6-22/600.00 Return of Writ of Possession

The officer must certify the manner and time of service of the execution, or if he fails to make service, the reason for the officer's failure, and return the process without delay. (GC 26609) The levying officer shall return the writ reporting his actions and an accounting of amounts collected, and costs incurred, at the earliest of the following times (CCP 712.050, 699.560):

- Two years from the date of issuance of the writ, unless it involves a wage garnishment.
- Promptly after all of the duties under the writ are performed.
- When requested in writing by the judgment creditor.
- If no levy takes place promptly after the expiration of the 180-day period.
- Promptly upon expiration of the 10 year judgment period. (CCP 683.020)
- If a levy has been made on personal property in the estate of a decedent, one year after the date of the decree distributing the interest becomes final. (CCP 700.200)

In lieu of returning to court the paper version of an original writ of execution, the levying officer may retain the original writ or an electronic copy of the original writ and file only a return of the levying officer's actions. (CCP 263.6, 699.560(e))

A creditor seeking the issuance of a writ directed to another county may direct the levying officer to file an accounting of the levying officer's actions with the court. This does not constitute a return of the writ.

The return of an officer upon process or notices is prima facie evidence of the facts stated in the return. (GC 26662) 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: 1855 case, no link available) 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)

The power and authority for the sheriff under a writ of execution terminates with the return thereof. (Duncan v. Standard Accident Ins. Co., 1 CA 2d 385)