advisor Sonoma County Legal Aid Santa Rosa, California	AM	N	Proof of service filed at least 5 days before the hearing.	Agree. See revised proposal.
15.					
16.					
17.					

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