

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR16-09

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| Title | Action Requested |
| Civil Practice and Procedure: Order of Examination | Review and submit comments by June 14, 2016 |
| Proposed Rules, Forms, Standards, or Statutes | Proposed Effective Date |
| Revise forms SC-134 and EJ-125 | January 1, 2017 |
| Proposed by | Contact |
| Civil and Small Claims Advisory Committee Hon. Raymond Cadei, Chair | Anne M. Ronan, 415-865-8933, anne.ronan@jud.ca.gov |

Executive Summary and Origin

This proposal, initially raised by a superior court commissioner who handles small claims cases, would revise *Order to Produce Statement of Assets and Appear for Examination* (form SC-134), to clarify in the instructions that, while service may be completed by any means proper for serving a summons, service *must* be by a registered process server or sheriff in order to be enforced by the court. The format of the Small Claims form has also been revised to make the provisions of the order easier to read. The parallel form for use in civil actions generally, *Application and Order for Appearance and Examination* (form AT-138/EJ-125), would also be revised to include a similar instruction regarding service by a law officer.

Background

Judgments in small claims cases may be enforced under the same provisions applicable to all civil cases. See Code Civ. Proc. § 116.820.¹ Therefore small claims judgment creditors, just like judgment creditors in other types of civil cases, may examine judgment debtors and third parties to determine if there are attachable assets, and may seek sanctions for a party's failure to appear for such an examination just as any other civil litigant may. The regular civil form for this purpose is the *Application and Order for Appearance and Examination* (form AT-138/EJ-125), which may be used in enforcing small claims judgments as well as any other civil judgments.

Small claims judgment debtors, however, have an additional procedure that they may use in collecting on judgments; i.e., obtaining information via a statement of the judgment debtor's

¹¹ All statutory references hereafter are to the Code of Civil Procedure unless otherwise noted.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

assets. The court clerk sends a blank *Judgment Debtor's Statement of Assets* (form SC-133)² to the judgment debtor along with the notice of entry of judgment. If a judgment debtor “willfully fails” to complete and return that statement, the judgment debtor may ask the court to enforce sanctions under section 708.170—the provision authorizing a court to issue a bench warrant if a party has not appeared in response to an order for examination. See § 116.830. Because such sanctions are only available under section 708.170 if an order has been served by law enforcement, failure to complete the form sent by mail by the clerk is not sufficient to support such sanctions—there must be a court order, and the order must have been served by law enforcement. For that reason, the *Application and Order to Produce Statement of Assets and To Appear for Examination* (form SC-134) was developed. As is noted on the back of that form, it is intended for use when the judgment creditor is seeking completion of the statement of assets form as well as the examination of the judgment debtor. If the small claims judgment creditor only wants the debtor’s examination, form AT-138/EJ-125 should be used.

The Proposal

Both form SC-134 and form AT-138/EJ-125 include a provision within the order on the form (item 3 on each) that the order “may” be served by a law enforcement officer. The statute authorizing the judgment creditor to examine the judgment debtor provides that the order for examination is to be served “in the manner specified in Section 415.10.” See § 708.110(d); see also § 708.120(b) (service of order requiring third party’s appearance must be by personal delivery to that person). So the orders on the forms are correct that a judgment creditor is not *required* to have the order for examination served by law enforcement.³ However, a problem with other means of service arises if the judgment debtor or third party fails to appear for the examination. The court is only authorized to issue a bench warrant or apply other sanctions (e.g., award attorney’s fees) in those situations in which the order has been served by a sheriff, marshal, registered process server, or person specifically appointed by the court in the order itself. § 708.170. So although the forms at issue here are correct in saying in item 3 that the service may (rather than *must*) be served by a law enforcement officer or registered process server (or a server appointed by the court), service by anyone else is not sufficient if the party seeks court enforcement of the order.

The revised forms add the instructions to the judgment creditor that, *in order to be enforced by the court*, the order must be served by law enforcement. On both forms, this information would be placed on the second page (the back of the form), in revised paragraph 4 in the Instructions for Applicant on the back of form SC-134, and in a new box titled “Information for Judgment Creditor Regarding Service” on the back of form AT-138/EJ-125.

² A copy of that form is at <http://www.courts.ca.gov/documents/sc133.pdf>.

³ Note that while the current SC-135 form is correct on the front, the instructions on the back are incorrect, stating that the order *must* be served by law enforcement.

Other revisions

While revising the forms to address the issue of service, other minor revisions are being proposed at the same time. To begin, a new item has been added on the second page of both forms with instructions for those who are hard of hearing for requesting needed accommodations for a court appearance. This information is being included on all new or revised Judicial Council forms that set a hearing or other court appearance, as these two forms do.

Form AT-138/EJ-125 has also been revised to delete a requirement that the description of the property in the box on the second page titled “Instructions re Appearance of a Third Party” must be made “using typewritten capital letters”.

Form SC-134 has been further revised by reorganizing the top of the first page of the form, where space has been made to allow a court to file-stamp the form. In addition, the provisions of item 2 of the Order to Produce Statement of Assets and to Appear for Examination on that form have been reformatted to make them easier for the judgment debtor to understand. A parenthetical sentence has also been added to explain that the statement of assets should have been provided by the judgment debtor within 30 days after notice of entry of judgment.

The instructions on the second page of form SC-134 have also been reorganized, moving the current last paragraph to the top, and renumbering all the paragraphs.

Alternatives Considered

The alternative of not revising the two forms was considered by the committee, but rejected in light of the burden on both parties and the courts resulting from parties’ not understanding that a bench warrant cannot be issued for a failure to appear at a debtor’s examination if the order to appear has not been served by law enforcement, registered process server, or a party expressly authorized by the court to perform the service. Correcting and adding instructions to the forms regarding service should eliminate needless appearances by parties seeking court enforcement of orders on which bench warrants cannot be issued.

The committee also considered further revising the forms to spit each one in two. Form AT-138/EJ-125 and form SC-134 each contain both the application for an order and the order to appear in a single form. The committee considered whether each of the forms should be split into one form for the application and a separate form for the order. It has been a policy to split such forms in recent years, in order to have Judicial Council forms be either entirely incoming to the court, or entirely outgoing, rather than a mixture of the two, particularly to make electronic filing, issuance, and service simpler. Court administrator members of the committee who specifically addressed this issue, however, indicated both that the combined forms are easier for the clerks to deal with at the window, and that there is now software that allows the courts to handle electronically filing, and executing and issuing the forms as they currently exist, without undue burden to the court.

Because this is an ongoing issue that needs to be addressed with Judicial Council forms, the committee would like commenters, particularly courts, to consider whether forms such as the ones in this proposal be split into separate incoming and outgoing forms, or be left as forms that may be both filed into the court and then later issued by the court.

Implementation Requirements, Costs, and Operational Impacts

The revisions proposed to these forms should clarify to the parties that, if they want to be able to seek a bench warrant or other court enforcement for non-appearance, then they must have the forms served by law enforcement or other appropriate individuals. This should result in some cost-saving by eliminating the need for second applications and orders when the first cannot be enforced, and ultimately fewer hearings on orders of examination. Courts will need training to recognize the new forms and, should the forms be issued as part of electronic case management systems, the forms will need to be revised within those systems.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should forms such as the ones in this proposal, that are both incoming to the court and outgoing from the court, be split into two forms? Is it easier for courts to handle the forms physically or electronically if there is one form (e.g., the application) that gets filed, and another one (e.g., the order or notice) that gets issued by the court?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments

1. Proposed revised Judicial Council forms SC-134 and AT-138/EJ-125, at pages 5-8.

FOR COURT USE ONLY

DRAFT
04/06/2016
NOT APPROVED
BY JUDICIAL
COUNCIL

PLAINTIFF/DEMANDANTE (Name, address, and telephone number of each):

Telephone No.:

DEFENDANT/DEMANDADO (Name, address, and telephone number of each):

Telephone No.:

See attached sheet for additional plaintiffs and defendants.

ORDER TO PRODUCE STATEMENT OF ASSETS
AND TO APPEAR FOR EXAMINATION

1. TO JUDGMENT DEBTOR (name):

2. YOU ARE ORDERED

- a. to pay the judgment and file proof of payment...
b. to (1) personally appear in this court on the date and time shown below, and
(2) bring with you a completed Judgment Debtor's Statement of Assets (form SC-133).

At the hearing you will be required to:

- answer questions about your income and assets, and
• explain why you did not complete and mail form SC-133 to judgment creditor in a timely manner. (You should have sent it within 30 days after the Notice of Entry of Judgment (form SC-130) was mailed or handed to you by the clerk.)

Hearing Date
Date: Time:
Dept.: Room:

Name and address of court if different from above:

If you fail to appear and have not paid the judgment, including postjudgment costs and interest, a bench warrant may be issued for your arrest, you may be held in contempt of court, and you may be ordered to pay penalties.
Si usted no se presenta y no ha pagado el monto del fallo judicial, inclusive las costas e intereses posteriores al fallo, la corte puede expedir una orden de detencion contra usted, declararle en desacato y ordenar clue pague multas.

3. This order may be served by a sheriff, marshal, or registered process server.

Date: (SIGNATURE OF JUDGE)

APPLICATION FOR THIS ORDER

(See Instructions on reverse)

- A. Judgment creditor (the person who won the case) (name): applies for an order requiring judgment debtor (the person or business who lost the case and owes money) (name): to (1) pay the judgment or (2) personally appear in this court with a completed Judgment Debtor's Statement of Assets (form SC-133), explain why judgment debtor did not pay the judgment or complete and mail form SC-133 to judgment creditor within 30 days after the Notice of Entry of Judgment was mailed or handed to judgment debtor, and answer questions about judgment debtor's income and assets.
B. I, judgment creditor, state the following:
(1) Judgment debtor has not paid the judgment.
(2) Judgment debtor either did not file an appeal or the appeal has been dismissed or judgment debtor lost the appeal.
(3) Judgment debtor either did not file a motion to vacate or the motion to vacate has been denied.
(4) More than 30 days have passed since the Notice of Entry of Judgment form was mailed or delivered to judgment debtor.
(5) I have not received a completed Judgment Debtor's Statement of Assets form from judgment debtor.
(6) The person to be examined resides or has a place of business in this county or within 150 miles of the place of examination.

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) (DECLARANT)

- The county provides small claims advisor services free of charge -

INSTRUCTIONS FOR APPLICANT

1. This form is intended to be an easy tool to enforce your right to receive a completed *Judgment Debtor's Statement of Assets* (form SC-133). This form is not intended to replace the *Application and Order for Appearance and Examination* (form EJ-125), often called an "Order for Examination." The *Application and Order for Appearance and Examination* (form EJ-125) should still be used to enforce a small claims judgment if you are not seeking at the same time to make the debtor complete a *Judgment Debtor's Statement of Assets* (form SC-133).
2. To set a hearing on an *Application for Order to Produce Statement of Assets and to Appear for Examination*, you must complete this form, present it to the court clerk, and pay the fee for an initial hearing date or a reset hearing date.
3. After you file this form, the clerk will set a hearing date, note the hearing date on the form, and return two copies or an original and one copy of the form to you.
4. **If you want to be able to ask the court to enforce the order on the judgment debtor (the person or business who lost the case)**, you must have a copy of this form and a blank copy of the *Judgment Debtor's Statement of Assets* (form SC-133) personally served on the judgment debtor by a sheriff, marshal, or registered process server at least 10 calendar days before the date of the hearing, and have a proof of service filed with the court. The law provides for a new fee if you reset the hearing.
5. If the judgment is paid, including all postjudgment costs and interest, you must immediately complete the *Acknowledgment of Satisfaction of Judgment* form on the reverse of the *Notice of Entry of Judgment* (form SC-130) and file a copy with the court.
6. You must attend the hearing unless the judgment has been paid.



Request for Accommodations. Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Request for Accommodation*, form MC-410. (Civil Code, § 54.8.)

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| ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (name): _____ | FOR COURT USE ONLY <h1 style="margin: 0;">DRAFT</h1> <h2 style="margin: 0;">04-06-16</h2> <h3 style="margin: 0;">not approved by Judicial Council</h3> |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | |
| Plaintiff: Defendant: | |
| APPLICATION AND ORDER FOR APPEARANCE AND EXAMINATION <input type="checkbox"/> ENFORCEMENT OF JUDGMENT <input type="checkbox"/> ATTACHMENT (Third Person) <input type="checkbox"/> Judgment Debtor <input type="checkbox"/> Third Person | CASE NUMBER: _____ |

ORDER TO APPEAR FOR EXAMINATION

1. TO (name): _____
2. YOU ARE ORDERED TO APPEAR personally before this court, or before a referee appointed by the court, to
 - a. furnish information to aid in enforcement of a money judgment against you.
 - b. answer concerning property of the judgment debtor in your possession or control or concerning a debt you owe the judgment debtor.
 - c. answer concerning property of the defendant in your possession or control or concerning a debt you owe the defendant that is subject to attachment.

| | | | |
|--|-------------|----------------------|------------|
| Date: _____ | Time: _____ | Dept. or Div.: _____ | Rm.: _____ |
| Address of court <input type="checkbox"/> shown above <input type="checkbox"/> is: _____ | | | |

3. This order may be served by a sheriff, marshal, registered process server, or the following specially appointed person (name):

Date: _____

JUDGE OR REFEREE

This order must be served not less than 10 days before the date set for the examination.

IMPORTANT NOTICES ON REVERSE

APPLICATION FOR ORDER TO APPEAR FOR EXAMINATION

4. Judgment creditor Assignee of record Plaintiff who has a right to attach order
 applies for an order requiring (name): _____ to appear and furnish
 information to aid in enforcement of the money judgment or to answer concerning property or debt.
5. The person to be examined is
 - a. the judgment debtor.
 - b. a third person (1) who has possession or control of property belonging to the judgment debtor or the defendant or (2) who owes the judgment debtor or the defendant more than \$250. An affidavit supporting this application under Code of Civil Procedure section 491.110 or 708.120 is attached.
6. The person to be examined resides or has a place of business in this county or within 150 miles of the place of examination.
7. This court is **not** the court in which the money judgment is entered or (attachment only) the court that issued the writ of attachment. An affidavit supporting an application under Code of Civil Procedure section 491.150 or 708.160 is attached.
8. The judgment debtor has been examined within the past 120 days. An affidavit showing good cause for another examination is attached.

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

Date: _____

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|-------------------------------|-----------------------------------|
| _____ (TYPE OR PRINT NAME) | _____ (SIGNATURE OF DECLARANT) |
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(Continued on reverse)

Information for Judgment Creditor Regarding Service

If you want to be able to ask the court to enforce the order on the judgment debtor or any third party, you must have a copy of the order personally served on the judgment debtor by a sheriff, marshal, registered process server, or the person appointed in item 3 of the order at least 10 calendar days before the date of the hearing, and have a proof of service filed with the court.

IMPORTANT NOTICES ABOUT THE ORDER**APPEARANCE OF JUDGMENT DEBTOR (ENFORCEMENT OF JUDGMENT)**

NOTICE TO JUDGMENT DEBTOR If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the judgment creditor in this proceeding.

APPEARANCE OF A THIRD PERSON (ENFORCEMENT OF JUDGMENT)

(1) NOTICE TO PERSON SERVED If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the judgment creditor in this proceeding.

(2) NOTICE TO JUDGMENT DEBTOR The person in whose favor the judgment was entered in this action claims that the person to be examined pursuant to this order has possession or control of property which is yours or owes you a debt. This property or debt is as follows (*Describe the property or debt*) :

If you claim that all or any portion of this property or debt is exempt from enforcement of the money judgment, you must file your exemption claim in writing with the court and have a copy personally served on the judgment creditor not later than three days before the date set for the examination. You must appear at the time and place set for the examination to establish your claim of exemption or your exemption may be waived.

APPEARANCE OF A THIRD PERSON (ATTACHMENT)

NOTICE TO PERSON SERVED If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the plaintiff in this proceeding.

APPEARANCE OF A CORPORATION, PARTNERSHIP, ASSOCIATION, TRUST, OR OTHER ORGANIZATION

It is your duty to designate one or more of the following to appear and be examined: officers, directors, managing agents, or other persons who are familiar with your property and debts.



Request for Accommodations. Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Request for Accommodation*, form MC-410. (Civil Code, § 54.8.)