Division 23. Miscellaneous

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

(a) Proceedings governed

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

(b) Definitions

For purposes of this rule:

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

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

(c) Designated judge

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

(d) Petition

(1) *Form*

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

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

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

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

(2) *Time for filing*

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

(3) *Where to file*

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

(4) *Fee*

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

(5) *Service*

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

(e) Record

(1) *Filing*

(A) The law enforcement agency must serve the record on the person filing the petition and must file the record in the superior court in which the petition was filed.

(B) The record must be served and filed within 15 days after the date the petition is served on the law enforcement agency as required by subdivision (d)(5) of this rule.

(C) If the record contains any documents that are part of a juvenile case file or are sealed or confidential under Welfare and Institutions Code section 827, the law enforcement agency must include a coversheet that states "Confidential Filing – Juvenile Case File Enclosed."

(D) The procedures set out in rules 2.550 and 2.551 apply to any record sought to be filed under seal in a proceeding under this rule.

(2) *Contents*

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

(3) *Format*

(A) The cover or first page of the record must:

(i) Clearly identify it as the record in the case;

(ii) Clearly indicate if the record includes any documents that are sealed or confidential under Welfare and Institutions Code section 827;

(iii) State the title and court number of the case; and

(iv) Include the name, mailing address, telephone number, fax number (if available), e-mail address (if available), and California State Bar number (if applicable) of the attorney or other person filing the record on behalf of the law enforcement agency. The court will use this as the name, mailing address, telephone number, fax number, and e-mail address of record for the agency unless the agency informs the court otherwise in writing.

(B) All documents in the record must have a page size of 8.5 by 11 inches;

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

(D) The contents must be arranged chronologically;

(E) The pages must be consecutively numbered; and

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

(4) *Failure to file the record*

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

(f) Written argument

(1) C*ontents*

(A) The person filing the petition may include in the petition or separately serve and file a 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 active gang membership, associate status, or affiliate status of the person so designated or to be so designated by the law enforcement agency in the shared gang database.

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

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

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

(2) *Time to serve and file*

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

(3) *Format and length of argument*

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

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

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

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

(B) An argument must not exceed 10 pages.

(C) The pages must be consecutively numbered.

(g) Oral argument

(1) *Setting oral argument*

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

(2) *Requesting or waiving oral argument*

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

(3) *Sending notice of oral argument*

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

(4) *Sealed or confidential records*

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

(h) Decision

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

(i) Service on the Attorney General

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

Advisory Committee Comment

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

Subdivision (e)(2). Penal Code section 186.35(b) provides that the evidentiary record for this review proceeding "shall be limited to the agency's statement of basis of its designation made pursuant to subdivision (e) of Section 186.34, and the documentation provided to the agency by the appellant pursuant to subdivision (f) of Section 186.34."

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

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

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

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

Rule 3.2300 adopted effective January 20, 2017.