

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

### ITC W22-02

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<b>Title</b>	<b>Action Requested</b>
Rules and Forms: Enforcement of Judgment Form Implementing Assembly Bill 1580	Review and submit comments by January 21, 2022
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Revise form AT-138/EJ-125	September 1, 2022
<b>Proposed by</b>	<b>Contact</b>
Civil and Small Claims Advisory Committee Hon. Tamara Wood, Chair	James Barolo, 415-865-8928 james.barolo@jud.ca.gov

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### Executive Summary and Origin

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 on the council’s existing form.

### Background

Various sections of the Code of Civil Procedure<sup>1</sup> specify language that must be included in orders to appear for examination, including certain information that is required on any order to appear for examination that is directed to a corporation, partnership, association, trust, limited liability company, or other organization (hereinafter “organization”). (§ 708.150.) Prior to the enactment of Assembly Bill 1580 (Stats. 2021, ch. 30), that section only required such a notice to inform the organization that it must designate a person familiar with the organization’s property to appear. This notice is included on current form AT-138/EJ-125.

AB 1580, which will go into effect January 1, 2022, amended section 708.150 to expand the information that must be provided in an order for an organization to appear for an examination. The new required notice explains that if the organization fails to designate a person to appear, then the order will be deemed to have been made for a specific person to appear. The required

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<sup>1</sup> All citations are to the Code of Civil Procedure unless otherwise noted.

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.*

information sets out who that specific person will be based on the type of organization. (New § 708.150(c)(2).)

## **The Proposal**

This proposal recommends revising *Application and Order for Appearance and Examination* (form AT-138/EJ-125) effective September 1, 2022. The change is needed to conform to the provisions of AB 1580.

Current form AT-138/EJ-125 is two pages. The first page of the form contains the application and order to appear for examination. The second page contains the statutorily required notices under sections 491.110, 708.110, 708.120, and 708.150. This proposal expands the last notice on the form as amended by section 708.150 and makes other minor modifications to the form. Specifically:

- The notice to organizations ordered to appear for examination now includes new statutory language from amended section 708.150 advising the organization of duties and consequences for failing to exercise those duties.
- Given that amended section 708.150 contains different provisions for different types of organizations, for clarity the notice now uses the third person point of view instead of the second person point of view.
- “Limited Liability Company” is included in the heading for the notice to organizations correcting an inadvertent omission on the current form.

Finally, due to the length of additional information that must be provided to organizations, the form is now on three pages and the references to “reverse” on page one of the form are replaced with “pages 2 and 3.”

## **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 proposal, 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. For example, the notice required for the appearance of a judgment debtor to enforce a judgment is identical to the notice required for the appearance of a third party in an action where the plaintiff has a right to attach

order. The committee declined to consolidate the other notices for two reasons. First, using a single notice for differently situated individuals in different types of actions might be confusing. Second, the new information required to be provided to organizations is sufficiently lengthy that even consolidating other notices would not prevent the form from going onto a third page.

### **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.

#### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee [or other proponent] also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Form AT-138/EJ-125, at pages 4–6.
2. Link A: AB 1580,  
[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB1580](https://leginfo.legislature.ca.gov/faces/billTextClient.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  <b>DRAFT</b>  11/05/2021  <b>NOT APPROVED BY JUDICIAL COUNCIL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF DEFENDANT	
<b>APPLICATION AND ORDER FOR APPEARANCE AND EXAMINATION</b> <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 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)

**(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, LIMITED LIABILITY COMPANY, OR OTHER ORGANIZATION**

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