

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR16-10

Title	Action Requested
Civil Practice and Procedures: Writ of Execution	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise form EJ-130	January 1, 2017
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Raymond A. Cadei, Chair	Anne M. Ronan, 415-865-8933, anne.ronan@jud.ca.gov

Executive Summary and Origin

The Civil and Small Claims Advisory Committee is proposing several minor revisions to the *Writ of Execution*, form EJ-130, to facilitate its use. The changes are based on requests from court administrators, levying officers, private practitioners, and legal aid offices.

The Proposal

Changes are being proposed to three different sections of the *Writ of Execution*, as described below.

Identifier for limited v. unlimited case

Most writs of execution are prepared by parties on the Judicial Council's *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. Form EJ-130 was revised a few years ago, at the recommendation of this advisory committee, to include check boxes at the top of form to implement a bill that required that a writ of execution, possession, or sale specify, among other things, whether the underlying case is a limited or unlimited civil action.¹ Code Civ. Proc. § 699.520(k). In an effort to make the form easier for self-represented litigants to use, and in response to requests from some courts, the check boxes currently indicate the type of case as limited, unlimited, small claims, or other. Although at the time that revision was circulated for public comment, no objections were raised to having the multiple boxes, some sheriff's offices refuse to accept a form that has the "small

¹ The intent of this required 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.

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 These proposals are circulated for comment purposes only.

claims” box checked even though, by law, a small claims case is a limited civil action. As a result, it has been suggested by some court clerks and by some collection agencies that the check boxes be limited to only “limited cases” and “unlimited cases.” That revision has been made on the proposed form, with an indicator that limited cases include small claims cases.

Possession of real property

The items on the form relating to a writ of possession of real property² assumes that the underlying action is one for unlawful detainer. A judgment creditor who has obtained judgment for possession in another kind of action (such as quiet title or ejectment) cannot fill out the current form completely, because this item requires that all parties complete the item addressing prejudgment claims of right of possession, even though such claims are pertinent only in unlawful detainer actions. See §715.010(5)–(7). The form has been modified to reflect that the information need only be provided in unlawful detainer actions. (See proposed item 25a.)

Calculations of amount to enforce (items 11-20)

Several attorneys, court clerks, and public agencies including the Regional Human Rights/Fair Housing Commission in Sacramento have complained over the past several years that the items on the current form used to calculate the total amount the levying officer is to collect are non-intuitive and confusing, particularly for determining how partial payments are credited toward the amount owed, and how interest is to be calculated or credited.³ The revised form attempts to improve this section. No substantive changes have been made to the section—only revisions to the way it has been organized.

First, the item for interest accrued after the original judgment has been moved up on the list of items (see item 14 on the proposed form), so that it is now added to the amounts due (with a new subtotal line, at item 15⁴) before any credits are applied.⁵ This move is an attempt to make the form more intuitive, with all amounts that increase the amount due listed above any partial payments that have been made toward those amounts.

Second, the item for stating the amount of any partial payments has been split into two subparts: one for the payment amount to be credited toward accrued interest and one for the amount to be credited toward the judgment principal. See item 16 on the proposed form. The goal is to make it easier for parties to understand that the interest may be applied to one before the other. There is currently no place to show how that application has been made.

² This is item 24a on the current form, renumbered as item 25a on the proposed form.

³ The amount of interest due is actually calculated separately and stated on a declaration under penalty of perjury on *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* (form MC-012), but is added to the amount due on this form.

⁴ The remaining items on the form have all been renumbered in light of the addition of this item.

⁵ Specific comments are sought on whether this newly renumbered item 14 should be further revised, to replace the reference to the interest being “per filed affidavit” to a reference to the required form *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued interest* (form MC-012).

Finally, the item and instructions for calculating the daily interest have been revised to more correctly reflect the law. Currently, the form calls for the interest to be calculated on the amount of the judgment plus costs, minus *all* credits. See item 19 on current form. This means that the daily interest rate is being calculated on an amount that has been reduced by the full amount of partial payments received, even those amounts that should be credited only toward accrued interest rather than towards the judgment principal. In the revised form, with the credit for partial payments identified as being toward interest or toward principal, it is only the amount credited toward the judgment principal (item 16a) that is to be subtracted from the subtotal of total judgment plus costs when calculating the daily interest rate.⁶

Alternatives Considered

No action

The committee considered not recommending any revisions to this form. However, in light of the need to revise the items relating to the writ of possession of real property to conform to law, and the problems being caused by having a small claims box on the current form, the committee concluded that it was important to revise the form. While making those revisions, the committee decided to tackle the section for calculating the amount to be collected, in light of the confusion that section seems to engender.

Other potential revisions

The committee considered, but rejected, some other suggestions it had received regarding this form. One organization proposed that the item related to the writ of possession of real property be further revised, to indicate whether the writ is being sought in a case brought on a foreclosed property. Under Code of Civil Procedure section 1161a, in unlawful detainer cases on foreclosed property, an occupant not named as a party in the case may file a claim of right to possession at any time before judgment or even after judgment until the writ is executed. It was suggested that such an indicator would make it easier for a sheriff to know whether the tenant in possession could raise a claim for a right of possession up to time of enforcement of the writ.

The committee decided to not make this revision, for two reasons. First, the committee concluded that, should an individual give a levying officer a claim for right of possession, the sheriff, if not already aware that the property was a foreclosure, can contact the court to determine whether the case has been brought under Code of Civil Procedure 1161a (an action under that code section must be identified as such on the first page of the complaint). Second, the statute allowing for such a late claim for possession, is currently set to sunset in January 2, 2019, only two years after any revisions would go into effect. In light of the fact that adding another item to this already dense form would add another page to the form, making it into a three-page form), the committee concluded that the change would be more burdensome than helpful.

⁶ The language that the daily interest should not be calculated on any amounts due to the court, rather than the judgment creditor, remains, and has been clarified.

Implementation Requirements, Costs, and Operational Impacts

These forms are completed by the parties, but must be reviewed and issued by court clerks. Therefore self-help centers and clerks will need training to recognize and understand the revised items. The hope is that, once initial training is completed, the revised forms will be easier for parties to complete correctly and for court clerks to review, ultimately benefitting the courts. Should the forms be issued as part of electronic case management systems, the electronic 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?
- Will the reorganization of items 11 through 21 on the form make the form easier for parties to complete and for courts to review?
- Should the form be further revised so that one or more of those items include a direct reference to the *Memorandum of Costs After Judgment, Acknowledgement of Credit, and Declaration of Accrued interest* (form MC-012) rather than the more generic references to a memo (item 12) or an affidavit (item 14)?

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 form EJ-130, at pages 5-6.

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): <input type="checkbox"/> ATTORNEY FOR <input type="checkbox"/> JUDGMENT CREDITOR <input type="checkbox"/> ASSIGNEE OF RECORD	FOR COURT USE ONLY <h1 style="margin:0;">DRAFT</h1> <h2 style="margin:0;">04/14/16</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:	CASE NUMBER:
Plaintiff: Defendant:	
<input type="checkbox"/> EXECUTION (Money Judgment) WRIT OF <input type="checkbox"/> POSSESSION OF <input type="checkbox"/> Personal Property <input type="checkbox"/> SALE <input type="checkbox"/> Real Property	<input type="checkbox"/> Limited Civil Case (including Small Claims) <input type="checkbox"/> Unlimited Civil Case

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):

[Empty box for judgment debtor name and address]

[Empty box for judgment debtor name and address]

Additional judgment debtors on next page

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.

- 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. Interest after judgment (per filed affidavit CCP 685.050) (not on GC 6103.5 fees) \$ _____
- 15. Subtotal (add 13 and 14) \$ _____
- 16. a. Credits toward judgment principal \$ _____
 b. Credits toward interest on judgment \$ _____
- 17. Subtotal (subtract 16 a and b from 15) \$ _____
- 18. Fee for issuance of writ \$ _____
- 19. Total (add 17 and 18) \$ _____
- 20. Levying officer:
 - a. Add daily interest from date of writ (at the legal rate on subtotal of 13 minus 16a and minus any amounts in 20b) \$ _____
 - Subtotal (13 minus 16a) \$ _____
 - b. Pay directly to court costs included in 11 and 18 under GC 6103.5, 68637; CCP 699.520(i) \$ _____
- 21. The amounts called for in items 11–20 are different for each debtor. These amounts are stated for each debtor on Attachment 21.

[SEAL]

Issued on (date): _____ Clerk, by _____, Deputy

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

Plaintiff: Defendant:	CASE NUMBER:
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—Items continued from page 1—

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

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

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

<p>a. on (date):</p> <p>b. name, type of legal entity stated in judgment if not a natural person, and last known address of joint debtor:</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; border: 1px solid black; height: 20px;"></td> <td style="width:50%; border: 1px solid black; height: 20px;"></td> </tr> </table>			<p>a. on (date):</p> <p>b. name, type of legal entity stated in judgment if not a natural person, and last known address of joint debtor:</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; border: 1px solid black; height: 20px;"></td> <td style="width:50%; border: 1px solid black; height: 20px;"></td> </tr> </table>		

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

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

a. Possession of real property: The complaint was filed on (date): _____ and the action was was not for unlawful detainer (if for unlawful detainer, 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 25e) 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).