



ELECTRONIC FRONTIER FOUNDATION
Protecting Rights and Promoting Freedom on the Electronic Frontier

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VIA EMAIL & US MAIL

JUDICIAL COUNCIL OF CALIFORNIA
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***RE: Electronic Frontier Foundation Comments on
Proposed California Rule of Court 3.2300 and Court
Form MC-1000 Request for Review of Denial of Request
to Remove Name From Gang Database
SPR17-26***

To Whom It May Concern:

The Electronic Frontier Foundation (EFF)¹ submits these comments in response to your invitation for comment on the proposed California Rule of Court 3.2300 and Form MC-1000 for Request for Review of Law Enforcement's Denial of Request to Remove Name from the California Gang Database.

We applaud the Judicial Council's decision to provide direction for implementing the judicial procedure for review of law enforcement's denial of removal from the CalGang database. First, in response to your question regarding the placement of the new rule in the "miscellaneous" category of the civil rules of court, we are concerned that clerks and individual citizens alike will have trouble finding it. Being that the rule is promulgated in response to a change in the California Penal Code, we think it better designated among the court rules governing criminal cases, even if it deals only with a limited civil action.

¹ EFF is a San Francisco-based, non-profit, member-supported digital rights organization. As recognized experts focusing on the intersection of civil liberties and technology, EFF actively encourages and challenges industry, government, and the courts to support free expression, privacy, and openness in the information society. Founded in 1990, EFF has nearly 36,000 dues-paying members.

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Second, we recommend that Form MC-1000 get its own designated category labeled: "Removal from CalGang Database" within the Judicial Council Forms drop-down menu in order to ease access for average citizens. In addition, we recommend the Judicial Council standardize a form for the application to law enforcement agencies for removal from the CalGang Database, with appropriate instructions for how to serve the request upon law enforcement.

Third, for the rule's provision directing that one or more judges in each court be designated to handle these requests for review, we agree that this is a good way to ensure that courts are able to manage these proceedings, provided that this provision is not used to prevent judges presiding over criminal cases from likewise handling any appellate review of law enforcement's denial of removal from the CalGang Database as part of a criminal proceeding. We are concerned that criminal court judges may interpret the existing provision standing alone to mean that they are not empowered to rule on a request for review of law enforcement's denial of removal from the CalGang Database in connection with a criminal proceeding if they are not officially designated to handle the request. Thus, we suggest including a provision specifically empowering all judges hearing criminal cases to be designated to handle these requests in addition to the one or more judges designated in the existing provision.

Fourth, with regard to the 90-day limit for the time of filing, we are concerned that the language under Rule 3.2300 § (d)(2) does not adequately protect individuals' right to notice because the language "the date the law enforcement agency mails" written verification of the agency's decision does not ensure proper service of the notice because it is silent on the issue of proof of receipt. The rule as proposed would not appropriately address its stated purpose of ensuring notice and judicial review if law enforcement is not required to show proof of service to effectuate proper notice.

Instead, we suggest that the § (d)(2) read: "Time for filing: The petition must be filed within 90 days of the date that the law enforcement agency personally serves, or the date of proof of service and receipt by, the person filing the petition with written verification of the agency's decision denying that person's request under Penal Code § 186.34 to remove the name from the shared gang database." We believe this language better protects the public's right to proper notice. Likewise, we suggest amending the language for the Instructions in Form MC-1000 on the second page to read: "You must serve and file this form no later than 90 calendar days after you receive written verification of the law

enforcement agency's decision denying your request under Penal Code section 186.34..."

Fifth, with regard to the language for Rule 3.2300 § (d)(4), we recommend adding language identifying the court fee waiver application for indigent petitioners: "But petitioners may file for a court fee waiver under Government Code § 68633 by submitting Court Form FW-001."

Finally, we are concerned that the language for Rule 3.2300 § (e)(1)(C) does not adequately protect the privacy of juvenile records. We suggest that the language be amended to require the law enforcement agency to include an envelope marked "Sealed and Confidential Filing Enclosed" that may be sealed by the court after it has reviewed the record in its entirety.

In sum, EFF supports the Judicial Council's promulgated rule with the suggested amendments to the aforementioned provisions.

Sincerely,



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