6-14/100.00 Order For Examination of Judgment Debtor

The judgment creditor may obtain an Order to Appear for Examination (AT-138/EJ-125) compelling the judgment debtor to appear in court and answer questions about the debtor's assets.

• 6-14/100.10 Court Seal Not Required

CCP 153 Except as otherwise expressly provided by law, the seal of a court need not be affixed to any proceeding therein, or to any document, except to the following:

a. A writ.
b. A summons.
c. A warrant of arrest.

• 6-14/110.20 Service

Written instructions, the fee deposit and a copy of the order are required for service. The order must be personally served at least 10 days before the hearing. Failure to appear is punishable as a contempt of court. Service of the order creates a lien on the debtor's property for one year. Unless good cause is shown, a creditor shall not examine a debtor more often than once every 120 days. Service of the order creates a lien on the debtor's personal property for one year from the date of the order. The order contains a warning that the debtor is subject to arrest for contempt for failure to appear at the hearing. (CCP 708.110)

• 6-14/110.30 Affidavit of Identity

Pursuant to an affidavit of identity, the creditor may attempt to levy on property in the possession of a third person which stands in an additional name (alias) used by the debtor and not listed in the judgment. The affidavit of identity sets forth grounds establishing an alias name of the debtor and is submitted to the court for approval when applying for a writ of execution. The court may, without notice or hearing, approve the affidavit of identity and order the clerk to add the debtor's alias name to the writ of execution. The garnishee shall not transfer property levied on under an alias named in an affidavit of identity until directed to do so by the levying officer. The levying officer shall not direct delivery sooner than 15 days after levy. An affidavit of identity is inapplicable to an earnings withholding order or seizure from the possession of the debtor. The notice of levy shall include any name listed in the affidavit of identity. After levy, the levying officer shall promptly serve on the debtor, personally or by mail, a copy of the writ of execution, notice of levy, exemptions list (if the debtor is a natural person) and affidavit of identity. The creditor is liable to any person not the debtor whose property is wrongfully attached. (CCP 685.135, 699.510, 699.520, 699.540, 699.545, 700.010, 700.160)

• 6-14/110.40 Travel Distance

A debtor and the debtor of a judgment debtor are not required to attend an examination in another county unless the distance is less than 150 miles from their place of residence. Witnesses may testify at examination hearings. (CCP 708.160)

• 6-14/110.50 Appearance by Artificial Person

An order for examination of a corporation, partnership or other organization may be directed to a specified individual or the organization. (CCP 708.150)

• 6-14/110.60 Failure to Appear

If an order requiring a person to appear for an examination was served by a sheriff, marshal, a person specially appointed by the court in the order, or a registered process server, and the person fails to appear, the court may issue a warrant pursuant to CCP 1993, find the person in contempt, or both. A person who willfully makes an improper service of an order for an examination which subsequently results in the person's arrest is guilty of a misdemeanor. (CCP 708.170)

• 6-14/120.00 Order For Examination of Debtor of Judgment Debtor

A judgment creditor may obtain an order to examine a third party in possession of the judgment debtor's property. Mileage fees at the rate of $0.20 a mile to and from the third party's residence must be tendered at the time of service. Service of the order creates a lien on the debtor's property for one year. The debtor must also be served personally or by mail at least ten days before the hearing. Failure to appear to punishable as a contempt. The third party may not be required to appear before a court outside the county of the third party's residence unless the distance is less than 150 miles. The court may issue an order forbidding the transfer of the property to the debtor until ownership is determined or a creditor's lawsuit is filed. The court may also order that the property be applied toward the satisfaction of a money judgment thereby creating a lien on the property. A court seal is not required on the order. The debtor may file a claim of exemption with the court. (CCP 708.120)

• • 6-14/120.10 Service on Debtor of Judgment Debtor

Written instructions, the fee deposit and a copy of the order are required for service. The order must be served personally at least 10 days before the hearing. (CCP 708.120)

• • 6-14/120.20 Service on Judgment Debtor

In addition to service of the order for appearance of the debtor of the judgment, the judgment debtor must also be served either personally or by mail at least 10 days prior to the hearing date. If service is by mail, the time is extended by 5, 10 or 20 days if mailed to a California address, another United States address or a foreign country address, respectively. Consequently, the order must be deposited in the mail at least 15 days prior to the hearing date if the judgment debtor's address is in the State of California. Service on the debtor is a separate service requiring a separate service fee. There is no requirement that the same person make both services. (CCP 708.120, 684.120)

• • 6-14/120.30 Certificate of Service

Most courts, by court rule, require the original order, unless kept in the court file, and the proof of service be filed with the court a specific number of court days prior to the hearing, and will not issue a warrant for failure to appear or allow any costs if the return is not filed timely. Unless specifically requested otherwise, send the return directly to the clerk of court as soon as possible after service rather than the party requesting service. In Limited Civil cases, including small claims cases, send the return directly to the referee who presides in these matters, or the referee's clerk. Most courts, however, will proceed with the examination whether or not the return has been filed, if all the parties are present and ready to proceed at the time set.

• • 6-14/120.40 Lien

The court may order the judgment debtor's interest in the property in the possession or under the control of the judgment debtor or the third person or a debt owed by the third person to the judgment debtor to be applied toward the satisfaction of the money judgment if the property is not exempt from enforcement of a money judgment. Such an order creates a lien on the property or debt. (CCP 708.205)The court may order the judgment debtor's interest in the property in the possession or under the control of the judgment debtor or the third person or a debt owed by the third person to the judgment debtor to be applied toward the satisfaction of the money judgment if the property is not exempt from enforcement of a money judgment. Such an order creates a lien on the property or debt. (CCP 708.205)The court may order the judgment debtor's interest in the property in the possession or under the control of the judgment debtor or the third person or a debt owed by the third person to the judgment debtor to be applied toward the satisfaction of the money judgment if the property is not exempt from enforcement of a money judgment. Such an order creates a lien on the property or debt. (CCP 708.205)