

6-19/183.00 Instructions

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The plaintiff's written instructions must adequately describe the property and, if the property is a dwelling, state whether it is real or personal property. The sheriff may rely on the instructions unless the sheriff has actual knowledge that the information is incorrect. In the case of an ex parte writ where a copy of the summons and complaint has not previously been served on the defendant, the plaintiff or his attorney of record shall instruct the officer to make such service at the same time he serves the defendant with a copy of the writ and notice of attachment. It is the duty of the attorney to instruct the levying officer to make the service, rather than the duty of the levying officer to refuse to make the levy absent instructions to serve the summons and complaint.

Consequently, if an ex parte writ is received, the requirement should be brought to the attention of the plaintiff's attorney. If the attorney does not issue instructions for the service, that fact should be noted in the file, but the levy should be performed. (CCP 488.020, 488.030, 488.040)

The defendant must be served personally, in the manner of a summons, unless the defendant has "appeared in the action", which is not the same as having appeared at a hearing. If the defendant has an attorney of record, the process must be served on the defendant's attorney, not the defendant. In order to determine whom to serve (the defendant or the attorney) and how to serve (personally or by mail), the plaintiff's instructions must include that information.

• 6-19/183.20 Attorney of Record

Instructions to the levying officer may be taken only from the attorney of record. The attorney shall have authority to receive money claimed by a client in an action or proceeding during the pendency thereof, or after judgment, unless a revocation of the attorney's authority is filed, and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment. An attorney in an action or special proceeding may be changed at any time before or after judgment or final determination either upon the consent of both client and attorney filed with the clerk, or entered upon the minutes; or upon the order of the court, upon the application of either client or attorney, after notice from one to the other. The former attorney must be recognized as the exclusive agent for the client until such time as written notice of the change and of the substitution of a new attorney or of the appearance of the party in person is given to the adverse party. (CCP 283, 284, 285)