



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27–28, 2016

Title

Civil Practice and Procedure: Order of Examination

Agenda Item Type

Action Required

Effective Date

January 1, 2017

Rules, Forms, Standards, or Statutes Affected

Revise forms SC-134 and AT-138/EJ-125

Date of Report

October 18, 2016

Recommended by

Civil and Small Claims Advisory Committee
Hon. Raymond M. Cadei, Chair

Contact

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Executive Summary

The Civil and Small Claims Advisory Committee recommends revising the forms used to order examination of a judgment debtor to clarify in the instructions that, to be enforceable by the court, the order must be served by a law enforcement officer or a registered process server. This proposal, based on a suggestion from a superior court commissioner who handles small claims cases, will assist litigants and eliminate needless appearances by judgment creditors seeking court enforcement of orders that were not served in this manner and therefore are unenforceable.

The committee also recommends revisions to these forms to improve clarity and readability.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2017:

1. Revise *Application and Order to Produce Statement of Assets and Appear for Examination* (form SC-134), used in small claims cases, and *Application and Order for Appearance and Examination* (form AT-138/EJ-125), the parallel form used in civil actions generally, to

clarify in the instructions that, although service may be completed by any means proper for serving a summons, to be enforceable by the court service *must* be effected by a sheriff, marshal, or a registered process server;

2. Further revise forms SC-134 and AT-138/EJ-125 to add instructions for those who are hard of hearing regarding requesting accommodations for a court appearance;
3. Further revise form SC-134 by reorganizing the top of the first page to allow space for file-stamping; adding a parenthetical statement to explain that the judgment debtor should have provided the statement of assets within 30 days after service of notice of entry of the judgment; and reformatting item 2 and reorganizing the instructions on the second page for clarity and readability; and
4. Further revise form AT-138/EJ-125 to delete a requirement in the box on the second page titled “Appearance of a Third Person (Enforcement of Judgment)” that the description of the property must be made “using typewritten capital letters.”

The revised forms are attached at pages 7–10.

Previous Council Action

The Judicial Council adopted form SC-134 in 1998 and most recently revised it effective January 1, 2007, to update the reference to Small Claims Act statutes in the lower right-hand corner. No change has been made to item 3, the instruction regarding service of the order, since the initial adoption of the form.

The Judicial Council adopted form AT-138/EJ-125 in 1984 and most recently revised it effective July 1, 2000, to remove “constable” as one of the item 3 categories of persons permitted to serve the order.

Rationale for Recommendation

Service of an order enforceable by the court

Judgments in small claims cases may be enforced under the same provisions applicable to all civil cases, including examination of judgment debtors and third parties regarding attachable assets, and sanctions for the failure to appear for such examination (Code Civ. Proc., §§ 116.820, 116.830, 708.170).¹ However, sanctions (such as a bench warrant) are available under section 708.170 only if an order of examination has been served by a sheriff, marshal, or registered process server (hereafter referred to collectively as “law enforcement”). This requirement is not well understood by litigants. The recommendation is intended to address this problem.

¹ All further statutory references are to the Code of Civil Procedure.

Both *Application and Order to Produce Statement of Assets and Appear for Examination* (form SC-134), used in small claims cases, and *Application and Order for Appearance and Examination* (form AT-138/EJ-125), the parallel form used in civil actions generally, currently include a provision (item 3 on each form) that the order “may” be served by law enforcement. The statute authorizing the judgment creditor to examine the judgment debtor provides that the order for examination is to be served “in the manner specified in Section 415.10,” i.e., in any manner that is proper for service of a summons. (See § 708.110, subd. (d); see also § 708.120, subd. (b) [service of an order requiring third party’s appearance must be by personal delivery to that person].) So the provisions on the forms are correct that a judgment creditor is not *required* to have the order served by law enforcement. However, a problem with other means of service arises if the judgment debtor or third party fails to appear for the examination and the judgment creditor seeks to enforce the order. The court is authorized to issue a bench warrant or apply other sanctions (such as awarding attorney’s fees) only if the order was served by law enforcement (§ 708.170).

The recommended revisions to these forms would add instructions to the judgment creditor that, *in order to be enforced by the court*, the order *must* be served by law enforcement. On both forms, this information is placed on the second page (the back of the form), in revised paragraph 4 in the Instructions for Applicant on the back of form SC-134, and in a new box entitled “Information for Judgment Creditor Regarding Service” on the back of form AT-138/EJ-125.

Other revisions

While revising the forms to address the issue of service, the committee recommends other minor, nonsubstantive revisions. A new item has been added to both forms with instructions for those who are hard of hearing regarding requesting accommodations for a court appearance. This information is being included on all new or revised Judicial Council forms that set a hearing or other court appearance.

Form SC-134 has also been revised by reorganizing the top of the first page to allow space for file-stamping. The provisions of item 2 of the order section have been reformatted to make them easier for the judgment debtor to understand, and a parenthetical statement has been added to explain that the judgment debtor should have provided the statement of assets within 30 days after service of notice of entry of the judgment. The instructions on the second page have been reorganized, moving the current last paragraph to the top and renumbering all the paragraphs.

Form AT-138/EJ-125 has been further revised to delete a requirement in the box on the second page titled “Appearance of a Third Person (Enforcement of Judgment)” that the description of the property must be made “using typewritten capital letters” to reflect modern methods of document production.

Comments, Alternatives Considered, and Policy Implications

External comments

The proposed revisions to forms SC-134 and AT-138/EJ-125 were circulated for public comment between April 15 and June 14, 2016, as part of the regular spring 2016 comment cycle. Twelve individuals or organizations submitted comments on the proposal. Four commentators agreed with the proposal, four agreed if the proposal is amended, and four did not state a position but submitted specific comments. Commentators included superior courts, judicial officers, a State Bar committee, a county bar association, and a collections organization.

A chart with the full text of the comments received and the committee's responses is attached at pages 11–25. Based on these comments, the committee recommends adopting this proposal as circulated.

Comments on text regarding service of the orders. The Orange County Bar Association suggested that the language in item 3 regarding service on form SC-134 should be revised to be the same as that on form AT-138/EJ-125, which states that the order “may be served by a sheriff, marshal, registered process server, or the following specially appointed person,” along with space for the name to be written. This language tracks with the provisions of section 708.170, subdivision (a). The same item on form SC-134 states that the order “may be served by a sheriff, marshal, or registered process server”; it does not include a “specially appointed person.” The advisory committee concluded that this provision on form SC-134 should not be revised to mirror that of form AT-138/EJ-125 because including language that the order may be served by a “specially appointed person” and space to write in that name could cause confusion for self-represented litigants and unintended consequences for courts required to enforce the orders. Moreover, the omission of this language from the form does not preclude a small claims court from specially appointing someone to effect service and writing in that person's name.

Several other comments suggested changes to item 3 on form SC-134. The collections organization suggested removing item 3 regarding service from the top half of form SC-134 on the basis that this section of the form is the order to appear, directed at the judgment debtor, and information regarding service is not relevant to the debtor. Alternatively, the collections organization suggested changing the wording of item 3 to state that the order “should” be served by law enforcement or “shall” be served by law enforcement (in conjunction with amending section 708.110, subdivision (d)). Similarly, a judicial officer suggested changing the word “may” to “must” in item 3. The advisory committee concluded that item 3 correctly states the law, is helpful to parties, and is necessary to allow courts to specially appoint a person to serve the order and therefore declined to make these changes.

Other comments on both forms. The collections organization suggested adding reference to sections 708.170 and 1993 to the lower right-hand corner of both form SC-134 and form AT-138/EJ-125. The committee agreed with adding section 708.170, which addresses

disciplinary proceedings on failure to appear for an examination when required, but declined to add section 1993, on issuing an arrest warrant, because it is not directly relevant to the forms.

Other comments on form AT-138/EJ-125. Two judicial officers suggested revising the signature line, which currently reads “Judge or Referee,” to state “Judicial Officer.” The committee discussed this point and decided the signature line should read simply “Judge,” because this term is defined to mean “judges of the superior courts, and court commissioners and referees” (§ 170.5, subd. (a)).

The collections organization suggested a change to item 4, in which the applicant self-identifies as, among other things, a judgment creditor or an assignee of record by checking a particular box. The collections organization stated that assignees who comply with the requirements of section 673 and become assignees of record also consider themselves to have become the judgment creditor. Therefore, some of them check both boxes, for judgment creditor and assignee of record, which can cause confusion in the clerk’s office. The suggested change was to consolidate the two boxes. The committee declined to make this change because not all assignees of record acquire all rights and interest in the judgment. Rather, the committee decided that the matter could best be clarified by changing “judgment creditor” to “original judgment creditor.”

Comments in response to whether the forms should be split into two forms. The invitation to comment requested feedback on whether forms such as the ones in this proposal, that are both incoming to the court (the application that gets filed) and outgoing from the court (the order that gets issued), should be split into two forms for ease of handling by the courts. Of the seven commentators that responded to this question, all stated that the forms should not be split. Specific comments included that keeping the application and order together on one form was more efficient for courts and litigants and caused no filing or case management problems.

Alternatives considered

In addition to the alternatives raised in the comments, the committee considered the alternative of not revising the forms, but rejected this option in light of the burden on both parties and the courts resulting from the parties’ not understanding that a bench warrant cannot be issued for failure to appear at a debtor’s examination if the order to appear has not been served by law enforcement. Correcting and adding instructions to the forms regarding service should eliminate needless appearances by parties seeking court enforcement of orders on which bench warrants cannot be issued.

Implementation Requirements, Costs, and Operational Impacts

The recommended revisions to these forms will clarify for parties that service of the order must be by law enforcement if they want to seek enforcement by the court for nonappearance. This clarification should result in cost savings by eliminating the need for second applications and orders when the first cannot be enforced and by setting fewer hearings on orders of examination. Courts will need training to recognize the new forms, and forms issued as part of electronic case management systems will need to be revised within those systems.

Attachments

1. Judicial Council forms SC-134 and AT-138/EJ-125, at pages 7–10
2. Chart of comments, at pages 11–25

FOR COURT USE ONLY

DRAFT
08/16/2016
NOT APPROVED
BY JUDICIAL
COUNCIL

PLAINTIFF/DEMANDANTE (name, address, and telephone number of each):

Telephone No.:

DEFENDANT/DEMANDADO (name, address, and telephone number of each):

Telephone No.:

☐ See attached sheet for additional plaintiffs and defendants.

**ORDER TO PRODUCE STATEMENT OF ASSETS
AND TO APPEAR FOR EXAMINATION**

1. TO JUDGMENT DEBTOR (name):

2. YOU ARE ORDERED

- a. to pay the judgment and file proof of payment (a canceled check or money order or cash receipt, and a written declaration that shows full payment of the judgment, including postjudgment costs and interest) with the court before the hearing date shown in the box below, **OR**
- b. to (1) personally appear in this court on the date and time shown below, and
 (2) bring with you a completed *Judgment Debtor's Statement of Assets* (form SC-133).

At the hearing you will be required to

- answer questions about your income and assets; and
- explain why you did not complete and mail form SC-133 to judgment creditor in a timely manner. (You should have sent it within 30 days after the *Notice of Entry of Judgment* (form SC-130) was mailed or handed to you by the clerk.)

**Hearing
Date**

→ Date: _____ Time: _____
 Dept.: _____ Room: _____

Name and address of court if different from above:

If you fail to appear and have not paid the judgment, including postjudgment costs and interest, a bench warrant may be issued for your arrest, you may be held in contempt of court, and you may be ordered to pay penalties.

Si usted no se presenta y no ha pagado el monto del fallo judicial, inclusive las costas e intereses posteriores al fallo, la corte puede expedir una orden de detencion contra usted, declararle en desacato y ordenar que pague multas.

3. This order may be served by a sheriff, marshal, or registered process server.

Date:

(SIGNATURE OF JUDGE)

APPLICATION FOR THIS ORDER

(See Instructions on reverse)

- A. Judgment creditor (the person who won the case) (name): _____ applies for an order requiring judgment debtor (the person or business who lost the case and owes money) (name): _____
 to (1) pay the judgment or (2) personally appear in this court with a completed *Judgment Debtor's Statement of Assets* (form SC-133), explain why judgment debtor did not pay the judgment or complete and mail form SC-133 to judgment creditor within 30 days after the *Notice of Entry of Judgment* was mailed or handed to judgment debtor, and answer questions about judgment debtor's income and assets.
- B. I, judgment creditor, state the following:
- (1) Judgment debtor has not paid the judgment.
 - (2) Judgment debtor either did not file an appeal or the appeal has been dismissed or judgment debtor lost the appeal.
 - (3) Judgment debtor either did not file a motion to vacate or the motion to vacate has been denied.
 - (4) More than 30 days have passed since the *Notice of Entry of Judgment* was mailed or delivered to judgment debtor.
 - (5) I have not received a completed *Judgment Debtor's Statement of Assets* from judgment debtor.
 - (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.

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)

(DECLARANT)

– The county provides small claims advisor services free of charge –

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INSTRUCTIONS FOR APPLICANT

1. This form is intended to be an easy tool to enforce your right to receive a completed *Judgment Debtor's Statement of Assets* (form SC-133). This form is not intended to replace the *Application and Order for Appearance and Examination* (form EJ-125), often called an "Order for Examination." The *Application and Order for Appearance and Examination* should still be used to enforce a small claims judgment if you are not seeking at the same time to make the debtor complete a *Judgment Debtor's Statement of Assets*.
2. To set a hearing on an *Application and Order to Produce Statement of Assets and to Appear for Examination*, you must complete this form, present it to the court clerk, and pay the fee for an initial hearing date or a reset hearing date.
3. After you file this form, the clerk will set a hearing date, note the hearing date on the form, and return two copies or an original and one copy of the form to you.
4. If you want to be able to ask the court to enforce the order on the judgment debtor (the person or business who lost the case), you must have a copy of this form and a blank copy of the *Judgment Debtor's Statement of Assets* (form SC-133) personally served on the judgment debtor by a sheriff, marshal, or registered process server at least 10 calendar days before the date of the hearing, and have a proof of service filed with the court. The law provides for a new fee if you reset the hearing.
5. If the judgment is paid, including all postjudgment costs and interest, you must immediately complete the *Acknowledgment of Satisfaction of Judgment* on the reverse of the *Notice of Entry of Judgment* (form SC-130) and file a copy with the court.
6. You must attend the hearing unless the judgment has been paid.



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 *Request for Accommodation* (form MC-410). (Civil Code, § 54.8.)

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY <div style="font-size: 24pt; font-weight: bold;">DRAFT</div> <div style="font-size: 24pt; font-weight: bold;">08-17-16</div> <div style="font-size: 24pt; font-weight: bold;">Not approved by Judicial Council</div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF _____ DEFENDANT _____	
APPLICATION AND ORDER FOR APPEARANCE AND EXAMINATION <input type="checkbox"/> ENFORCEMENT OF JUDGMENT <input type="checkbox"/> ATTACHMENT (Third Person) <input type="checkbox"/> Judgment Debtor <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 10 days before the date set for the examination.
IMPORTANT NOTICES ON REVERSE**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 reverse)

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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 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)

(1) 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.

(2) 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, OR OTHER ORGANIZATION

It is your 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 your property and debts.



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 *Request for Accommodation* (form MC-410). (Civil Code, § 54.8.)

SPR16-09**Civil Practice and Procedure: Order of Examination** (revise forms SC-134 and EJ-125)

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

	Commentator	Position	Comment	DRAFT Committee Response
1.	Hon. Mark A. Borenstein Superior Court of Los Angeles County	A	<p>Excellent idea. Often times a party will seek a bench warrant even though service was not accomplished by the sheriff, marshal or RPS.</p> <p>There is some confusion though about whether a licensed private investigator qualifies as a registered process server for purposes of an ORAP. I've held no, but if a licensed PI is appropriate, then the licensed PI should be added to the list of appropriate servers.</p>	<p>The committee appreciates the comment and notes that the commentator supports the proposal.</p> <p>The committee notes the issue of whether a licensed private investigator qualifies as a registered process server, but resolving the question is beyond the committee's purview.</p>
2.	California Association of Judgment Professionals by Gretchen D. Lichtenberger	A	<p>On behalf of the California Association of Judgment Professionals, we would like to submit our comments regarding the proposed changes to the Judicial Council forms EJ-125, Application and Order for Appearance and Examination and the SC-134 Order to Produce Statement of Assets and Appear for Examination. We welcome changes to the forms to provide some clarity for creditors seeking the Court's help holding the debtors responsible for their failures to comply.</p> <p><u>Regarding the SC-134 form:</u> We support the changes and are happy to see a spot created for the Court to date-stamp the form for filing. We do have a few comments regarding the SC-134 form.</p> <p>We would like to suggest removing item 3 from the top half of the form altogether. The top half of the SC-134 form is the Order to Appear directed at the Judgment Debtor. The wording</p>	<p>The committee appreciates the commentator's support for the proposal and the detailed comments, which are addressed below.</p> <p>The committee declined to make this change to maintain the similar format and content as form AT-138/EJ-125.</p>

SPR16-09**Civil Practice and Procedure: Order of Examination** (revise forms SC-134 and EJ-125)

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	Commentator	Position	Comment	DRAFT Committee Response
			<p>in item 3 has no relevance as far as the Debtor is concerned. This sentence only leads to confusion and is not necessary. The Judicial Officer signing the Order does not need to give a sheriff, marshal or registered process server permission to serve this form; the statutes do that.</p> <p>[Removing item 3 may allow extra space for the rest of the form. We would like to see more space allotted to the “(name)” spaces in item A of the Application for This Order section.]</p> <p>In the alternative to removing item 3 altogether, we would like to suggest a revision of CCP §708.110(d) by the removal of the words “Service shall be made in the manner specified in Section 415.10” and replacing those words with the words “Service shall be made by a sheriff, marshal, registered process server or a person specially appointed by the court.”</p> <p><i>suggested change:</i> CCP §708.110(d) The judgment creditor shall personally serve a copy of the order on the judgment debtor not less than 10 days before the date set for the examination. Service shall be made in the manner specified in Section 415.10. <u>Service shall be made by a sheriff, marshal, registered process server or a person specially appointed by the court.</u> Service of the order creates a lien on the personal property of the judgment debtor for a period of one year from</p>	<p>The committee acknowledges this concern and will retain the suggestion for future consideration.</p> <p>The committee acknowledges the suggestion to amend Code of Civil Procedure section 708.110, subdivision (d) and notes that it is beyond the scope of this proposal for Judicial Council form revisions.</p>

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	Commentator	Position	Comment	DRAFT Committee Response
			<p>the date of the order unless extended or sooner terminated by the court.</p> <p>Concurrently or after Section 708.110(d) is amended, then item 3 in the top half of the SC-134 form can be changed to read “This order <u>shall</u> be served by a sheriff, marshal or registered process server.”</p> <p>As a third alternative, item 3 can be changed to read “This order <u>should</u> be served by a sheriff, marshal or registered process server.”</p> <p>We would also like to suggest the inclusion of “§708.170 and §1993”, along with “Code of Civil Procedure §§116.820, 116.830” in the lower right area of this form as reference. Clerks and litigants look to the lower right hand corner of Judicial Council forms to find the statutes that govern each form.</p> <p><u>Regarding the SC-133 form:</u> We don’t think this current proposal would solve one of the problems you mentioned. In Small Claims Court, after entry of judgment, the Clerk mails the Notice of Entry of Judgment along with a blank SC-133 form to the judgment debtor [CCP §116.830(a)]. The debtor then has 30 days to return the completed SC-133 form to the judgment creditor [CCP §116.830(b)]. The problem not truly addressed in this current proposal is when a judgment creditor wants to hold the judgment debtor accountable for not returning the completed SC-133 <u>form without</u></p>	<p>The committee will modify the form to include Code of Civil Procedure section 708.170, which is referenced in the Small Claims statutes, in the lower right hand corner of the form. The committee declines to add section 1993.</p> <p>Form SC-134 may be used to order a debtor to appear and provide a statement of assets; the form does not require examination. If the debtor does not appear and provide the statement, sanctions under section Code of Civil Procedure section 708.170 may apply. This suggestion is beyond the scope of the current proposal, but it will be retained by the committee for future consideration.</p>

SPR16-09**Civil Practice and Procedure: Order of Examination** (revise forms SC-134 and EJ-125)

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	Commentator	Position	Comment	DRAFT Committee Response
			<p><u>conducting an examination</u> of the debtor. A creditor who has not received the timely completed SC-133 form may ask the Court to hold the debtor in contempt pursuant to CCP §1209(a)(5) or possibly §1209(a)(9) without applying for and conducting an examination. Unfortunately, the wording of CCP §116.830(d) is not very clear. That subsection can be read as follows:</p> <p>In case of the judgment debtor’s willful failure to comply with subdivision (b) or (c), the judgment creditor <u>may request the court to apply the sanctions</u>,..... including arrest and attorney’s fees, as provided in Section 708.170,<u>on contempt of court</u>. [meaning the creditor may ask for contempt of court]</p> <p>Or</p> <p>In case of the judgment debtor’s willful failure to comply with subdivision (b) or (c), the judgment creditor <u>may request the court to apply the sanctions, including arrest and attorney’s fees, as provided in Section 708.170, on contempt of court</u>. [meaning the only remedy is provided in Section 708.170]</p> <p>The current wording of §116.830(d) seems to imply the only remedy available is that provided in Section 708.170. We would like to suggest that CCP §116.830(d) be amended to remove the reference to “Section 708.170” because this</p>	<p>The committee agrees that the only remedy suggested is that provided by section 708.170, and will leave it to the Legislature whether to make any changes to this statutory provision.</p>

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	Commentator	Position	Comment	DRAFT Committee Response
			<p>particular statute (§116.830) does not pertain to examinations in any way. Section 116.830 <u>only</u> pertains to what happens if the debtor fails to return the SC-133 form provided by the Clerk of the Court. “Section 708.170” is applicable for orders to appear for examination <u>only</u> and would have no application if a debtor failed to comply with CCP §116.830(a) or (b). The two statutes (§116.830(d) and §708.170) <u>are mutually exclusive</u>.</p> <p>It appears from this Invitation to Comment that the only remedy available for a creditor, should the debtor fail to timely return the completed SC-133 form given to the debtor by the Clerk, would be for the creditor to apply to the court for an examination of the debtor by completing and having issued an SC-134 form and having that form personally served upon the debtor. Only then could the Court hold the debtor accountable for failure to return the completed SC-133 form.</p> <p>We understand that a very minute percentage of judgment debtors actually comply by mailing the completed SC-133 form to the creditor after entry of judgment however the debtor is directed to do so as part of entry of judgment in small claims court so there must be some way to hold them accountable <u>without</u> setting an examination hearing.</p> <p>There is nothing that we know of that mandates</p>	

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			<p>that a creditor must apply to examine the debtor in order to elicit help from the Court in holding the debtor accountable for not returning the completed SC-133 form. Currently, a creditor can complete the SC-105 form to ask the court for an Order to hold the debtor in contempt for failing to return the SC-133. The Clerk then mails the filed SC-105 form to the debtor giving the debtor an opportunity to answer. After receiving the debtor's answer or if no answer is returned, the Court may make a ruling or choose to set a hearing and notify both parties by mail. The SC-105 form would act as an affidavit under penalty of perjury in compliance with CCP §1211 for a contempt committed outside the immediate view of the court. The court could then issue a warrant of attachment for the debtor under CCP §1212.</p> <p>In other words, a warrant may issue pursuant to CCP §708.170 for a person who fails to appear for an examination, if the debtor or third party was personally served with the Order to Appear by a sheriff, marshal or registered process server. Alternately, a warrant may issue pursuant to CCP §1212 for a person found in contempt pursuant to CCP §1209 for a person who was disobedient of any lawful judgment, order or process of the court, as in the case of a debtor who fails to return the completed SC-133 form to the creditor. Two separate and distinct processes which tend to have similar results but that originate from different 'violations'. This</p>	

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			<p>is a very misunderstood process by most creditors and most judges.</p> <p>Additionally, we would like to comment that the current SC-133 form indicates the “(name)” of the judgment creditor be put at the top of the form. It would be very beneficial if the SC-133 form said “(name and address)” for the judgment creditor and for the judgment debtor. That way, the debtor easily has the address for the creditor available when mailing the SC-133 form to the creditor.</p> <p><u>Regarding AT-138/EJ-125 form:</u> In item 3, we would like to suggest the alternate wording of “In addition to a sheriff, marshal or registered process server, this order may be served by the following specially appointed person (name):” [See also our comments regarding item 3 under the SC-134 form above].</p> <p>In item 4, there are two check boxes, one for “judgment creditor” and one for “assignee of record”. There are also two separate check boxes like this on several other judicial council forms (which we will address when those forms are being changed for other reasons). This causes confusion because some assignees of record check both boxes and the Clerks of the Court will reject the forms saying that only one box can be checked.</p> <p>An assignee of record, who has properly</p>	<p>The committee appreciates this suggested revision to form SC-133 and will consider it at a future time.</p> <p>The committee has considered this suggestion and decided not to make the change because of the potential for a self-represented litigant to mistakenly write in someone’s name. The judge retains the authority under the statute to specially appoint someone to serve the order.</p> <p>To clarify the distinction, the committee has changed “judgment creditor” to “original judgment creditor.”</p>

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			<p>complied with CCP §673 steps into the shoes of the original judgment creditor and becomes the judgment creditor by acquiring all rights, title and interest to the judgment. <u>By definition, “judgment creditor” includes an assignee of record pursuant to CCP §680.240.</u></p> <p>We would like to suggest that you remove those two check boxes and corresponding text, putting instead one check box and simply typing “Judgment creditor (includes an assignee of record per CCP 680.240).”</p> <p>Also in item 4, we would request that you move the words “to appear and furnish” down to the third line thus leaving a longer line for the name of the person to be examined. The extra space for the name of the examinee is needed especially when the judgment debtor is a corporation and the creditor is requiring the appearance of an officer (ie. Name: “ABC Corporation, Inc. by and through Robert Smith, Chief Financial Officer”).</p> <p>On the back of the form, in the Appearance of a Third Person box, you removed the words “using typewritten capital letters” and left the words “(Describe the property or debt):”. We would like to suggest those words be changed to “(Description of property or debt)” because that is the actual wording in the statute [CCP §708.120(e)].</p>	<p>The committee agrees with the request to move the indicated text down to the next line to provide more space for the name of the examinee. This formatting change also improves the clarity and readability of the item.</p> <p>The committee has decided to leave this wording as it stands because it is an instruction directing an action.</p>

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			<p>We would also like to suggest the inclusion of “§708.170 and §1993”, along with “Code of Civil Procedure §§491.110, 708.110, 708.120” in the lower right corner of this form as reference.</p> <p><u>Regarding the Splitting of Forms into Incoming and Outgoing:</u></p> <p>We cannot speak for the Court or the Clerks, of course, however we do have some comments regarding splitting forms. Simpler is better. We fully understand it becomes somewhat problematic trying to squeeze everything onto one form. However, though the Application part of the form appears to be somewhat redundant of the information in the top half of the form in the Order portion, currently, if they were a separate documents, there is no statute that would mandate service of the Application upon the debtor along with the Order. Having the Application and Order together is good so the debtor (or Third Party) can see what information was given to the court to obtain the Order without going to the court to get a copy. Though the information should be uniform and consistent between the two parts of the form, sometimes it isn’t and is overlooked by the Clerk. We believe the more separate forms, the more chance for a creditor to forget one of the forms causing rejection at filing time by the Clerks, especially in Small Claims.</p>	<p>The committee agrees with the suggestion to include section 708.170 because it references the instruction that is being added to the form. The committee declines to include section 1993; this statute is cross-referenced in section 708.170, which is sufficient.</p> <p>The committee appreciates the detailed and thoughtful comments on its question, including the possibility of splitting the form into one for judgment debtor examinations and one for third party examinations. This suggestion will be retained for future consideration.</p>

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			<p>Should the Council seek to split forms, they may want to look at splitting this EJ-125 form into two separate forms: one exclusively for use for Judgment Debtors Examinations and another exclusively for use for Third Party Examinations, each for use in both attachment and enforcement of judgments. There are statutory differences between examining judgment debtors and examining third parties.</p> <p>By splitting these off, as we propose, the form for third parties could include a warning that the person serving must tender to the third person fees for mileage pursuant to CCP §708.120(f) as well as other items unique to examining third parties. Additionally, it would be easier for the Court, the Clerks and the recipient to determine who is being examined. Then, the third party examination form could have an additional page to include the “application” required pursuant to CCP §708.120(a) to include all the substantiation necessary to be supplied by the creditor in order to be permitted to exam a third party. Just a suggestion for future discussion.</p>	
3.	Hon. Christine Copeland Commissioner, Superior Court of Santa Clara County	AM	Form SC-134, item 3: change the word "may" to “must” when describing who has to serve the Debtor's Exam.	The committee appreciates the comment but declines to follow the suggestion. Section 708.110(d) provides that the form be served in the manner specified in section 415.10, which allows service by other individuals.
4.	Hon. David L. Haet Commissioner, Superior Court of Solano County	N/I	It has come to my late attention that the Council is considering a proposal to revise form AT-138/EJ-125 to include information regarding	The committee thanks the commentator for this suggestion and has changed the signature line to “Judge,” which includes a judge, a commissioner,

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			<p>service by a law enforcement officer.</p> <p>While I would have no objection to that proposal, I would point out that the form as it exists at present and revised 7-1-00 has under the signature line, the notation “Judge or Referee”.</p> <p>Given the fact that we have few if any Referees at this point some 16 years later, it would appear to make sense to revise the form to state “Judicial Officer” as most if not all forms in this area currently use. Given the fact that most of these forms are signed by Commissioners and from time to time a Judge, then this might clarify what in practice occurs quite often.</p> <p>If the form is to be revised otherwise, it might make sense to make this minor change at the same time.</p>	and a temporary judge under California Rules of Court, rule 1.6.
5.	Orange County Bar Association by Todd G. Friedland, President	AM	<p>The OCBA believes that generally the proposal appropriately addresses its stated purposes if it is modified as follows:</p> <p>Form SC-134 should be modified in the same manner as Form AT-138 to refer to service “by a sheriff, marshal, registered process server, or person specially appointed by the Court” since as proposed the Form SC-134 incorrectly eliminates the authority of the court to specially appoint a person for service contrary to C.C.P. §708.170(a).</p>	<p>The committee appreciates the comments and notes the commentator’s general agreement with the proposal if modified.</p> <p>The committee has considered this suggestion and decided not to make the change because of the potential for a self-represented litigant to mistakenly write in someone’s name. The judge retains the authority under the statute to specially appoint someone to serve the order.</p>

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			The OCBA believes that the forms should <u>not</u> be split into two forms each and that one form each are appropriate.	The committee thanks for commentator for the response to its question.
6.	State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong, chair	A	<p><u>Does the proposal appropriately address the stated purpose?</u></p> <p>Yes. The proposal would make clearer, both to judgment creditors and court personnel, that an order to produce a judgment debtor's statement of assets cannot be enforced (via a bench warrant, sanctions, etc.) unless it was served by a law enforcement officer or registered process server. This would simplify the process of enforcing orders for low or moderate-income litigants and reduce needless court appearances by them to enforce orders that are not capable of enforcement. SCDLS also supports the addition of instructions about accommodations for the hard of hearing during court appearances.</p> <p><u>Should forms such as the ones in this proposal, that are both incoming to the court and out going from the court, be split into two forms? Is it easier for courts to handle the forms physically or electronically if there is one form (e.g., the application) that gets filed, and another one (e.g., the order or notice) that gets issued by the court?</u></p> <p>From the litigants' standpoint, the forms in this proposal should not be split into two forms because it is easier to understand all processes</p>	The committee notes that the commentator agrees with the proposal and appreciates the commentator's detailed responses to specific questions presented.

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			and associated instructions if they are consolidated in a single place.	
7.	Superior Court of Los Angeles County	A	<p>This proposal addresses the stated purpose.</p> <p>Forms such as these should not be split because they can be handled electronically without undue burden to the court.</p> <p>No cost savings have been identified.</p> <p>In regard to implementation requirements for the court, no changes or special training have been identified. The forms are simply being made clearer.</p> <p>Two months would be sufficient for implementation after approval of this proposal.</p> <p>We have no comment regarding courts of different sizes.</p>	The committee notes the commentator's agreement with the proposal and appreciates the input.
8.	Superior Court of Orange County, Civil and Probate Managers by Bryan Chae, Principal Analyst	N/I	Can the information regarding the use of an appropriate process server be interpreted as legal advice? As the proposal notes, service can be produced in several ways, one of which is advantageous over the others. When given legal choices like this, shouldn't the courts abstain from suggesting the best routes?	The committee acknowledges the concern expressed in the comment. The proposed changes clarify the statutory requirement for service if the judgment creditor wants the order to be enforceable by a court. The proposed changes do not constitute an opinion or suggestion to a litigant that one form of service is preferable to another, and do not constitute legal advice.
9.	Superior Court of Orange County, Family and Juvenile Court Managers by Michelle Wang, Program Coordinator Specialist	N/I	These forms should remain together for ease to ensure they do get filed together and do not delay the process and make it easier for the Family Law window clerks to handle these forms. In addition, our case management system is able to process these forms and add	The committee appreciates the commentator's feedback on this question.

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			them as an event whether filed separately or together.	
10.	Superior Court of Riverside County by Marita Ford, Senior Management Analyst	N/I	One form is more efficient than splitting it into two forms.	The committee thanks the commentator for the response to this question.
11.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	AM	<p>Q: Does the proposal appropriately address the stated purpose? Yes.</p> <p>Q: Should forms such as the ones in this proposal that are both incoming to the court and outgoing from the court, be split into two forms? Is it easier for courts to handle the forms physically or electronically if there is one form (e.g., the application) that gets filed, and another one (e.g., the order or notice) that gets issued by the court? No, it should remain one form. If the forms are split into two, there is increased likelihood that one form will be misplaced or not submitted by litigants. Additionally, if the “outgoing from the court” form is to be completed by court staff aside from what is currently completed (e.g., hearing, date, and time), there would be an increase in workload for staff.</p> <p>Q: Would the proposal provide cost savings? No.</p> <p>Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation? Yes.</p>	The committee appreciates these comments and notes the commentator’s general agreement with the proposal.

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			The proposed revisions to SC-134 provide insufficient space to list the name and address of the plaintiff/defendant. It is preferred that the boxes be listed as they are on the current form and be made narrower to accommodate the "For Court Use Only" box.	The committee understands the concern but declines to make the change due to space and formatting constraints.
12.	Hon. Rebecca Wightman Commissioner, Superior Court of San Francisco County	AM	It has been pointed out to me by some of my colleagues that for the Application and Order form AT-138/EJ-125, it has the words "Judge or Referee" under the signature line. Many other forms that have come to the attention of those who put forth proposed changes have been changing the signature line to read "Judicial Officer". This is one of those forms deserving of such a change, as it is my understanding there are many Commissioners (neither Judges nor Referees) that end up having to sign these. Please consider making this change at this time.	The committee thanks the commentator for this suggestion and has changed the signature line to "Judge," which includes a judge, a commissioner, and a temporary judge under California Rules of Court, rule 1.6.