6-05/200.00 General Service Fee

In general, the fee for service of process is $40, not found and cancellation. The fee to cancel or not found an earnings withholding order is limited to $35 because the service fee is only $35.

There shall be no additional fee for substitute service when substitute service is authorized.

In any case where property has been levied upon and, pursuant to the levy, a copy of the writ of execution and a notice of levy are required by statute to be served either personally or by mail upon the judgment debtor or other person, no fee shall be charged for that service. Consequently, an additional fee shall not be charged when a copy of the writ of execution/attachment and notice are required to be served on any third person or judgment debtor/defendant pursuant to the requirements of the levy, unless a separate fee is delineated by other statute.

In a case where the levying officer attempted to require a separate fee for serving a notice of filing claim of exemption on the creditor, the court stated in disallowing the fee:

“Where a statute is susceptible of two constructions, one leading to mischief or absurdity, and the other consistent with justice and common sense, the latter must be adopted. As we view the statutory provisions relied upon by the respondent, the unreasonableness of respondent’s interpretation is obvious. To require payment of a fee as a prerequisite to accepting a properly executed claim of exemption could result in an arbitrary frustration of the total purpose of the statutory scheme requiring satisfaction in the writ process out of the debtor’s “non-exempt’ property. We view the whole of the execution process as a reasonably constructed statutory process. It is clear that the claim of exemption is an integral part of the writ process. The levying officer when requested to commence the levy by the creditor is required to secure his fee in the manner prescribed by the Government Code.” (Lampley v. Alvares, 50 CA 3d 124)

GC 26720.9 Notwithstanding any other provision of law, the amounts set forth in Sections 26721, 26721.1, 26725, 26728, 26734, 26742, and 26743 shall be thirty-five dollars ($40).

GC 26721 Service fee process or notice is GC 26720.9

GC 26736 The fee for cancellation of the service or execution of any process or notice prior to its completion shall be thirty-five dollars ($40). The fee provided by this section shall not be charged where a charge is made pursuant to any other section of this article in attempting to serve or execute the process or notice.

GC 26738 The fee for making a not-found return on a summons, affidavit and order, order for appearance, subpoena, writ of attachment, writ of execution, writ of possession, order for delivery of personal property, or other process or notice required to be served, certifying that the person or property cannot be found at the address specified is thirty-five dollars ($35).

The County Counsel of Orange County, by a written opinion dated January 31, 1974, held that GC 26738 must be interpreted to read that if the officer cannot, within the exercise of due diligence and within a reasonable period of time, find the person to be served under circumstances which would reasonably permit the service to be made, a not found return should be made, and the statutory fee

should be charged. (Similar opinion of Los Angeles County Counsel dated December 21, 1981)

GC 26742 The fee for executing and delivering any other instrument shall be the amount described in Section 26720.9.