6-28/440.30 Undertaking Required to Continue Levy during Appeal of Plaintiff

An appeal by a party who has levied an attachment shall not continue the attachment, unless an undertaking is executed and filed and the appeal is perfected within five days after written notice of the entry of the order appealed from. (CCP 921)

The attachment continues in effect until dissolved by court order, failure to file a required undertaking, or the expiration of the time to file an appeal if no written notice of entry of judgment is served on the plaintiff. If written notice of entry of judgment is served, then any attached property should be released on the sixth day after service, unless the plaintiff has perfected an appeal and filed the undertaking pursuant to CCP 921 prior to such time. The five days must be extended if the notice was served by mail pursuant to CCP 1013 and if the fifth day falls on a holiday (Saturday and Sunday included) pursuant to CCP 12a.

If the plaintiff has filed a timely motion in the trial court to vacate the judgment, or for judgment notwithstanding the verdict, or for a new trial, the time to file an appeal does not commence until the entry of an order denying the motion.

The provisions continuing the attachment's effect for the period to perfect an appeal and file the required undertaking apply to any form of judgment for the defendant, including a dismissal, nonsuit, order discharging attachment, etc. Appealable judgments and orders are set forth in CCP 904.1, 904.2, 904.5.

Since there is no requirement that the levying officer be given notification of the filing of an appeal or undertaking, prior to releasing property because the time has expired for the plaintiff to continue the attachment by perfecting the appeal and filing the undertaking, the levying officer should verify whether or not the plaintiff has done so with the plaintiff or the court.