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DEBTOR'S EXAMINATION

Discover the Judgment Debtor's Assets

This Guide includes instructions and sample forms. Links to download the fillable forms are at the end of this Guide. Additional copies of this Guide can be accessed at ***www.saclaw.org/debtor-exam***.

You may also need….

Related Legal Research Guides

- Enforcement of Judgments

BACKGROUND

A debtor's examination, also known as an order of examination, is often a preliminary step before initiating collection efforts. This examination is a formal court proceeding in which the judgment creditor may question the debtor to obtain information about the location and value of the judgment debtor's assets, including paychecks and other sources of income, bank accounts, stocks and other investments, and personal and real property. This procedure may also be used to question a third party who may be in possession of the judgment debtor's assets, or owe debts to the judgment debtor.

STEP-BY-STEP INSTRUCTIONS

Step 1: Complete the Form

The Judicial Council form used in this procedure is:

- Application and Order for Appearance and Examination (EJ-125)

To examine a third party, you must attach a declaration indicating that you believe the third party is in possession of the debtor's assets or is indebted to the judgment debtor in an amount exceeding two hundred fifty dollars ($250), and describing the basis of your belief. You may write your declaration on this Judicial Council form:

- Attached Declaration (MC-031)

The declaration must be attached to your application.

In Sacramento County, hearing dates for orders of examination are self-selected. This means you, as the person requesting the hearing, are responsible for selecting the hearing date. Orders of examination are heard in Department 45 on Fridays at 9:00 a.m. Write the date you choose on the *Application and Order for Appearance and Examination* (EJ-125); you do not need to reserve the time with the court.

Disclaimer: This Guide is intended as general information only. Your case may have factors requiring different procedures or forms. The information and instructions are provided for use in the Sacramento County Superior Court. Please keep in mind that each court may have different requirements. If you need further assistance consult a lawyer.

There are two separate time periods to consider when choosing your hearing date:

- Your hearing date must be at least 45 days after the date you file your papers.
- The Judgment Debtor must be served at least 10 days prior to the hearing date California Code of Civil Procedure (CCP) § 708.110(d).

Be sure to select a date that will allow enough time for service.

Step 2: File Your Forms

To obtain your Order for Appearance and Examination, file the following items with the court:

- *Application and Order for Appearance and Examination* (EJ-125), including the *Attached Declaration* (MC-031), if needed (original + 2 copies).
- A file-endorsed (stamped) copy of your Judgment, if entered prior to November 13, 2007. If you do not have a copy of the judgment, you may obtain one from the court. See www.saccourt.ca.gov/civil/file-status.aspx for more information.
- Filing fee (currently $60 per application; see www.saccourt.ca.gov/fees/docs/fee-schedule.pdf for current fees).
- Self-addressed, stamped envelope, if you would like the clerk to mail you a signed copy of the order.

You may file these documents in person at the filing counter in Room 102 of the Gordon D. Schaber Courthouse, located at 720 Ninth Street. You may also file by mail. If you file by mail, please allow extra time for processing your paperwork.

After receiving your documents, the clerk will forward them to the judge for signature. Once signed, the clerk will mail you a copy, if you provided a self-addressed, stamped envelope. Otherwise, you may print a copy of the signed *Application and Order for Appearance and Examination* (EJ-125) from the court's website. For instructions on accessing court documents, see the Sacramento County Superior Court's website at services.saccourt.ca.gov/PublicCaseAccess/Home/Help.

Step 3: Serve Your Order

The examinee must be personally served at least 10 calendar days prior to hearing. If examining a third party, you must also serve notice on the judgment debtor, either personally or by mail, at least 10 calendar days prior to the hearing. Calendar days include weekends and holidays.

If you want the option of having a bench warrant issued if the examinee does not appear, **service must be made in person by a sheriff or a registered process server**, unless the court specially appointed a different server (CCP § 708.107). To have your documents served by the Sacramento County Sheriff's Department, submit the following documents to the Sheriff's Civil Bureau at 3341 Power Inn Road #313:

- Original Sheriff Instructions (available at www.bit.ly/sheriffinst)
- *Application and Order for Appearance and Examination* (EJ-125) signed by the judge (original + 1 copy)
- Fee for service (currently $40, see www.bit.ly/sherifffees for current fees)

After serving your documents, the Sheriff will mail the proof of service to you. If you hire a registered process server, ask that the proof of service be returned to you, rather than the court. You must file the proof of service in Department 45 on the day of your hearing (Local Rule 2.10).

Step 4: Attend the Hearing

When you arrive at the courthouse, check in with the clerk in Department 45, and turn in your proof of service. The judgment debtor or third-party examinee will be given an oath, and the examination will be conducted privately between the parties. There is no court reporter provided for this type of hearing, but you may provide one if you wish. Court reporters can be found in the yellow pages under "Court Reporters" or "Legal Services," or from the National Court Reporters Association's online directory at www.ncrasourcebook.com.

Be sure to have questions prepared ahead of time, to ensure you don't forget anything.

Sample questions to ask the debtor

California Courts Self-Help Website - Sample Questions to Ask a Debtor
www.courts.ca.gov/11328.htm

How to Collect When You Win a Lawsuit
KFC 1065 .Z9 S25 (Self Help) Appendix

Enforcing Civil Money Judgments: Here's How and When to Do It
KFC 1065 .O65 Appendix D
Electronic Access: On the Law Library's computers, using *OnLaw.*

Step 5: If the Examinee Does Not Show Up

If you have filed a proper proof of service showing that the examinee was served in a timely manner by a sheriff or registered process server, the court will order the issuance of a bench warrant for the examinee's failure to appear (CCP §§ 708.170(a)(1)(A), 708.170(a)(1)(B)). To have the warrant issued, you must submit the following Sacramento County local forms to the court:

- Civil Bench Warrant (CV/E-127A) (original + 2 copies)
- Instructions to Serve Civil Bench Warrant (CV/E-127B) (original + 2 copies)
- Sheriff's fee for service (currently $50 or $140 per warrant, depending on the court's order, see www.bit.ly/sherifffees)
- Self-addressed, stamped envelope, if you would like a copy returned to you

After receiving your documents, the clerk will have the warrant signed by the judge, and will forward the original to the Sheriff's Department for service. Once the warrant is served, the court will set a hearing date for the debtor to respond to his or her failure to appear at the originally scheduled hearing, and will notify you of the hearing date. You will need to appear at this time to conduct the debtor examination.

Step 6: Begin Your Collection Efforts

Once you have obtained information about the judgment debtor's assets, you may begin your collection efforts. There are numerous ways a judgment creditor may collect from a judgment debtor. The method(s) used depend on the type(s) of the judgment debtor's assets. For more information

about collection methods, see our series of Step-by-Step guides on Collecting Judgments on our website at www.saclaw.org/law-101/collecting-resisting-judgments-topic/.

FOR HELP

Sacramento County Public Law Library Civil Self Help Center
609 9th Street, Sacramento 95814
www.saclaw.org/self-help/civil-self-help-center/
Services Provided: The Sacramento County Public Law Library Civil Self Help Center provides general information and basic assistance to self-represented litigants on a variety of civil legal issues. Appointments will be made beginning at 8:30 a.m. Patrons who are present at 8:30 a.m. will be entered into a random drawing to determine the order their case will be evaluated. If an appointment is appropriate, it will be made for later in the day. You are encouraged to arrive by 8:25 a.m. to participate in the appointment setting drawing.

Eligibility: Must be a Sacramento County resident or have a qualifying case in the Sacramento County Superior Court.

FOR MORE INFORMATION

On the Web:
California Courts Self-Help Website - Get Information about the Debtor's Assets
www.courts.ca.gov/11187.htm

California Courts Self-Help Website - Sample Questions to Ask a Debtor
www.courts.ca.gov/11328.htm

Sacramento County Superior Court - Orders of Examination
www.saccourt.ca.gov/civil/orders-of-examination.aspx

At the Law Library:
California Forms of Pleading and Practice KFC 1010 .A65 C3 (Ready Reference)
Chap. 254, §§ 254:220-254:230
Electronic Access: On the Law Library's computers, using the *Matthew Bender CD*.
Electronic Access: On the Law Library's computers, using *Lexis Advance*.

California Practice Guide: Enforcing Judgments and Debts KFC 1065 .A9 S3 Chap. 6G
Electronic Access: On the Law Library's computers, using *WestlawNext.*

Debt Collection Practice in California KFC 256 .C83 Chap. 8
Electronic Access: On the Law Library's computers, using *OnLaw.*

Enforcing Civil Money Judgments: Here's How and When to Do It KFC 1065 .O65
Electronic Access: On the Law Library's computers, using *OnLaw.*

>>Home >>Law 101

How to Collect When You Win a Lawsuit KFC 1065 .Z9 S25 (Self Help) Chap. 6

Matthew Bender Practice Guide. California Debt Collection and Enforcement of Judgments
KFC 1065 .E5 M38 Chap. 10, §§ 10.25-10.44A
Electronic Access: On the Law Library's computers, using the *Matthew Bender CD*.
Electronic Access: On the Law Library's computers, using *Lexis Advance*.

Witkin's California Procedure KFC 995 .W58 (Ready Reference) Chap. 10, §§ 275-290
Electronic Access: On the Law Library's computers, using *WestlawNext.*

IF YOU HAVE QUESTIONS ABOUT THIS GUIDE, OR IF YOU NEED HELP FINDING OR USING THE MATERIALS LISTED, DON'T HESITATE TO ASK A REFERENCE LIBRARIAN.

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ATTACHMENTS: FORMS AND INSTRUCTIONS

The Judicial Council forms commonly used in this procedure are:

- Application and Order for Appearance and Examination (EJ-125)

Sample filled-in forms with instructions are available at the end of this Guide.

IF YOU HAVE QUESTIONS ABOUT THIS GUIDE, OR IF YOU NEED HELP FINDING OR USING THE MATERIALS LISTED, DON'T HESITATE TO ASK A REFERENCE LIBRARIAN.

AT-138, EJ-125

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, stat

Calvin J. Creditor
2036 Donner Drive
Sacramento, CA 95826

TELEPHONE NO.: 916-123-4567
ATTORNEY FOR (Name): In Pro Per

Your name, address, and phone number. In Pro Per means you're representing yourself. Check the box next to "Judgment Creditor."

FOR COURT USE ONLY

NAME OF COURT: Sacramento Superior Court
STREET ADDRESS: 720 Ninth Street
ILING ADDRESS: 720 Ninth Street
Y AND ZIP CODE: Sacramento, CA 95814
BRANCH NAME: Civil

Court name, address, and branch.

PLAINTIFF: Calvin J. Creditor
DEFENDANT: Doug J. Debtor

Plaintiff's and Defendant's names as they appeared on the Complaint.

Check Enforcement of Judgment and Judgment Debtor.

Case Number.

CASE NUMBER: 34-2009-00012345

APPLICATION AND ORDER FOR APPEARANCE AND EXAMINATION

☑ **ENFORCEMENT OF JUDGMENT** ☐ **ATTACHMENT (Third Person)**
☑ **Judgment Debtor** ☐ **Third Person**

ORDER ... AMINATION

1. TO (name): Doug J. Debtor
2. YOU ARE ORDERED TO APPEAR personally b... a referee appointed by the court, to
   a. ☑ furnish information to aid in enforcemen... ainst you.
   b. ☐ answer concerning property of the judg... ssion 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.

Name of the person to be examined, and the purpose of the examination.

Date: 2/6/2013 Time: 9 am Dept. or Div.: 44 Rm.:
Address of court ☑ shown above ☐ is:

Enter the date, time, and location of the examination.

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

Date:

JUDGE OR REFEREE

This order must be served not less than 10 days before the date set for the examination.

IMPORTANT NOTICES ON REVERSE

Check Judgment Creditor.

APPLICATION FOR ORDER TO APPEAR FOR EXAMINATION

4. ☑ Judgment creditor ☐ Assignee of record ☐ Plaintiff who has a right to attach order applies for an order requiring (name): Doug J. Debtor to aid in enforcement of the money judgment or to answer concerning property or debt.

Name of the person to be examined.

5. The person to be examined is
   a. ☑ the judgment debtor.
   b. ☐ a third person (1) who has possession or contro... 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.

Check the box describing the person to be examined.

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 ... attachment. An affidavit supporting an application under Code of Civil Procedure s...
8. ☐ The judgment debtor has been examined within the past 120 days. An affidavit sh... is attached.

Questions 7 and 8 apply only in rare situations. Check the box only if the entire statement is true.

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

Date:

Enter your name, date and sign.

Calvin J. Creditor
(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

(Continued on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
AT-138, EJ-125 [Rev. July 1, 2000]

APPLICATION AND ORDER FOR APPEARANCE AND EXAMINATION (Attachment—Enforcement of Judgment)

Code of Civil Procedure, §§ 491.110, 708.110, 708.120