

1 **Division 23. Miscellaneous**

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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**
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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**
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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**

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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.”

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