

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Elihu M. Berle, Chair
Uniform Rules Subcommittee, Hon. Brian R. Van Camp, Chair
Patrick O'Donnell, Committee Counsel, 415-865-7665,
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DATE: September 28, 2005

SUBJECT: Writ of Execution (revise form EJ-130) (Action Required)

Issue Statement

The *Writ of Execution* (form EJ-130) should be revised to clarify that no interest should be charged on fees that were not paid by public entities but that are imputed and included in the total judgment.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2006, revise the *Writ of Execution* (form EJ-130).

Revised form EJ-130 is attached at pages 4–5.

Rationale for Recommendation

As currently structured, the *Writ of Execution* (form EJ-130) implies that interest should be charged on certain fees imputed to public agencies that are to be included in judgments, but on which no interest should be charged. This proposal would clarify the wording on the form to indicate that interest should not be charged on such fees.

On the existing form EJ-130, items 11–16 work well for calculating interest on ordinary judgments. However, a problem arises in certain cases because, although public entities pay no court fees under Government Code section 6103, the clerk entering judgment “shall include as a part of the judgment the amount of the filing fee, and the amount of the fee for the service of process or notices which would

have been paid but for section 6103, designating it as such.” (Gov. Code, § 6103.5(a).)

If such imputed fees are included in the judgment, the total judgment in item 11 of form EJ-130 may include such fees in cases where a judgment is recovered by a public entity. But as far as these imputed fees are concerned, “[n]o interest shall be computed or charged on the amount of the fee.” (Gov. Code, § 6103.5(b).) Thus, if interest is calculated in the usual manner based on items 11–15, the calculation would erroneously include interest on the fees imputed to government agencies.

To rectify this problem, the following words would be added to items 16 and 19(a): “not on GC 6103.5 fees.” This would clarify that the interest calculation for persons using the form EJ-130 does not include interest on the imputed fees where a public entity has recovered a judgment.

Alternative Actions Considered

The committee considered leaving the form unchanged, but concluded that it was better to revise it to clarify the interest issue.

Comments From Interested Parties

The revised form was circulated for comment in the spring of 2005. Seven comments were received on this proposal. The commentators included a judge, court administrators, and the Committee on Administration of Justice of the State Bar of California (CAJ). A chart summarizing the comments and the subcommittee’s responses is attached at pages 6–9. All of the commentators except the CAJ agreed with the proposed revision.

The CAJ objected to changing the form. Its position turns on the interpretation of Government Code section 6103.5(b), which provides in pertinent part:

When an amount equal to the clerk’s fees and the fees for service of process and notices is collected upon a judgment pursuant to subdivision (a), those amounts shall be due and payable to the clerk and the serving officer respectively. The clerk shall ascertain from the serving officer’s return the amount of fees he or she would have charged had it not been for the provisions of Section 6103. Remittances of the amounts so due shall be made within 45 days by the fiscal officer of the plaintiff or petitioner or respondent or defendant in the action or proceeding unless those fees have been collected by the levying officer and remitted to the court. *No interest shall be computed or charged on the amount of the fee. . . .* (Emphasis added.)

The CAJ believes that the prohibition on charging interest in subdivision (b) is intended to preclude any interest being charged on the filing fees that would have been paid at the outset if the plaintiff had not been a governmental entity; this would relieve the governmental entity of any requirement that it pay the clerk of the court interest on those fees. But CAJ does not believe that section 6103.5 is intended to relieve a post-judgment debtor from paying post-judgment interest on imputed filing fees that will have been added to the judgment under section 6103.5(a).

The problem with the CAJ'S interpretation is that section 6103.5 does not state that interest is not to be charged against a public entity, but is to be charged against a judgment debtor. It states simply that “[n]o interest shall be computed or charged on the amount of the fee.” Thus, the plain language of section 6103.5 indicates that no interest should be charged to anyone on the imputed fees. It would be rather unusual to charge someone interest on a fee that has not been paid. Based on the language of section 6103.5, the committee concluded that the form should be revised as proposed.

The committee did agree with CAJ that the statement “not on GC 6103.5 fees” should be added to both items 16 and 19(a). In the circulated version, it had only been added to item 16. By adding the statement to both items, the revised form will clarify for users that interest should not be charged on fees that are imputed in the total judgment under section 6103.5.

Implementation Requirements and Costs

Some minor costs will be incurred in replacing the current form with the revised form.

Attachments

PLAINTIFF:	CASE NUMBER:
DEFENDANT:	

— Items continued from page 1—

21. **Additional judgment debtor** (name and last known address):

22. **Notice of sale** has been requested by (name and address):

23. **Joint debtor** was declared bound by the judgment (CCP 989–994)

a. on (date): _____ a. on (date): _____

b. name and address of joint debtor: _____ b. name and address of joint debtor: _____

c. additional costs against certain joint debtors (itemize):

24. (Writ of Possession or Writ of Sale) **Judgment** was entered for the following:

a. Possession of real property: The complaint was filed on (date): _____

(Check (1) or (2)):

(1) The Prejudgment Claim of Right to Possession was served in compliance with CCP 415.46. The judgment includes all tenants, subtenants, named claimants, and other occupants of the premises.

(2) The Prejudgment Claim of Right to Possession was NOT served in compliance with CCP 415.46.

(a) \$ _____ was the daily rental value on the date the complaint was filed.

(b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates (specify): _____

b. Possession of personal property. If delivery cannot be had, then for the value (itemize in 9e) specified in the judgment or supplemental order.

c. Sale of personal property.

d. Sale of real property.

e. Description of property: _____

NOTICE TO PERSON SERVED

WRIT OF EXECUTION OR SALE. Your rights and duties are indicated on the accompanying *Notice of Levy* (Form EJ-150).

WRIT OF POSSESSION OF PERSONAL PROPERTY. If the levying officer is not able to take custody of the property, the levying officer will make a demand upon you for the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

► A Claim of Right to Possession form accompanies this writ (unless the Summons was served in compliance with CCP 415.46).

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Superior Court of California, County of Los Angeles	A	Y	No specific comment.	No response required.
2.	Mr. Stephen V. Love Executive Officer Superior Court of California, County of San Diego	A	N	No specific comment.	No response required.
3.	Ms. Pam Moraida Court Program Manager Superior Court of California, County of Solano Fairfield	A	N	No specific comment.	No response required.
4.	Hon. Kathleen R. O'Connor Judge of the Superior Court of California, County of Yuba Marysville	A	N	I agree with this clarifying change.	No response required.
5.	Ms. Patti Morua-Widdows Court Program Manager Superior Court of California, County of Ventura	A	N	No specific comment.	No response required.
6.	Committee on Administration of Justice The State Bar of California San Francisco	N	Y	The Committee on Administration of Justice (CAJ) opposes this proposal. The reason is as follows: CAJ believes this proposal misconstrues the intent of the Government Code sections under review. Under Government Code section 6103, governmental entities do not pay filing fees and certain other fees. However, under Government Code section 6103.5(a), if the governmental entity prevails in the litigation, these fees (even	The committee disagreed for the reasons explained in the report.

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				<p>though they were not paid at the outset) can be charged to the judgment debtor, and are then paid to the clerk of the court. Government Code section 6103.5(b) explains what happens after money is collected from the judgment debtor, and provides in relevant part:</p> <p>“(b) When an amount equal to the clerk’s fees and the fees for service of process and notices is collected upon a judgment pursuant to subdivision (a), those amounts shall be due and payable to the clerk and the serving officer respectively. <i>The clerk shall ascertain from the serving officer’s return the amount of fees he or she would have charged had it not been for the provisions of Section 6103.</i> Remittances of the amounts so due shall be made within 45 days by the fiscal officer of the plaintiff or petitioner or respondent or defendant in the action or proceeding unless those fees have been collected by the levying officer and remitted to the court. <i>No interest shall be computed or charged on the amount of the fee.</i>” (Emphasis added.)</p> <p>CAJ believes the prohibition against computing or charging interest that appears in section 6103.5(b) is intended to preclude any requirement that the clerk of the court or the governmental entity compute interest on the filing fees that would have been paid at the outset had the plaintiff not been a governmental</p>	<p>This statement of intent appears correct as to charging any interest to a governmental entity.</p>

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				<p>entity, and to relieve the governmental entity of any requirement that it pay the clerk of the court interest on those filing fees. The governmental entity who prevails in the litigation is therefore required to pay the clerk of the court the principal amount of those fees only.</p> <p>CAJ does not believe section 6103.5 is intended to relieve the judgment debtor from paying post-judgment interest on these filing fees, which fees will have been added to the principal amount of the judgment, under section 6103.5(a).</p> <p>The current version of Form EJ-130 comports with CAJ's understanding of the way section 6103.5 is intended to operate. In the current version, the "total judgment" amount listed in item 11 will include the filing fees in question. Interest will be charged to the judgment debtor on those fees in items 16 and 19(a). Once the judgment is collected on, item 19(b) directs the levying officer to pay "directly to the court" the costs that have been included in item 11 (as well as the fee for the writ in item 17). Item 19(b) does not tell the levying officer to compute or charge interest on those fees before paying them to the court, but rather refers only to the amount of the fees itself (i.e., without interest). Thus, the current form properly captures the purpose and intent of section 6103.5, and CAJ believes the form should not be changed.</p>	<p>The language of section 6103.5 does not support the interpretation that a post-judgment debtor should not be relieved of paying interest. The language simply states "[n]o interest shall be computed or charged on the amount of the fee." A reasonable interpretation of this language is that no one should be charged interest on fees imputed under section 6103.5.</p>

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				<p>If, for any reason, a revision to Form EJ-130 is pursued, based upon the original analysis that formed the basis of this proposal, the proposed revision appears to be internally inconsistent. The proposed new form would only excuse the judgment debtor from paying interest on the Government Code section 6103.5 fees during the period between entry of judgment and issuance of the writ of execution. However, under the proposed revision, the levying officer would still charge interest to the judgment debtor on those fees for the period after issuance of writ, pursuant to item 19(a). To be consistent, item 19(a) would also need to include a note stating “(not on GC 6103.5 fees).” However, as discussed above, CAJ believes the current version of the form is correct and should remain unchanged.</p>	<p>The committee agreed with this comment and has revised item 19(a) to include the parenthetical statement “(not on GC 6103.5 fees).”</p>
7.	Mr. Dean Zipser President Orange County Bar Association Irvine	A	Y	No specific comment.	No response required.