

Invitation to Comment

<p>Title</p>	<p>Forms for Electronic Service: Adopt new <i>Proof of Electronic Service, Attachment to Proof of Electronic Service (Documents Served)</i>, and <i>Attachment to Proof of Electronic Service (Additional Persons Served)</i> (forms POS-050/EFS-050, POS-050(D)/EFS-050(D), and (POS-050(P)/EFS-050(P)); and Revise <i>Proof of Service—Civil</i> (form POS-040)</p>
<p>Summary</p>	<p>California courts have begun to use electronic filing and service, and will be using them more in the years ahead. This proposal recommends the approval of new optional forms to help persons provide proof of electronic service.</p> <p>The proposal also recommends the revision of the current multipurpose proof of service form to reflect a proposed amendment to rule 2.260(f)(1)(D) on proof of electronic service that is being circulated at the same time as these forms.</p>
<p>Source</p>	<p>Court Technology Advisory Committee Hon. Ming W. Chin, Chair</p>
<p>Staff</p>	<p>Patrick O’Donnell, Supervising Attorney, 415-865-7665, patrick.o’donnell@jud.ca.gov</p>
<p>Discussion</p>	<p><u>New Forms for Proof of Electronic Service</u> Various proof of service forms have previously been approved by the Judicial Council. These include a multipurpose form that provides the option of being used as a proof of electronic service.¹ However, the multipurpose form is complicated, difficult to use, and more than one page.</p> <p>Currently, there is no simple, single-page Judicial Council form available to show proof of electronic service of documents. This proposal would recommend the approval of such a form. It would also recommend the approval of attachments that could be used to show proof of service of multiple documents or service on multiple parties.</p> <p><i>1. Proof of Electronic Service</i> (forms POS-050/EFS-050) This form is designed to be used by persons serving documents electronically to show proof of service. It is a simple, one-page form. It contains all the information and statements required on</p>

¹ See *Proof of Service—Civil* (form POS-040).

proofs of electronic service under rule 2.260(f).² It would be optional.

2. Attachment to Proof of Electronic Service (Documents Served) (POS-050(D)/EFS-050(D))

This attachment would make it easy for persons using the *Proof of Electronic Service* form to list additional documents served. It would be optional.

3. Attachment to Proof of Electronic Service (Additional Persons Served) (POS-050(P)/EFS-050(P))

This attachment would make it easy for persons using the *Proof of Electronic Service* form to identify additional parties served and indicate the dates and times of service. It would be optional.

Revision of Current Proof of Service Form

This proposal also recommends the revision of the multi-purpose proof of service form, which includes a proof of electronic service.

Proof of Service—Civil (form POS-040)

Item 6(f) (on electronic service) on this multipurpose proof of service form would be revised. The first sentence of 6(f) would be modified to more closely track the language of the statute and rules on electronic service. The second sentence would be deleted entirely. That sentence currently contains the following statement: “I did not receive within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.” This sentence would no longer be needed if the separate proposal being circulated to amend rule 2.260(f)(1)(D) is approved.

Attachment

² The new proof of electronic service form does not include a statement that the “the transmission was reported as complete and without error,” as currently required under rule 2.260(f)(1)(D). The reason is that this language would no longer be required in proofs of electronic service under a proposed amendment to rule 2.260 that is being recommended in a separate rules proposal that is circulating at the same time as this forms proposal.

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> <hr/> TELEPHONE NO.: _____ FAX NO. <i>(Optional)</i> : _____ E-MAIL ADDRESS <i>(Optional)</i> : _____ ATTORNEY FOR <i>(Name)</i> : _____	FOR COURT USE ONLY DRAFT 04-08-09 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER: JUDICIAL OFFICER:
PROOF OF ELECTRONIC SERVICE	DEPT.:

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the electronic service took place.

a. My residence or business address is *(specify)*:

b. My electronic notification address is *(specify)*:

2. I electronically served the following documents *(exact titles)*:

Additional documents served are listed in attachment. *(Form POS-050(D)/EFS-050(D) may be used for this purpose.)*

3. I electronically served documents listed in 2 as follows:

a. On *(Name of person served. If the person served is an attorney, the party or parties represented should also be stated)*:

b. To *(electronic notification address of person served)*:

c. On *(date)*:

d. At *(time)*:

Electronic service of the documents listed in item 2 on additional persons is described in attachment. *(Form POS-050(P)/EFS-050(P) may be used for this purpose.)*

Date:

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

_____ _____
 (TYPE OR PRINT NAME OF DECLARANT) (SIGNATURE OF DECLARANT)

SHORT TITLE:	CASE NUMBER:
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ATTACHMENT TO PROOF OF ELECTRONIC SERVICE (ADDITIONAL PERSONS SERVED)

(This attachment is for use with form POS-050/EFS-050.)

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

<u>Name of Person Served</u>	<u>Electronic Notification Address</u>	<u>Date and Time of Electronic Service</u>
<i>(If the person served is an attorney, the party or parties represented should also be stated.)</i>		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____
		Date: _____ Time: _____

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 04-08-09 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
<p style="text-align: center;">PROOF OF SERVICE—CIVIL</p> <p>Check method of service (only one):</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	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 residence or business address is:

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. *(Complete if service was by personal service, mail, overnight delivery, or messenger service.)*
 Business or residential address where person was served:

 - c. *(Complete if service was by fax or electronic service.)*
 (1) Fax number or electronic notification address where person was served:

(2) Time of 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, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

(Continued on back)

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 a party's consent to accept service by electronic means, I caused the documents to be served electronically on the persons at the electronic notification addresses listed in item 5.

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 6d 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, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger 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 plaintiff/petitioner and defendant/respondent 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 5, 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 form POS-040 is true and correct.

Item SPR09-28 Response Form

Title: Forms for Electronic Service: Adopt new *Proof of Electronic Service, Attachment to Proof of Electronic Service (Documents Served), Attachment to Proof of Electronic Service (Additional Persons Served),* and revise *Proof of Service-Civil* (adopt forms POS-050/EFS-050, POS-050(D)/EFS-050(D), and POS-050(P)/EFS-050(P); and revise *Proof of Service-Civil* (form POS-040))

- 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 submitted online, written on this form, or prepared in a letter format. 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. You are welcome to email your comments as an attachment.

Internet: <http://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., Wednesday, June 17, 2009
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Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.