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References

CCP – Code of Civil Procedure

FAM – Family Code

GC – Government Code

PROB – Probate Code

PC – Penal Code

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• 6-01/010.00 Affidavit

CCP 2003. An affidavit is a written declaration under oath, made without notice to the adverse party.

CCP 2009. An affidavit may be used to verify a pleading or a paper in a special proceeding, to prove the service of a summons, notice, or other paper in an action or special proceeding, to obtain a provisional remedy, the examination of a witness, or a stay of proceedings, and in uncontested proceedings to establish a record of birth, or upon a motion, and in any other case expressly permitted by statute.

• 6-01/020.00 Appear in Action

CCP 1014. A defendant appears in an action when the defendant answers, demurs, files a notice of motion to strike, files a notice of motion to transfer pursuant to Section 396b, moves for reclassification pursuant to Section 403.040, gives the plaintiff written notice of appearance, or

when an attorney gives notice of appearance for the defendant. After appearance, a defendant or the defendant's attorney is entitled to notice of all subsequent proceedings of which notice is required to be given. Where a defendant has not appeared, service of notice or papers need not be made upon the defendant.

• 6-01/030.00 Bond of Public Entity

CCP 995.220. Bond in action or proceeding; public entities and officers not required to give

Notwithstanding any other statute, if a statute provides for a bond in an action or proceeding, including but not limited to a bond for issuance of a restraining order or injunction, appointment of a receiver, or stay of enforcement of a judgment on appeal, the following public entities and officers are not required to give the bond and shall have the same rights, remedies, and benefits as if the bond were given:

(a) The State of California or the people of the state, a state agency, department, division, commission, board, or other entity of the state, or a state officer in an official capacity or on behalf of the state.

(b) A county, city, or district, or public authority, public agency, or other political subdivision in the state, or an officer of the local public entity in an official capacity or on behalf of the local public entity.

(c) The United States or an instrumentality or agency of the United States, or a federal officer in an official capacity or on behalf of the United States or instrumentality or agency.

• 6-01/040.00 Child Support

FAM 17304. County departments of child support services; duties; criminal enforcement; state plan for local agency functions; cooperative agreements; consolidation; oversight responsibility; district attorney responsibility, assets, and staff; administrators (cited in part)

To address the concerns stated by the Legislature in Section 17303, each county shall establish a new county department of child support services. Each department is also referred to in this division as the local child support agency. The local child support agency shall be separate and independent from any other county department and shall be responsible for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. The local child support agency shall refer all cases requiring criminal enforcement services to the district attorney and the district attorney shall prosecute those cases, as appropriate. If a district attorney fails to comply with this section, the director shall notify the Attorney General and the Attorney General shall take appropriate action to secure compliance.

• 6-01/050.00 Collection of Money

GC 24353. Payment of moneys collected into county treasury; reimbursement for financial penalty (cited in part).

Each officer of a county or judicial district authorized to collect money shall pay into the county treasury all money collected by him or her, or under his or her control, that is payable into the treasury in a timely manner, and shall remit fee, fine, and forfeiture data within 35 days after the end of the month in which they are collected to the county auditor and treasurer in the form they require. No officer who collects money as described in this section shall be required to accept payment in coin.

• 6-01/060.00 Forms

The Judicial Council of California provides various forms which are either “adopted” or “approved.” An “adopted” form is mandatory. An “approved” form permits the usage of another form that substantially resembles the approved form.

The Judicial Council may adopt forms in either of two ways. Under Government Code section 68511, it may “prescribe” certain forms. Use of those forms is mandatory (rule1.31).

The council may also “approve” forms. Use of an approved form is not mandatory, but the form must be accepted by all courts in appropriate cases (rule 1.35).

Forms thus are “adopted” for mandatory use and “approved” for optional use. The lower left corner of the first page of each form indicates whether the Judicial Council adopted or approved the form. Local rules of many courts make the use of some optional council forms mandatory in those courts.

A form adopted or approved by the council is not subject to the requirements of rule 2.302, which specify the format of papers filed in superior and municipal courts, respectively.

A party may file a “duplicate” of a council form produced entirely by computer (rule 2.150).

• 6-01/070.00 Judges and Magistrates

PC 807. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

PC 808. The following persons are magistrates:

1. The judges of the Supreme Court.

2. The judges of the courts of appeal.

3. The judges of the superior courts.

• 6-01/080.00 Judgment

CCP 577. A judgment is the final determination of the rights of the parties in an action or proceeding.

CCP 680.230. “Judgment” means a judgment, order, or decree entered in a court of this state.

PC 1214. Judgment for fine; enforcement; inapplicability of provisions on period for enforcement and renewal of judgments to judgments from crime victim restitution program.

• 6-01/090.00 Jurisdiction

CCP 1141.11. At-issue civil actions in superior courts and municipal court districts; amount in controversy; submission to arbitration; use of case questionnaires.

• 6-01/100.00 Legal Tender

31 USC 5103. United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts.

• 6-01/110.00 Levying Officer

CCP 481.140. “Levying officer” means the sheriff or marshal who is directed to execute a writ or order issued under this title.

CCP 680.260. “Levying officer” means the sheriff or marshal.

• 6-01/120.00 Service by Mail or Fax

CCP 1013. (a) In case of service by mail, the notice or other paper shall be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by mail; otherwise at that party’s place of residence.

• 6-01/130.00 Writ of Mandate

CCP 1084. The Writ of Mandamus may be denominated a writ of mandate.

CCP 1085. (a) A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person.

(b) The appellate division of the superior court may grant a writ of mandate directed to the superior court in a limited civil case or in a misdemeanor or infraction case. Where the appellate division grants a writ of mandate directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

• 6-01/140.00 Order and Motion

CCP 1003. Every direction of a court or judge, made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

• 6-01/150.00 Certification Under Penalty of Perjury

CCP 2015.5. Certification or declaration under penalty of perjury

Whenever, under any law of this state or under any rule, regulation, order or requirement made pursuant to the law of this state, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may with like force and effect be supported, evidenced, established or proved by the unsworn statement, declaration, verification, or certificate, in writing of such person which recites that it is certified or declared by him or her to be true under penalty of perjury, is subscribed by him or her, and (1), if executed within this state, states the date and place of execution, or (2), if executed at any place, within or without this state, states the date of execution and that it is so certified or declared under the laws of the State of California. The certification or declaration may be in substantially the following form:

(a) If executed within this state:

“I certify (or declare) under penalty of perjury that the foregoing is true and correct”:

_____ _____

(Date and Place) (Signature) (b) If executed at any place, within or without this state:

"I certify (or declare) under penalty of perjury under the laws of the State of California that the

Foregoing is true and correct":

....

(Date) (Signature)

• 6-01/160.00 Pleading

CCP 420. The pleadings are the formal allegations by the parties of their respective claims and defenses, for the judgment of the Court.

CCP 422.30. Caption Contents

(a) Every pleading shall contain a caption setting forth:

(1) The name of the court and county, and, in municipal courts, the name of the judicial district, in which the action is brought.

(2) The title of the action.

(b) In a limited civil case in a county in which there is no municipal court, the caption shall state that the case is a limited civil case, and the clerk shall classify the case accordingly.

• • 6-01/165.00 Power of Attorney

A Power of Attorney (POA) is a legal document giving one person to act for another person. The authority and requirements for a Power of Attorney is found in Probate Code, Division 4.5. (added October 22, 2020) The holder of a power of attorney can act as the agent for the creditor to enforce a judgment and sign instructions to the Sheriff. (PROB 4459) The approved document filed in court granting the Power of Attorney must be included with the written instructions. A statement indicating an individual has Power of Attorney is not sufficient.

• 6-01/170.00 Process

GC 22. “Process” includes a writ or summons issued in the course of judicial proceedings of either a civil or criminal nature.

GC 26660. As used in this title:

(a) “Process” includes all writs, warrants, summons, and orders of courts of justice, or judicial officers. (b) “Notice” includes all papers and orders required to be served in any proceedings before any court,

board, or officer, or when required by law to be served independently of such proceeding.

• 6-01/180.00 Writ of Prohibition

CCP 1102. The writ of prohibition arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person.

CCP 1103. (a) A writ of prohibition may be issued by any court, except municipal courts, to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon the verified petition of the person beneficially interested.

(b) The appellate division of the superior court may grant a writ of prohibition directed to the superior court in a limited civil case or in a misdemeanor or infraction case. Where the appellate division grants a writ of review directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

• 6-01/190.00 Words and Phrases

CCP 17 (a) Words used in this code in the present tense include the future as well as the present. Words used in the masculine gender include the feminine and neuter. The singular number includes the plural and the plural number includes the singular.

(b) As used in this code, the following words have the following meanings, unless otherwise apparent from the context:

(1) “Affinity” signifies the connection existing in consequence of marriage, between each of the married persons and the blood relatives of the other when applied to the marriage relation.

(2) “County” includes “city and county.”

(3) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(4) “Month” means a calendar month, unless otherwise expressed.

(5) “Oath” includes an affirmation or declaration.

(A) “Depose” includes any written statement made under oath or affirmation.

(B) “Testify” includes any mode of oral statement made under oath or affirmation.

(6) “Person” includes a corporation as well as a natural person.

(7) “Process” signifies a writ or summons issued in the course of a judicial proceeding.

(8) “Property” includes both personal and real property.

(A) “Personal property” includes money, goods, chattels, things in action, and evidences of debt.

(B) “Real property” is coextensive with lands, tenements, and hereditaments.

(9) “Section” refers to a section of this code, unless some other code or statute is expressly mentioned.

(10) “Sheriff” includes marshal.

(11) “Signature” or “subscription” includes a mark of a person’s name, if the person cannot write, with his or her name being written near it by a person who writes his or her own name as a witness. In order that a mark may be acknowledged or serve as the signature to any sworn statement, it shall be witnessed by two persons who shall subscribe their own names as witnesses thereto.

(12) “Spouse” includes “registered domestic partner,” as required by Section 297.5 of the Family Code.

(13) “State” includes the District of Columbia and the territories when applied to the different parts of the United States, and the words “United States” may include the district and territories.

(14) “Will” includes codicil.

(15) “Writ” means an order or precept in writing, issued in the name of the people, or of a court or judicial officer.

(16) “Writing” includes printing and typewriting.

• 6-07/510.00 Corporation

A summons against a corporation may be served by delivering a copy of the summons and complaint, with the required notice of capacity, to one of the following officers or agents (CCP 416.10):

1. Person designated as agent for service of process or a person authorized by the corporation to receive service of process (as listed with the Secretary of State) (CCP 416.10(a))
2. President, Chief Executive Officer, or other head of the corporation (416.10 (b))
3. Vice-President (416.10 (b))
4. Secretary or Assistant Secretary (416.10 (b))
5. Treasurer or Assistant Treasurer (416.10 (b))
6. Controller or Chief Financial Officer (CCP 416.10(b))
7. General Manager (NOT Office Manager) (416.10 (b))
8. Person authorized by the Corporation to receive civil process (CCP 416.10(b))
9. Cashier or Assistant Cashier of a bank (CCP 416.10 (c))

If a proper officer or agent cannot be found within the state after reasonable diligence, or if no agent has been designated, the court may make an order that the service be made by delivering by hand to the Secretary of State, or an assistant or deputy, a copy of the process and a copy of the court order. The order may be from a court of another state or of any federal court if the proceeding has been filed in that court. (CORP 1702) Such service must be made personally and not by mail. (Hunstock v. Estate Development Co., 22 CA 2d 205)

Before a summons against a corporation is assigned out for service, the “Notice to the Person Served” at the bottom of the summons shall be completed. If the summons is served by the substitution method, both copies of the summons shall be completed in this manner.