



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 22-100

For Circulating Order CO-22-02 on: May 10, 2022

Title

Rules and Forms: Form Revision
Implementing Assembly Bill 1580

Rules, Forms, Standards, or Statutes Affected

Revise form AT-138/EJ-125

Recommended by

Civil and Small Claims Advisory Committee
Hon. Tamara Wood, Chair

Agenda Item Type

Action Required

Effective Date

September 1, 2022

Date of Report

April 20, 2022

Contact

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Executive Summary

The Civil and Small Claims Advisory Committee recommends revising *Application and Order for Appearance and Examination* (form AT-138/EJ-125) to implement statutory changes in Assembly Bill 1580 (Stats. 2021, ch. 30). The statutory amendment requires additional information for organizations on orders to appear for examination. The proposal incorporates the new required statements and suggestions from commenters on the council's existing form.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council revise *Application and Order for Appearance and Examination* (form AT-138/EJ-125), effective September 1, 2022.

The proposed revised form is attached at pages 5–7.

Relevant Previous Council Action

The Judicial Council adopted form AT-138/EJ-125 in 1984 and most recently revised it effective January 1, 2017. The most recent revisions to the form included minor modifications regarding service and requests for accommodation.

Analysis/Rationale

Prior to the enactment of Assembly Bill 1580 (Stats. 2021, ch. 30),¹ Code of Civil Procedure section 708.150² set forth certain duties and rights of a corporation, partnership, association, trust, or other organization (hereafter “organization”) served with an order to appear for an examination. Section 708.150 also required that if the order to appear for examination does not require the appearance of a specified individual, that the order notify the organization of its duty to designate one or more officers to be examined.

Assembly Bill 1580 amended section 708.150 to expand the information that must be provided in an order for an organization to appear for an examination if the order does not require the appearance of a specified individual. Specifically, if the organization fails to designate a person to appear, the order will be deemed to have been made to a specific individual in the organization and sets out who that specific person will be based on the type of organization.

To address the amendments to section 708.150, the committee recommends expanding the notice on the form that is directed at organizations to include new statutory language.³ Expanding the notice requires the form to have an additional page, and conforming modifications concerning page numbers are also made throughout the form.⁴

Policy implications

The revised form in this proposal would implement amended statutes that provide additional information to organizations subject to an order to appear for examination. Accordingly, the key policy implications are ensuring that council forms reflect the law correctly and are not misleading to parties.

Comments

The proposal was circulated for public comment between December 10, 2021, and January 21, 2022, as part of the winter comment cycle. Comments were received from the California Association of Judgment Professionals, the Superior Court of San Bernardino County, and the

¹ Assem. Bill 1580, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1580.

² All further statutory references are to the Code of Civil Procedure unless otherwise noted.

³ Although the statutory amendments enacted by AB 1580 are already in effect, the committee recommends the standard effective date for form proposals in the winter cycle, September 1, to provide courts time to prepare for the revised form.

⁴ The proposal also makes two other minor modifications to correct errors: “Limited Liability Company” is now included in the heading for the notice to organizations and on page 3 the title of form MC-410 is updated in the information about accommodations.

Superior Court of San Diego County. All three commenters offered that the proposal addresses its stated purpose, and the Superior Court of San Diego County indicated their agreement with the proposal. A chart setting forth all the comments and committee's responses to the comments is attached at pages 8–14.

The California Association of Judgment Professionals offered several technical comments to improve the form's clarity and to more accurately reflect the amendments to section 708.150 enacted by AB 1580. The committee agreed with most of those suggestions and included them in the proposed form. For example, the caption of the form now includes "petitioner" and "respondent" as well as "plaintiff" and "defendant." Additionally, the notices to organizations on page 3 of proposed form AT-138/EJ-125 explains at the top that the notices only apply if the order to appear for examination on page 1 of the form does not require the appearance of a specified individual. (See § 708.150(c).)

The committee declined the association's suggestion to include additional language on the first page of the form stating that all of the notices on pages 2 and 3 of the form apply to organizations. The committee determined such language is unnecessary as the notices on page 2 of the form are not limited to natural persons. Additionally, the committee declined another suggestion to include a notice that additional persons from an organization may accompany an individual specified to appear as such notice is not required by statute.

Alternatives considered

Because AB 1580 expressly requires additional information on orders to appear for examination that is not on the council's current order form, the committee determined it must act and that taking no action would be inappropriate.

In addition to this recommendation, the committee considered separating the required notice for organizations into its own form that could be attached to form AT-138/EJ-125 if the order to appear for examination was directed to an organization. However, the committee concluded that requiring a separate attachment in certain instances would needlessly complicate the process for seeking an order to appear for examination.

The committee also considered consolidating other notices on the form, but declined to do so because using a single notice applicable to differently situated individuals in different types of actions might be confusing.

Fiscal and Operational Impacts

The committee anticipates that this proposal will result in costs incurred by courts to incorporate new forms into their paper or electronic processes and to train court staff. However, given that the proposal only makes minor informational modifications to an existing form, any such costs or impacts are likely to be minor.

Attachments and Links

1. Form AT-138/EJ-125, at pages 5–7
2. Chart of comments, at pages 8–14
3. Link A: AB 1580,

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1580

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 3/8/2022 NOT APPROVED BY JUDICIAL 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):
 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 10 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)

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 10 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.)

W22-02

Rules and Forms: Enforcement of Judgment Form Implementing Assembly Bill 1580 (Revise form AT-138/EJ-125.)

All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
1.	California Association of Judgment Professionals by Gretchen D. Lichtenberger Legislative Chairperson	NI	<p>On behalf of the California Association of Judgment Professionals, we would like to submit our comments regarding your proposed revision of form AT-138/EJ-125.</p> <p>Suggestions for the revised <i>Application and Order for Appearance and Examination</i> (form AT-138/EJ-125):</p> <p>1) On page 1, in the caption above the form title, we suggest you include “Petitioner” with the word “Plaintiff” and include the word “Respondent” with the word “Defendant” so those two lines will read “<u>PLAINTIFF/PETITIONER</u>” and “<u>DEFENDANT/RESPONDENT</u>” respectively, as was done with the last revised <i>Writ of Execution</i> form EJ-130 and <i>Notice of Levy</i> form EJ-150. {underlined words added to existing text} The AT-138/EJ-125 form is also used in Family Law and Probate matters as well.</p> <p>2) On page 1, in the caption regarding the check boxes in the form title, we suggest you reposition the check boxes because persons using this form are often confused and don’t check the correct boxes. Currently, the “Third Person” box is below the “ATTACHMENT (Third Person)” box which causes confusion. The “Third Person” box is only checked when the “ENFORCEMENT OF JUDGMENT” box is checked. Examinations to enforce a judgment are either “Judgment Debtor” exams under Code of Civil Procedure §708.110 or “Third</p>	<p>In light of this comment, proposed form AT-138/EJ-125 now includes “Petitioner” and “Respondent” in the caption.</p> <p>In light of this comment, the checkboxes at the top of proposed form AT-138/EJ-125 have been reconfigured so that “Judgment Debtor” <i>or</i> “Third Person” are aligned under “Enforcement of Judgement.”</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

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Committer	Position	Comment	Committee Response
		<p>Person” exams under Code of Civil Procedure §708.120. We frequently hear Creditors and the Courts refer to examinations of Third Persons as “<i>Third Person Judgment Debtor Exams</i>”, which is incorrect verbiage, and causes creditor to, at times, check both boxes. In Enforcement of Judgments, the exam is <u>either</u> of the Judgment Debtor <u>or</u> the Third Person. In Attachments, there are no Judgment Debtors, it is always a Third Person. We would like to suggest you please configure the title box in the caption so both the “Judgment Debtor” box and the “Third Person” box are under the “ENFORCEMENT OF JUDGMENT” box, and possibly put the word “or” between them, something like this:</p> <p><input type="checkbox"/>ENFORCEMENT OF JUDGMENT <input type="checkbox"/>Judgment Debtor <i>or</i> <input type="checkbox"/>Third Person <input type="checkbox"/>ATTACHMENT (Third Person)</p> <p>3) On page 1 in item 4, we would like to request that the fillable box after “(name):” please extend all the way to the right margin, like in item 1. The space is available on the form however the area selected to accommodate typing does not extend to the farthest right margin. Sometimes, the “name” of the examinee is something like “<i>ABC Plumbing, by and through Jonathan Switzer, Chief Financial Officer</i>”.</p> <p>4) On page 3, we suggest the addition of the relevant text from the new Code of Civil Procedure §708.150 distinguishing when a</p>	<p>The committee notes that the fillable box after “name” in item 4 of proposed form AT-138/EJ-125 already extends to the right margin.</p> <p>The committee declines this suggestion because subdivision (c) of Code of Civil Procedure section 708.150 only requires the included notices when a</p>

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Committer	Position	Comment	Committee Response
		<p>named individual is listed in items 1 and 4 as a person to be examined on behalf of an organization. So, at the top of page 3, <u>before the paragraph beginning “The organization has a duty to designate....”</u>, we suggest you add as the first paragraph:</p> <p><u>“If the order to appear for an examination on page 1 requires the appearance of a specified individual, the specified individual shall appear for the examination and may be accompanied by one or more officers, directors, managing agents, or other persons familiar with the property and debts of the organization”</u> {see CCP §708.150(b)}.</p> <p>Then, followed by the second paragraph <u>“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....”</u> {and the rest of your current first paragraph – see CCP §708.150(c); underlined words added to existing sentence}. If the creditor applies on page 1 to have a specific individual appear on behalf of the organization, it could be confusing if the organization reads the text of page 3 as it reads now. We believe there needs to be a distinction made that everything in this box on page 3 only applies when a specific individual is not named on page 1.</p> <p>5) On page 3, in the second paragraph of newly added text, we suggest a slight variation to the</p>	<p>specified individual has not been designated.</p> <p>In light of this comment, similar language was added at the top of the notices on page 3 of proposed form AT-138/EJ-125 to make clear that the following notices only apply if the order does not require the appearance of a specified individual.</p> <p>In light of this comment, proposed form AT-138/EJ-125 now includes the suggested language.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

W22-02

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Commenter	Position	Comment	Committee Response
		<p>wording. Currently, it currently states “<i>Failure to designate a person to appear for examination....</i>”. Stating just “<i>a person</i>”, doesn’t further demonstrate the intent of the statute where the new CCP §708.150(a)(2) says “<i>fails to designate a person to appear pursuant to paragraph (1)</i>”. Said statutory wording references back to the fact the person designated must be familiar with the entity’s property and debts. We suggest you please clarify said sentence by putting “<i>Failure to designate <u>such a person familiar with the organization’s property and debts</u> to appear for examination ...</i>” { and the rest of your current second paragraph; underlined words added to existing sentence}</p> <p>6) On page 3, in the last paragraph, we suggest you add the qualifier for when a named individual is not stated on page 1 {see CCP §708.150(c)}, so the last paragraph should read “<i><u>If the order to appear for the examination on page 1 does not require the appearance of a specified individual, service of an order to appear for an examination upon an organization.....</u></i>” { and the rest of your current last paragraph; underlined words added to existing sentence}</p> <p>7) We would also like to make the suggestion that a warning or notice be added on page 3 letting any organization know that the Important Notices on page 2 apply, as appropriate, to the organization in whichever capacity it is being order to appear. We suggest something like:</p>	<p>In light of this comment, similar language was added at the top of the notices on page 3 of proposed form AT-138/EJ-125 to make clear that the following notices only apply if the order does not require the appearance of a specified individual.</p> <p>The committee declines this suggestion as unnecessary because the notices on page 2 of the form are as provided in the statute and are not limited to natural persons.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

W22-02

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	Commenter	Position	Comment	Committee Response
			<p><u>“WARNING: THE IMPORTANT NOTICES STATED ON PAGE 2 APPLY TO ORGANIZATIONS, AS WELL AS TO INDIVIDUALS, WHEN ORDERED TO APPEAR FOR EXAMINATION”.</u></p> <p>8) Interesting to note, Code of Civil Procedure §491.140 was not amended to parallel the new amended language of §708.150. Guess we will have to work on that issue. At least the form will already be correct when §491.140 is amended.</p> <p>Request for Specific Comments Yes, we believe your Proposal appropriately addresses the stated purpose. And thank you for addressing our previously submitted comments/suggestions into your drafting of this Proposal.</p>	<p>The committee appreciates the information provided.</p>
2.	<p>Superior Court of San Bernardino County Civil and Small Claims Committees by Melissa Williams District Manager I</p>	NI	<p>Requested comments from courts on the Rules and Forms: Enforcement of Judgment Form Implementing Assembly Bill 1580:</p> <p>1. Does the proposal appropriately address the stated purpose?</p> <p>Yes.</p> <p>2. Would the proposal provide cost savings? If so, please quantify.</p> <p>The committee does not believe this would</p>	<p>The committee appreciates the information provided.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

W22-02

Rules and Forms: Enforcement of Judgment Form Implementing Assembly Bill 1580 (Revise form AT-138/EJ-125.)

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	Commenter	Position	Comment	Committee Response
			<p>provide cost savings for the court.</p> <p>3. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p> <p>The courts would need to provide notice to the judicial officers of the amendments. Staff training would be minimal and would need to include training staff to look for a designee when debtor is a corporation. Additionally, form packets would need to be updated and revised QRGs generated and distributed to staff.</p> <p>4. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Yes.</p> <p>5. How well would this proposal work in courts of different sizes?</p> <p>The proposal should work for courts of all sizes.</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

W22-02

Rules and Forms: Enforcement of Judgment Form Implementing Assembly Bill 1580 (Revise form AT-138/EJ-125.)

All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
3.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	<p><u>Request for Specific Comments</u></p> <p>Q: Does the proposal appropriately address the stated purpose?</p> <p>Yes.</p> <p>Q: Would the proposal provide cost savings? If so, please quantify.</p> <p>No.</p> <p>Q: What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p> <p>Notifying staff and updating procedures.</p> <p>Q: Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Yes.</p> <p>Q: How well would this proposal work in courts of different sizes?</p> <p>The proposal appears to work for courts of different sizes.</p>	The committee appreciates the information provided.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.