



Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2011

Title	Agenda Item Type
Civil Forms: Writ of Execution	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise form EJ-130	January 1, 2012
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair Hon. Patricia M. Lucas, Vice Chair	August 18, 2011
	Contact
	Anne Ronan, 415-865-8933 anne.ronan@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends revising the *Writ of Execution* (form EJ-130) to add information concerning the type of legal entity of the judgment debtor, if other than a natural person, and a statement indicating whether the case is a limited or an unlimited civil action. These additional items of information are required to be on the form by Assembly Bill 2394.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council revise the *Writ of Execution* (form EJ-130) to add an item below the case number for indicating the type of case and instructions in each item identifying the judgment debtor to include the type of legal entity if other than a natural person.

Revised form EJ-130 is attached at pages 6-7.

Previous Council Action

The Judicial Council first approved the *Writ of Execution* (form EJ-130) for optional use in January 1978. It has been revised several times, most recently in 2006, but has never before included an item to specify the type of legal entity of the judgment debtor or to indicate what type of case the underlying judgment arose in.

Rationale for Recommendation

Assembly Bill 2394 authorizes sheriffs or other levying officers to electronically transmit and receive certain documents and records pertaining to the enforcement of judgments, on agreement with courts and financial institutions. In addition, the bill added some requirements as to what information has to be included in a writ of execution. Specifically, in addition to providing the name and last known address of a judgment debtor, the writ must now identify the type of legal entity the judgment debtor is, if other than a natural person. (Code Civ. Proc., § 699.520(c).) The writ must also include an indication of whether the case in which it is being issued is a limited or unlimited case. (Code Civ. Proc., § 699.520(k).) The intent of this latter designation is to permit the sheriff to determine what appeals period applies (30 or 60 days) should a claim of exemption be sought by the judgment debtor.

Almost all writs of execution are prepared by parties on the Judicial Council form *Writ of Execution* (form EJ-130) and presented to the court clerk to be issued. Although the use of the form is not mandated, the form is the most frequently used format in which such writs are presented to the court. Revision of the form to include the new statutorily required information would be helpful to courts and parties, and was specifically requested by court personnel. The revisions to reflect the statutory changes are as follows:¹

- A new item has been added under the box with the case number at the top of the form, with check boxes to indicate the type of case: limited, unlimited, small claims, or other.
- New text has been added to items 4 (Judgment debtor), 21 (Additional judgment debtor), and 23 (Joint judgment debtor) to indicate that the information provided in each should include the type of legal entity if the judgment debtor is not a natural person.
- The space in which to respond to each of those items has been increased to allow more information in the response. In order to add the extra line of text to item 4 and to add additional space for the response, item 4 has been modified to allow information on only one judgment debtor on the first page of the form, rather than two.

¹ In addition to the revisions based on the new statute, a technical correction has been made on the form, to replace the current reference in item 19(b) to Government Code §68511.3, which was superseded by the new fee waiver statute in 2008. Item 19(b) has been revised to reference Government Code §68637, the current fee waiver provision regarding payment of waived fees and costs to the court by a judgment debtor.

Comments, Alternatives Considered, and Policy Implications

Comments

The proposed revised form circulated for public comment in spring 2011. Comments were received from 12 commentators, including 5 superior courts (for Monterey, Sacramento, San Bernardino, San Diego, and Ventura Counties), 2 sheriff's offices (for Los Angeles and San Joaquin Counties), the California Association of Legal Support Professionals and an individual process server, the State Bar's Committee on Administration of Justice (CAJ), a public interest legal group from Sacramento, and a small claims legal advisor from San Luis Obispo.² All commentators agree that the form should be revised, although some suggested modifications in addition to the proposed revisions. These comments are discussed below.

Designation of case type. Commentators agreed that the new box for designating the case type was needed to assist the parties and the courts comply with the requirements of Assembly Bill 2394. In addition to seeking comments on this proposed revision generally, comments were specifically solicited on whether case types in addition to "limited civil" and "unlimited civil" (the only two categories included on the form as circulated) should be included as options in the new box under the case number. Although new Code of Civil Procedure 669.520 (k) requires only "A statement indicating whether the case is limited or unlimited," two courts had contacted the Administrative Office of the Courts with concerns that, although not all cases fit within those categories, sheriff's offices were returning writs that did not have one or the other designation.

The Los Angeles County Sheriff's Department stated it had no objections to such further case designations. The commenter noted that the intent of sheriffs in requesting the addition of subdivision (k) to the statute was to allow levying officers to determine the last day for a party's appealing an order on a claim of exemption. Most other commentators who addressed this issue—including Superior Courts of San Bernardino, San Diego, and Ventura Counties—agreed with adding further designations. Some commentators wanted Small Claims and Family Law as the additional checkboxes. CAJ suggested just one additional box labeled "Other" with a blank to be filled in with the type of case, to assure that writs of execution could correctly designate whatever type of case the underlying judgment was in.

The committee recommends the addition of four checkboxes to the form, the two expressly required by the statute, plus one for "Small Claims" cases and one for "Other," with a blank line to allow entry of the specific case type. The separate small claims designation may be technically unnecessary, because such cases are included within the definition of limited civil cases, but the committee concluded that the discrete designation will make it easier for self-represented litigants to complete the form.

² A chart summarizing all comments and the committee's responses is attached at pages 8–13.

Suggestions outside the scope of the proposal. Several commentators suggested further revisions to the form that are outside the scope of this proposal. The committee concluded that all these proposed revisions could not be addressed in the current proposal without further circulation and so will consider them in the future, not as part of the current proposal. The suggestions to be considered later are summarized below.

- Amending item 21 to include any additional judgment debtor names that have been filed with the court in affidavits of identity.³
- Adding an item (following item 15) in which to list sanctions that may not be included in the judgment but that the court ordered debtor to pay. (Item 19(b) already includes an item for listing waived court fees to be paid directly to the court, but does not include a space for sanctions.)
- Making item 14 for credit toward principal only and adding a new item for credit toward interest.
- Making item 16 the rate at which interest is to accrue, rather than the dollar amount accrued, and leaving that for the sheriff to compute.

Formatting comment. The small claims advisor from San Luis Obispo suggested revising the format of the section of the form in which the party enters dollar amounts (items 11 to 18) to make an outlined box for each item, so the form would be neater and have clear lines to ensure that amounts would be entered in the correct place. The online fillable forms already have discrete fillable boxes for each of these items. If the outlined boxes were added to the printed form, however, although it might make handwritten forms easier to read, it would make the forms harder to complete and to read when the figures are input by typewriter or computer. It is not possible to make the spaces larger (and so easier to complete in a boxed format) and still limit the form to a single page (back and front). For these reasons, the committee declined to make the requested format change.

Alternative of Taking No Action

Although the *Writ of Execution* form is optional, it needs to be legally correct. It is possible to leave the form as is, even though the statute has changed. Furthermore, this form is the most commonly used format for issuance of writs of execution, and the committee concluded that it should include all statutorily required information. If the form is not revised, based on information received from several courts, parties will have problems having the writs enforced after issuance and clerks will be burdened with returned writs.

³ The advisory committee has previously considered and rejected this proposal, but will look at it again in light of the renewed proposal.

Implementation Requirements, Costs, and Operational Impacts

These forms are generally prepared by litigants, so revisions should have little impact on most courts beyond assuring that the correct information appears on forms that are issued by the court clerks.

Attachments

1. Revised form EJ-130, at pages 6–7.
2. Chart of comments, at pages 8–13.

FOR COURT USE ONLY

DRAFT
Not approved by
Judicial Council

08.10.2011

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number and address):

TELEPHONE NO.:

FAX NO.:

E-MAIL ADDRESS:

ATTORNEY FOR (Name):

ATTORNEY FOR JUDGMENT CREDITOR ASSIGNEE OF RECORD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

PLAINTIFF:

DEFENDANT:

CASE NUMBER:

WRIT OF EXECUTION (Money Judgment)
POSESSION OF Personal Property
Real Property
SALE

Limited Civil Case Small Claims Case
Unlimited Civil Case Other

1. To the Sheriff or Marshal of the County of:

You are directed to enforce the judgment described below with daily interest and your costs as provided by law.

2. To any registered process server: You are authorized to serve this writ only in accord with CCP 699.080 or CCP 715.040.

3. (Name):

is the judgment creditor assignee of record whose address is shown on this form above the court's name.

4. Judgment debtor (name, type of legal entity stated in judgment if not a natural person, and last known address):

9. See next page for information on real or personal property to be delivered under a writ of possession or sold under a writ of sale.

10. This writ is issued on a sister-state judgment.

11. Total judgment \$

12. Costs after judgment (per filed order or memo CCP 685.090) \$

13. Subtotal (add 11 and 12) \$

14. Credits \$

15. Subtotal (subtract 14 from 13) \$

16. Interest after judgment (per filed affidavit CCP 685.050) (not on GC 6103.5 fees) \$

17. Fee for issuance of writ \$

18. Total (add 15, 16, and 17) \$

19. Levying officer:

(a) Add daily interest from date of writ (at the legal rate on 15) (not on GC 6103.5 fees) of \$

(b) Pay directly to court costs included in 11 and 17 (GC 6103.5, 68637, CCP 699.520(i)) \$

20. The amounts called for in items 11-19 are different for each debtor. These amounts are stated for each debtor on Attachment 20.

5. Judgment entered on (date):

6. Judgment renewed on (dates):

7. Notice of sale under this writ

- a. has not been requested.
b. has been requested (see next page).

8. Joint debtor information on next page.

[SEAL]

Issued on (date):

Clerk, by , Deputy

NOTICE TO PERSON SERVED: SEE NEXT PAGE FOR IMPORTANT INFORMATION.

PLAINTIFF:	CASE NUMBER:
DEFENDANT:	

— Items continued from page 1 —

21. **Additional judgment debtor** (name, type of legal entity stated in judgment if not a natural person, 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, type of legal entity stated in judgment if not a natural person, and last known address of joint debtor	b. name, type of legal entity stated in judgment if not a natural person, and last known 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 24e) 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).

SPR11-22

Civil Forms: Writ of Execution (revise form EJ-130)

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Position	Comment	Proposed Committee Response
1. California Association of Legal Support Professionals By Brett Peters Chairman, Legislative Committee	A	These changes are clearly needed to assist in compliance with Assembly Bill 2394 requirements. The vast majority of writs our members receive to present to the clerk for issuance are lacking the required information. Placing these items on the form would make it obvious to law firms that the information is needed and would save our members countless emails and phone calls to obtain the information so we can submit the Writ to the Court or Sheriff.	No response required.
2. Debbie Grafft, Economic Crime Officer and Small Claims Advisor District Attorney's Office San Luis Obispo, California	AM	Since you are updating the WRIT – I would like to see the dollar amount area set up to appear neat since I always tell folks you cannot make mistakes. Can you add a nice lined boxed, decimal points etc. (something like attached?) It just looks sloppy. Just something with clear lines so amounts are not entered in the wrong place, and entries are lined up to add.	The fillable form on the Judicial Branch website has discrete boxes for each dollar amount that can be entered in items 11 through 19. The committee has concluded, however, that underlining each blank space on the form, while possibly making hand-written forms neater, would make it harder to read forms where the figures had been entered by typewriter or computer.
3. Human Rights/ Fair Housing Commission Sacramento, California By Dana Wallack	AM	We concur with the changes suggested to form EJ-130. We would, however, like to put forth some ideas for further modification to the form, especially with an eye toward this form's use by self-represented litigants and for ease of understanding for the levying officers. As the form is now, there is no spot to list sanctions and waived court fees, which the court does sometimes order the debtor to pay but which are not included in the judgment awarded to the creditor. We would recommend labeling section 11 "Total judgment and costs to be paid to court" or adding a separate item beneath section	The committee notes the agreement with the proposed revisions. Item 19(b) provides space for entry of waived court fees and costs which the court has ordered be paid by the judgment debtor. That item is being revised to include reference to the current fee waiver statute. The further proposed revisions are outside the scope of the current proposal and will be considered by the committee in the future.

SPR11-22

Civil Forms: Writ of Execution (revise form EJ-130)

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Position	Comment	Proposed Committee Response
		<p>15 for "costs and sanctions to be paid to the court." The language in section 19 could then be modified accordingly.</p> <p>In addition, we have encountered litigants who are confused about how to report credits applied toward interest versus principal. We suggest relabeling section 14 "credits toward principal" and adding a line under section 16 labeled "credits toward interest."</p>	
<p>4. Tony Klein Process Server Institute San Francisco, California</p>	<p>A</p>	<p>The Writ of Execution form is being revised to provide a designation whether the case is a limited or unlimited case, and the legal entity of the judgment debtor. This is reflected of the change last year requiring the information, which is now being typed in, or hand written, and returned to the court to the issuing court clerk to initial the change.</p>	<p>No response required.</p>
<p>5. Los Angeles County Sheriff's Department By Sergeant Michael Torres</p>	<p>AM</p>	<p>I am in favor of this change.</p> <p>We have no opinion on the proposals to add boxes for small claims and family law. We sought the addition of boxes for limited and unlimited cases because we need that information to determine the last day to appeal a judgment from a claim of exemption hearing.</p>	<p>In light of this and other comments on this point, the committee is further modifying the proposed revisions to add checkboxes for designating "Small Claims Cases" and "Other: _____," so that it will be clearer to parties, the courts, and levying officers what designation is applicable.</p> <p>The committee notes that, with the comment, the commentator also provided a proposal for further changes to the Writ of Execution, particularly to further amend item 21 to identify additional judgment debtor names included on an affidavit of identity. The further proposal is outside the scope of the current revision, and will be considered by</p>

SPR11-22

Civil Forms: Writ of Execution (revise form EJ-130)

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Position	Comment	Proposed Committee Response
6. Orange County Bar Association By John Hueston, President	A	As to the specific request for comment, it seems that specifying whether a case was “limited” or “unlimited” is more than enough. Specifying the type of case (e.g., Family Law or Small Claims) seems unnecessary in light of the fact the Case Number can be used by the levying officer (or others) to discover the type of case. Unless and until it is reported by levying officers that the failure to identify the type of case is an impediment to “returning” the Writs of Execution, it seems excessive to require specification of the type of case (beyond what the law and proposed form requires: “unlimited” vs. “limited”).	The committee has concluded that, in light of reports from courts that writs have been rejected by levying officers for not indicating that the case was limited or unlimited, it is appropriate to add additional categories to the form.
7. San Joaquin County Sheriff-Civil By Sheryl Allan, Sr. Office Assistant	AM	I wish you would make the interest a %. We have so many problems with people calculating interest wrong and the vast majority of courts and sheriffs' offices use automated systems now that don't even use the daily \$ amt. Our system uses the resulting %. It would allow creditors to get a full 10% when they want and avoid a lot of errors that have to be re-worked with the courts' assistance.	This proposed revision is beyond the scope of the current proposal, but will be considered by the committee in the future.
8. The State Bar of California Committee on Administration of Justice By Saul Bercovitch	A	CAJ supports this proposal. In response to the request for specific comments on whether any additional choices should be added to the box under Case Number, to identify, for example, small claims or family law actions, CAJ agrees that options beyond “limited civil case” and	In light of this and other comments on this point, the committee is further modifying the proposed revisions to add checkboxes for designating “Small Claims Cases” and “Other: _____”, so that it will be clearer to parties, the courts, and levying officers what designation is applicable.

SPR11-22

Civil Forms: Writ of Execution (revise form EJ-130)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Committee Response
9.	Superior Court of Monterey County By Minnie Monarque, Deputy Court Executive Officer	A	<p>“unlimited civil case” should be offered, but also believes it is not necessary to list other specific types of actions, given the number of other possible choices. CAJ therefore recommends adding an “other: _____” choice.</p> <p>Agree with proposed changes.</p>	No response required.
10.	Superior Court of Sacramento County By Robert Turner, Finance Division	AM	<p>We concur with the changes suggested to form EJ-130. We would, however, like to put forth some ideas for further modification to the form, especially with an eye toward this form’s use by self-represented litigants and for ease of understanding for the levying officers. As the form is now, there is no spot to list sanctions and waived court fees, which the court does sometimes order the debtor to pay but which are not included in the judgment awarded to the creditor. We would recommend labeling section 11 “Total judgment and costs to be paid to court” or adding a separate item beneath section 15 for “costs and sanctions to be paid to the court.” The language in section 19 could then be modified accordingly.</p> <p>In addition, we have encountered litigants who are confused about how to report credits applied toward interest versus principal. We suggest relabeling section 14 “credits toward principal” and adding a line under section 16 labeled “credits toward interest.”</p>	<p>The committee notes the agreement with the proposed revisions.</p> <p>Item 19(b) provides space for entry of waived court fees and costs which the court has ordered be paid by the judgment debtor. That item is being revised to include reference to the current fee waiver statute. The further proposed revisions are outside the scope of the current proposal and will be considered by the committee in the future.</p>
11.	Superior Court of San Bernardino County	AM	<p><i>Question Posed:</i> Should there be choices for</p>	In light of this and other comments on this point, the committee is further modifying the proposed

SPR11-22

Civil Forms: Writ of Execution (revise form EJ-130)

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Position	Comment	Proposed Committee Response
By Debra Meyers, Director		<p>small claims & family law?</p> <p><i>Suggestion:</i> Yes, because it is very confusing to a non-lawyer (and probably lawyers) as to how those cases would fit within the titles "unlimited civil" and "limited civil". Some person may try to classify the family and/or small claims based upon the dollar value of the case, rather than the statutory authority set forth in CCP 85, et seq, re: limited civil cases. Without designation, then people may not pick "unlimited" civil for those cases types and the legislative purpose in identifying these categories may be thwarted.</p>	<p>revisions to add checkboxes for designating "Small Claims Cases" and "Other: _____", so that it will be clearer to parties, the courts, and levying officers what designation is applicable.</p>
12. Superior Court of San Diego County By Mike Roddy, Executive Officer	A	<p>Form EJ-130: Add Small Claims and Family Law under the checkboxes for Limited Civil Case and Unlimited Civil Cases.</p>	<p>In light of this and other comments on this point, the committee is further modifying the proposed revisions to add checkboxes for designating "Small Claims Cases" and "Other: _____", so that it will be clearer to parties, the courts, and levying officers what designation is applicable.</p>
13. Superior Court of Ventura County By Julie Camacho	AM	<p>The Ventura Superior Court agrees with the proposed changes with the following modification: Since the revision of CCP 699.520 adding the requirement to indicate on the writ form whether the case is a "limited" or "unlimited" case the court has received information that the Sheriff's Department is rejecting writs issued for Small Claims and Family Law cases if this indication is not present. Since this does not apply to Family Law and Small Claims cases, it is extremely helpful that the new proposed check boxes being added are specific in their language to "civil".</p>	<p>In light of this and other comments on this point, the committee is further modifying the proposed revisions to add checkboxes for designating "Small Claims Cases" and "Other: _____", so that it will be clearer to parties, the courts, and levying officers what designation is applicable.</p>

SPR11-22

Civil Forms: Writ of Execution (revise form EJ-130)

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Position	Comment	Proposed Committee Response
		<p>Because the writ form is also used in Small Claims and Family Law, it would be helpful to add an additional check box for "Small Claims Case" and one for "Family Law Case".</p> <p>Currently, there is no way for the Sheriff's Department to know if the case falls within one of these categories unless they are familiar with the each court's case number sequencing.</p> <p>Because the Sheriff's Department often times receives writs for cases from courts outside of their county, it is difficult to determine the case category based solely on the case number sequencing for each court. Adding these two additional check boxes would make it clear on the face of the document to determine the case category.</p>	