

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SPR17-26

Title

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

Action Requested

Review and submit comments by April 28, 2017

Proposed Rules, Forms, Standards, or Statutes

Cal. Rules of Court, rule 3.2300; form MC-1000

Proposed Effective Date

September 1, 2017

Proposed by

Civil and Small Claims Advisory Committee
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Executive Summary and Origin

The Judicial Council adopted California Rules of Court, rule 3.2300 and approved new form MC-1000, *Request for Review of Denial of Request to Remove Name From Gang Database*, effective January 20, 2017, in response to Assembly Bill 2298 (Stats. 2016, ch. 752), which took effect January 1, 2017. The legislation authorized superior court review of a law enforcement agency's denial of a request to remove an individual's name from a shared gang database.¹ The Civil and Small Claims Advisory Committee and the Criminal Law Advisory Committee are now seeking public comment on the rule and form.

Background

The State of California currently maintains a "CalGang" system of databases that contain information about approximately 150,000 individuals designated by law enforcement as suspected gang members, associates, or affiliates.² According to the August 22, 2016, Senate Floor Analysis of AB 2298, the CalGang system contains data "including name, address,

¹ The enacted version of this bill is available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2298.

² Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 2298 (2015–2016 Reg. Sess.), available at http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB2298.

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 These proposals are circulated for comment purposes only.

description, social security number, and race or ethnicity” of individuals in the database.³ The database is widely accessed by law enforcement officers for various reasons including “to determine who should be served with civil gang injunctions, given gang sentences and targeted for saturation policing.”⁴

In response to concerns about the accuracy and secrecy of the CalGang database system, the Legislature enacted Penal Code section 186.34, effective January 1, 2014, requiring that before a law enforcement agency designates a person who is under 18 years of age as a suspected gang member, associate, or affiliate or otherwise identifies the person in a shared gang database, the agency must provide written notice and the basis for the proposed designation to the person and his or her parent or guardian, unless providing this notice would compromise an active criminal investigation or compromise the health or safety of the minor. (Pen. Code, § 186.34(b).) If the law enforcement agency sends such a notice, the minor or his or her parent or guardian may contest the designation with the law enforcement agency.⁵

Assembly Bill 2298 amends Penal Code section 186.34 and enacts new section 186.35, extending the provisions regarding notification and review of law enforcement agency decisions to designate an individual as a suspected gang member, associate, or affiliate in a shared gang database. Specifically, the bill extends to adults the right to notification and to contest designation with the local law enforcement agency, and it creates a procedure for persons who have contested their designation to seek superior court review if the law enforcement agency denies their request.

Penal Code section 186.35 states that a person may seek this judicial review by “filing an appeal” in the superior court.⁶ It also states that the procedure for judicial review of a law enforcement agency’s denial is a “limited civil case.”⁷ The statute limits the evidentiary record for the appeal to (1) the material submitted to and by the law enforcement agency when the person contested the inclusion in the database with the agency under Penal Code section 186.34, and (2) “any arguments presented to the [superior] court.”⁸ In addition, Penal Code section 186.35(b) provides that if, on de novo review of this limited record and arguments, the court finds that the law enforcement agency has failed to establish the petitioner’s active gang membership, associate status, or affiliate status by clear and convincing evidence, the court shall order the law enforcement agency to remove the name of the person from the shared gang database.⁹

³ *Id.* at p. 5

⁴ *Id.* at p. 6.

⁵ Pen. Code, § 186.35(a).

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Id.* at § 186.35(b).

⁹ *Ibid.*

Drafting an implementing rule and form to appropriately effectuate the intent of this bill proved challenging in part because the judicial review procedure described in Penal Code section 186.35 does not fit squarely into existing appellate, civil, or criminal procedure. Although the statute refers to the procedure as an “appeal” triggered by filing a “notice of appeal” in the superior court (Pen. Code, § 186.35(a)), there is no lower court decision or any adjudicatory decision by an administrative agency for the superior court to review. And although the statute states that the procedure under section 186.35 is a “limited civil case,” both the nature of the dispute and the procedures established under the statute are inconsistent with statutes regarding limited civil cases.¹⁰ Those statutes delineate what constitutes a limited civil case based on the dollar amount in controversy. They also limit the permissible pleadings in limited civil cases to complaints, answers, and demurrers, provide for discovery, and provide for a jury or court trial, none of which appears to be contemplated by Penal Code section 186.35. Finally, although the legislation amends the Penal Code and relates to law enforcement decisions and actions that in certain instances may implicate criminal matters, a request to review a law enforcement decision to deny removal from the database is *not* tied to any specific underlying criminal case. Individuals not currently involved in any criminal court matter may seek judicial relief, and the Legislature made clear its intent to place this judicial review process outside the criminal context.

Given these statutory provisions, the chairs of the Civil and Small Claims Advisory Committee, Criminal Law Advisory Committee, Appellate Advisory Committee, and Family and Juvenile Law Advisory Committee initially designated members of each of their committees to participate in an informal working group to review the legislation and consider possible implementing rules or forms. That working group proposed immediate adoption of a new rule and form to ensure that courts and individuals seeking review under this procedure would have necessary guidance as soon as possible after the legislation took effect on January 1, 2017. On the recommendation of the Civil and Small Claims Advisory Committee, the Judicial Council adopted the proposed rule and form effective January 20, 2017. The Civil and Small Claims Advisory Committee and the Criminal Law Advisory Committee are now seeking public comments on this rule and form and will propose any necessary revisions based on comments received.

The Proposal

Rule 3.2300 and form MC-1000, *Request for Review of Denial of Request to Remove Name From Gang Database*, are designed to implement the new judicial review procedure established by Penal Code 186.35. New rule 3.2300 combines elements from Penal Code section 186.35 with provisions modeled on the rule relating to habeas corpus petitions (rule 4.551) and formatting requirements from the rules relating to appeals to the superior court appellate division (rules 8.838 and 8.883). Among other things:

- New rule 3.2300 has been placed in a new “Miscellaneous” division within Title 3, Civil Rules; and form MC-1000 has been designated a miscellaneous form in recognition of Penal Code section 186.35’s review procedure, which is neither criminal nor general civil;

¹⁰ Code Civ. Proc., §§ 86 et seq. and 630.20 et seq.

- Rule 3.2300 requires the presiding judge to designate one or more judges to handle requests for review under Penal Code section 186.35, in further recognition of the unique nature of this review procedure. This provision is designed to ensure that any requests for review are handled by a judge who is familiar with proceedings under this section and are not treated as either criminal or general civil cases;
- Rule 3.2300 also:
 - Generally requires self-represented individuals to use new form MC-1000 when seeking review of a law enforcement agency decision. This requirement is designed to assist self-represented individuals and courts by ensuring that necessary information is conveyed to the court;
 - Requires the law enforcement agency to prepare, serve, and file the record specified by Penal Code section 186.35, and provides that if the law enforcement agency does not timely file the required record, the court may order the law enforcement agency to remove the name of the person from the shared gang database;
 - Allows the person filing the request for review to include written argument in his or her initial filing or in a separate filing, and also allows the law enforcement agency to file written argument; and
 - Provides for request or waiver of oral argument.

New form MC-1000, *Request for Review of Denial of Request to Remove Name From Gang Database*, is designed to be a straightforward request for review of the law enforcement agency decision. It is in plain-language format, with instructions on the second page. The person filing the request is asked to attach a copy of the law enforcement agency decision.

Alternatives Considered

The working group and the Civil and Small Claims Advisory Committee considered not developing any proposal at this time, as the legislation does not specifically require the Judicial Council to adopt implementing rules or forms. The working group and committee concluded, however, that without a rule providing direction for implementing this judicial procedure, individuals seeking review and the courts themselves might have difficulty implementing these new legislative requirements.

The working group and committee also considered not including any references to the content of the record in the rule. Ultimately, however, they determined that incorporating the relevant statutory requirements in the rule and including advisory committee comments with additional statutory references would be helpful.

Implementation Requirements, Costs, and Operational Impacts

The new rule and form are intended to create an efficient, clear process for courts, thereby minimizing any additional burdens as individuals seek judicial relief under the Penal Code section 186.35 process. 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 committees are interested in comments on the following:

- Are the placement of the new rule and form in the “miscellaneous” category of the civil rules of court and the rule’s provision directing that one or more judges in each court be designated to handle these requests for review the best ways to ensure that courts are able to manage these proceedings efficiently and effectively?
- Does the proposal appropriately address the stated purpose?

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 12 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

1. Cal. Rules of Court, rule 3.2300, at pages 6–11
2. Form MC-1000, *Request for Review of Denial of Request to Remove Name From Gang Database*, at pages 12–13

1 Division 23. Miscellaneous

2
3
4 Rule 3.2300. Review under Penal Code section 186.35 of law enforcement agency
5 denial of request to remove name from shared gang database

6
7 **(a) Proceedings governed**

8
9 This rule applies to proceedings under Penal Code section 186.35 to seek review of
10 a local law enforcement agency's denial of a request under Penal Code section
11 186.34 to remove a person's name from a shared gang database.

12
13 **(b) Definitions**

14
15 For purposes of this rule:

16
17 (1) "Request for review" or "petition" means a "notice of appeal" under Penal
18 Code section 186.35 requesting review of a law enforcement agency's
19 decision denying a person's request under Penal Code section 186.34 to
20 remove a person's name from a shared gang database.

21
22 (2) "Law enforcement agency" means the local law enforcement agency that
23 denied the request under Penal Code section 186.34 to remove a person's
24 name from a shared gang database.

25
26 **(c) Designated judge**

27
28 The presiding judge of each superior court must designate one or more judges to
29 handle any petitions governed by this rule that are filed in the court.

30
31 **(d) Petition**

32
33 (1) *Form*

34
35 (A) Except as provided in (i) and (ii), *Request for Review of Denial of*
36 *Request to Remove Name From Gang Database* (form MC-1000) must
37 be used to seek review under Penal Code section 186.35 of a law
38 enforcement agency's decision denying a request to remove a person's
39 name from a shared gang database.

40
41 (i) A petition filed by an attorney need not be on form MC-1000.
42 For good cause the court may also accept a petition from a
43 nonattorney that is not on form MC-1000.

1
2 (ii) Any petition that is not on form MC-1000 must contain the
3 information specified in form MC-1000.
4

5 (B) The person seeking review must attach to the petition under (A) the law
6 enforcement agency's written verification of its decision denying the
7 person's request under Penal Code section 186.34 to remove his or her
8 name—or, if the request was filed by a parent or guardian on behalf of
9 a child under 18, the name of the child—from the shared gang
10 database.
11

12 (2) Time for filing
13

14 The petition must be filed within 90 calendar days of the date the law
15 enforcement agency mails or personally serves the person filing the petition
16 with written verification of the agency's decision denying that person's
17 request under Penal Code section 186.34 to remove the name from the shared
18 gang database.
19

20 (3) Where to file
21

22 The petition must be filed in either the superior court of the county in which
23 the law enforcement agency is located or, if the person filing the petition
24 resides in California, in the superior court of the county in which that person
25 resides.
26

27 (4) Fee
28

29 The fee for filing the petition is \$25, as specified in Government Code
30 section 70615.
31

32 (5) Service
33

34 A copy of the petition with the attachment required under (1)(B) must be
35 served either personally or by mail on the law enforcement agency, as
36 provided in Code of Civil Procedure sections 1011–1013a. Proof of this
37 service must be filed in the superior court with the petition.
38

39 (e) **Record**
40

41 (1) Filing
42

- 1 (A) The law enforcement agency must serve the record on the person filing
2 the petition and must file the record in the superior court in which the
3 petition was filed.
4
5 (B) The record must be served and filed within 15 days after the date the
6 petition is served on the law enforcement agency as required by
7 subdivision (d)(5) of this rule.
8
9 (C) If the record contains any documents that are part of a juvenile case file
10 or are sealed or confidential under Welfare and Institutions Code
11 section 827, the law enforcement agency must include a coversheet that
12 states “Confidential Filing – Juvenile Case File Enclosed.”
13
14 (D) The procedures set out in rules 2.550 and 2.551 apply to any record
15 sought to be filed under seal in a proceeding under this rule.
16

17 (2) Contents

18
19 The record is limited to the documents required by Penal Code section
20 186.35(b)
21

22 (3) Format

- 23
24 (A) The cover or first page of the record must:
25
26 (i) Clearly identify it as the record in the case;
27
28 (ii) Clearly indicate if the record includes any documents that are
29 sealed or confidential under Welfare and Institutions Code
30 section 827;
31
32 (iii) State the title and court number of the case; and
33
34 (iv) Include the name, mailing address, telephone number, fax
35 number (if available), e-mail address (if available), and California
36 State Bar number (if applicable) of the attorney or other person
37 filing the record on behalf of the law enforcement agency. The
38 court will use this as the name, mailing address, telephone
39 number, fax number, and e-mail address of record for the agency
40 unless the agency informs the court otherwise in writing.
41
42 (B) All documents in the record must have a page size of 8.5 by 11 inches;
43

1 (C) The text must be reproduced as legibly as printed matter;

2
3 (D) The contents must be arranged chronologically;

4
5 (E) The pages must be consecutively numbered; and

6
7 (F) The record must be bound on the left margin.

8
9 (4) *Failure to file the record*

10
11 If the law enforcement agency does not timely file the required record, the
12 superior court clerk must serve the law enforcement agency with a notice
13 indicating that the agency must file the record within five court days of
14 service of the clerks notice or the court may order the law enforcement
15 agency to remove the name of the person from the shared gang database.

16
17 (f) **Written argument**

18
19 (1) *Contents*

20
21 (A) The person filing the petition may include in the petition or separately
22 serve and file a written argument about why, based on the record
23 specified in Penal Code section 186.35(b), the law enforcement agency
24 has failed to establish by clear and convincing evidence the active gang
25 membership, associate status, or affiliate status of the person so
26 designated or to be so designated by the law enforcement agency in the
27 shared gang database.

28
29 (B) The law enforcement agency may serve and file a written argument
30 about why, based on the record specified in Penal Code section
31 186.35(b), it has established by clear and convincing evidence the
32 active gang membership, associate status, or affiliate status of the
33 person.

34
35 (C) If an argument refers to something in the record, it must provide the
36 page number of the record where that thing appears or, if the record has
37 not yet been filed, the page number of the relevant document.

38
39 (D) Except for any required attachment to a petition when an argument is
40 included in the petition, nothing may be attached to an argument and an
41 argument must not refer to any evidence that is not in the record.
42

1 (2) Time to serve and file

2
3 Any written argument must be served and filed within 15 days after the date
4 the record is served.

5
6 (3) Format and length of argument

7
8 (A) The cover or first page of any argument must:

9
10 (i) Clearly identify it as the argument of the person filing the petition
11 or of the law enforcement agency;

12 (ii) State the title and court number of the case; and

13 (iii) Include the name, mailing address, telephone number, fax
14 number (if available), e-mail address (if available), and California
15 State Bar number (if applicable) of the attorney or other person
16 filing the argument.

17
18
19
20 (B) An argument must not exceed 10 pages.

21
22 (C) The pages must be consecutively numbered.

23
24 **(g) Oral argument**

25
26 (1) Setting oral argument

27
28 The court may set the case for oral argument at the request of either party or
29 on its own motion.

30
31 (2) Requesting or waiving oral argument

32
33 The person filing the petition or the law enforcement agency may request oral
34 argument or inform the court that they do not want to participate in oral
35 argument. Any such request for or waiver of oral argument must be served
36 and filed within 15 days after the date the record is served.

37
38 (3) Sending notice of oral argument

39
40 If oral argument is set, the clerk must send notice at least 20 days before the
41 oral argument date. The court may shorten the notice period for good cause;
42 in that event, the clerk must immediately notify the parties by telephone or
43 other expeditious method.

1
2 (4) Sealed or confidential records

3
4 If the responding party indicates that the record contains information from a
5 juvenile case file or documents that are sealed or confidential under Welfare
6 and Institutions Code section 827, the argument must be closed to the public
7 unless the crime charged allows for public access under Welfare and
8 Institutions Code section 676.

9
10 **(h) Decision**

11
12 As provided in Penal Code section 186.35, if, on de novo review and any
13 arguments presented to the court, the court finds that the law enforcement agency
14 has failed to establish by clear and convincing evidence the active gang
15 membership, associate status, or affiliate status of the person so designated in the
16 shared gang database, the court must order the law enforcement agency to remove
17 the name of the person from the shared gang database.

18
19 **(i) Service on the Attorney General**

20
21 The court must serve on the Attorney General a copy of any order under (e)(4) or
22 (h) to remove a name from a shared gang database.

23
24 **Advisory Committee Comment**

25
26 **Subdivision (d)(1)(B).** Penal Code section 186.34(f) provides that if a person to be designated as
27 a suspected gang member, associate, or affiliate, or his or her parent or guardian, submits written
28 documentation to the local law enforcement agency contesting the designation, the local law
29 enforcement agency “shall provide the person and his or her parent or guardian with written
30 verification of the agency’s decision within 30 days of submission of the written documentation
31 contesting the designation. If the law enforcement agency denies the request for removal, the
32 notice of its determination shall state the reason for the denial.”

33
34 **Subdivision (e)(2).** Penal Code section 186.35(b) provides that the evidentiary record for this
35 review proceeding “shall be limited to the agency’s statement of basis of its designation made
36 pursuant to subdivision (e) of Section 186.34, and the documentation provided to the agency by
37 the appellant pursuant to subdivision (f) of Section 186.34.”

38
39 Penal Code section 186.34(e)(1) provides that “[a] person, or, if the person is under 18 years of
40 age, his or her parent or guardian, or an attorney working on behalf of the person may request
41 information of any law enforcement agency as to whether the person is designated as a suspected
42 gang member, associate, or affiliate in a shared gang database” and, if the person is so designated,
43 “information as to the basis for the designation for the purpose of contesting the designation as

1 described in subdivision (f).” Section 186.35(e)(2) provides that “[t]he law enforcement agency
2 shall provide information requested under paragraph (1), unless doing so would compromise an
3 active criminal investigation or compromise the health or safety of the person if the person is
4 under 18 years of age.”

5
6 Penal Code section 186.34(f) provides that “the person to be designated as a suspected gang
7 member, associate, or affiliate, or his or her parent or guardian, may submit written
8 documentation to the local law enforcement agency contesting the designation.”

9
10 Penal Code section 186.34(g) also provides that “[n]othing in this section shall require a local law
11 enforcement agency to disclose any information protected under Section 1040 or 1041 of the
12 Evidence Code or Section 6254 of the Government Code.”

13
14 *Rule 3.2300 adopted effective January 20, 2017.*

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

Clerk stamps date here when form is filed.

Instructions: Please read the instructions on the back of this form before completing and filing this form.**Notice to the Clerk:** This request is filed under Penal Code section 186.35 and California Rules of Court, rule 3.2300. Rule 3.2300(c) requires the presiding judge of each superior court to designate one or more judges to hear such requests. This request must be submitted to a judge designated under rule 3.2300(c).

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:**1 Name of Person Making This Request:**

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

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____ E-Mail: _____

2 Decision You Are Requesting Be ReviewedI am seeking review of the attached decision by the following law enforcement agency denying my request under Penal Code section 186.34 to remove my name or the name of my child or ward from a shared gang database. (*You must attach a copy of the written verification that the law enforcement agency served on you of its decision denying your request and fill in the name and address of the law enforcement agency.*)

Name of law enforcement agency: _____

Address: _____

City: _____ State: _____ Zip: _____

The attached decision was served on me/my client by the law enforcement agency:

-
- By personal delivery
-
- By mail on (
- date:*
-) _____

3 Reason for This Request for Review

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

4 Written Argument

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

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



5 Request for or Waiver of Oral Argument

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

Date: _____

*Type or print your name*_____
*Signature***Instructions**

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

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

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

1. Fill out this form

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

In Item 1:

Fill in your name.

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

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

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

In Item 2:

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

Attach a copy of the law enforcement agency's decision denying your request to remove your name or the name of your child or ward from the gang database.

In Item 4:

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

In Item 5:

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

At the end of the form:

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

2. Make copies of the form

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

3. Serve the form

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

4. File the form

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

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