

Invitation to Comment

Title	Small Claims: <i>Proof of Service</i> (revise form SC-104)
Summary	<p>The Judicial Council form <i>Proof of Service</i> (form SC-104), approved for optional use in small claims actions, would be revised to correct contradictory information regarding when a server must mail a copy of a document to the person being served. The revised form would clarify that mailing is required only for substituted service. It also clarifies that the <i>Proof of Service</i> must be filed with the court in advance of the hearing.</p>
Source	<p>Civil and Small Claims Advisory Committee Hon. Lee Smalley Edmon, Chair</p>
Staff	<p>Anne M. Ronan, Small Claims and Limited Case Subcommittee Counsel, 415-865-8933, anne.ronan@jud.ca.gov</p>
Discussion	<p>Section 116.340 of the Code of Civil Procedure provides for service of small claims documents by several methods, including personal delivery or substituted service per Code of Civil Procedure section 415.20. Mailing a copy of the summons or other document to the served party is required in the event of substituted service under section 415.20 but is not required on personal service.</p> <p>The current small claims <i>Proof of Service</i> (form SC-104) section “Instructions to Server” tells the server to mail a copy of the document to the person being served in all instances, even when the party was personally served. The back of the form, which the server must complete to show service, correctly requires a declaration of mailing of the document only in the event of substituted service, as the statute requires.</p> <p>The proposed revision changes the “Instructions to Server” section of the form, so that the instruction to mail a copy of the documents served applies only to substituted service.</p> <p>In addition to clarifying when mailing is required, the new language informs the server that the <i>Proof of Service</i> must be completed and returned in sufficient time for the litigant to file the form five or more days before the scheduled hearing. (See Code Civ. Proc., § 116.340(c).) This new language will also remind the litigant of the requirement that the proof of service be filed in advance of the hearing.</p>
	Attachment

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

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

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

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

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

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

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

Business or Agency Name Person Authorized for Service Job Title

2 Instructions to Server:

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

- Give a copy of all the documents checked in 3 to the person in 1, **or**
 - Give a copy of all the documents checked in 3 to one to the following people:
 - A competent adult (at least 18) living with, and at the home of the person in 1, **or**
 - An adult (at least 18) who seems to be in charge at the usual workplace of the person in 1, **or**
 - An adult (at least 18) who seems to be in charge where the person in 1 receives mail, (but not a U.S. post office box), if there is no known physical address for the person in 1.
- and** mail a copy of the documents to the person in 1.

THEN,

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

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

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



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

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

d. Other (specify): _____

Clerk stamps date here when form is filed.

DRAFT V. 4
03/14/08

NOT APPROVED
BY JUDICIAL
COUNCIL

Fill in court name and street address:

Superior Court of California, County of

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

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



Case name: _____

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

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

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

At this address: _____

City: _____ State: _____ Zip: _____

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

 a competent adult (at least 18) at the **home** of, and living with the person in **1**, or an adult who seems to be in charge where the person in **1** usually **works**, or an adult who seems to be in charge where the person in **1** **receives mail**, or has a private post office box (not a U.S. post office box), if there is no known physical address for the person in **1**.I told that adult, "Please give these court papers to (name of person in **1**)." "I did this on (date): _____ At (time): _____ a.m. p.m.

At this address: _____

City: _____ State: _____ Zip: _____

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

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

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

a. At a U.S. Postal Service mail drop, orb. At an office or business mail drop where I know the mail is picked up every day and deposited with the U.S. Postal Service, orc. With someone else I asked to mail the documents to the person in **1** and I have attached that person's completed Form SC-104A.**5 Server's Information**

Name: _____ Phone: _____

Address: _____

City: _____ State: _____ Zip: _____

Fee for service: \$ _____

If you are a registered process server:

County of registration: _____ Registration number: _____

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

Date: _____

Type or print server's name_____
Server signs here after serving

Item SPR08-22 Response Form

Title: Small Claims: Proof of Service (revise form SC-104)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be written on this form, prepared in a letter format, or submitted online. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments.

Internet: www.courtinfo.ca.gov/invitationstocomment

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 20, 2008

*Circulation for comment does not imply endorsement by the Judicial Council
or the Rules and Projects Committee.
All comments will become part of the public record of the council's action.*