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6-03/261.00 Treasurer/Tax Collector Notices

6-03/270.00 Sheriff as a Party

6-03/280.00 Superior Court

6-03/290.00 Trust Monies

References

CCP – Code of Civil Procedure

GC – Government Code

PROB – Probate Code

PC – Penal Code

Updated February 11, 2020

• 6-03/010.00 Adjourn Court in Absence of Judge

CCP 139. If no judge attends on the day appointed for the holding or sitting of a court, or on the day to which it may have been adjourned, within one hour after the time appointed, the sheriff, marshal, or clerk

shall adjourn the same until the next day, at 10 o'clock a.m., and if no judge attend on that day, before noon, the sheriff, marshal, or clerk shall adjourn the same until the following day at the same hour; and so on, from day to day unless the judge, by written order, directs it to be adjourned to someday certain, fixed in said order, in which case it shall be so adjourned.

• 6-03/020.00 Arrests

GC 26601. The sheriff shall arrest and take before the nearest magistrate for examination all persons who attempt to commit or who have committed a public offense.

• 6-03/030.00 Certificate of Service

GC 26661. When process or notices are returnable to another county the sheriff may enclose the process or notice in an envelope, addressed to the officer from whom it emanated, and deposit it in the post office prepaying postage.

• • 6-030/030.10 Return as prima facie evidence

GC 26662. The return of the sheriff upon process or notices is prima facie evidence of the facts stated in the return. A Sheriff's employee (deputy, civilian process server, clerk) may sign a certificate of service where the service was actually made by another employee. (Attorney General Opinion 83-603)

• • 6-030/030.20 Certificate of sheriff, marshal, or court clerk; force and effect

CCP 2015.3. The certificate of a sheriff, marshal, or the clerk of the superior court, has the same force and effect as his or her affidavit.

• • 6-030/030.30 Certification of service of process and notices

GC 26609. The sheriff shall certify upon process or notices the manner and time of service, or if he fails to make service, the reason of his failure, and return the process or notices without delay.

• 6-03/040.00 Court Crier

GC 26611. The sheriff in attendance upon court shall act as the crier thereof. He shall call the parties and witnesses and all other persons bound to appear at the court and make proclamation of the opening and adjournment of the court and of any other matter under its direction.

• 6-03/050.00 Decedentâ€™s Property

PROB 19303. If trust property of the deceased settlor is subject to an execution lien at the time of the settlor's death, enforcement against the property may proceed under the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure) to satisfy the judgment. The levying officer, as defined in Section 680.260 of the Code of Civil Procedure, shall account to the trustee for any surplus. If the judgment is not satisfied, the balance of the judgment remaining unsatisfied is payable in the course of administration.

• 6-03/060.00 Deed of Sheriff

CCP 262.4. If the sheriff sells real estate, under and by virtue of an execution or order of court, the sheriff, or his or her successors in office, shall execute and deliver to the purchaser or purchasers all deeds and conveyances required by law and necessary for the purpose, and those deeds and conveyances shall be valid in law as if they had been executed by the sheriff who made the sale. The deeds and conveyances may be recorded electronically pursuant to Chapter 2 (commencing with Section 263) if they comply with the Electronic Recording Delivery Act of 2004 (Article 6 (commencing with Section 27390) of Chapter 6 of Part 3 of Division 2 of Title 3 of the Government Code).

• 6-03/070.00 Deposit of Property per Court Order

CCP 574. Whenever, in the exercise of its authority, a court has ordered the deposit or delivery of money, or other thing, and the order is disobeyed, the court, beside punishing the disobedience, may make an order requiring the sheriff or marshal to take the money, or thing, and deposit or deliver it in conformity with the direction of the court.

• 6-03/080.00 Deputy

GC 7. Whenever a power is granted to, or a duty is imposed upon, a public officer, the power may be exercised or the duty may be performed by a deputy of the officer or by a person authorized, pursuant to law, by the officer, unless this code expressly provides otherwise.

• • 6-03/080.10 Deputy included in principalâ€™s name

GC 24100. Whenever the official name of any principal officer is used in any law conferring power or imposing duties or liabilities, it includes deputies.

• 6-03/090.00 Emergency Services Director

GC 26620. The office of county director of emergency services shall be held ex officio by the county sheriff.

• 6-03/100.00 Endorsement of Process

GC 26607. The sheriff shall endorse upon all process and notices the year, month, day, hour, and minute of reception and on payment of fees issue to the person delivering it a certificate showing the names of the parties, title of paper, and time when received.

• 6-03/110.00 Equipment Fund

GC 26731. (a) Eighteen dollars ($18) of any fee collected by the sheriff's civil division or marshal under Sections 26721, 26722, 26725, 26726, 26728, 26730, 26733.5, 26734, 26736, 26738, 26742, 26743, 26744, and 26750 shall be deposited in a special fund in the county treasury. A separate accounting of funds deposited shall be maintained for each depositor, and funds deposited shall be for the exclusive use of the sheriff's civil division or marshal.

(b) Ninety-five percent of the moneys in the special fund shall be expended to supplement the costs of the depositor for the implementation, maintenance, and purchase of auxiliary equipment and furnishings for automated systems or other nonautomated operational equipment and furnishings deemed necessary by the sheriff's civil division or marshal. Five percent of the moneys in the special fund shall be used to supplement the expenses of the sheriff's civil division or marshal in administering the funds.

• 6-03/120.00 Exhibit Process, Duty to

CCP 262.2. Except as otherwise provided, the officer executing process shall, so long as he or she retains the original process, show it to any interested person, upon request. The officer shall show the process, with all papers, or electronic copies of all papers, attached, at his or her office whenever the office is open for business.

• 6-03/130.00 Federal Process

Under California law the Sheriff has neither the duty nor the authority to serve federal process. (County Counsel Opinion, September 21, 1982)

• 6-03/140.00 Firearms, Sale of

The sheriff, as a levying officer, is exempt from the provisions of PC 26500 relating to the sale of firearms.

(Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2. PC 26505, CCP 680.010. This title shall be known and may be cited as the Enforcement of Judgments Law.

• • 6-03/140.10 Restrictions

Absent statutory provisions, concealable firearms, should be limited to purchasers who are licensed to sell such items, and such fact should be stated in the notice of sale. Please refer to 6-27/102.00 (to be amended when chapter revision completed).

• 6-03/150.00 Jails

GC 26605. Notwithstanding any other provision of law, except in counties in which the sheriff, as of July 1, 1993, is not in charge of and the sole and exclusive authority to keep the county jail and the prisoners in it, the sheriff shall take charge of and be the sole and exclusive authority to keep the county jail and the prisoners in it including persons confined to the county jail pursuant to subdivision (b) of Section 3454 of the Penal Code for a violation of the terms and conditions of their postrelease community supervision, except for work furlough facilities where by county ordinance the work furlough administrator is someone other than the sheriff.

• 6-03/160.00 Judicial Council, Render Assistance to

GC 68725. State and local public bodies and departments, officers and employees thereof, and officials and attaches of the courts of this State shall co-operate with and give reasonable assistance and information to the commission and any authorized representative thereof, in connection with any investigations or proceedings within the jurisdiction of the commission.

GC 68726. It shall be the duty of the sheriffs and marshals in the several counties, upon request of the commission or its authorized representative, to serve process and execute all lawful orders of the commission.

• 6-03/170.00 Jurors, Summoning

CCP 211. When a court has no prospective jurors remaining available for voir dire from panels furnished by, or available from, the jury commissioner, and finds that not proceeding with voir dire will place a party's right to a trial by jury in jeopardy, the court may direct the sheriff or marshal to summon, serve, and immediately attach the person of a sufficient number of citizens having the qualifications of jurors, to complete the panel.

• 6-03/180.00 Military Affidavit

GC 26608.1. The sheriff, when serving any process or notice, shall, if the instructions to the sheriff include a request for a certificate as prescribed by the Soldiers and Sailors Relief Act of 1940 as amended (50 United States Code Appendix, Section 520) [replaced with THE SERVICEMEMBERS CIVIL RELIEF ACT (SCRA) in 2003]make inquiry of the person served to attempt to ascertain the information required to execute a certificate as prescribed by said act. He shall then execute and deliver to the party requesting service, a certificate as provided by said act or a certificate setting forth the facts as ascertained by him.

• 6-03/190.00 Peace Officer

PC 830.1. (a) Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county, any chief of police of a city or chief, director, or chief executive officer of a consolidated municipal public safety agency that performs police functions, any police officer, employed in that capacity and appointed by the chief of police or chief, director, or chief executive of a public safety agency, of a city, any chief of police, or police officer of a district, including police officers of the San Diego Unified Port District Harbor Police, authorized by statute to maintain a police department, any marshal or deputy marshal of a superior court or county, any port warden or port police officer of the Harbor Department of the City of Los Angeles, or any inspector or investigator employed in that capacity in the office of a district attorney, is a peace officer. The authority of these peace officers extends to any place in the state, as follows:

(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision that employs the peace officer or in which the peace officer serves.

(2) Where the peace officer has the prior consent of the chief of police or chief, director, or chief executive officer of a consolidated municipal public safety agency, or person authorized by him or her to give consent, if the place is within a city, or of the sheriff, or person authorized by him or her to give consent, if the place is within a county.

(3) As to any public offense committed or which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense.

(b) The Attorney General and special agents and investigators of the Department of Justice are peace officers, and those assistant chiefs, deputy chiefs, chiefs, deputy directors, and division directors designated as peace officers by the Attorney General are peace officers. The authority of these peace officers extends to any place in the state where a public offense has been committed or where there is probable cause to believe one has been committed.

(c) Any deputy sheriff of the County of Los Angeles, and any deputy sheriff of the Counties of Butte, Calaveras, Colusa, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Mariposa, Mendocino, Plumas, Riverside, San Benito, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in the state only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to his or her custodial assignments, or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency.

• 6-03/200.00 Perform Service

GC 6110. Upon payment of the fees required by law, the officer shall perform the services required. For every failure or refusal to do so, the officer is liable upon his official bond.

• 6-03/210.00 Posse Comitatus

GC 26604. The sheriff shall command the aid of as many inhabitants of the sheriff's county as he or she thinks necessary in the execution of his or her duties.

PC 723. When a sheriff or other public officer authorized to execute process finds, or has reason to apprehend, that resistance will be made to the execution of the process, the officer may command as many able-bodied inhabitants of the officer's county as he or she may think proper to assist in overcoming the resistance and, if necessary, in seizing, arresting, and confining the persons resisting, and their aiders and abettors.

PC 724. The officer must certify to the Court from which the process issued the names of the persons resisting, and their aiders and abettors, to the end that they may be proceeded against for their contempt of Court.

PC 839. Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein.

**Special Note – August 30, 2019, Governor Gavin Newsom signed Senate Bill (SB) 192 into law repealing PC 150 thereby abolishing the crime of willful or negligent failure to join a posse.

• 6-03/220.00 Process Regular on Its Face

CCP 262.1. A sheriff or other ministerial officer is justified in the execution of, and shall execute, all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.

• 6-03/230.00 Qualifications for Deputy Sheriff

GC 24103. Repealed effective January 1, 2007.

• 6-03/240.00 Qualifications for Sheriff

GC 24004.3. (a) No person is eligible to become a candidate for the office of sheriff in any county unless, at the time of the final filing date for election, he or she meets one of the following criteria:

(1) An active or inactive advanced certificate issued by the Commission on Peace Officer Standards and Training.

(2) One year of full-time, salaried law enforcement experience within the provisions of Section 830.1 or 830.2 of the Penal Code at least a portion of which shall have been accomplished within five years prior to the date of filing, and possesses a master’s degree from an accredited college or university.

(3) Two years of full-time, salaried law enforcement experience within the provisions of Section 830.1 or 830.2 of the Penal Code at least a portion of which shall have been accomplished within five years prior to the date of filing, and possesses a bachelor’s degree from an accredited college or university.

(4) Three years of full-time, salaried law enforcement experience within the provisions of Section 830.1 or 830.2 of the Penal Code at least a portion of which shall have been accomplished within five years prior to the date of filing, and possesses an associate in arts or associate in science degree, or the equivalent, from an accredited college.

(5) Four years of full-time, salaried law enforcement experience within the provisions of Section 830.1 or 830.2 of the Penal Code at least a portion of which shall have been accomplished within five years prior to the date of filing, and possesses a high school diploma or the equivalent.

(b) All persons holding the office of sheriff on January 1, 1989 shall be deemed to have met all qualifications required for candidates seeking election or appointment to the office of sheriff.

• 6-03/250.00 Returns (See Certificate of Service)

A statement in a return that the officer had levied on property is not evidence proving that the various steps required to effectuate a valid levy had been taken. (Kee v. Becker, 54 CA 2d 466) An officer's opinion as to the legal effect of the officer's acts, whether correct or erroneous, does not form any part of the return. (Gilbank v. Benton, 9 CA 2d 517) Since the officer has a duty to state in the return what acts were performed in serving the writ, in order to enable the court to decide on the sufficiency to constitute a valid service, it must be assumed that the officer's return stated all that was done; and as the acts stated were insufficient to constitute a valid service, there was no lien created by the attachments. (Sharp v. Baird, 43 CA 577)

When the necessary acts prescribed by statute have actually been performed by the officer, the court may allow the filing of an amended officer's return to recite the truth. (Alpha Stores, Ltd. v. You Bet Mining Company, 18 CA 2d 249)

A deputy under a public officer and the officer or person holding the office are, in contemplation of law and in an official sense, one and the same person. The deputy acts for and in the place of the principal, and the deputy's acts are, therefore, not the deputy's, but those of the holder or incumbent of the office. (Sarter v. Siskiyou County, 42 CA 530) The law recognizes deputies only through their principals, and their acts must

be done in the name of their principals. (People v. Le Doux, 155 CA 535) A return of a deputy is a nullity unless it is done in the name of and by the authority of the principal officer. (Joyce v. Joyce, 5 CA 449) The duty of making returns is an official duty; consequently a deputy having no personal knowledge of the facts is qualified to make a return. (Colver v. W. B. Scarborough Co., 73 CA 441

• 6-03/260.00 Service of Process

GC 26608. The sheriff shall serve all process and notices in the manner prescribed by law.

GC 26665. All writs, notices, or other process issued by superior courts in civil actions or proceedings may be served by any duly qualified and acting marshal or sheriff of any county in the state, subject to the Code of Civil Procedure.

The Sheriff shall attempt service of process without delay. "Without delay" does not mean the instant it is received. Rather, it is a matter of reasonableness in his actions to serve process "without delay". What

constitutes this varies with the circumstances and the process. Civil process may legally be served at any time of the day or night. However, it has been held that an officer serving civil process at midnight by pounding on the door was liable to an action for damages for extreme emotional distress (but not for abuse of process). (Golden v Dungan, 20 CA 3 295) The Los Angeles County Sheriff may serve process between 5:00 a.m. and 10:00 p.m.

• • 6-03/260.10 Due Diligence

At least three attempts at service shall be made at times when the party to be served could reasonably have been expected to be present at the location for service. If the service is to be effected at a home address, unless it is determined that the party would not be present at such time, at least one of the attempts at service shall be during evening hours and/or on a weekend. For this purpose, evening hours begins at 1700 hours.

A “Not Found” return should be processed when the Sheriff has been unable to effect service for any of the following reasons:

- Defendant does not live or work at the address specified in the instructions and cannot be found in the service area in which the address is situated.
- There is no such address in the serving area.
- Defendant lives at the address but is presently confined for an indefinite period in a hospital located outside the service area specified.
- Defendant works for the firm indicated at the address specified but only occasionally reports there in-person.
- Defendant works at the address but cannot be served because of company policy. (To be used where the type of process does not allow for substitute service.)

A “No Service” return should be processed when the Sheriff has been unable to effect at least three attempts at service of the process in sufficient time before the hearing. When disposition is no service, refund the fee deposit for each defendant so designated.

• • 6-03/260.20 Short Dated Process

Process is short-dated if received seven days or less before the last day to serve. Short-dated process shall be rejected for service if it is determined that at least one attempt to serve cannot be made. If accepted for service, short-dated process shall be marked “Not Found” and a $30 fee charged only if at least one attempt to serve is made. If at least one attempt to serve is not made, the process shall be marked “No Service” and the service fee shall be refunded.

• • 6-03/261.00 Treasurer/Tax Collector Notices

The Revenue and Taxation Code allows the Treasurer/Tax Collector to designate an agent to serve such notices. The responsibility of the Sheriff to serve process and notices are set forth in the Government Code and there are no statutes indicating the Sheriff has a duty to act as an agent for the Treasurer/Tax Collector in any capacity. Court Services Division personnel shall not serve notices for the Treasurer/Tax Collector including the notice referenced above.

• 6-03/270.00 Sheriff as a Party

CCP 262.6. When the sheriff is a party to an action or proceeding, the process and orders therein, which it would otherwise be the duty of the sheriff to execute, shall be executed by the coroner of the county.

CCP 262.7. If an action is begun against a sheriff, all process and orders may be served by any person in the manner provided in this code.

• 6-03/280.00 Superior Court

GC 69922. (cited in part) (a) Except as otherwise provided by law, whenever required, the sheriff shall attend all superior court sessions held within his or her county. A sheriff shall attend a noncriminal, nondelinquency action, however, only if the presiding judge or his or her designee makes a determination that the attendance of the sheriff at that action is necessary for reasons of public safety. The court may use court attendants in courtrooms hearing those noncriminal, nondelinquency actions. Notwithstanding any other law, the presiding judge or his or her designee may provide that a court attendant take charge of a jury, as provided in Sections 613 and 614 of the Code of Civil Procedure. The sheriff shall obey all lawful orders and directions of all courts held within his or her county.

• 6-03/290.00 Trust Monies

GC 24351. Unless otherwise specifically provided for by law, each officer of a county shall on the certificate of the auditor immediately deposit in the county treasury all trust money coming into the officer’s possession officially. Trust money so deposited shall be withdrawn only on a warrant issued by the county auditor drawn upon requisition of the officer depositing the money.