



Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-082

For business meeting on March 15, 2024

Title

Rules and Forms: Order for Debtor's Examination

Agenda Item Type

Action Required

Effective Date

April 1, 2024

Rules, Forms, Standards, or Statutes Affected

Revise form AT-138/EJ-125

Date of Report

February 15, 2024

Recommended by

Judicial Council staff

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Executive Summary

Judicial Council staff recommend revising the instructions on one Judicial Council form to implement a statutory change made by Assembly Bill 1119 (Stats. 2023, ch. 562), enacted October 8, 2023. Staff recommend revising the form to ensure it conforms to existing law and to avoid causing confusion for court users, clerks, and judicial officers.

Recommendation

Judicial Council staff recommend that the council, effective April 1, 2024, revise *Application and Order for Appearance and Examination* (form AT-138/EJ-125) to reflect the revised deadline set in AB 1119 for service of an order for examination of a judgment debtor.

The proposed revised form is attached at pages 3–5.

Relevant Previous Council Action

Form AT-138/EJ-125 was adopted effective July 1, 1984, and has been revised by the council several times since then. The most recent revision was made effective April 1, 2023, to correct a typographical error.

Analysis/Rationale

Prior law required a judgment creditor to serve a copy of an order to appear for a debtor's examination on the judgment debtor no less than 10 days before the date of the examination. AB 1119¹ changes this deadline to 30 days for all judgment debtors.² This change in law became effective on January 1, 2024.

This deadline is stated in two places on *Application and Order for Appearance and Examination* (form AT-138/EJ-125): in a notice box in the middle of page 1, and in the "Information for Judgment Creditor Regarding Service" at the top of page 2. Staff recommend changing "10 days" and "10 calendar days" to "30 days" and "30 calendar days" in these places on the form to reflect the requirements of AB 1119.

Policy implications

The proposed revisions to the form implement an amended statute that changes the deadline for a judgment creditor to serve a judgment debtor with an order to appear for examination. Accordingly, the key policy implication is ensuring that this council form correctly reflects the law.

Comments

This proposal was not circulated for public comment because the changes are noncontroversial: they directly implement a change in statute and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).) The Civil and Small Claims Advisory Committee will be asking to circulate other revisions to this form later this year as part of a proposal to implement other provisions in AB 1119, but the current changes are needed to ensure that the form is not stating incorrect law in the meantime.

Alternatives considered

The alternative of no action was not considered because without the proposed revisions, the form will not reflect current law.

Fiscal and Operational Impacts

Staff anticipate that this proposal will require courts to train court staff and judicial officers on the changes in law reflected in the revised form. Because the revisions reflect changes in statute, these operational impacts cannot be avoided.

Attachments and Links

1. Form AT-138/EJ-125, at pages 3–5
2. Link A: Assem. Bill 1119,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1119

¹ See Link A.

² Code Civ. Proc., § 708.110(d).

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY DRAFT 01/23/2024 NOT APPROVED BY COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
APPLICATION AND ORDER FOR APPEARANCE AND EXAMINATION <input type="checkbox"/> ENFORCEMENT OF JUDGMENT <input type="checkbox"/> ATTACHMENT (Third Person) <input type="checkbox"/> Judgment Debtor or <input type="checkbox"/> Third Person	CASE NUMBER: _____

ORDER TO APPEAR FOR EXAMINATION

1. TO (name): _____
2. YOU ARE ORDERED TO APPEAR personally before this court, or before a referee appointed by the court, to
 - a. ☐ furnish information to aid in enforcement of a money judgment against you.
 - b. ☐ answer concerning property of the judgment debtor in your possession or control or concerning a debt you owe the judgment debtor.
 - c. ☐ answer concerning property of the defendant in your possession or control or concerning a debt you owe the defendant that is subject to attachment.

Date: _____	Time: _____	Dept. or Div.: _____	Rm.: _____
Address of court <input type="checkbox"/> is shown above <input type="checkbox"/> is: _____			

3. This order may be served by a sheriff, marshal, registered process server, or the following specially appointed person (name): _____

Date: _____

JUDGE

This order must be served not less than 30 days before the date set for the examination.

IMPORTANT NOTICES ON PAGES 2 AND 3

APPLICATION FOR ORDER TO APPEAR FOR EXAMINATION

4. ☐ Original judgment creditor ☐ Assignee of record ☐ Plaintiff who has a right to attach order
 applies for an order requiring (name): _____
 to appear and furnish information to aid in enforcement of the money judgment or to answer concerning property or debt.
5. The person to be examined is
 - a. ☐ the judgment debtor.
 - b. ☐ a third person (1) who has possession or control of property belonging to the judgment debtor or the defendant or (2) who owes the judgment debtor or the defendant more than \$250. An affidavit supporting this application under Code of Civil Procedure section 491.110 or 708.120 is attached.
6. The person to be examined resides or has a place of business in this county or within 150 miles of the place of examination.
7. ☐ This court is **not** the court in which the money judgment is entered or (attachment only) the court that issued the writ of attachment. An affidavit supporting an application under Code of Civil Procedure section 491.150 or 708.160 is attached.
8. ☐ The judgment debtor has been examined within the past 120 days. An affidavit showing good cause for another examination is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

 (TYPE OR PRINT NAME)

 (SIGNATURE OF DECLARANT)

(Continued on pages 2 and 3)

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Information for Judgment Creditor Regarding Service

If you want to be able to ask the court to enforce the order on the judgment debtor or any third party, you must have a copy of the order personally served on the judgment debtor by a sheriff, marshal, registered process server, or the person appointed in item 3 of the order at least 30 calendar days before the date of the hearing, and have a proof of service filed with the court.

IMPORTANT NOTICES ABOUT THE ORDER**APPEARANCE OF JUDGMENT DEBTOR (ENFORCEMENT OF JUDGMENT)**

NOTICE TO JUDGMENT DEBTOR If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the judgment creditor in this proceeding.

APPEARANCE OF A THIRD PERSON (ENFORCEMENT OF JUDGMENT)

NOTICE TO PERSON SERVED If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the judgment creditor in this proceeding.

NOTICE TO JUDGMENT DEBTOR The person in whose favor the judgment was entered in this action claims that the person to be examined under this order has possession or control of property that is yours or owes you a debt. This property or debt is as follows *(describe the property or debt)*:

If you claim that all or any portion of this property or debt is exempt from enforcement of the money judgment, you must file your exemption claim in writing with the court and have a copy personally served on the judgment creditor not later than three days before the date set for the examination. You must appear at the time and place set for the examination to establish your claim of exemption or your exemption may be waived.

APPEARANCE OF A THIRD PERSON (ATTACHMENT)

NOTICE TO PERSON SERVED If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the plaintiff in this proceeding.

APPEARANCE OF A CORPORATION, PARTNERSHIP, ASSOCIATION, TRUST, LIMITED LIABILITY COMPANY, OR OTHER ORGANIZATION

If the order to appear for the examination on page 1 does not require the appearance of a specified individual:

- The organization has a duty to designate one or more of the following to appear and be examined: officers, directors, managing agents, or other persons who are familiar with the organization's property and debts.
- Failure to designate such a person familiar with the organization's property and debts to appear for examination will result in the order to appear for the examination to be deemed to have been made to, and require the appearance of, the following:
 - If the organization is a corporation registered with the Secretary of State, a natural person named as the chief financial officer in the corporation's most recent filing with the Secretary of State. If no one is so named, a natural person named as the chief executive officer in the corporation's most recent filing with the Secretary of State. If no one is so named, a natural person named as the secretary in the corporation's most recent filing with the Secretary of State.
 - If the organization is a limited liability company registered with the Secretary of State, the first natural person named as a manager or member in the limited liability company's most recent filing with the Secretary of State.
 - If the organization is a limited partnership registered with the Secretary of State, the first natural person named as a general partner in the limited partnership's most recent filing with the Secretary of State.
 - If the organization is not registered with the Secretary of State or the organization's filings with the Secretary of State do not identify a natural person as described above, a natural person identified by the judgment creditor as being familiar with the property and debts of the organization, together with an affidavit or declaration signed by the judgment creditor that sets forth the factual basis for the identification of the individual. The affidavit or declaration shall be served on the organization together with the order.
- Service of an order to appear for an examination upon an organization by any method permitted under the Code of Civil Procedure or the Corporations Code, including service on the agent of the organization for service of process, shall be deemed effective service of the order to appear upon the individuals identified above.



Request for Accommodations. Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Disability Accommodation Request* (form MC-410). (Civil Code, § 54.8.)