

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR18-09

Title

Civil Practice and Procedure: Review of Denial of Request to Remove Name From Shared Gang Database

Action Requested

Review and submit comments by June 8, 2018

Proposed Effective Date

January 1, 2019

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 3.2300;
revise form MC-1000

Contact

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Proposed by

Civil and Small Claims Advisory Committee
Anne I. Jones, Chair

Executive Summary and Origin

Recent legislation amended statutes relating to criminal gang databases and the process that authorizes challenges to a law enforcement agency's inclusion of a person in a shared gang database. The Civil and Small Claims Advisory Committee proposes amending the rule of court and revising the Judicial Council form that address a petition for a superior court to review a law enforcement agency's denial of a request for removal from a shared gang database to reflect this legislation.

Background

The State of California currently maintains a "CalGang" system of databases that contains information about approximately 150,000 individuals designated by law enforcement as suspected gang members, associates, or affiliates.¹ According to the August 22, 2016, Senate Floor Analysis of Assembly Bill 2298, the CalGang system contains data "including name, address, description, social security number, and race or ethnicity" of individuals in the database.² The database is widely accessed by law enforcement officers for various reasons including "to determine who should be served with civil gang injunctions, given gang sentences and targeted for saturation policing."³

¹ Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 2298 (2015–2016 Reg. Sess.), available at http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB2298.

² *Id.* at p. 5.

³ *Id.* at p. 6.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

In response to concerns about the accuracy and secrecy of the CalGang database system, the Legislature enacted Penal Code section 186.34, effective January 1, 2014, requiring that before a law enforcement agency designates a person who is under 18 years of age as a suspected gang member, associate, or affiliate, or otherwise identifies the person in a shared gang database, the agency must provide written notice and the basis for the proposed designation to the person and his or her parent or guardian, unless providing this notice would compromise an active criminal investigation or compromise the health or safety of the minor. (Pen. Code, § 186.34(b).) If the law enforcement agency sends such a notice, the minor or his or her parent or guardian may contest the designation with the law enforcement agency. (Pen. Code, § 186.34(e).)

AB 2298 also enacted section 186.35 to provide the right to a judicial review of a law enforcement agency's denial of a contested designation and procedures for seeking review. Section 186.35, at the time of its enactment, stated that a person may seek this judicial review by "filing an appeal" in the superior court. It also provided that the procedure for judicial review of a law enforcement agency's denial is a "limited civil case."

As discussed below, new legislation — Assembly Bill 90 (Stats. 2017, ch. 695) — made some changes to this statutory scheme.

Prior Circulation

A proposal to adopt rule 3.2300 and approve *Request for Review of Denial of Request to Remove Name From Gang Database* (form MC-1000) was approved by the Judicial Council on January 20, 2017, without a public comment period. The proposal thereafter circulated for comment from February 27 to April 28, 2017. The comments received inform the changes in this proposal.

The Proposal

AB 90, among other changes, amended Penal Code section 186.35 to recast, as a petition process rather than an "appeal," the superior court review in which a person may challenge a law enforcement agency's denial of a request to be removed from the gang database. It also deleted the provision designating this proceeding as a limited civil case and added a provision stating that is not a criminal case.

Some of the changes made to section 186.35 have already been incorporated into rule 3.2300 as technical amendments. Effective January 1, 2018, the rule was amended in response to the statutory change recognizing that a request to be removed from the gang database⁴ does not always result in a decision from the law enforcement agency denying the request; the request may be deemed denied. This occurs when the law enforcement agency fails to provide a verification of its decision within 30 days of the submission of the written documentation contesting the designation.

⁴ The process of requesting removal from the gang database is also referred to as contesting the designation.

This proposal would amend rule 3.2300 and revise *Request for Review of Denial of Request to Remove Name From Gang Database* (form MC-1000) to conform to the other changes made by AB 90 and further clarify the petition process. Specifically, rule 3.2300 would be amended to:

- Refer to form MC-1000 by its proposed revised name, using the word “Petition” rather than “Request”;
- Require that a petition for review of a denial of a request to be removed from the gang database that is not on form MC-1000 must include in the petition’s name the words “Gang Database Review”;
- Provide that a person filing a petition for review must file either (1) the law enforcement agency’s written verification of the decision denying the request, or, if none was received, (2) a copy of the request and written documentation that was submitted to the law enforcement agency contesting the designation;
- Add the qualifying language “if assigned” to the requirement that the court case number be included on the first page of the record because a petitioner could file his or her part of the record with the petition and before a case number is assigned; and
- Switch the word order for clarity in subdivisions (e)(1)(C) and (e)(3)(A)(ii) as follows: “documents . . . that are ~~sealed or~~ confidential under Welfare and Institutions Code section 827 or have been sealed.”

Request for Review of Denial of Request to Remove Name From Gang Database (form MC-1000) would be revised to:

- Change the form name by replacing the first “Request” with “Petition” and change the text of the form accordingly by replacing “request” with “petition” where appropriate;
- In item 2, add a place for the petitioner to check that the law enforcement agency did not respond to the request and to indicate how and when the request was served;
- In the instructions section, include what to do if the request to be removed was deemed denied and a review of the decision is sought;
- In the instructions section, add “civil” before clerk’s office so the petitioner knows where to file the form (the committee would particularly appreciate comments on this proposed change); and
- Incorporate other minor edits for accuracy and clarity.

Alternatives Considered

Based on comments received when the initial proposal to adopt rule 3.2300 and approve form MC-1000 was circulated, the advisory committee considered amending rule 3.2300 to remove the detailed requirements on the format and length of the argument in support of the petition. Though the specific requirements on format and length of the argument in rule 3.2300(f)(3) are also required by rules 2.109 and 2.111—rules governing all papers filed in the trial court—they are repeated in subdivision (f)(3) to assist self-represented litigants who may not know to consult these rules and might file papers that do not comply with the format and length requirements. For these reasons, the advisory committee decided that the requirements should remain in the rule.

One commenter recommended that the council develop a form for a person listed in the gang database (or his or her parent or guardian if a minor) to submit to a law enforcement agency to contest the designation. The advisory committee determined that this is outside its purview.

Two commenters addressed specific practices for protecting the privacy of juvenile records. One suggested that rule 3.2300(e)(1)(c), which currently provides that “If the record contains any documents that are part of a juvenile case file or are sealed or confidential under Welfare and Institutions Code section 827, the law enforcement agency must include a coversheet that states “Confidential Filing – Juvenile Case File Enclosed” be amended to require the law enforcement agency to include an envelope marked “Sealed and Confidential Filing Enclosed” that may be sealed by the court after it has reviewed the record in its entirety.

Another commenter recommended including the police report as a separate item in the subdivision governing the juvenile case file (subd. (e)(1)(C)) and indicating that the police report, though confidential, is not required to be sealed. Advisory committee staff consulted with staff from the Family and Juvenile Law Advisory Committee and concluded that the first comment concerns a matter that can be left to local court practices and that rule 3.2300(e)(1)(C) is intended to be narrowly tailored to juvenile court records. The text of subdivisions (e)(1)(C) and (e)(3)(A)(ii), however, have been amended for clarity, as discussed in the bullet on page 3.

For other alternatives the advisory committee is considering, please see the box titled Request for Specific Comments.

Implementation Requirements, Costs, and Operational Impacts

The amended rule and revised form are intended to comply with statutory changes and to continue to provide an efficient, clear process for courts to manage petitions for review of denials of request to remove names from the gang database. Expected costs result from the legislation and are limited to training, possible case management system updates, and the production of new forms.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Rule 3.2300(e)(3)(F) requires that the record be bound on the left margin. Is this necessary and helpful for courts, or do courts file records with a two-hole punch at the top?
- Rule 3.2300(e)(4) requires that a court notify the law enforcement agency of its failure to timely file the record, which means that a clerk must identify all petitions for review of denial of request to be removed from a gang database and determine when the record is due. Is there anything that could be added to the rule text to make this easier?
- Should a petition filed by an attorney that is not on form MC-1000 use the same name as that form (*Petition for Review of Denial of Request to Remove Name From Gang Database*) or is it sufficient if the petition simply includes “Gang Database Review” in its name?
- On form MC-1000, is the description of requirements of rule 3.2300(c) under “Notice to the Clerk:” helpful or can it be removed?
- In the instructions on page 2 of form MC-1000, is it helpful to direct filers to take or mail the form to the “civil” clerk’s office?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 3.2300, at pages 6–9
2. Form MC-1000, *Petition for Review of Denial of Request to Remove Name From Gang Database*, at pages 10–11

Rule 3.2300 of the California Rules of Court would be amended, effective January 1, 2019, to read:

1 **Rule 3.2300. Review under Penal Code section 186.35 of law enforcement agency**
2 **denial of request to remove name from shared gang database**

3
4 (a)–(c) * * *

5
6 (d) **Petition**

7
8 (1) *Form*

9
10 (A) Except as provided in (i) and (ii), ~~Request~~ *Petition for Review of Denial*
11 *of Request to Remove Name From Gang Database* (form MC-1000)
12 must be used to seek review under Penal Code section 186.35 of a law
13 enforcement agency’s decision denying a request to remove a person’s
14 name from a shared gang database.

15
16 (i) A petition filed by an attorney need not be on form MC-1000.
17 For good cause the court may also accept a petition from a
18 nonattorney that is not on form MC-1000.

19
20 (ii) Any petition that is not on form MC-1000 must contain the
21 information specified in form MC-1000 and must include in its
22 name the words “Gang Database Review.”

23
24 (B) The person seeking review must attach to the petition under (A) either:

25
26 (i) The law enforcement agency’s written verification, if one was
27 received, of its decision denying the person’s request under Penal
28 Code section 186.34 to remove his or her name—or, if the
29 request was filed by a parent or guardian on behalf of a child
30 under 18, the name of the child—from the shared gang database;
31 or

32
33 (ii) If the law enforcement agency did not provide a written
34 verification responding to the person’s request under Penal Code
35 section 186.34 within 30 days of submission of the request, a
36 copy of the request and written documentation contesting the
37 designation submitted to the law enforcement agency.

38
39 (2) *Time for filing*

40
41 The petition must be filed within the time frame specified in Penal Code
42 section 186.35(b).

43
44 (3) *Where to file*

45
46 The petition must be filed in either the superior court of the county in which

1 the law enforcement agency is located or, if the person filing the petition
2 resides in California, in the superior court of the county in which that person
3 resides.

4
5 (4) *Fee*

6
7 The fee for filing the petition is \$25, as specified in Government Code
8 section 70615.

9
10 (5) *Service*

11 A copy of the petition with the attachment required under (1)(B) must be
12 served either personally or by mail on the law enforcement agency, as
13 provided in Code of Civil Procedure sections 1011–1013a. Proof of this
14 service must be filed in the superior court with the petition.
15

16
17 (e) **Record**

18
19 (1) *Filing*

20
21 (A) The law enforcement agency must serve the record on the person filing
22 the petition and must file the record in the superior court in which the
23 petition was filed.

24
25 (B) The record must be served and filed within 15 days after the date the
26 petition is served on the law enforcement agency as required by
27 subdivision (d)(5) of this rule.

28
29 (C) If the record contains any documents that are part of a juvenile case file
30 or are ~~sealed or~~ confidential under Welfare and Institutions Code
31 section 827 or have been sealed, the law enforcement agency must
32 include a coversheet that states “Confidential Filing – Juvenile Case
33 File Enclosed.”
34

35 (D) The procedures set out in rules 2.550 and 2.551 apply to any record
36 sought to be filed under seal in a proceeding under this rule.
37

38 (2) *Contents*

39
40 The record is limited to the documents required by Penal Code section
41 186.35(c).
42

43 (3) *Format*

44
45 (A) The cover or first page of the record must:
46

- 1 (i) Clearly identify it as the record in the case;
 2
 3 (ii) Clearly indicate if the record includes any documents that are
 4 ~~sealed or~~ confidential under Welfare and Institutions Code
 5 section 827 or have been sealed;
 6
 7 (iii) State the title and court number of the case; and
 8
 9 (iv) Include the name, mailing address, telephone number, fax
 10 number (if available), e-mail address (if available), and California
 11 State Bar number (if applicable) of the attorney or other person
 12 filing the record on behalf of the law enforcement agency. The
 13 court will use this as the name, mailing address, telephone
 14 number, fax number, and e-mail address of record for the agency
 15 unless the agency informs the court otherwise in writing.
 16
 17 (B) All documents in the record must have a page size of 8.5 by 11 inches;
 18
 19 (C) The text must be reproduced as legibly as printed matter;
 20
 21 (D) The contents must be arranged chronologically;
 22
 23 (E) The pages must be consecutively numbered; and
 24
 25 (F) The record must be bound on the left margin.
 26

27 (4) *Failure to file the record*
 28

29 If the law enforcement agency does not timely file the required record, the
 30 superior court clerk must serve the law enforcement agency with a notice
 31 indicating that the agency must file the record within five court days of
 32 service of the clerks notice or the court may order the law enforcement
 33 agency to remove the name of the person from the shared gang database.
 34

35 (f) **Written argument**
 36

37 (1) *Contents*
 38

- 39 (A) The person filing the petition may include in the petition or separately
 40 serve and file a written argument about why, based on the record
 41 specified in Penal Code section 186.35(c), the law enforcement agency
 42 has failed to establish by clear and convincing evidence the active gang
 43 membership, associate status, or affiliate status of the person so
 44 designated or to be so designated by the law enforcement agency in the
 45 shared gang database.
 46

- 1 (B) The law enforcement agency may serve and file a written argument
2 about why, based on the record specified in Penal Code section
3 186.35(c), it has established by clear and convincing evidence the
4 active gang membership, associate status, or affiliate status of the
5 person.
6
- 7 (C) If an argument refers to something in the record, it must provide the
8 page number of the record where that thing appears or, if the record has
9 not yet been filed, the page number of the relevant document.
10
- 11 (D) Except for any required attachment to a petition, when an argument is
12 included in the petition, nothing may be attached to an argument and an
13 argument must not refer to any evidence that is not in the record.
14

15 (2) *Time to serve and file*
16

17 Any written argument must be served and filed within 15 days after the date
18 the record is served.
19

20 (3) *Format and length of argument*
21

22 (A) The cover or first page of any argument must:
23

- 24 (i) Clearly identify it as the argument of the person filing the petition
25 or of the law enforcement agency;
26
- 27 (ii) State the title and, if assigned, court number of the case; and
28
- 29 (iii) Include the name, mailing address, telephone number, fax
30 number (if available), e-mail address (if available), and California
31 State Bar number (if applicable) of the attorney or other person
32 filing the argument.
33

34 (B) An argument must not exceed 10 pages.
35

36 (C) The pages must be consecutively numbered.
37

38 (g)-(i) * * *
39

Petition for Review of Denial of Request to Remove Name From Gang Database

Clerk stamps date here when form is filed.

DRAFT
Not Approved by
the Judicial Council

Instructions: Please read the instructions on the back of this form before completing and filing this form.

Notice to the Clerk: This petition is filed under Penal Code section 186.35 and California Rules of Court, rule 3.2300. Rule 3.2300(c) requires the presiding judge of each superior court to designate one or more judges to hear such petitions. This request must be submitted to a judge designated under rule 3.2300(c).

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Name of Person Filing This Petition:

- I am:** The person whose name is in the gang database.
 The parent or guardian of the child under 18 whose name is in the gang database.

Your lawyer in this case (if you have one):

Name: _____ State Bar No.: _____

Firm Name: _____

Address (If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer, give your information.)

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____ E-Mail: _____

2 Decision You Are Requesting Be Reviewed

I am seeking review of the following law enforcement agency's denial of my request under Penal Code section 186.34 to remove my name or the name of my child or ward from a shared gang database. (Complete a. or b.)

Name of law enforcement agency: _____

Address: _____

City: _____ State: _____ Zip: _____

- a. The decision denying the request** was served on me/my client by the law enforcement agency:
 By personal delivery By mail on (date:) _____

You must attach a copy of the written verification denying your request.

- b. The agency did not respond to my request, which I submitted in writing:**
 By personal delivery By mail on (date:) _____

You must attach a copy of your request and written documentation contesting your designation.

3 Reason for This Petition for Review

I am seeking review of the denial of my request on the basis that the law enforcement agency has not established by clear and convincing evidence the active gang membership, associate status, or affiliate status of the person whose name I requested be removed from the shared gang database.

4 Written Argument

- I have attached my written argument about why, based on the record specified in Penal Code section 186.35(b), the law enforcement agency has failed to establish by clear and convincing evidence the gang membership, associate status, or affiliate status of the person whose name I requested be removed from the street gang database.

NOTE: You are not required to submit written argument. If you wish to submit written argument, you can either include that argument in this petition or serve and file the argument separately within 15 days after the law enforcement agency serves and files the record in this proceeding. Please see rule 3.2300(f) for information about submitting written argument.



5 Request for or Waiver of Oral Argument

I understand oral argument can be requested in this case. I am am not requesting oral argument.

Date: _____

Type or print your name

Signature

Instructions

This form is only for seeking review by a court of a local law enforcement agency's written **or deemed** denial of a request under Penal Code section 186.34 to remove an individual's name from a shared gang database.

You must serve and file this form **no later than 90 calendar days** after either (1) the law enforcement agency serves you with written verification of its decision denying your request under Penal Code section 186.34 to remove your name from a shared gang database or, if you are the parent or guardian of a child under 18 whose name is in the gang database, the child's name, or (2) the date your request was deemed denied under Penal Code section 186.34 (e). **If your petition is late, your request will be dismissed.**

To serve and file this form, complete the following steps:

1. Fill out this form

In the second box on the right-hand side: Fill in the name of the county for the superior court where you plan to file the petition and the street address for the court (see rule 3.2300(d)(3) for information about where to file this form).

In Item 1:

Fill in your name.

Check the box to indicate if you are the person whose name is in the gang database or that person's parent or guardian.

Fill in the name and firm name of your lawyer, if you have one.

Fill in your lawyer's contact information, or if you do not have a lawyer, your contact information.

In Item 2:

Fill in the name and address of the law enforcement agency whose decision you are petitioning the court to review.

(a) If you received a written decision from the law enforcement agency denying your request to remove your name or the name of your child or ward from the gang database, attach a copy to the form. (b) If you did not receive a decision, and your request was deemed denied, be sure to complete the date and way in which you submitted the request.

In Item 4:

Check whether or not you are attaching written argument to this request.

In Item 5:

Indicate whether or not you want to have oral argument on your petition or whether you want to give up (waive) oral argument, and have the court decide the case without oral argument.

At the end of the form:

Print and sign your name and fill in the date you signed the form.

2. Make copies of the form

Make a copy of the completed form for your records and **one** for the law enforcement agency.

3. Serve the form

Serve a copy of the completed form and **any** required attachment on the law enforcement agency and keep proof of this service. You can get information about how to serve court papers and proof of service on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

4. File the form

Take or mail the original completed form with a copy of the law enforcement agency decision attached and proof of service on the law enforcement agency to the **civil** clerk's office of the court where you are filing this form. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

Pay the \$25 filing fee and file this form, or if you are unable to pay this fee, file a request to waive court fees (form FW-001) in the court.