

6-19/188.20 Service on the Defendant

At the time of levy or promptly thereafter (CCP 488.305), 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.

In addition to the documents listed in 6-19/188.10, a summons and complaint must also be served on the defendant if he has not previously been served. (CCP 488.020(c)) 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)
