

# SMALL CLAIMS

## HOW TO CONDUCT A DEBTOR EXAMINATION

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### Debtor's Examination: What, When, and How?

#### What is a Debtor's Examination?

A Debtor's Examination is conducted to assist you, the judgment creditor, with gathering information that may help you to collect your small claims judgment. After following the necessary procedures (outlined below), the debtor must appear in court and answer your questions. You may also serve the debtor an additional form (SC-107, "Small Claim's Subpoena and Declaration") which requires them to bring certain documents (i.e. bank statements, etc) for the exam that you may review.

#### When Can I File?

Once a small claims judgment is entered, the clerk mails the debtor a form called a "Judgment Debtor's Statement of Assets" (SC-133) to complete and return to the judgment creditor within 30 days (CCP 116.830). This form requires the debtor to disclose information about their assets (i.e. regarding bank accounts, property owned, gross pay, etc.) If the judgment debtor files an appeal or motion to vacate, he/she does not have to return the "Judgment Debtor's Statement of Assets" until 30 days after losing his/her appeal or motion to vacate.

#### How Do I Get a Hearing for a Debtor's Examination?

If:

You do not receive the "Judgment Debtor's Statement of Assets" (SC-133) from the debtor,

**OR**

You question the validity of the document, seek more information, or desire information on assets of the debtor's spouse...

30 days after the "Notice of Entry of Judgment" the judgment creditor can initiate a debtor's examination by filing one of two forms<sup>1</sup>:

"Application and Order to Produce Statement of Assets and to Appear for Examination" (SC-134)

**OR**

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

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<sup>1</sup> Both forms perform essentially the same function, to force the judgment debtor to appear in court and provide information regarding his/her assets. The **only distinguishing factor** is that the "Application and Order to Produce Statement of Assets and to Appear for Examination" allows the judgment creditor to require the judgment debtor to complete and provide the "Judgment Debtor's Statement of Assets."

To set a hearing using an “Application for Order to Produce Statement of Assets and to Appear for Examination” (SC-134), you must<sup>2</sup>:

1. Complete the form
2. File the form with the clerk (you will receive a court date)
3. Pay fees
4. Hire a Sheriff to **personally** serve a copy of the form along with a blank copy of the “Judgment Debtor’s Statement of Assets” (SC-133).

To set a hearing using an “Application and Order for Appearance and Examination” (EJ-125):

1. Complete the form
2. File the form with the clerk (you will receive a court date)
3. Pay fees
4. Hire a Sheriff to serve a copy of the form

Either form (SC-134 or EJ-125) must be **personally** served on the judgment debtor at least ten calendar days before the hearing date. You must then file a “Proof of Service” (Form SC-104) with the clerk at least five calendar days before the court date.

The judgment creditor can also require the judgment debtor to bring specific documents with him to court if those documents are material important to the judgment creditor’s efforts to collect the judgment. In which case, the judgment creditor must complete and file a “Small Claim’s Subpoena and Declaration” (SC-107). For more information with regard to preparing and having a subpoena issued, you can refer to “How to Subpoena a Witness and Documents.”

### **About the Process**

The “Application and Order to Produce Statement of Assets and Appear for Examination” (SC-134) and the “Application and Order for Appearance and Examination” (EJ-125) can be filed every 120 days or shorter with good cause.

### **Planning for the Hearing**

Before your hearing, you should call the court clerk to ensure it is still scheduled. Sometimes, the Debtor’s Examination is removed from the calendar if procedural guidelines were not followed adequately (i.e. it was not filed in time, the debtor was not served on time, etc). Assuming your hearing is still scheduled, you should make a list of **relevant** questions to ask the debtor. For a list of sample questions to ask at the Debtor’s Examination, see the “Questions to Ask for Debtor’s Examination” fact sheet.

### **At the Hearing**

The hearing is generally scheduled for a courtroom and is then transferred to a different location within the courthouse. Once you arrive at this second location, there will be a

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<sup>2</sup> This method is preferable because this form may provide helpful information

judge (or possibly a commissioner or referee) and a bailiff. Sometimes, debtors do not show for the hearing<sup>3</sup>. Assuming they do appear, once your name is called, the debtor is sworn in. You are then sent to a location where you can discuss the matter confidentially with the debtor (often the courtroom hall). This is the time to ask the relevant questions you generated about the debtor's assets. If the debtor becomes difficult and/or fails to answer relevant questions, you should return to the hearing location and ask the judge or supervising official for assistance.

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<sup>3</sup> If the debtor does not appear, judges generally set a new date for the hearing. Often times, the court notifies the debtor of this new date but ensure that this is the case by asking. If the debtor fails to appear again, you can request (and pay for) a bench warrant.

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