

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue . San Francisco, California 94102-3688

www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SPR19-19

Title	Action Requested
Criminal Procedure: Proof of Service in Record Clearing Requests	Review and submit comments by June 10, 2019
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve forms CR-106 and CR-106-INFO	January 1, 2020
Proposed by	Contact
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Sarah Fleischer-Ihn, 415-865-7702 Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes a new optional form, *Proof of Service (Criminal Record Clearing)* (form CR-106) and an accompanying information sheet, *Information on How to File a Proof of Service in Criminal Record Clearing Requests* (form CR-106-INFO), for petitioners to use with requests for a court to review a criminal record for dismissal, vacatur, resentencing, reduction, sealing, or other record clearing remedies.

Background

Legislation authorizing petitions for dismissal, sealing, or other related criminal record clearing relief has increased in recent years.¹ Most petitioners seeking these forms of relief are self-represented because these petitions are generally filed after the criminal case or inquiry has concluded. An optional proof of service form for use in these record clearing proceedings may be helpful for self-represented petitioners to meet requirements for service on the prosecuting agency and other relevant parties required by the statutes that authorize the various forms of relief (e.g., under Penal Code section 851.91(b)(1)(D), a petition to seal arrest records must be served on the law enforcement agency that arrested petitioner).

¹ For example, [Pen. Code, § 236.14](#) (vacatur relief for human trafficking victims meeting designated factors), [Pen. Code, § 851.91](#) (sealing of arrest and related records), [Pen. Code, § 1170.22](#) (recall or dismissal of conviction for violation of former Pen. Code, § 647f), and [Pen. Code, § 1170.91](#) (resentencing of current or former members of the U.S. military who may be suffering from designated conditions).

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

The Proposal

The proposed *Proof of Service (Criminal Record Clearing)* (form CR-106):

- Provides brief instructions, including the direction to read *Information on How to File a Proof of Service in Criminal Record Clearing Requests* (form CR-160-INFO) before using the form, and confirms that the form is to be used only for providing proof of service of requests for a record clearing remedy;
- States that the form is for proof of service by mail or personal delivery only, and directs use of *Proof of Electronic Service* (form POS-050/EFS-050) for proof of electronic service; and
- Asks for specifics about the server and methods of service.

The proposed *Information on How to File a Proof of Service in Criminal Record Clearing Requests* (form CR-106-INFO):

- Provides general information on proof of service for record clearing requests;
- States that *Proof of Service (Criminal Record Clearing)* (form CR-106) is intended for use with a record clearing request, including use with several optional Judicial Council forms, including a proposed form that is currently circulating for public comment in a separate proposal;
- States that the law generally allows the person requesting record clearing to serve the document or form, and that the server must be at least 18 years old; and
- Provides directions on how to serve an agency by mail or personal delivery, and how to file *Proof of Service (Criminal Record Clearing)* (form CR-106) with the court.

Alternatives Considered

The committee discussed whether optional form CR-106 should track the requirements outlined in Code of Civil Procedure sections 1011 and 1013a, requiring service by mail or personal delivery to be accomplished by a person over 18 who is not a party to the case, noting no equivalent sections addressing service by mail or personal delivery in the Penal Code. However, the committee confirmed that these sections of the Code of Civil Procedure are not applicable in record clearing actions, and there is no authority in the Penal Code for requiring that the server *not* be a party to the case.² The committee discussed whether to include proof of electronic service in the optional form but decided instead to refer users to the existing Judicial Council *Proof of Electronic Service* (form POS-050/EFS-050) for proof of electronic service.

The committee considered developing a proof of service form for broader use in criminal proceedings, but concluded that narrowing the form for use with record clearing requests would serve a more useful purpose. The committee noted that in many instances these requests are filed

² *People v. Glimps* (1979) 92 Cal.App.3d 315, 325, fn. 6, (section 1011, specifying methods for service, does not apply in criminal actions because the statute appears in part 2 of the Code of Civil Procedure [“Of Civil Actions”] and is not referenced in the Penal Code); see *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 731 (only those procedural provisions of the Code of Civil Procedure that expressly are made applicable to penal actions apply in criminal cases).

by self-represented petitioners, and the corresponding statutes require service on the prosecuting agency and other government agencies. The committee believed that an optional proof of service for use in these types of criminal proceedings would assist self-represented petitioners to meet statutory notification and service requirements.

Fiscal and Operational Impacts

Expected costs are limited to training, possible case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- The proposed form and information sheet use the term “record clearing” to refer to dismissals, vacatur, resentencing, reduction, sealing, and other remedies intended to diminish the impact of an arrest or criminal conviction. Is another term more accurate or appropriate?
- Are the form and information sheet written in a way that would be understandable to a typical self-represented court user?
- Is it confusing to have one proof of service form for use with a variety of record clearing requests that arise from different statutes with different procedural requirements?
- Is there a need for a proof of service form for broader use in criminal proceedings, not just limited to criminal record clearing requests?
- Are there policy reasons for the server not to be a party to the action, similar to the requirements for service by mail or personal delivery in civil proceedings under Code of Civil Procedure sections 1011 and 1013a?
- Item 8 of the proposed information sheet discusses when the other parties are served and when the proof of service is filed. It suggests that in most cases, the other parties should be served after the original document or form is filed with the court, but that some courts require that the document or form be served on the other parties first, and then the original document be filed with the court along with a proof of service. The committee requests comments on the practices and procedures of different courts.

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

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

Attachments and Links

1. Forms CR-106 and CR-106-INFO, at pages 5–8

Clerk stamps date here when form is filed.

**DRAFT
Not approved by
the Judicial Council**

Instructions

- Before using this form, read *Information on How to File a Proof of Service in Criminal Record Clearing Requests* (form CR-106-INFO).
- This form is only for providing proof that a document or form was served (delivered) in a case requesting that a court review a criminal record for dismissal, vacatur, resentencing, reduction, sealing, or other record clearing remedy.
- The person who serves (delivers) a document or form in this case and who fills out this form must be at least 18 years old.
- This form is for proof of service by mail or personal delivery. For proof of electronic service, use *Proof of Electronic Service* (form POS-050/ EFS-050).
- A completed form should be filed with the court.

Fill in court name and street address:

Superior Court of California, County of

Fill in the criminal case number and case name:

Case Number:

Case Name:

1 At the time I served the document or form listed below, I was at least 18 years old.

2 My home business address is:

Street City State Zip

3 I mailed or personally delivered the following document or form (fill in the name of the document you are serving and complete 4 or 5):

4 **Service by mail** 

(a) I put one copy of the document or form in an envelope addressed to each agency (and person, if applicable) listed below, sealed the envelope, and put first-class postage on the envelope.

(b) The envelope or envelopes were addressed as follows:

(1) Name of agency served (and person, if applicable):
Address on envelope:

Street City State Zip

(2) Name of agency served (and person, if applicable):
Address on envelope:

Street City State Zip

Check here if you mailed copies of the document or form to more people or agencies. Attach a separate page listing the names and addresses on each additional envelope you mailed. Write "CR-106, Item 4" on the top of the page.

(c) I mailed the envelope or envelopes on (date): from (city): (state):
by depositing the envelope or envelopes (check one):

(1) With the U.S. Postal Service.

(2) 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.



1 What does this information sheet cover?

This information sheet tells you how to use and fill out *Proof of Service (Criminal Record Clearing)* (form CR-106). This information sheet does not need to be copied, served (delivered), or filed.

2 What is proof of service?

A proof of service shows the court that a document or form was served in a legal case to provide notice to the other parties in the case, as required by law. The proof of service generally describes how, where, and when a document or form was served, and who served the document. The person who served the document is required to fill out and sign the proof of service form.

3 What is record clearing?

Record clearing laws allow you to request a court to clear your criminal record by filing a “petition” or “motion” for dismissal, vacatur (or vacating) a sentence, resentencing, reduction, sealing, or other remedies.

4 Who do I need to serve when I ask a court to clear my criminal record?

Most record clearing laws say you have to let the prosecuting agency (usually the district attorney) know about the record clearing request. Sometimes you also have to let law enforcement (like the police or sheriff) or other parties know about your request. This can be done by “serving” a copy of the papers you filed with the court on the prosecuting agency or other parties. Read the record clearing law you are basing your request on carefully to see who needs to be notified of your record clearing request. Those are the parties who must be served.

5 Why do I need to file a proof of service?

Filing a proof of service shows the court that you have let the other parties know about the record clearing request by giving them a copy of the document or form you are using to make a record clearing request to the court.

6 When can I use *Proof of Service (Criminal Record Clearing)* (form CR-106)?

Proof of Service (Criminal Record Clearing) (form CR-106) is intended for use with a record clearing request that requires notification or service of the request to the prosecuting agency and other parties. This includes use with optional Judicial Council forms for record clearing:

- *Petition for Dismissal* (form CR-180), dismissals under Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, 1203.49, and reductions under Penal Code sections 17(b) and 17(d)(2)
- *Petition for Dismissal (Military Personnel)* (form CR-183), dismissals under Penal Code section 1170.9(h), and reductions under Penal Code section 17(b)
- *Motion to Vacate Conviction or Sentence* (form CR-187), vacating convictions under Penal Code sections 1016.5 and 1473.7
- *Petition/Application for Resentencing and Dismissal* (form CR-404), resentencing and dismissal under Penal Code section 1170.22
- *Petition to Seal Arrest and Related Records* (form CR-409), sealing under Penal Code section 851.91
- *Petition for Resentencing Based on Health Conditions From Military Service Listed in Penal Code Section 1170.91(b)* (form CR-412/MIL-412)

DRAFT
Not approved by
the Judicial Council



7 Who can serve the petition or motion?

In most cases, the law allows you (the person who is filing the record clearing request) to serve the document or form. You can also ask someone else to serve the document or form. The person who serves a document or form for record clearing and fills out the *Proof of Service (Criminal Record Clearing)* (form CR-106) must be at least 18 years old. Read the record clearing law you are basing your request on carefully to see if it sets any other requirements for who can serve the request.

8 When are the other parties served, and when do I file a proof of service?

Ask the court clerk if any local filing rules apply. In most cases, the other parties should be served *after* the original document or form is filed with the court. This is because the court may add helpful information to the document or form, such as a hearing date. When you file the document or form with the court, take the original plus at least two copies of your documents. The court will keep the original. The clerk will stamp your copies “Filed” and return them to you. Keep one copy for your records. The other parties can be served with a copy of your court-stamped document or form, and a proof of service would be filed with the court after the parties are served.

Some courts require that the document or form is first served on the other parties, and then the original document or form is filed with the court, along with a proof of service.

9 How should the petition or motion be served?

There are three main ways to serve documents: by mail, personal delivery, or electronic service. *Proof of Service (Criminal Record Clearing)* (form CR-106) can be used to prove service by mail or personal delivery. If you serve the document or form electronically, use *Proof of Electronic Service* (form POS-050/EFS-050).

If someone else is serving documents on your behalf, make sure to provide them with the name of the agency that must be served (for example, San Francisco County District Attorney), the agency’s address, and a copy of the document or form.

If serving by mail, the server should put one copy of the document or form in an envelope addressed to the agency, seal the envelope, and place first-class postage on the envelope. The server should mail the document or form by depositing the envelope at a post office or mailbox, or by depositing the envelope at an office or business mail drop where the server knows mail is picked up every day by the postal service. If serving by personal delivery, the server should give the document or form to a person with the agency, and note the name of the person, as well as the address, date, and time of the service.

Once the document or form has been served on the other parties by mail or personal delivery, the server should fill out and sign the proof of service form.

10 What do I do with *Proof of Service (Criminal Record Clearing)* (form CR-106) once it is filled out?

You should file a completed proof of service with the court where you filed your document or form. Ask the court clerk if any local filing rules apply.