



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: February 28, 2012

Title

Family Law: Proof of Service by Posting or Publication

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, rule 5.72;
approve forms FL-980, FL-982 and FL-985

Effective Date

January 1, 2013

Date of Report

February 14, 2012

Recommended by

Family and Juvenile Law Advisory
Committee
Hon. Kimberley J. Nystrom-Geist, Cochair
Hon. Dean Stout, Cochair

Contact

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Elkins Family Law Implementation Task
Force
Hon. Laurie Zelon, Chair

Executive Summary

The Family and Juvenile Law Advisory Committee and the Elkins Family Law Implementation Task Force recommend that the Judicial Council adopt rule 5.72 and approve new application, order and proof of service forms for family law cases where a petitioner is unable to locate a respondent to serve the summons or a request for order. On demonstration of a good faith effort to locate the respondent, these forms allow service either by publication or, if the petitioner is eligible for a fee waiver, by posting.

Recommendation

The Family and Juvenile Law Advisory Committee and the Elkins Family Law Implementation Task Force recommend that the Judicial Council, effective January 1, 2013:

1. Adopt rule 5.72 *Court order for service of summons by publication or posting when respondent's address is unknown*;
2. Approve *Application for Order for Publication or Posting* (form FL-980);
3. Approve *Order for Publication or Posting* (form FL-982); and
4. Approve *Proof of Service by Posting or Publication* (form FL-985).

The text of the proposed rule and the forms are attached at pages 8–13.

Previous Council Action

The Judicial Council established the Elkins Family Law Task Force in response to the decision in *Elkins v. Superior Court* (2007) 41 Cal.4th 1337. The task force was charged with studying and proposing measures to assist trial courts in achieving efficiency and fairness in marital dissolution proceedings and to ensure access to justice for family law litigants, many of whom are self-represented.

On April 23, 2010, the council accepted the Elkins Family Law Task Force's *Final Report and Recommendations*. In July 2010, the Elkins Family Law Implementation Task Force was appointed to help implement the *Final Report and Recommendations*.

Rationale for Recommendation

The Elkins Family Law Task Force *Final Report and Recommendations* (Final Report) contained recommendations regarding providing basic information for litigants about the family law process.¹

The task force recommended at page 36 of the Final Report:

When litigants are unable to locate the other party, there should be procedures to allow for service by publication after good cause is shown to the court. Indigent litigants who cannot afford the costs of newspaper publication should be able to ask the court to post the pleadings on a bulletin board at the courthouse. To increase the likelihood that the respondent will actually get notice of the pending case, the Administrative Office of the Courts (AOC) should investigate the possibility of establishing a Web site for documents that are to be served by posting.

To aid implementation the committee and task force consulted with information systems analysts who advised that a standard form of application and order would simplify automation. In addition, while some courts have developed local forms for publication and posting, many others have not. Currently, there is no statewide procedure to explain how to complete service of process by publication or posting. A litigant must ask for guidance from a self-help center or

¹ The Final Report of the Task Force may be found at <http://www.courts.ca.gov/xbcr/cc/elkins-finalreport.pdf>

clerk's office on how to accomplish posting. This proposed rule and form would answer many litigants' questions without further need for assistance or provide an easy referral for court clerks.

Service by publication or posting is appropriate in cases where a petitioner has made diligent efforts to locate the respondent but has been unable to do so. Case law allows for posting of documents if the petitioner is unable to afford the costs of publication.

In [*Boddie v. Connecticut* \(1971\) 401 U.S. 371](#), the U.S. Supreme Court held that due process of law prohibits a state from denying, solely because of inability to pay court fees and costs for service of process, access to its courts to indigents who, in good faith, seek judicial dissolution of their marriages. The Supreme Court stated:

We think that reliable alternatives exist to service of process by a state-paid sheriff if the State is unwilling to assume the cost of official service. This is perforce true of service by publication which is the method of notice least calculated to bring to a potential defendant's attention the pendency of judicial proceedings. See *Mullane v. Central Hanover Tr. Co.*, *supra* [339 U.S. 306]. We think in this case service at defendant's last known address by mail and posted notice is equally effective as publication in a newspaper. ([401 U.S. at p. 382](#)).

This decision was followed by *Cohen v. Board of Supervisors* (1971) 20 Cal. App.3d 236, 239 in which indigent litigants requested that the Board of Supervisors of Alameda County and the Controller of the State of California pay for the cost of publication of their summons in their dissolution and nullity actions. The Court of Appeals followed *Boddie's* holding that service by posting is equally as effective as publication in a newspaper and posed less of a burden on state funds and stated:

Section 415.50 of the Code of Civil Procedure provides, in relevant part, that summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in other specified manner, and that a cause of action exists against the party or he is a necessary or proper party to the action. But this is not the only pertinent statute. Section 413.30 of the same code directs that where no provision is made "in this chapter or other law" for service of summons, the court in which the action is pending may direct that summons be served in a manner which is reasonably calculated to give actual notice to the party to be served. Obviously, such a "manner" is at hand, for the Supreme Court has described it in *Boddie* ([401 U.S. 371, 382](#)) as service at a defendant's last known address and posting. The other prerequisite mentioned in section 413.30 is also present, in that there really is no other provision made by law for service, because although publication is theoretically possible, practically there is no way of efficient publication save by the doubtful expedient of ordering public officials to make expenditures which no statute authorizes them to make. This would be a

measure justifiable, if at all, only if it were the sole available means of carrying into execution the service of summons which plaintiffs, as indigent litigants, rightfully demand as an incident of due process.

Proposed rule 5.72 *Court order for service of summons by publication or posting when respondent's address is unknown* sets forth the procedures for service of the summons or a request for order.

The *Application for Order for Publication or Posting* (form FL-980) identifies where the publication or posting should take place and sets out the efforts that the petitioner has made to locate the respondent for the purpose of service.

The *Order for Publication or Posting of Summons* (form FL-982) allows the judicial officer to quickly make the order regarding publication or posting. It also allows for the judicial officer to request a hearing regarding the petitioner's financial ability to pay for publication.

The *Verification of Service by Posting Summons* (form FL-985) is to be completed by the person who posted the pleadings and mailed them to the respondent's last known address. This verification is to be attached to the *Proof of Service of Summons* (form FL-115) and submitted to the court upon completion of service.

Comments, Alternatives Considered, and Policy Implications

Comments

The rule and forms were circulated for comment as part of the spring 2011 invitation-to-comment cycle from April 21 to June 20, 2011. In addition to the standard mailing list for proposals—which includes appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, attorneys, mediators, family law facilitators and self-help center attorneys, and other family law professionals and attorney organizations—the Task Force and Advisory Committee sought comment from the Joint Rules Working Group of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee.

Of the 21 comments addressing the proposal, 5 agreed, 12 agreed if modified, 2 did not agree and 2 did not state a position.

The Trial Court Presiding Judges Advisory Committee (TCPJAC) and Court Executives Advisory Committee (CEAC)/Joint Rules Working Group opposed this proposal because of the potential additional processing and storage costs related to paragraph (c) of rule 5.72. This paragraph directed the petitioner to serve any future papers on the court if the respondent's address had not yet been ascertained. The working group, as well as other commentators, noted that this seems to be an unnecessary workload in processing forms that the respondent is unlikely

to see. The task force and committee agreed and removed paragraph (c) from the proposal. This appeared to be the only concern raised by the working group.

The task force and committee also clarified that anyone 18 years or older who is not a party to the action can accomplish the posting or publication. While many clerks offices and sheriff's departments provide this service, this is not universal. Thus, the task force and committee thought it wisest to allow local courts to identify the most appropriate way of accomplishing this service.

A commentator from one court indicated that the court had developed forms that it thought were preferable to the ones circulated for comment. The task force and committee agreed to make the forms optional rather than mandatory to allow the most flexibility for local courts.

A number of commentators raised the question of why the proposed form *Verification of Service* (form FL-985) indicated it must be attached to the *Proof of Service of Summons* (FL-115). The task force and committee agreed to streamline the form and include that verification in a standalone proof of service by posting.

One commentator noted that the suggestion that a new fee waiver application had to have been filed within the last four months of the application for posting does not follow the Government Code. The task force and committee agreed that there was no reason to have a different requirement here and deleted that requirement. However, the task force and committee left the box on the order page allowing the court to set a hearing on the financial situation of the party if the court has any questions about the fee waiver.

Some commenters suggested that additional forms must be served at the time of the Petition and Summons. Those include the *Declaration Under Uniform Child Custody Jurisdiction Act* (form FL-105) and potentially the *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155). Section 415.50 of the Code of Civil Procedure only requires that the Summons be published or posted. When circulated, the forms referred to a Petition being posted or served as well. Given the very sensitive nature of the documents on these forms, as well as with the costs associated with publishing or posting, task force and committee members were concerned that publishing or posting this information may not be appropriate. The task force and committee added a box and space for other forms that might be attached by the petitioner. However, they determined to leave it up to the discretion of the court whether any documents must be served beyond the summons or request for order.

A number of commentators noted that the date that service was accomplished and a default could be taken was described in two different ways on the form, and that while they were both accurate, the differences could be confusing. The task force and committee agreed and made those descriptions consistent to say that documents must be posted for 28 days and that a default may be taken on the 59th day after the first day of posting.

Many excellent suggestions were made regarding how to set out the requirements for a search for the respondent. The task force and committee included some introductory lines to establish the last known addresses of the respondent for purposes of service and to add a note that parties may want to check with their local self help center or the California courts on-line self-help center for additional ideas regarding how to locate someone. The local self-help center will be able to direct them to local forms and the statewide on-line center can link them to a variety of resources for a search, as well as any local forms that are on-line. In response to another comment, a check box was added to indicate that the results of a search are attached.

Other commenters suggested that the forms be modified to allow for service of a Request for Order (form FL-300) as well as for the Summons. This is due to the nature of family law cases where there are often modifications post judgment. Commentators noted situations in which a parent cannot be found and the other parent needs to have an order to move. Another situation involves a parent in a government child support case in which a “father wishes to get custody and has no idea where mother and child is living. Due to the confidentiality limitation, the Department of Child Support Services cannot release the information, nor can they serve the parent with paperwork not related to the child support. In this situation, one of the only options for the father is to seek a publication order of the request for custody order.” The task force and committee agreed that these situations do occur regularly in family law matters and agreed to modify the forms accordingly.

Alternatives considered

The Elkins Family Law Implementation Task Force and the Family and Juvenile Law Advisory Committee considered the following options, and recommend that the council adopt Option 2.

Option 1: Take no action.

The task force and the committee considered taking no action on recommending optional forms for service by publication or posting in family law matters. This would mean that clerks and self-help centers would have to spend time explaining how to accomplish such service to self-represented litigants, rather than having a statewide form and instructional materials to which they could direct litigants.

Option 2: Adopt forms FL-980, FL-982 and FL-985 as optional forms.

The forms were initially circulated for mandatory use. In the comment process, one court indicated that it had developed local forms that it preferred to a statewide approach including templates for describing due diligence efforts. Another had an excellent declaration format for a litigant to use to explain the attempts to locate the respondent. While standardized forms may make the development of a statewide website for service by publication easier to develop and use, the task force and committee thinks that it is wisest to make these forms optional at this time. This will allow local courts to use forms that they have developed, but saves time for other courts who will not have to develop materials.

Implementation Requirements, Costs, and Operational Impacts

The task force and the committee anticipate that these forms will save money for those courts that do not currently have forms as they will save courts the time and expense of developing procedures. They will be able to direct litigants to these forms and instructions that will be included on the California Courts Self-Help Website. The requirement that clerks do the actual posting has been eliminated so that in courts where the clerk does not currently perform this function, no additional time will be required. There is likely no change to those courts that prefer to use their own local forms.

Relevant Strategic Plan Goals and Operational Plan Objectives

These recommendations serve Goal I: Access, Fairness and Diversity in that barriers to obtaining judgments in family law cases are significantly reduced for self-represented litigants who do not know how to locate the opposing party. These litigants can often be stymied in moving ahead with their family law action since they do not know how to accomplish service.

These recommendations also serve Goal III. B: Modernization of Management and Administration, by implementing effective practices to foster the fair, timely, and efficient processing and resolution of all cases. The opportunity to direct litigants to standardized forms and instructions should save significant time for clerks, self-help staff and others in cases involving parties who do not know how to locate the opposing party.

These recommendations also serve Goal IV: Quality of Justice and Service to the Public, by implementing effective practices in a high-volume court such as family law to enhance procedural fairness and reduce the time and expense of court proceedings.

Attachments

1. California Rules of Ct., rule 5.72, at page 8
2. FL-980, FL-982 and FL-985, at pages 9–13
3. Comment chart, at pages 14–43
4. Attachment A: Code of Civil Procedure section 415.50 and Government Code section 6064, at page 44

Rule 5.72 of the California Rules of Court is adopted, effective January 1, 2013, to read as:

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 4. Starting and Responding to a Family Law Case: Service of Papers

Article 4. Manner of service

Rule 5.72. Court order for service by publication or posting when respondent's address is unknown

If the respondent cannot be found to be served a summons or a request for order by any method described in Code of Civil Procedure sections 415.10 through 415.40, the petitioner may request an order for service by publication or posting of notice under Code of Civil Procedure sections 415.50 and 413.30, respectively.

(a) Forms

To request service by publication or posting, the petitioner must complete and submit to the court *Application for Order for Publication or Posting* (form FL-980) and *Order for Publication or Posting* (form FL-982). Alternatively, petitioner may complete and submit to the court pleadings containing the same information as forms FL-980 and FL-982. The petitioner must list all the reasonable diligent efforts that have been made to find and serve the respondent.

(b) Order

Service by posting may be ordered if the court finds that the petitioner is eligible for a waiver of court fees and costs.

(1) To request service by posting, the petitioner must have obtained an *Order on Court Fee Waiver (Superior Court)* (form FW-003). If petitioner's financial situation has improved since obtaining the approved order on court fee waiver, the petitioner must file a *Notice to Court of Improved Financial Situation or Settlement* (form FW-010). If the court finds that the petitioner no longer qualifies for a fee waiver, the court may order service by publication of the documents.

(2) *Proof of Service by Posting* (form FL-985) (or a pleading containing the same information as form FL-985) is completed by the person who posted the documents and is filed with the court once posting is completed.

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> _____	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center; font-size: 24pt; font-weight: bold;">DRAFT Not approved by the Judicial Council</p>
<p style="text-align: center;">SUPERIOR COURT OF CALIFORNIA, COUNTY OF</p> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARTY/PARENT:	
<p>APPLICATION FOR ORDER</p> <p>FOR <input type="checkbox"/> PUBLICATION OR <input type="checkbox"/> POSTING</p>	CASE NUMBER:

1. **Publication Request:** The petitioner requests that the court issue an order directing service of the documents listed in item 3 in the following newspaper of general circulation *(name of proposed newspaper of general circulation where respondent is most likely to receive actual notice):*

2. **Posting Request:** The petitioner requests that the court issue an order directing service at the location listed below of the document listed in item 3. The petitioner has submitted a *Request to Waive Court Fees* (form FW-001). This request is based on Code of Civil Procedure section 413.30.

Posting location *(name, city, and state of proposed location to post where respondent is most likely to receive actual notice):*

3. **The legal documents to be served are:**
- a. *Summons (Family Law)* (form FL-110)
 - b. *Summons (Uniform Parentage—Petition for Custody and Support)* (form FL-210)
 - c. *Request for Order* (form FL-300)
 - d. *Other (specify):*

PETITIONER: RESPONDENT: OTHER PARTY/PARENT:	CASE NUMBER:
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4 The respondent cannot with reasonable diligence be served in any manner specified in Code of Civil Procedure sections 415.10 through 415.40 based on the declaration below.

5. **Declaration:**

Describe how you tried to find the respondent. This search may include checking with respondent's last known address; respondent's friends and family, respondent's current and past employers and any unions, Internet research, and the tax assessor records in the county of respondent's last known address or any county in which you think the respondent may live. List all steps, the date you took each step, and the results.

- a. I last saw or had contact with the respondent on *(date)*:
at *(location)*:
- b. The last address I have for respondent is:
- c. The last work or business address I have for respondent is:
- d. I have taken the following steps to try to find the respondent:

Continued on the attached declaration. Number of pages attached: _____

Search results attached.

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)



(SIGNATURE OF PETITIONER)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY <h2 style="margin: 0;">DRAFT</h2> <h2 style="margin: 0;">Not approved</h2> <h2 style="margin: 0;">by the Judicial Council</h2>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARTY/PARENT:	
ORDER FOR <input type="checkbox"/> PUBLICATION OR <input type="checkbox"/> POSTING	CASE NUMBER:

1. **Publication Granted:** The court finds that the respondent cannot be served in any other manner specified in the California Code of Civil Procedure. The court orders that the documents listed in item 6 be served by publication at least once per week for four successive weeks in the following newspaper (*specify*):

2. **Posting Granted:** The court finds that the respondent cannot be served in any other manner specified in the California Code of Civil Procedure and that the petitioner cannot afford to serve by publication. The court orders that the documents listed in item 6 be served by posting for 28 continuous days at the following location (*address*):

And that the documents in item 6, along with this order, be mailed to respondent's last known address (*specify*):

3. **Publishing Denied:** The court denies the request to publish.
 a. Other methods of service are possible.
 b. Insufficient attempts have been made to locate the respondent (*specify*):

4. **Posting Denied:** The court denies the request to post.
 a. Other methods of service are possible.
 b. Petitioner is able to pay fees required for publication.
 c. Insufficient attempts have been made to locate the respondent (*specify*):

5. **Hearing Required:** The court orders that a hearing be set to determine the petitioner's financial circumstances. If at this hearing the court decides that the petitioner, based on financial circumstances, does not qualify for posting, then the court may order that the documents listed in item 6 be served by publication.

Hearing date: _____ Time: _____ Dept: _____

6. Documents to be served: a. *Summons (Family Law) (form FL-110)*
 b. *Summons (Uniform Parentage—Petition for Custody and Support) (form FL-210)*
 c. *Request for Order (form FL-300)*
 d. *Other (specify):*

7. If, during the 28 days of publication or posting, you locate the respondent's address, you must have someone 18 years of age or older mail the documents listed in item 6 to the respondent along with this order. The server must complete and file with the court a *Proof of Service by Mail (form FL-335)*.

Date: _____ JUDICIAL OFFICER _____

PETITIONER: RESPONDENT:	CASE NUMBER:
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INSTRUCTIONS

Publication:

1. **Publication:** Take this order to the approved newspaper for publication and pay the fee to publish the documents listed in item 6 of this order for at least once a week for four successive weeks.
2. **Proof of Service by Publication:** After the newspaper publication is complete, the newspaper will send you a declaration or affidavit of publication and a copy of the publication notice that appeared in the newspaper. You must file this declaration or affidavit of publication with the court clerk if it has not been filed by the newspaper. Be sure to make a copy for yourself.
3. **Service by Publication Completed:** Service by publication is complete at the end of the 28th day of publication in the newspaper. If no response has been filed by the respondent, the petitioner may file a *Request to Enter Default* (form FL-165) starting on the 59th day after the first day of publication.
4. **Mailing:** If during the time of publication, you locate the respondent's address, you must have someone 18 years of age or older mail the this order and all documents listed in item 6 of this order to the respondent. Be sure the person who mails these documents completes and files a proof of service of this mailing. The server may use *Proof of Service by Mail* (form FL-335).

Posting:

1. **Posting Location:** You must have someone, 18 years of age or older and not a party to the case, post a copy of this *Order for Publication or Posting* (form FL-982) and all documents listed in item 6 of this order at the court-ordered posting location leaving it posted for 28 days in a row.
2. **Mailing to last known address:** You must have someone, 18 years or older and not a party to the case, mail this *Order for Publication or Posting* (form FL-982) and all documents listed in item 6 of this order to the respondent's last known address. The person who mails these documents completes a proof of service of this mailing. The server may use *Proof of Service by Mail* (form FL-335).
3. **Proof of Service by Posting:** The person (server) who posts and/or mails these documents must complete and file a declaration under penalty of perjury of such proof of posting. The server may use *Proof of Service of Posting* (form FL-985.).
4. **Service by Posting Completed:** Service by posting is complete at the end of the 28th day of posting. If no response has been filed by the respondent, the petitioner may file a *Request to Enter Default* (form FL-165) on the 59th day after the first day of posting.
5. **Mailing:** If during the time of posting, you locate the respondent's address, you must have someone 18 years of age or older mail the this order and all documents listed in item 6 of this order to the respondent. Be sure the person who mails these documents completes and files a proof of service of this mailing. The server may use *Proof of Service by Mail* (form FL-335).

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 DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARTY/PARENT:	
PROOF OF SERVICE BY POSTING	CASE NUMBER: _____

1. At the time of service I was at least 18 years of age and not a party to this action. I served the respondent by posting copies of:
- a. *Summons (Family Law) (form FL-110)*
 - b. *Summons (Uniform Parentage—Petition for Custody and Support) (form FL-210)*
 - c. *Request for Order (form FL-300)*
 - d. *Other (specify):*

2. Location where documents were posted:
3. Date when documents were first posted:
 Date when documents were removed *(document must be posted at least 28 days):*

4. My Name:
 My Address:

 My Telephone No.:
 I am
- a. exempt from registration under Business and Professions Code section 22350(b).
 - b. not a registered California process server.
 - c. a registered California process server: an employee or an independent contractor
 (1) Registration No.:
 (2) County:

5. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- or-
6. I am a California sheriff, marshal, or constable, and I certify that the foregoing is true and correct.

Date:

 (NAME OF PERSON WHO SERVED PAPERS)

}

 (SIGNATURE OF PERSON WHO SERVED PAPERS)

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Family Law- Proof of Service by Publication or Posting (adopt rule 5.72; approve forms FL-980, FL-982, and FL-985)

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

	Commentator	Position	Comment	Committee Response
1.	Bay Area Legal Aid, Central Office, Santa Clara County Office by Nicole Ford, Staff Attorney San Jose	N/I	<p>The proposed Rule 5.72(b)(2) says that the <i>verification of service by posting of summons</i> (form FL-985) should be completed by the clerk and filed with the court once posting is completed.</p> <p>To me, this reads as that the clerk’s office is responsible for posting and doing the POS (that’s how they do it in Marin; but we are required to do it ourselves in Santa Clara County) – however, the form for the order for publication or posting of summons (FL-982) includes instructions on the back. #8 for posting is inconsistent with proposed rule 5.72(b)(2) because it states that you must have someone 18 years or older, etc. and that the person who posts and mails must complete the <i>Verification of Service by Posting Summons</i> stated the date, time, and location of the posting and mail service.</p> <p>I think that it needs to be clear who does the posting in these cases – an individual or the clerks. Or is that something to be left up to the local courts to decide how they want to handle it.</p> <p>I realize this point may be nitpicking – however I think the general public will follow the instructions and never bother to actually look at the rules of court and therefore not know the rules of court (as proposed) actually designate the clerk as the person to complete the verification of service form.</p>	As noted by the commentator, the practice for posting documents varies between counties. The committee and task force have revised the proposed rule to reflect those variations. The clerk, sheriff or anyone 18 years or older who is not a party to this action may serve the forms.

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

	Commentator	Position	Comment	Committee Response
2.	Family Connections Christian Adoptions by Alison Foster Davis, Exec. Director/Counsel Modesto, CA 95350	A	Suggest that the following be added to Para. 3 of Application and Para. 4 of Verification, respectively: <input type="checkbox"/> Petition to Free Minor from Custody and Control of Parent (FC §§ 7800 et.seq.)	This petition can be written in as “other.” This is a less common procedure than the others being described.
3.	Family Violence Law Center by Kristie Whitehorse, Managing Attorney Oakland	A	No narrative comments.	No response required.
4.	Harriett Buhai Center by Erin Dabbs Senior Staff Attorney	AM	We strongly agree that the Judicial Council should standardize Posting and Publication procedures across the state. The <i>Bodie</i> and <i>Cohen</i> cases set out the right to Posting, but do not detail the necessary procedures, thus creating confusion and leaving courts open to create their own local rules and forms. A state-wide standard procedure would be a great help to litigants, self-help resource centers and legal service providers. Confusion also exists as to the differences between Posting and Publication, so the local rules and forms should seek to clarify this confusion. For example, we have often had litigants’ Posting requests incorrectly denied on the basis of not meeting the Publication standards. Proposed California Rules of Court Rule 5.72:	No response required. The committee and task force changed the rule and the forms to add clarity and added check boxes to allow the user to select publication or posting by marking the appropriate check box on the form.

SPR11-42

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	Commentator	Position	Comment	Committee Response
			<p>We agree that a Rule of Court is necessary to distinguish between Posting and Publication and to detail the required procedures for each method.</p> <p>However, we have several concerns with the proposed Rule of Court and only agree to its adoption if it is modified as follows.</p> <p><u>Introductory Paragraph:</u> The introductory paragraph references two sections of the California Code of Civil Procedure (CCP). However, section 413.20 does not apply to Posting or Publication. We believe this should be CCP section 413.30.</p> <p><u>Item (b)(1) - No requirement that litigants file new fee waiver every 4 months:</u> At item (b)(1), the proposed rule states “To request service by posting, petitioner must complete and file a <i>Request to Waive Court Fees</i>, (Form FW-001), unless one has been approved in the last 4 months.” We strongly object to the final phrase in that sentence. It implies that fee waiver orders expire, and that litigants are obligated to provide the court with updated financial information every few months.</p> <p>However, fee waiver orders do not expire until 60 days post-judgment. Cal. Govt. Code § 68639. Further, the court’s authority to evaluate a litigant’s continuing eligibility for a fee waiver is limited by statute. Courts may hold a hearing</p>	<p>The committee and task force corrected the typographical error using Code of Civil Procedure section 413.30 instead of section 413.20.</p> <p>The committee and task force have deleted this phrase.</p> <p>The committee and task force have deleted this phrase.</p>

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			<p>on a litigant’s eligibility only once every 6 months while the case is pending, and only in those cases where the court receives information that the litigant no longer qualifies for the fee waiver. Cal. Govt. Code § 68636(b). The code does require litigants to provide updated financial information to the court when their income has changed such that it affects their continued eligibility for a fee waiver. Cal. Govt. Code § 68636(a).</p> <p>We see no reason to modify this general scheme for litigants who must pursue service by Posting. Requiring litigants to file a new <i>Request to Waive Court Fees</i> when their income has not changed is unduly burdensome and is inconsistent with the statute.</p> <p>We propose that item (b)(1) be modified to read as follows “To request service by posting, petitioner must have obtained an <i>Order on Court Fee Waiver (Superior Court)</i> (Form FW-003) by completing and filing a <i>Request to Waive Court Fees</i> (Form FW-001). If petitioner’s financial situation has improved since obtaining the <i>Order on Court Fee Waiver</i>, the petitioner must file a <i>Notice to Court of Improved Financial Situation or Settlement</i> (FW-010). If the court finds that petitioner does not qualify for a fee waiver, then the court may order service by publication of the summons.”</p> <p><u>Item (b)(2) and Proposed Verification of Service by Posting Summons:</u> We propose that the</p>	<p>The committee and task force have recommended this proposed language for adoption.</p> <p>The committee and task force have modified the proposed verification form, renamed it a <i>Proof of</i></p>

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			<p>requirement that the <i>Verification of Service</i> form be attached to a <i>Proof of Service of Summons</i> (FL-115) be eliminated and that the proposed <i>Verification of Service</i> form be modified to account for this.</p> <p>The introductory notes for this Rule of Court revision state that the <i>Verification of Service</i> form must be attached to the <i>Proof of Service of Summons</i> (FL-115) (see page 3 of the SPR11-42 <i>Invitation to Comment</i> packet). Additionally, the proposed <i>Verification of Service by Posting Summons</i> includes the following language “Notice to Petitioner: This verification must be attached to <i>Proof of Service of Summons</i> (Form FL-115) before filing.”</p> <p>However, the proposed Rule of Court does not mention that the <i>Verification of Service</i> form need be attached to a <i>Proof of Service of Summons</i>. Instead it simply states that the court clerk will complete the <i>Verification of Service</i> form and file it with the court. This also raises a question as to whether or not the court clerk will also complete the <i>Proof of Service of Summons</i>, as presumably the two forms should be completed together.</p> <p>Further, neither the introductory notes nor the proposed Rule of Court explain how a litigant who is serving by Posting or Publication should complete the <i>Proof of Service of Summons</i> (FL-115), which does not currently provide for service by either Posting or Publication.</p>	<p><i>Service by Posting</i> (FL-985) and incorporated the necessary terms from FL-115 so that it can be a standalone form.</p> <p>The proposed rule of court has been modified to reflect the revised form name.</p> <p>This issue is addressed by the change of the verification form to a proof of service.</p>

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			<p>The <i>Proof of Service of Summons</i> (FL-115) lists 4 methods of service. 1) Personal service, 2) Substituted service, 3) Mail and acknowledgment service, and 4) Other (specify code section).</p> <p>Consequently, we propose that the requirement that the <i>Proof of Service of Summons</i> be filed along with the proposed <i>Verification of Service</i> form be eliminated, and that the proposed <i>Verification of Service</i> form be modified so that it includes all relevant language about service such that no other Proof of Service need be filed along with it.</p> <p>We recommend several additions/modifications to the proposed <i>Verification of Service</i> form in order to eliminate the need for modifying the <i>Proof of Service of Summons</i> (FL-115):</p> <p>1. That the list of forms being served at item 4 also include the blank responsive papers as they are listed on the <i>Proof of Services of Summons</i> (FL-115) at item 1(a)-(d) and that the <i>Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act, Income and Expense Declaration, Financial Statement Simplified, and Property Declaration</i> also be listed. It is very important that the <i>Verification of Service</i> form list all relevant documents that are served by Posting on the respondent, including blank responsive documents and the financial disclosure forms.</p>	<p>The committee and task force have made this change.</p> <p>Since Section 415.50 of the Code of Civil Procedure only requires that the summons be published, the committee and task force have not added additional forms, but rather have provided a box and space for other forms depending on the case.</p>

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			<p>In the overwhelming majority of Posting cases, no Response will be filed and the petitioner must have proof that these documents were served in order to proceed by default.</p> <p>2. That item 6 be added, stating “I am a California sheriff or marshal and I certify that the foregoing is true and correct.” In Los Angeles County, and in all other counties with which we have interacted, the sheriff completes the actual Posting process and signs a Proof of Service. Thus, the form should include this as an option.</p> <p>3. Delete the “Notice to Petitioner” language at the bottom of the form.</p> <p>Should the Judicial Council choose not to eliminate the proposed requirement that the <i>Verification of Service</i> form be attached to the <i>Proof of Service of Summons</i>, we propose that the Judicial Council amend the <i>Proof of Service of Summons</i> to list Posting specifically as item 4) and create an item 5) other, and that the Rule of Court be modified to clarify the relationship between the <i>Verification of Service</i> form and the <i>Proof of Service of Summons</i>.</p> <p>Still, for either option, it is unclear why the court clerk would be expected to complete the <i>Verification of Service</i> form as stated in proposed Rule 5.72(b)(2). Clarification is needed on this point as well.</p>	<p>The committee and task force added these provisions as suggested.</p> <p>The committee and task force deleted this provision as suggested.</p> <p>The committee and task force have modified the proposed verification form, renamed it a <i>Proof of Service by Posting</i> (FL-985) and incorporated the necessary terms from FL-115 so that it can be a standalone form.</p> <p>The rule has been modified to reflect that a proof of service of posting would be completed by the person who posted the documents.</p>

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			<p><u>Item (c)(3)</u>: This portion of the proposed rule indicates that if the other side has not made an appearance after service by Posting or Publication, all further documents should be served on the clerk of court. However, there is no instruction to the clerk of court as to what should be done with these documents. Will the court be required to keep them for several years? Will the court be allowed to shred them? Guidance on this point would be helpful.</p> <p>Application for Order for Publication or Posting of Summons (FL-980):</p> <p>For clarity’s sake, we propose writing the word “or” between items 1 and 2 so it is clear that a litigant need not complete Posting and Publication, since they are mutually exclusive processes.</p> <p>At item 2, we propose changing the second sentence to state “The petitioner has a current <i>Order on Court Fee Waiver</i> on file.” The proposed sentence states that the petitioner has <u>requested</u> a fee waiver. However, it is important that the litigant has actually obtained an <i>Order on Court Fee Waiver</i>, as indigence is a prerequisite to Posting.</p> <p>At item 3, we suggest adding the following forms, including a box to check for each, which are likely to have been filed along with the Petition: <i>Declaration Under Uniform Child</i></p>	<p>The committee and task force have removed proposed paragraph c.</p> <p>The committee and task force have clarified this form by adding check box options so that the user may select Posting or Publication.</p> <p>The committee and task force have made this change.</p> <p>Since Section 415.50 of the Code of Civil Procedure only requires that the summons be published, the committee and task force have not added additional forms, but rather have provided a</p>

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			<p><i>Custody Jurisdiction and Enforcement Act, Income and Expense Declaration, Financial Statement Simplified, and Property Declaration.</i></p> <p>At item 5, we object to the statement that the search should generally include “the tax assessor’s records in the county of respondent’s last known address or any county in which you think the respondent might live.” Neither case law nor statute set out specific requirements for Posting, and we worry that if the form lists suggested practices, court clerks will assume these suggestions are instead legal requirements. While the first three suggestions—checking with family and friends, inquiring with former employers, and running internet searches—are reasonable common practice, we see no reason to add a requirement that the tax assessor’s records be checked.</p> <p>At the box at the bottom of page 2, the statement should read “Continued on the attached declaration.”</p> <p>Order for Publication or Posting of Summons (FL-982):</p> <p>For the same reasons listed above, we suggest that the word “or” be included between items 1 and 2 to clarify that Posting and Publication are independent processes.</p>	<p>box and space for other forms depending on the case.</p> <p>Many counties do request that tax assessor’s records be reviewed and since these records are generally online this does not seem like an overly burdensome suggestion that litigants check those tax records. The form is designed to give suggestions to litigants for how to locate the opposing party.</p> <p>The committee and task force made this change.</p> <p>The check boxes in Items 1 and 2 allow for an election for Publication or Posting. The committee has added checkboxes in the Caption: “ORDER FOR <input type="checkbox"/>PUBLICATION <input type="checkbox"/>POSTING”</p>
5.	Virginia Johnson Staff Attorney	AM	5.72(c) - the rule seems to be an improper approach to service on a non-appearing	This paragraph has been deleted.

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	Superior Court of San Diego		<p>respondent and, as written, will cause court files to include unnecessary duplicates of documents. The court file will have the documents filed by petitioner and then will also have the identical documents that were “served” on the respondent. What forms and notices are being contemplated that petitioner would need to serve on a non-appearing respondent? If there is a valid service by publication or posting and respondent does not answer within 60 days, it would seem that the only documents petitioner should be filing are default papers.</p> <p>The rule could easily cause every petitioner, particularly self-represented litigants, who served by publication or posting to believe they just mail serve all their other papers to the court.</p>	<p>Potential confusion has been eliminated with the deletion of the paragraph.</p>
6	Neighborhood Legal Services of Los Angeles County by Carmen McDonald-Goldberg, Esq. Pacoima	AM	<p>NLSLA makes the following comments regarding SPR11-42 Posting or Publication procedure:</p> <p>Since Posting is largely a creation by case law, it is good that a rule be created to instruct the parties and the Courts as to the procedure and process of this type of service. It should be clear that posting is only available to litigants who qualify for a fee waiver and if they do not qualify for a fee waiver, publication is required when the Respondent’s whereabouts are unknown to the Petitioner.</p> <p>Rule 5.72</p> <ul style="list-style-type: none"> • Suggest rule include direction as to the court’s 	<p>The committee and task force thinks that this has been made clear by the clarifying the requirement for an Order on Court Fee Waiver.</p> <p>Paragraph (c) has been deleted from the rule, it is</p>

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			<p>handling of the service documents when service is pursuant to CCP 1011(b); are the papers to be filed?</p> <ul style="list-style-type: none"> • It should be clear that the Posting is to be handled by the Court or the Sheriff – this task should not be relegated to the parties (whether represented or not). It would be close to impossible for a self-represented litigant to get someone (over the age of 18) to post their papers somewhere in the Courthouse. This clearly should be done by a Court employee or a Sheriff. <p>FORM FL -982</p> <ul style="list-style-type: none"> • Item 1 – add a line where the litigants can write in which newspaper they published their notice. • Item 4, add a checkbox for item c to read “Petitioner able to pay for fees required for publication.” <p>Form FL-985</p> <ul style="list-style-type: none"> • Final line of form, under Notice to Petitioner should read “A copy of this verification must be attached...” 	<p>covered by Rule 3.252.</p> <p>The form and rule have been modified to reflect different practices in different counties. Given the financial stresses facing the courts, the committee and task force do not think that it is appropriate to mandate that court staff or the sheriff complete this service.</p> <p>The committee and task force added a colon at the end of the sentence.</p> <p>The committee and task force made this suggested change to the form.</p> <p>The committee and task force modified this verification form and renamed it a <i>Proof of Service by Posting</i> (FL-985) and incorporated all of the necessary terms from the proof of service form. Thus, this Notice provision is no longer necessary.</p>
7.	Orange County Bar Association by John Hueston, President Newport Beach	A	No narrative comment	No response required.
8.	Sonoma County Bar Association, Family Law Committee by Jeanne Miskel, Esq.	AM	FL-980: The case law reference contained on page 1, paragraph 2, should be removed. The case	The committee and task force removed this reference to case law.

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	Santa Rosa		reference may create confusion for pro per litigants and does not appear to add enough value to counterbalance the potential negative effect.	
9.	<p>The State Bar of California Standing Committee on the Delivery of Legal Services (SCDLS) Office of Legal Services By Sharon Ngim Program Developer and Staff Liaison, San Francisco</p> <p>[This position is only that of the State Bar of California’s Standing Committee on the Delivery of Legal Services. This position has not been adopted by the State Bar’s Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.]</p>	AM	<p>SCDLS recognizes the importance of having a rule on service by posting when respondent’s address is unknown. To reduce confusion between service by publication and service by posting, the following changes are suggested:</p> <p><u>Rule 5.72</u></p> <ul style="list-style-type: none"> • In (c) (non-appearance by respondent), include direction as to the court’s handling of the service documents when service is pursuant to Code of Civil Procedure section 1011(b), such as what happens to the documents after the court receives them (i.e., documents are filed). • Provide information for posting by the Clerk of the Court rather than the party who would not know the process and possibly be unable to comply with the rule. <p><u>Form FL-982</u></p> <ul style="list-style-type: none"> • Item 1 is missing a colon at the end of the last sentence. • Item 2 language, “posting for at least 30 days,” conflicts with wording of 28 days in FL-985 item 3, although both are correct (first and last day not counted) it could be confusing to the 	<p>The committee and task force deleted paragraph c. This is covered by rule 3.252.</p> <p>While best practice may well be for the clerk to do the posting, it does not seem appropriate to mandate this given the stresses on the court. Different courts handle this differently and the forms have been modified to reflect the opportunity for variation.</p> <p>The colon was added as suggested.</p> <p>Gov. Code §6064 requires publication once a week for four successive weeks. Service by publication begins on the first day of publication and is complete at the end of the 28th day.</p>

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			<p>general public.</p> <p>Should posting be only once a week like publication? If not, we need to specify that it will be posted continuously for 28 days. Unlike newspapers that may public weekly or daily and can be accessed during and after the publication. Posting must be for a continuous 28 days since it may not be found elsewhere except in the court file or at the posting location.</p> <ul style="list-style-type: none"> • Item 4, add a checkbox for item c. to read “Petitioner able to pay for fees required for publication.” <p><u>Form FL-985</u></p> <ul style="list-style-type: none"> • Item 3 language, “for 28 days (from date of first day of posting)”, conflicts with wording of 30 days in FL-982 item 2. <ul style="list-style-type: none"> • Final line of form, under “Notice to Petitioner” 	<p>Similarly, service by posting would begin on the first day of posting and is complete at the end of the 28th day after the first day of posting. Posting shall be for a continuous period of 28 days. <i>See Cohen v. Board of Supervisors</i> (1971) 20 Cal. App.3d 236, <i>Boddie v. Connecticut</i> (1971) 401 U.S. 371, CCP§§ 415.50 and 413.30. The forms have been modified to clarify this.</p> <p>The form has been modified to clarify that the documents should be posted continuously for 28 days.</p> <p>The committee and task force have made this change.</p> <p>FL-982, page 2, Item 8. The committee and task force added the required posting for continuous period of 28 days in the instructions and corrected the last sentence to read: “Service by posting is complete at the end of the 28th day of posting. If no response has been filed by the respondent, the petitioner may file a <i>Request to Enter Default</i> (form FL-165), on the 59th day after the first day of posting.</p> <p>The committee and task force changed this</p>

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			should read, "A copy of this verification must be attached...".	verification form and renamed it a <i>Proof of Service by Posting</i> (FL-985) and incorporated all of the necessary terms from the proof of service form. Thus, this notice is no longer necessary.
10.	Superior Court of Amador County by Janet Davis, Court Manager Jackson	AM	<p>Proposed Rule 5.72 references CCP 413.20 in the first paragraph last code cite. Should this be 413.30?</p> <p>Proposed Rule 5.72(b)(1) requires a fee waiver unless one has been approved in the last 4 months. However, Govt Code §68636(b) states the court shall not conduct a fee waiver review hearing more often than once every 6 months. It would be easier for the courts to implement if the time lines are consistent.</p> <p>Form FL-982 the Order form on Page 2 – posting time lines on instructions say service by posting is complete the 31st day after posting and default can be taken 61st day after posting. The FL-985 Verification form in #3 calculates the posting time of 28 days. It was my understanding the date of jurisdiction for posting was the 28th day after the first date of posting, so the default can be taken on the 58th day after the first post date, which is the same as the jurisdiction in the publication process.</p>	<p>The committee and task force corrected the typographical error using CCP section 413.30 instead of CCP section 413.20.</p> <p>The committee and task force have deleted this requirement.</p> <p>See above. FL-982, page 2, Item 8. The committee and task force added the required posting for continuous period of 28 days in the instructions and corrected the last sentence to: "Service by posting is complete at the end of the 28th day of posting. If no response has been filed by the respondent, the petitioner may file a <i>Request to Enter Default</i> (form FL-165), on the 59th day after the first day of posting."</p>
11.	Superior Court of Los Angeles County	AM	<p>1. FL-980 page 2 #5: Add language that "This search should generally include checking at Respondent's last known address,"</p> <p>2. FL-980 page 2: It is unclear how the litigant</p>	<p>The committee and task force made this suggested change.</p> <p>The committee and task force made this suggested</p>

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			<p>should attach the "results of the search". Usually the litigant attaches Internet printouts, real property search results, and returned mail which was sent certified mail, returned receipt requested. Consider adding a box at the bottom for "Search Results Attached" similar to the box they have for "Continue on the attached declaration".</p> <p>3. FL-982: #3a, 3b, 4a and 4b need added space where the Judge may write comments. For example, 3b "Insufficient attempts have been made to locate the Respondent." The litigant will not know what additional steps should be taken to try to locate the Respondent. With the current draft of the form a litigant would not know what to do next after receiving the denial.</p> <p>4. FL-982 #6: It is unclear why the form states that, if the Respondent's address is discovered, service by mail OK. It seems more accurate to say personal service using the FL-115 Proof of Service of Summons is then required.</p>	<p>change.</p> <p>The committee and task force made these changes as suggested.</p> <p>CCP§415.50(b) states, in relevant part, that: "The order shall direct that a copy of the summons, the complaint, and the order for publication be forthwith mailed to the respondent if his or her address is ascertained before expiration of the time prescribed for publication of the summons."</p>
12.	Superior Court of Monterey County by Minnie Monarque Director of Civil & Family Law Division	A	Agree with proposed changes.	No response required.
13.	Superior Court of Orange County Family Law Operations Family Law Division Santa Ana	AM	<p>Rule 5.72</p> <ul style="list-style-type: none"> Suggest rule include direction as to the court's handling of the service documents when service is pursuant to CCP 1011(b); are the 	Proposed paragraph (c) is being deleted. Service under CCP 1011(b) is covered by Rule 3.252.

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			<p>papers to be filed?</p> <p>Form FL-982</p> <ul style="list-style-type: none"> • Item 1 missing colon after final word • Item 2 language reading “posting for at least 30 days” conflicts with wording of 28 days in FL-985 item 3, although both correct (first and last day not counted) it could be confusing to the general public. • Item 4, add a checkbox for item c to read “Petitioner able to pay for fees required for publication.” <p>Form FL-985</p> <ul style="list-style-type: none"> • Item 3 language reading “for 28 days (from date of first day of posting)” conflicts with wording of 30 days in FL-982 item 2 • Final line of form, under Notice to Petitioner should read “A copy of this verification must be attached...” <p>Rule 5.54: should include requirements for service of Preliminary Declaration of Disclosure when the Petition has been served by</p>	<p>The colon has now been added.</p> <p>FL-982, page 2, Item 8. The committee and task force added the required posting for continuous period of 28 days in the instructions and corrected the last sentence to: “Service by posting is complete at the end of the 28th day of posting. If no response has been filed by the respondent, the petitioner may file a <i>Request to Enter Default</i> (form FL-165), on the 59th day after the first day of posting.”</p> <p>The committee and task force added 4(c.) <input type="checkbox"/> Petitioner is able to pay fees required for publication.</p> <p>FL-985. The committee and task force have modified the language to make the language consistent.</p> <p>This verification form has been modified and renamed <i>Proof of Service by Posting</i> (FL-985) All of the necessary terms from the proof of service form have been incorporated. This Notice provision is no longer necessary.</p> <p>The committee and task force have removed paragraph (c) from the proposed rule. This addresses the concern set forth in this comment. If</p>

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			<p>Publication or Posting; service on the clerk would be accepted, however the documents being served are not normally filed with the court, suggest rule include requirement that the documents be filed into the court file; if Respondent appears later to queries the file, the documents would be available.</p>	<p>a respondent wishes to see the declaration of disclosure, he or she can contact the petitioner as this would otherwise not be available in the court file.</p>
14.	<p>Superior Court of Riverside County by Michael Capelli, General Counsel Riverside</p>	AM	<p>Proposed rule 5.72(b)(1) states that the petitioner must complete a file a fee waiver unless one has been approved in the last four months. Seeking clarification on the 4-month time limit; since this is a process for serving the summons and petition it would be presumed that the petitioner does not have a previous fee waiver request on file.</p> <p>On the FL-980 Application for Order for Publication or Posting Summons, it is recommended that under #5 the form should ask a series of questions to obtain responses as to the petitioner’s due diligence; or in the alternative create a due diligence form.</p> <p>On the FL-982 Order for Publication or Posting of Summons, I believe that #1 should read ‘Publication Requested Granted’.</p> <p>Proposed rule 5.72(b)(2) states that the FL-985 will be completed by the clerk, however the instructions on FL-982 states that someone over the age of 18 will post the Summons and Petition and complete the Verification of Service by Posting form. Thus, the language needs to clarify who will post the Summons, the</p>	<p>The committee and task force deleted “unless one has been approved in the last 4 months.”</p> <p>This suggestion will be considered for future proposals. The committee and task force added some additional prompts, but a more detailed declaration format would need to be circulated for comment.</p> <p>The committee and task force made this change as suggested.</p> <p>The committee and task force clarified the rule and changed this verification form to allow any individual, who is 18 or older and not a party to the action, to post and complete this <i>Proof of Service by Posting</i> (FL-985).</p>

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			<p>clerk or the party.</p> <p>Rule 5.72(b)(2) further requires that the court clerk complete the Verification of Service by Posting of Summons, yet the instructions for FL-982 appear to require the party to arrange for posting. There is no mention in the instructions that the court clerk would perform this task.</p> <p>FL-985 Verification of Service by Posting Summons has a place for a file stamp however at the bottom it indicates that the form must be attached to the FL-115 before filing. It is suggested that the FL-985 form be modified to 1) be completed by the clerk and 2) returned to the customer so it can attach to the FL-115.</p>	<p>This has been clarified to note that any person not a party to the action who is aged 18 or older can post the documents.</p> <p>This has been modified to be a stand-alone document.</p>
15.	Superior Court of Sacramento County By Robert Turner, ASO II Finance Division	NI	<p>Rule 5.72(c)(1), line 8: This is duplicative to an existing rule or statute. Remove c (1) - c (3).</p> <p>*FL-980: 1. [paragraph 2] Change the “write in date” to “print date”</p> <p>2. [paragraph 2]This is not reasonable to post at government buildings or law enforcement offices. They will not know what to do with the form. Such as posting at the visitors center at Yosemite. Remove reference to government building and law enforcement office.</p>	<p>Agree to eliminate paragraph c.</p> <p>This has been modified.</p> <p>Each local court can designate the posting location(s) where legal notice may be posted in the courthouse or other location. If the notice must be posted at the courthouse, the court may designate court staff to post the legal document(s) on the courthouse bulletin board or other designated posting location. Any individual, over 18 years of age and not a party to the action, may post the legal document(s). The person who posts</p>

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			<p>3. [last line] Change "write in date" to "print date"</p> <p>*FL-982: 7. This is not reasonable. The burden is on the party to ensure the court receives the proof and should not be with the newspaper. Remove this language.</p> <p>8. This is not reasonable. The court needs to continue to manage this process. To leave the burden to the third party to post may result in no control over when and when posting occurs. This language needs to be changed to state the court will post, and court staff would prepare the form.</p>	<p>the legal document must complete and file the proof of service by posting with the court.</p> <p>The committee and task force deleted this last line and added subsection numbers and added "filed on" at the end of the options.</p> <p>The committee and task force clarified the instructions since generally the newspaper that publishes the Summons and Petition will also complete and file the declaration or affidavit of publication.</p> <p>This procedure varies in different counties. The rule has been modified to reflect those changes and allow courts to make a determination of a proper order for posting. The revised language allows courts the flexibility to designate court clerks, law enforcement, or other non-parties who are 18 years of age or older to post and complete the proof of service.</p>
16.	Superior Court of San Bernardino County by Debra Meyers, Director	AM	1. Thank you for this proposal. Forms relating to publication and posting have been needed for several years; Judicial Council forms addressing these topics will be of great benefit to the courts and to the litigants in bringing uniformity across the State as to the process and standards. As can be seen from the comments below, however, creating a new standard can be a challenge to work out the practicalities facing the individual courts.	No response required.

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			<p>2. Contradiction in Procedure? Rule 5.72(b)(2) indicates that Verification of Service is completed by the clerk. However, the form indicates that it is done by the party’s representative. (See Instructions, page 2). Also, it looks like a typographical error in the rule to refer to “413.20” rather than “413.30”.</p> <p>3. Is this process intended to be set for a hearing? Per GC 70617(c)(3), the charge for a request relating to publication is \$20, which suggests that no hearing will be held. [Proposed Rule 5.165(a)(3) states that notice is automatically waived for this type of emergency request for order.] Yet the Order for Publication includes a section regarding a hearing relating to the financial circumstances. If there is going to be an option re: hearing, then the form Order could also contain language that there will be a hearing set to obtain more factual information upon which to make a ruling.</p> <p>4. Broaden the form’s use for the Request for Order (former OSC). Example: father has a government child support case in which his paternity was established. Father wishes to get custody and has no idea where mother and child is living. Due to the confidentiality limitation, the Department of Child Support Services cannot release the information, nor can they</p>	<p>The committee and task force clarified the rule, changed this verification form, renamed it to allow any individual, who is over 18 and not a party to the action, to post and use this <i>Proof of Service by Posting</i> (FL-985). The revised language allows court the flexibility to designate court clerks, law enforcement, or other non-parties, 18 years of age or older, to post and complete the proof of service. The typographical error using CCP section 413.30 instead of CCP section 413.20 has been corrected.</p> <p>The hearing referenced on the form only relates to the issue of whether filing fees should be waived, thus, like a fee waiver hearing itself, there would be no filing fee involved. The committee and task force has tried to clarify this in the language.</p> <p>The committee and task force has incorporated this suggestion into the forms.</p>

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			<p>serve the parent with paperwork not related to the child support. In this situation, one of the only options for the father is to seek a publication order of the request for custody order.</p> <p>5. Form Comments – Instructions on Order: Can you include a reference to exactly where/how you attach to the FL-115? The person would check Item 3d on Page 2 and insert “Code of Civil Procedure Section 415.50” and “See attached”. Also on Page 2 at bottom for “continue on attachment” – should it read “continued on attachment”</p> <p>6. Posting comments:</p> <p>a. Contradiction in timing: According to the Instructions on Page 2 of the Order, you need to wait for the 31st day after posting to proceed. But the Verification form states at Item 3 that that they are to measure to the 28 days. Why not make the time for posting the same as for publication?</p> <p>b. What is the posting procedure? Who need to check to make sure that the posting stays up for 28 days? On the Verification form, it indicates that the person is supposed to list the first day of posting to the last day of posting.</p> <p>c. Can posting be done on-line somewhere?</p>	<p>The committee and task force changed this verification form, renamed it a <i>Proof of Service by Posting</i> (FL-985, and incorporated all of the necessary terms from the proof of service form, so that it no longer needs to be attached to FL 115.</p> <p>The committee and task force corrected the posting time for 28 days similar to publication and clarified the instructions on FL-985.</p> <p>Any individual, who is over 18 and not a party to the action, may post and use the <i>Proof of Service by Posting</i> (FL-985).</p> <p>The committee and task force clarified the rules and added a provision that local courts may designate a posting location in the courthouse or other public location. The long term goal is to</p>

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			<p>d. How do you handle the financial disclosures that are filed at the same time as the Summons & Complaint? Can a copy be handed to the clerk’s office in care of the respondent, or must there be technical service on the respondent in care of the clerk’s office?</p> <p>e. In the Instructions, include the form number for the Proof of Service of Summons (consistent with the Publication instructions, as the party may not read about Publication if doing a Posting).</p> <p>f. Instructions indicate that court clerk will post – but what if sheriff does the posting, as is common in many counties?</p>	<p>develop a website to increase access to these postings.</p> <p>Subsequent notices may be served according to CRC, Rule 5.72(c) if respondent has not appeared after service by publication or posting.</p> <p>The committee and task force clarified the rule, changed this verification form , renamed it to allow any individual, who is over 18 and not a party to the action, to post and use this <i>Proof of Service by Posting</i> (FL-985) without an additional form.</p> <p>The rule has been clarified to allow the sheriff or other non-parties to complete the posting.</p>
17.	Superior Court of San Francisco County Unified Family Court Bench Officers by Hon. Rebecca Wightman Commissioner (Child Support IV-D) San Francisco	AM	The declaration portion of the Application (Item 5 on p.2 of Application and Order) should not simply be a “free form” space. Check boxes and spaces for date and results should be created for direction to the litigant as to the common types of searches, and to make it easier on the court staff/bench to locate and review the pertinent information. Using a free form only – particularly with pro pers, where handwriting issues abound – will increase the likelihood that there will be information missing (e.g. date when a particular search method was performed, etc.), which may lead to an unnecessary denial	The committee and task force will consider these suggestions for future RUPRO cycles, as they will need to be sent out for comment. It is clear that many courts have developed forms to provide more guidance to litigants, but that there are significant differences in practice throughout the state. A reference to checking with the self-help center for local forms will be added.

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			<p>had sufficient detail been put in the first time around.). As the proposal summary notes, many counties have developed forms – some of which contain the most common search methods, with space for the date and the result. It is urged that these be reviewed to come up with the best ones, and then include them in a check box/date/space for result format.</p> <p><u>BY WAY OF EXAMPLE ONLY:</u> Add to #5 the following subsections, with instructions to check all that apply, and to list additional searches in the space below: (The wording/editing/spacing is for example only)</p> <p><input type="checkbox"/> I last saw respondent on or about the following date: _____, and lost track of respondent because: (explain your situation): [NOTE TO REVIEWERS]: This is inserted to give the court background as to how long it has been and the circumstances, which helps assess why certain search methods were not explored – e.g. so long ago, no employers to search]</p> <p><input type="checkbox"/> I have done a recent search by checking with all relatives, friends, and other persons likely to know where the respondent is, on the following dates, with these results: (Date): (Spoke to/relationship) (Results):</p> <p>_____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____</p>	

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			<p><input type="checkbox"/> I have done a recent search of current or past employers and/or unions with on the following dates, with these results: (Date): (Spoke to/company) (Results): _____ _____</p> <p><input type="checkbox"/> I have done a recent search of public records (check all that apply), with the following results: On (date) _____ <input type="checkbox"/> telephone directories or directory assistance for the city (cities) of: _____ Result:</p> <p>On date: _____ <input type="checkbox"/> internet search Result:</p> <p>On date: _____ <input type="checkbox"/> checked city /county tax records and election records for the city (cities)/county (counties) of: _____ Result:</p> <p><input type="checkbox"/> I called the Department of Child Support Services on (date) _____ at (number): _____, to inquire if they had an open case, or knew the whereabouts of respondent, and they told me the following: _____ _____</p>	

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			<p>[NOTE: While the Dept. of Child Support Services cannot necessarily provide any actual address information due to confidentiality laws/regulations – the fact that there is an active/open case can often lead the applicant then being able to successfully search public court records in an appropriate county]</p> <p><input type="checkbox"/> I also did the following things to try to find the respondent (give details, and include dates and results of the search):</p> <p>[NOTE: THIS COULD BE THE “FREE FORM” space that is currently on proposed form]</p>	
18.	<p>Superior Court of Santa Clara County by Superior Court Judges: Hon. Mary Ann Grilli Hon. Mary E. Arand San Jose</p>	AM	<p>APPLICATION FOR PUBLICATION OR POSTING, FL-980 It would be very helpful if there were a separate box describing the online search and the results of that. In addition, a section about the last contact with the party and efforts made to contact them and any other family members would be of help.</p>	<p>The committee and task force added a checkbox to attach results of online and other searches.</p>
19.	<p>Superior Court of Shasta County by Stacy Larson Family Law Facilitator</p>	AM	<ul style="list-style-type: none"> It would be helpful to see/review the proposed CCP rules that will allow posting in family-law cases. CRC 5.72 should also allow service of “Requests for Order” with temporary orders that would otherwise require personal service to be 	<p>Rule 5.72 provides for the service of summons by publication and posting but other appropriate legal documents such as the petition and other documents as listed on FL-115 may be served with the initial service of the summons.</p> <p>The committee and task force made this change.</p>

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			<p>served by posting/publication.</p> <ul style="list-style-type: none"> • CRC 5.72, subdivision (b)(1): We should delete the commas around (form FW-001) as the parentheses serve the necessary purpose. • FL-980 and FL-982 and FL-985, Caption: The caption should include a place for “Claimant” or “Other Party” in addition to “Petitioner” and “Respondent.” • FL-980 and FL-982 and FL-985: These forms should be modified throughout to also allow service of “Requests for Order” with temporary orders that would otherwise require personal service to be served by posting/publication. • FL-980, subdivision (5): We should delete the comma between “respondent” and “and” in the first sentence as it does not comply with any of the existing rules for comma usage. We should include the word “the” before “respondent’s friends and family” on the second line and before “respondent’s last known address” on the third line. The box stating that facts are continued on the attached declaration should replace “Continue” with “Continued.” The declaration should also describe why the proposed posting or place of publication is one that is most likely to provide actual notice. • FL-980, page 2, signature line: A line should be added for the Petitioner to print his/her name. • FL-982, subsection (1): A colon should be placed at the end of the verbiage to show that the publication must be listed in the blank space 	<p>The commas around the (form FW-001) have been deleted.</p> <p>The committee has made this change.</p> <p>The committee has made this change.</p> <p>These changes have been made.</p> <p>A line was added for Petitioner to print his/her name.</p> <p>Colon added.</p>

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			<p>provided.</p> <ul style="list-style-type: none"> • FL-982, subsection (2): This order should be expanded to specify that the petitioner must also mail the documents to the respondent’s last known address. This part of the process is likely to be easily overlooked by self-represented litigants. • FL-982, subsection (4): An extra checkbox/line should be included for a finding that the petitioner can afford to serve by publication or at least that the petitioner has not established inability to pay. • FL-982, subsection (6): A comma should be placed after “publication or posting,” on the first line as a dependent clause begins the sentence. • FL-982, page 2, subsection (8): On the second line, we should hyphenate “above-approved” as these two words are acting together as an adjective pertaining to “location.” • FL-985, subsection (2): We should capitalize “respondent’s” as it is being used as a proper noun. 	<p>This is not required by Government Code section 415.40. Mailing is only required if the address of the opposing party becomes known. However, it is one of the elements cited by <i>Boddie</i>, so it has been added to the form.</p> <p>The committee and task force added 4(c.) allowing courts to determine that the Petitioner is able to pay fees required for publication.</p> <p>A comma was added.</p> <p>Hyphen added.</p> <p>Not necessary to capitalize in accordance to AOC Style Standards.</p>
20.	Superior Court of Ventura County by Caron Smith, Family Law Case Coordinator	AM	For over 15 years, the Ventura Superior Court has used a simplified process for service by publication or posting. As noted in the discussion section of SPR11-42, “some courts have developed forms for publication and posting, others have not.” The forms in this proposal are mandatory. Courts that have used a process for years are being forced to abandon their procedures. The justification for imposing the AOC’s process and forms is that “information system analysts have advised that	<p>The reference to automation was not in relation to CCMS V4, but to a dedicated website where these notices could easily be filed on-line.</p> <p>The committee is recommending that these forms be approved as optional forms rather than mandatory forms. Courts can then continue to use forms and procedures that work well for them.</p>

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			<p>a standard form of application and order would greatly simplify automation.” Although not completely clear, this may be a reference to CCMS V4. Once V4 is ready to go online, this justification will be more persuasive.</p> <p>The Elkins Task Force quote used to support the proposed rule and forms is that indigent litigants “should be able to ask the court to post the pleadings on a bulletin board at the courthouse.” This, however, is not exactly the process required in the forms. The court is one of the locations that may be ordered. Problematically, other public buildings could be ordered. If the courthouse is the ordered location, the clerk must mail and post a copy of the documents. The clerk must then complete 2 additional forms. This is a similar process used by the Ventura Court, but instead of 2 additional forms, it is all contained on the bottom portion of the posting order. We believe our form is superior to the ones proposed. The Ventura form is one page front and back. Ventura’s form is easier to read, easier to understand, and easier to use.</p> <p>Recommendations</p> <p>The proposed forms should be made optional; Courts that do not have a process could use the proposed forms. Other courts would be able to continue to use their own forms and process. The AOC should also rewrite the forms and rule in plain language, along with making the forms</p>	<p>Agree to make these forms optional.</p>

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			shorter. The accompanying rules need to be rewritten to reflect the changes. The forms, by definition, will be used by the poorest of our community, those who may have the most difficulty reading and using the forms. Having a process and forms that are readable, understandable, and useable to all people is the very foundation of access to justice.	
21.	Trial Court Presiding Judges Advisory Committee (TCPJAC)/ Court Executives Advisory Committee (CEAC)/ Joint Rules Working Group	N	<p>Proposed Rule 5.72 – (Service of Summons by Publication)</p> <p>This proposal will create the following impacts on the courts:</p> <ul style="list-style-type: none"> • Increase in court staff workload - This proposal will cause unnecessary mailing and generation of paper. • Other impact – This proposal will increase records storage needs. • Increase in court staff workload – Requires clerk to process documents being served on the clerk. • Other comment – The working group is unable to ascertain the value of providing service on a party that has never appeared through the clerk and why these rules should differ than what is currently provided in the code of civil procedure. <p>Recommendation – Add language that makes clear that this proposal focuses only on those</p>	<p>The committee has modified the proposed rule to eliminate paragraph (c), which is the subject of this comment. Paragraph (c) provided that the petitioner should file a copy of every subsequent document that would have been served on the respondent with the court clerk. This would have required additional filings by the court clerk and larger files. The committee and task force agree that the burden of this requirement outweighs the potential benefit of having those documents in the file for the respondent if he or she should appear and check the file some day. Thus, this requirement has been eliminated and this rule will add no workload to the court.</p> <p>The committee has removed paragraph (c). Thus, a suggestion that additional documents need to be</p>

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			documents that are required to be served and that no additional documents are now being required to be served.	served has been eliminated.

Code of Civil Procedure 415.50

(a) A summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in another manner specified in this article and that either:

(1) A cause of action exists against the party upon whom service is to be made or he or she is a necessary or proper party to the action.

(2) The party to be served has or claims an interest in real or personal property in this state that is subject to the jurisdiction of the court or the relief demanded in the action consists wholly or in part in excluding the party from any interest in the property.

(b) The court shall order the summons to be published in a named newspaper, published in this state, that is most likely to give actual notice to the party to be served. If the party to be served resides or is located out of this state, the court may also order the summons to be published in a named newspaper outside this state that is most likely to give actual notice to that party. The order shall direct that a copy of the summons, the complaint, and the order for publication be forthwith mailed to the party if his or her address is ascertained before expiration of the time prescribed for publication of the summons. Except as otherwise provided by statute, the publication shall be made as provided by Section 6064 of the Government Code unless the court, in its discretion, orders publication for a longer period.

(c) Service of a summons in this manner is deemed complete as provided in Section 6064 of the Government Code.

(d) Notwithstanding an order for publication of the summons, a summons may be served in another manner authorized by this chapter, in which event the service shall supersede any published summons.

(e) As a condition of establishing that the party to be served cannot with reasonable diligence be served in another manner specified in this article, the court may not require that a search be conducted of public databases where access by a registered process server to residential addresses is prohibited by law or by published policy of the agency providing the database, including, but not limited to, voter registration rolls and records of the Department of Motor Vehicles.

Government Code 6064

Publication of notice pursuant to this section shall be once a week for four successive weeks. Four publications in a newspaper regularly published once a week or oftener, with at least five days intervening between the respective publication dates not counting such publication dates, are sufficient. The period of notice commences with the first day of publication and terminates at the end of the twenty-eighth day, including therein the first day.

