

Invitation to Comment

Title	Civil: Proof of Service (revise forms POS-040 and POS-040(P) and amend Cal. Rules of Court, rule 2.260)
Summary	<p>California Rules of Court, rule 2.260(f) contains requirements for proof of electronic service. Rule 2.306(h) contains requirements for proof of service by fax. The current versions of <i>Proof of Service—Civil</i> (form POS-040) and <i>Attachment to Proof of Service—Civil</i> (Persons Served) (form POS-040(P)) do not contain all of the rule’s requirements. The forms would be revised to contain the required information.</p> <p>Further, the current language of rule 2.260(f)(1)(A), that an electronic address must be given <i>in place of</i> a residence or business address, provides insufficient information and should be amended. The forms would also be revised to contain this information.</p>
Source	Civil and Small Claims Advisory Committee Hon. Lee Smalley Edmon, Chair
Staff	Anne Ronan, Case Management Subcommittee Counsel 415-865-8933, anne.ronan@jud.ca.gov
Discussion	<p>The proposed revisions are as follows:</p> <ol style="list-style-type: none"> 1. Revise rule 2.260(f)(1)(A) to provide that the server’s electronic service address is required <i>in addition to</i> the residence or business address on the proof of service. 2. Revise <i>Proof of Service—Civil</i> (form POS-040) as follows: <ol style="list-style-type: none"> a. In the caption and on the Information Sheet: change “Facsimile” to “Fax”, to be consistent with the rule of court and throughout the form; b. Change all references to “e-mail” to “electronic service” throughout the form; c. Change all references to “e-mail address” or “electronic address” to “electronic notification address” throughout the form; d. Add new item 3 to include space for the fax number or electronic notification address of the person serving the documents, and renumber the subsequent items on the form and all internal references to them; e. Revise current item 4 (item 5 on the revised form) to clarify that only a street address or a fax number or electronic notification

address of the person being served is required, depending on what means of service was used;

- f. Expand current item 4d on Time of Service (item 5d on the revised form) to include fax service and electronic service; and
- g. Amend the Information Sheet attached to the form to include the new item 3, and renumber the remaining items.

3. Revise *Proof of Service—Civil (Persons Served)* (form POS-040(P)) as follows:

- a. Clarify that only a single address need be entered in the Address item (middle column) for each person served;
- b. Expand the instructions for the Time of Service item (column on far right) to include service by fax and electronic service in addition to personal service.

Revision of Rule 2.260(f)(1)(A)

Rule 2.260(f)(1)(A) currently requires that, for electronic service, the electronic notification address of the person making the service be set forth in the proof of service *in place of* that person’s residence or business address. The revised rule would require the electronic notification address be shown *in addition to* the residence or business address. It is important for the person served to have sufficient information to be able to locate the person serving, if necessary. This would be consistent with rule 2.306(h)(1) on proof of service by fax, which requires that the sending fax machine number be given in the proof of service, but does not provide that it is to be in place of the residence or business address.

Revision of Forms POS-040 and POS-040(P)

Use of “Fax”

The word “facsimile” is used only in two places; the caption of Form POS-040 and the Information Sheet. Elsewhere, the word “fax” is used. For consistency within the form and with the rules (see rule 2.306(h), Proof of service by fax), the word “fax” would be used throughout the revised form.

Use of “electronic service” and “electronic notification address”

Rule 2.260 does not use the term “e-mail.” This is because in the future there may be forms of electronic service other than e-mail. The use of “electronic service” allows for future technological developments. Further, the rule uses the term “electronic notification address,” not “e-mail address” or “electronic address.” The revisions,

made in the text of the Proof of Service form itself, the Information Sheet that accompanies it, and the attachment form, would make the forms consistent with the rule.

Electronic notification address or fax number of person serving

Rule 2.260(f)(1)(A) currently requires that, for electronic service, the electronic notification address of the person making the service be set forth in the proof of service. Rule 2.306(h)(1) requires that for service by fax, the sending fax machine telephone number be included. Form POS-040 does not currently require this information. The revision would add a space for the electronic notification address or fax number of the person serving the documents as new item 3, immediately following the item for business or residential address of the server. A new instruction regarding this item would also be added to the Information Sheet. The numbers of items following new item 3 would be adjusted, in both the text of the form and the Information Sheet.

Electronic notification address or fax number of person being served

Rule 2.260(f)(1)(B) requires that a proof of service for electronic service show the electronic notification address of the person being served, in place of the address as shown on an envelope required for proof of mailed service under Code of Civil Procedure section 1013(a). Similarly, Rule 2.306(h)(2) requires that a proof of service by fax show the fax machine telephone number of the person being served instead of the address of that person. Revised form POS-040 would reorganize the item for entry for information concerning the person being served (item 4 on the current form; renumbered as item 5 on the revised form) to clarify that either (1) a street address is required (if personal delivery or mail service used), or (2) a fax number or electronic notification address is required (if fax service or electronic service is used), but not both.

A similar clarification would be made in the revised instructions for the “Address” column in form POS-040(P), the attachment used when form POS-040 is being used to cover service to more than one person

Reference to time of electronic service or service by fax

Rule 2.260(f)(1)(B) requires that the date and time of electronic service be included on the proof of service. Rule 2.306(h)(1) requires that the time of fax transmission be included on a proof of service by fax. Current item 4d in form POS-040 (requiring entry of the time of service if personal service used), renumbered as item 5d in the revised form, would be expanded to include references to electronic service

and service by fax. The same revision would be made to the “Time of Service” column in attachment form POS-040(P).

Attachment

Rule 2.260 of the California Rules of Court would be amended, effective January 1, 2009, to read as follows:

1 **Rule 2.260. Electronic service**

2
3 (a)–(e) * * *

4
5 **(f) Proof of service**

6 (1) Proof of electronic service may be by any of the methods provided in
7 Code of Civil Procedure section 1013(a), except that the proof of service
8 must state:

9
10 (A) The electronic notification address of the person making the service, in
11 ~~place of~~ addition to that person's residence or business address;

12
13 (B)–(D) * * *

14
15 (2)–(4) * * *

16
17 **(g) * * ***
18

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 7 04/10/08 Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:	
<p style="text-align: center;">PROOF OF SERVICE—CIVIL</p> <p>Check method of service (only one):</p> <p> <input type="checkbox"/> By Personal Service <input type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax <input type="checkbox"/> By Electronic Service </p>	
JUDGE: DEPT.:	

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. At the time of service I was over 18 years of age and **not a party to this action.**
2. My address is *(specify one)*:
 - a. Business: b. Residence:
3. The fax number or electronic notification address from which I served the documents is *(complete if service was by fax or electronic service)*:
4. On *(date)*: _____ I served the following **documents** *(specify)*:

The documents are listed in the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)).

5. I served the documents on the **person or persons** below, as follows:
 - a. Name of person served:
 - b. Address of person served:
 - (1) Business or residential address of person served *(complete if service was by personal delivery or mail)*:
 - (2) Fax number or electronic notification address of person served *(complete if service was by fax or electronic service)*:
 - c. Time of service *(complete if service was by personal, delivery, fax, or electronic service)*:

The names, addresses, and other applicable information about persons served is on the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)).

6. The documents were served by the following means *(specify)*:
 - a. **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5.
 - (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

CASE NAME	CASE NUMBER:
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6. b. **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and *(specify one)*:
- (1) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (2) placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at *(city and state)*:
- c. **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. *(A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)*
- e. **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- f.. **By electronic service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed in item 5. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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 OF DECLARANT) (SIGNATURE OF DECLARANT)

(If item 5d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

By personal service. I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on *(date)*:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____  _____
 (NAME OF DECLARANT) (SIGNATURE OF DECLARANT)

INFORMATION SHEET FOR PROOF OF SERVICE—CIVIL

(This information sheet is not part of the official proof of service form and does not need to be copied, served, or filed.)

USE OF THIS FORM

Note: This proof of service form should **not** be used to show proof of service of a summons and complaint. For that purpose, use *Proof of Service of Summons* (form POS-010).

This form is designed to be used to show proof of service of documents by (1) personal service, (2) mail, (3) overnight delivery, (4) messenger service, (5) fax, or (6) electronic transmission.

Certain documents must be personally served. For example, an order to show cause and temporary restraining order generally must be served by personal delivery. You must determine whether a document must be personally delivered or can be served by mail or another method.

GENERAL INSTRUCTIONS

A person must be over 18 years of age to serve the documents. The person who served the documents must complete the Proof of Service. **A party to the action cannot serve the documents.**

The Proof of Service should be typed or printed. If you have Internet access, a fillable version of this proof of service form is available at www.courtinfo.ca.gov/forms.

Complete the top section of the proof of service form as follows:

First box, left side: In this box print the name, address, and telephone number of the person for whom you served the documents.

Second box, left side: Print the name of the county in which the legal action is filed and the court's address in this box. The address for the court should be the same as the address on the documents that you served.

Third box, left side: Print the names of the Petitioner/Plaintiff and Respondent/Defendant in this box. Use the same names as are on the documents that you served.

Fourth box, left side: Check the method of service that was used. You should check only one method of service and should show proof of only one method on the form. If you served a party by several methods, use a separate form to show each method of service.

First box, top of form, right side: Leave this box blank for the court's use.

Second box, right side: Print the case number in this box. The case number should be the same as the case number on the documents that you served.

Third box, right side: State the judge and department assigned to the case, if known.

Complete items 1–6:

1. You are stating that you are over the age of 18 and that you are not a party to this action.
2. Print your home or business address.
3. If service was by fax service or electronic service, print the fax number or electronic notification address from which service was made.
4. List each document that you served. If you need more space, check the box in item 4, complete the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)), and attach it to form POS-040.
5. Provide the names, addresses, and other applicable information about the persons served. If more than one person was served, check the box on item complete the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)), and attach it to form POS-040.
6. Check the box before the method of service that was used, and provide any additional information that is required. The law may require that documents be served in a particular manner (such as by personal delivery) for certain purposes. Service by fax or electronic transmission generally requires the prior agreement of the parties.

You must sign and date the proof of service form. By signing, you are stating under penalty of perjury that the information that you have provided on POS-040 is true and correct.

SHORT TITLE:	CASE NUMBER:
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ATTACHMENT TO PROOF OF SERVICE—CIVIL (PERSONS SERVED)

(This Attachment is for use with form POS-040.)

NAMES, ADDRESSES, AND OTHER APPLICABLE INFORMATION ABOUT PERSONS SERVED:

<u>Name of Person Served</u>	<u>Address Where Served</u> <i>(provide business or residential address, fax number, or electronic notification address, as applicable.)</i>	<u>Time of Service</u> <i>(complete for personal, fax, or electronic service)</i>
		Time: _____

Item SPR08-21 Response Form

Title: **Civil: Proof of Service** (amend Cal. Rules of Court, rule 2.260; revise forms POS-040 and POS-040(P))

- 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

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or the Rules and Projects Committee.
All comments will become part of the public record of the council's action.*