



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 13, 2011

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| Title  | Agenda Item Type   |
| Civil Forms: Notice of Entry of Dismissal and Proof of Service | Action Required  |
| Rules, Forms, Standards, or Statutes Affected                  | Effective Date   |
| Revise form CIV-120  | January 1, 2012  |
| Recommended by   | Date of Report   |
| Civil and Small Claims Advisory Committee                      | August 11, 2011  |
| Hon. Dennis M. Perluss, Chair                                  | Contact  |
| Hon. Patricia M. Lucas, Vice Chair                             | Anne Ronan, 415-865-8933   |
|  | <a href="mailto:anne.ronan@jud.ca.gov">anne.ronan@jud.ca.gov</a> |

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### Executive Summary

The Civil and Small Claims Advisory Committee recommends revising the mandatory form *Notice of Entry of Dismissal and Proof of Service* (form CIV-120) to include an item for proof of electronic service and minor formatting changes. This revision will enable this form to be used in cases where courts require electronic service or parties agree to such service.

### Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council revise the *Notice of Entry of Dismissal and Proof of Service* (form CIV-120), effective January 1, 2012, to include an item for proof of electronic service, and minor formatting changes to make the form more effective.

A copy of the revised form is attached at page 4.

## **Previous Council Action**

The Judicial Council has sponsored legislation and adopted rules that enable parties to serve one another by electronic means. The Judicial Council has also approved proof of service forms to permit their use with electronic service, including modifying *Proof of Service—Civil* (form POS-040), a multipurpose form that may be used with various types of service. The council adopted a stand alone *Proof of Electronic Service* (form POS-050) last year.

## **Rationale for Recommendation**

Electronic service of documents is permitted and may be required by court order in certain circumstances. (Cal. Rules of Court, rule 2.251(a)–(b).) However, the *Notice of Entry of Dismissal and Proof of Service* (form CIV-120), a mandatory form required to be served and filed in all cases that have been voluntarily dismissed, includes a proof of service as an integral part of the form that does not provide for proof of electronic service. The proposed revisions to the form are necessary to allow the form to be used for such service. This proposal was initialized at the request of a law firm involved in asbestos cases in San Francisco Superior Court. Those attorneys pointed out that although electronic filing and proof of service is required in asbestos cases, the existing dismissal form does not provide a place to indicate that electronic service has been made.

This proposal recommends that a new item 4 (service by electronic delivery) be added on form CIV-120, to provide the information required by rule 2.251(g) in proofs of electronic service. This item would include a checkbox to allow a party the alternative of attaching a separate proof of electronic service.

In addition, to improve the form, Item 3, for service by personal delivery, would be reformatted where appropriate, so that the items more closely parallel those for service by other means. New Item 5 would be added to allow parties to indicate that additional proofs of service are attached when multiple parties are being served.

Finally, the committee also recommends revising the caption by removing the “optional” qualifiers from the e-mail and fax items in the attorney address box at the top of the form.

## **Comments Received, Alternatives Considered and Policy Implications**

### **Comments**

The proposal was circulated for public comment in spring 2011. Comments were received from the Superior Courts of Monterey and San Diego Counties,<sup>1</sup> the State Bar’s Committee on the Administration of Justice, and the California Association of Legal Professionals.<sup>2</sup> All commentators agreed generally with the proposal, although some suggested minor modifications.

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<sup>1</sup> The Superior Court of Sacramento County also reviewed the proposal, but reported that it had no comments.

<sup>2</sup> A chart summarizing the comments and the committee’s responses is attached at pages 5–6.

The Superior Court of San Diego County proposed some modifications of the new text on the circulated form relating to electronic service, to incorporate all the items relating to electronic service into a single item. The committee agreed and has further revised the recommended form in light of the comments.

Regarding the removal of the qualifier “optional” from the e-mail and fax items, no comments were received. The committee concluded that this revision will not place a significant burden on self-represented litigants.

### **Alternatives Considered**

*Alternative of taking no action.* The advisory committee considered the alternative of not recommending any changes to the form. It concluded that revising the form was appropriate, helpful to parties, and would incur no cost to the courts. As described above, the change was requested by a San Francisco law firm that regularly files such forms in asbestos cases in which electronic service is required by the court, so that the form could be used appropriately in such cases. If the form is not modified, parties in San Francisco and other courts requiring electronic service will not be able to complete the required form appropriately.

*Alternative of deleting the proof of service from the form.* Comments were solicited on an alternative approach to revising form CIV-120 that was considered by the committee: removing the proof of service from the form altogether and replacing it with an instruction stating that the form must be filed with a proof of service attached or filed simultaneously and advising the parties that they can use other Judicial Council forms for proofs of service. All commentators who addressed this issue—two superior courts, the Orange County Bar Association, and a legal professionals association—expressed a preference to retain the proof of service on the form. The committee concluded, in light of these responses, to recommend revising the proof of service on the form rather than deleting it.

*Alternative of revising proof of service on form.* For the reasons set forth above, the committee recommends revision of the proof of service on the current form.

### **Implementation Requirements, Costs, and Operational Impacts**

These forms are generally prepared by parties, so revisions would have little or no impact on most courts beyond simplifying and clarifying the process of filing notices of dismissal in cases where electronic service is used.

### **Attachments**

1. Form CIV-120, at page 4
2. Chart of comments, at pages 5–6



|  |  |
|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): _____ :<br><br>TELEPHONE NO.: _____ FAX NO.: _____<br>E-MAIL ADDRESS: _____<br>ATTORNEY FOR (Name): _____  | FOR COURT USE ONLY<br><br><b>DRAFT</b><br><b>Not approved by</b><br><b>Judicial Council</b><br><br><b>08.18.11</b> |
| <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b><br>STREET ADDRESS:<br>MAILING ADDRESS:<br>CITY AND ZIP CODE:<br>BRANCH NAME:  |  |
| PLAINTIFF/PETITIONER:<br>DEFENDANT/RESPONDENT:   |  |
| <b>NOTICE OF ENTRY OF DISMISSAL AND PROOF OF SERVICE</b><br><input type="checkbox"/> <b>Personal Injury, Property Damage, or Wrongful Death</b><br><input type="checkbox"/> <b>Motor Vehicle</b> <input type="checkbox"/> <b>Other</b><br><input type="checkbox"/> <b>Family Law</b><br><input type="checkbox"/> <b>Eminent Domain</b><br><input type="checkbox"/> <b>Other (specify):</b> | CASE NUMBER:   |

**TO ATTORNEYS AND PARTIES WITHOUT ATTORNEYS:** A dismissal was entered in this action by the clerk as shown on the *Request for Dismissal*. (Attach a copy completed by the clerk.)

Date: \_\_\_\_\_

\_\_\_\_\_  
 (TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY) (SIGNATURE)

**PROOF OF SERVICE**

1. I am over the age of 18 and not a party to this cause. My residence or business address is:
  
2.  I am a resident of or employed in the county where the mailing occurred. I served a copy of the *Notice of Entry of Dismissal and Request for Dismissal* by mailing them, in a sealed envelope with postage fully prepaid, as follows:
  - a.  I deposited the envelope with the United States Postal Service.
  - b.  I placed the envelope for collection and processing for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
  - c. Date of deposit: \_\_\_\_\_ d. Place of deposit (city and state): \_\_\_\_\_
  - e. Addressed as follows (name and address): \_\_\_\_\_
  
3.  I served a copy of the *Notice of Entry of Dismissal and Request for Dismissal* by personally delivering copies as shown below:
  - a. Name of person served: \_\_\_\_\_
  - b. Address at which person served: \_\_\_\_\_
  - c. On (date): \_\_\_\_\_ d. At (time): \_\_\_\_\_
  
4.  I served a copy of the *Notice of Entry of Dismissal and Request for Dismissal* by electronically serving copies as shown below (complete if electronic service is used based on a court order or agreement of the parties):
  - a. Name of person served: \_\_\_\_\_
  - b. Electronic service address of person served: \_\_\_\_\_
  - c. On (date): \_\_\_\_\_ d. At (time): \_\_\_\_\_
  - e. Electronic service address from which I served the documents: \_\_\_\_\_
  - Proof of electronic service is attached.
  
5.  Proof of service on additional parties is 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 DECLARANT)



**SPR11-23****Civil Forms: Notice of Entry of Dismissal and Proof of Service** (revise form CIV-120)

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

|    | <b>Commentator</b>  | <b>Position</b> | <b>Comment</b>   | <b>Committee Response</b>   |
|----|---|-----------------|--|---|
| 1. | California Association of Legal Support Professionals<br>By Brett Peters                  | A               | Most of our members would prefer to have the proof of service remain an integral part of the form. Many times, legal secretaries, paralegals and lawyers forget to include the proof of service with various forms and we believe that having the proof as part of the form may make it easier for them to remember that the information is needed.  | In light of this and other comments, the committee recommends leaving the proof of service on the form. |
| 2. | Orange County Bar Association<br>By John Hueston, President                               | A               | As to the specific request for comment, the integral proof of service box is slightly preferable to the instruction box; having the box integrated in the form reduces the chance of unlawful or deceptive changes to the proof of service requirements (or at least makes changes conspicuous). Integrating the form also decreases the chances of a Notice of Entry of Dismissal being accepted by a clerk for filing without the generally requisite signed proof of service. | In light of this and other comments, the committee recommends leaving the proof of service on the form. |
| 3. | State Bar of California<br>Committee on Administration of Justice<br>By Saul Bercovitch   | A               | CAJ supports this proposal.  | No response required.   |
| 4. | Superior Court of Monterey County<br>By Minnie Monarque<br>Deputy Court Executive Officer | A               | Agree with proposed changes. Do not agree with alternative suggestion as referenced in the invitation to comment.  | In light of this and other comments, the committee recommends leaving the proof of service on the form. |

**SPR11-23**

**Civil Forms: Notice of Entry of Dismissal and Proof of Service** (revise form CIV-120)

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|    | <b>Commentator</b>   | <b>Position</b> | <b>Comment</b>  | <b>Committee Response</b>   |
|----|--|-----------------|---|---|
| 5. | Superior Court of San Diego County<br>By Michael M. Roddy, Executive Officer | AM              | <p>Overall the proposal is fine, but it is noted that there are other Judicial Council forms which include Proof of Service sections -- whatever changes are ultimately adopted should be applied to other Proofs of Service as appropriate.</p> <p>The various proofs of service should be kept on the form; however, we suggest rearranging some of the items:</p> <p>1. Item 1: Completely remove the information about electronic service from this item and incorporate it into current item 3, which will be renumbered as new item 4.</p> <p>2. Item 3 (current): Move down and renumber to new item 4. Add the information from the checkbox in item 1 by revising the lead in sentence to read, "I served a copy of the <i>Notice of Entry of Dismissal and Request for Dismissal</i> by electronically serving the copies from (blank space for email address), as shown below:" Another alternative is to add the checkbox exactly as is, directly above the checkbox for "Proof of electronic service is attached."</p> <p>3. Item 4 (current): Move up and make new item 3, since more documents are served by mail, so this item regarding service by mail will come before the item on electronic service. Italicize the name of the form to be consistent with all other references to forms.</p> | <p>In light of this and other comments, the committee recommends leaving the proof of service on the form.</p> <p>The proposed form has been modified to incorporate the changes suggested in these comments.</p> |