

Policy 12000 - Civil Enforcement Procedures

12001 – Service of Process

12001.1 - Serving Electronic Media

- a) If we are requested to serve electronic media (DVDs or CDs) along with court documents.
 1. We will serve the electronic media only if it is an attachment to legal paperwork that we are required by law to serve.
 2. Electronic media will not be served by themselves.

Reference

POST ORDER 10-03

[Serving Electronic Media](#)

12001.2 - Prioritizing Civil and Criminal Processes for Field Service

Prioritizing Civil and Criminal Processes for Field Service

Civil and criminal process to be served by field sections shall be given a service priority as indicated below. Process within a given priority category are listed alphabetically and are considered equal. Process listed in Priority #1 requires the field section to complete service or make diligent efforts on the first day it is received.

PRIORITY 1

- a) Criminal Subpoenas.
- b) Garnishments (Escrow, Banks, Notice to Quit).
- c) Order to Show Cause with a short date (3 days or less) (OSC).
- d) Sale Postings.
- e) Writs of Possession – Real Property (Posting and Enforcement).
- f) Grand Jury Summons.
- g) Restraining Orders.

PRIORITY 2

- a) Claim and Deliveries.
- b) Criminal Summons.
- c) Earnings Withholding Order (EWO).
- d) Order for Examination of Judgment Debtor.
- e) Summons Unlawful Detainer (SUD).

PRIORITY 3

- a) Civil Bench Warrants.
- b) Civil Subpoenas.
- c) Claim and Order.
- d) Execution Levy – Car (ELC).
- e) Execution Levy – Keeper (ELK).
- f) Execution Levy – Till Tap (ELTT).
- g) Summons and Complaint (S&C).
- h) Traffic Bench Warrants.

Note

- a) Due to unusual circumstances exceptions to the above will be made by the Civil Sergeant.
- b) Additionally, any process which is extremely short dated should be considered as Priority #1 regardless of type.

Reference:

POST ORDER 07-01

[Prioritizing Civil and Criminal Process for Field Service](#)

California State Sheriffs' Association Civil Procedures Manual

12001.3 - Process from Plaintiffs without Signed Instructions from Attorney of Record

Process from Plaintiffs without Signed Instructions from Attorney of Record

This policy is intended to clarify and standardizes divisional procedures for the acceptance (for service) of civil actions from plaintiffs, when an attorney of record is shown on the face of the process.

Writs and Other Civil Processes

- a) Court Operations will not accept writs and/or other civil process delivered to Court Operations by a plaintiff and accompanied by the plaintiff's signed instructions, when the court process indicates on its face that there is an attorney of record.

Attorney of Record

- a) If the plaintiff has an attorney of record, instructions signed by the attorney of record are required by CCP Sections 488.030 and 687.010 [\[1\]](#).

Changes to Written Instructions

- a) Once Court Operations has accepted and commenced action on a case only the party signing the instructions (or their authorized agent if the party is unavailable) may authorize any change in the written instructions.
- b) All changes to the original instructions must be in writing and properly signed.
- c) If agreed upon in advance, documents may be electronically transmitted from the appropriate parties.

References:

California State Sheriff's Association Civil Procedures Manual

California Code of Civil Procedure (CCP) [\[2\]](#)

POST ORDER 06-02

[Process from Plaintiffs without signed instructions from Attorney of record](#)

12002 – Non-Writ Process

12002.1 - Service of Juvenile Court Order to Show Cause & Juvenile Court Citations

Service of Juvenile Court Order to Show Cause (OSC) & Juvenile Court Citations**Service of Juvenile Court Order to Show Cause (OSC)**

- a) A Juvenile Court Order to Show Cause is issued upon petition of the Probation Department for reimbursement of expenses incurred while a minor was detained; the order is directed to the parent/guardian of the minor.
- b) Service of the OSC shall be made by personal service of a copy upon the parent/guardian 10 days prior to the hearing if it is an Orange County court proceeding. If the proceeding is outside the County, then the service must be made 15 days prior to the hearing.

- c) The certificate of service on the reverse side of the original must be completed by the person making the service. There is no charge for this service.
- d) The return of service should be made to the Probation Department the day after service or the day after the expiration of the final attempt date.
 - 1. The return may be sent via the county messenger service and addressed to Probation. If the proceeding is outside of Orange County, the return should be made by mail.

Service of Juvenile Court Citations

- a) A juvenile court citation is a court order for the parent or guardian to appear for a juvenile court proceeding involving their child.
- b) Service of the citation shall be made by personally serving the parent or guardian named with a copy of the citation no later than 24 hours prior to the hearing.
- c) The certificate of service on the reverse side of the original must be filled out by the person making the service. There is no charge for this service.
- d) The return of service to juvenile court may be made by placing the citation in the County messenger (Pony) service. The citation can be returned to court as late as the day of the hearing.

Reference

POST ORDER 11-16

[Service of Juvenile Court OSCs Juvenile Court Citations](#)

12002.2 - Certificate of Service, Summons and Complaint

Certificate of Service – Summons and Complaint

- a) An individual "Certificate of Service" (Judicial Council Form POS-10) for each entity served with a Summons and Complaint shall be prepared.
 - 1. This practice is to be followed even when only one copy of the Summons is served on one person in two capacities.
 - 2. A service fee for each capacity shall be charged.

Reference

POST ORDER 08-01

- [Certificate of Service - Summons and Complaint](#)

12003 – Attachment

This section is currently under construction, for information please contact your supervisor.

12004 – Money Writs

12004.1 - Vehicle Levies, Execution Levy (ELC) & CHP 180

One of the most common ways to collect a civil judgment is to levy upon the debtor's vehicle. It is also one of the most potentially volatile situations that civil deputies handle.

Execution Levy Car (ELC)

- a) The primary method of service a civil field deputy will encounter is an "ELC", a levy on tangible personal property in possession of the defendant.
- b) The purpose of a vehicle levy under a writ of execution is to satisfy a money judgment out of the proceeds derived from the sale of the levied vehicle.

Guidelines for determining when/when not to Levy on a Vehicle:

- a) If the vehicle is registered to the defendant, perform the levy.

- b) If the vehicle is registered to another and the R/O is not present, but the defendant is present, perform the levy.
- c) If the vehicle is registered to another and the defendant is not present, do not perform the levy.
- d) Superior Court may issue a "Warrant" on a vehicle.
 - 1. In this case, the R/O, location of the defendant, etc. is inconsequential, perform the levy.
- e) Registration is not the sole factor which determines if the vehicle is taken or not.
 - 1. The levy is on "all rights, title, and interests" of the defendant in the vehicle.
 - 2. A vehicle registered to another person yet it is in the possession of the defendant can be construed to show the defendant has rights in/to the vehicle.
- f) If the subject vehicle is located, contact the defendant, serve a copy of the writ and seek a payoff.
 - 1. If the defendant is unable to pay the judgment and costs, tow the car.
 - 2. Serve a copy of the writ on the person having custody of the vehicle if the defendant is not present.
- g) If no one is present, post a copy of the writ in a conspicuous place.
 - 1. Complete a CHP 180 and notify Support Services/Teletype at [REDACTED] immediately so the impound information can be entered into the CLETS system and obtain a FCN number.
 - 2. The FCN number is written on the CHP 180 form adjacent to the REMARKS box.
 - 3. The CHP 180 form shall be used in conjunction with all civil vehicle levies.
- h) If a payoff is accepted in lieu of seizure, it should be in the form of cash, cashier's check or money order payable to the Sheriff, and a field receipt is issued. A personal check is never acceptable for a payoff on a vehicle levy.

Reference

POST ORDER 11-11

[Vehicle Levies & CHP 180](#)

12004.2 - Serving Earnings Withholding Orders

- a) When serving EWO's it will be the Sheriff's Department policy per Code of Civil Procedure to Serve:
 - 1. The managing agent or person in charge, at the time of service, of the branch or office where the employee works. Or
 - 2. The office from which the employee is paid.
- b) If a business refuses to accept service of an EWO, the deputy serving the document will deliver the "Service of Earnings Withholdings Orders Notification" (See POST ORDER 06-30) to the person in charge along with the EWO.

Reference

POST ORDER 06-30

[Serving EWOs](#)

12004.3 - Moving and Storage Guidelines for Civil Bureau

The Orange County Sheriff's Department has entered into formal contracts with moving companies to provide moving and storage services for civil levies. They have all agreed to the same hourly and storage rates.

Using authorized Moving and Storage Companies

- a) Civil enforcement Deputies will use the authorized Moving and Storage Companies listed in Post Order [11-17](#). No other companies are authorized for use.
- b) Field supervisors will ensure that moving and storage companies are being used on a rotational basis.
 - 1. If a company cannot perform the job, the deputy or sergeant will document that they were offered the job and declined. The deputy or sergeant will then go to the next company on the list.
 - 2. If service problems arise with any of the listed companies that cannot be resolved, contact the Civil Committee for their review.
- c) When the plaintiff or their attorney requests us to use a different Moving and Storage Company, we will inform them that the company they choose must go through the County Vendor process. This could lead to a delay in their levy request.
- d) The plaintiff has two options when moving, storing, and selling defendant's property to satisfy a Writ.
 - 1. The plaintiff can have us place a keeper in the business so that a complete inventory of the property to be seized can be taken beforehand. This also allows the Moving and Storage Company to visit the site and give an accurate moving and storage estimate.
 - 2. In this case the plaintiff must initially give us a deposit to cover the keeper fees and then deposit additional monies to cover the moving and storage costs.
- e) The plaintiff can have us immediately move and store the property to be levied. While this method is good for seizing one or two identifiable pieces of property, it is a poor method to seize property when the plaintiff requests us to "seize any and all property of the defendant."
 - 1. A keeper will be placed to conduct the inventory.

Blind Estimates

- a) If the plaintiff insists on immediately moving and storing the property, the deputy will get as good of an estimate of property to be moved from the plaintiff.
- b) The deputy will call the moving and storage facility and tell them we need a blind estimate on the seizure.
- c) Call the plaintiff back, give them the estimate and inform them that they must be immediately available to deposit additional funds if the costs go over the estimate.
 - 1. Also inform them that if there is no break in order and that if the business is closed, they will be charged a dry-run fee by the moving company.

Insurance on Seized Property

- a) The department must notify the plaintiff, or their attorney, that under state law, moving companies are only liable for lost or damaged goods in the amount of \$.60 per pound.
- b) If the plaintiff or their attorney want, or require, addition insurance they must purchase it from the moving company through us and include that amount in their deposit.
- c) The plaintiff or their attorney must check one of the boxes on the Levy/Garnishment Instruction Sheet either declining additional insurance or they must check the box requesting additional insurance.
 - 1. If the plaintiff or their attorney mailed in the instructions we will notify them of the insurance valuation limits by faxing them our instruction sheet so they can formally decline or purchase additional insurance.
 - 2. If no fax number is available we will mail them an instruction sheet.

3. We will hold the case for one month and return the writ and fees if the plaintiff or their attorney does not respond to our request to return the instruction sheet.

Reference

POST ORDER 11-17

[Moving and Storage Guidelines](#)

12004.4 - Storage of Small Levied Items

12004.4 - Storage of Small Levied Items

Items that are levied and are smaller than a banker's box, will be booked into our property/evidence locker.

Procedure for Handling Small Levied Property

- a) After the levy, obtain a DR # for property safekeeping.
 1. Complete a property report for safekeeping.
 2. Send the original report to support services, and put copies in the DR log book and civil case file.
 3. Book the property into the evidence booking room at 320 N. Flower. South Civil Deputies may book the property into the Aliso Viejo Substation.
 4. Follow the property booking procedures posted on the walls of the evidence rooms.
 5. We must use the "Levied" booking procedure when booking the levied property.
 6. This ensures the defendant cannot retrieve the property before the sale or release from the civil office.

Sale of Property

- a) Sale of Levied Property
 1. The day prior to the sale, the Bureau Sergeant will fax a Property Disposition Authorization form to Property/Evidence.
 2. The Bureau Sergeant will sign as the Authorizing Case Investigator and name the levying deputy who will pick up the items. On the sale date, the levying deputy will go to the property/evidence room and retrieve the items for an office counter sale.
 3. If the item is sold and released, the levying deputy will fill out a property disposition form.
 4. That form will be placed in the mail drop locker at either property room.
 5. If the property was not sold or was purchased with a credit bid, return the property to the evidence lockers.
 6. If the sale is cancelled and the property is to be released, the Bureau Sergeant will fax a Property Disposition Authorization form to Property/Evidence.
 - i. The Bureau Sergeant will sign as the Authorizing Case Inv. and name the person who the property is to be released to.
 - ii. Instruct that person to pick up the item(s) at the Property/Evidence.

Reference

POST ORDER 10-04

[Storage of Small levied Items](#)

12004.5 - DTS Towing Guidelines for Court Operations Civil Enforcement Bureau

Seizure of Vehicles

- a) Civil Operations will use the Dispatch and Tracking Solutions (DTS) tow system to seize, manage, and release vehicles that we take into our possession to satisfy Court Writs.
 1. Civil Enforcement Deputies will request a tow company through dispatch when conducting a vehicle seizure.
 2. The removal authority for a claim and delivery or money Writ will be "Civil."
 3. If a tow company is needed only for the removal of the vehicle from the defendant's property on a Personal Property Writ (Turnover Order), the removal authority will be "Civil-714."
- b) The deputy will obtain a DR number and fill out a CHP180 form on all seizures and turnovers.
 1. The deputy must obtain an FCN Number, this is done by calling teletype at [REDACTED]
 2. Teletype needs the removal authority to enter the FCN number, the removal authority for teletype is CCP 687.030 [1].
 3. After the deputy gives teletype the vehicle information, teletype will assign a FCN number that the deputy will include in the narrative section of the CHP 180 form.
 4. If the vehicle is seized, the deputy will mark the "Impounded" and "Agency Hold" boxes.
 5. If the vehicle is turned over to the plaintiff, the deputy and the plaintiff will complete the release sections of the form.
 6. In both cases, "Civil Seizure" will be written boldly in the narrative section.

Report Distribution

- a) Report Distribution to be completed by the deputy:
 1. Original - Support Services
 2. Copy - Attached to Civil Worksheet to be placed in case file
 3. Copy - Placed in Detail's DR log book

Professional Staff

- a) The professional staff member assigned to the case will query DTS to ensure the tow company entered all of the required fields when the deputy returns the service ticket along with the CHP180 form.
 1. The professional staff member will write the following in the "Hold" notes section: "Civil Seizure - Vehicle only to be release by Sheriff's Civil Office."

Vehicle Turned over to Plaintiff

- a) If the vehicle was turned over directly to the plaintiff and a tow company was used, the professional staff must do all of the data entry.
 1. The DTS system should be periodically checked while the vehicle is in storage to ensure the plaintiff has enough fees to cover the storage costs.
 2. Prior to the sale, the assigned staff member will tally the storage costs to ensure the tow company is paid in full prior to the disbursements of sale funds to the plaintiff.
 3. After a sheriff sale has been completed and the buyer has met all obligations, the staff member will send a release through DTS authorizing the tow company to release the vehicle to the winning bidder.

Additional Information

- a) The seizure of boats and planes will also be tracked through DTS.
 1. When these types of assets are seized, professional staff must manually enter all the data into the system since they will not be stored in a private tow yard.

Reference

POST ORDER 10-11

[DTS Towing Guidelines for Court Operations Civil Enforcement](#)

12005 – Keepers

12005.1 - Keepers in a Medical Facility

This policy is adopted to avoid liability on the County or Department that could result if patients are denied treatment.

- a) Judgment Creditors seeking to place keepers in businesses where the judgment debtor provides medical services will be informed that we will permit the judgment debtor to provide medical services to patients.
 1. It is desirable to inform the creditor beforehand of our policy and the reason.
- b) The keeper may request payment from the patient in the form of cash or check after services are rendered.
 1. However, if the patient refuses or cannot make payment by cash/check the keeper shall allow the patient to pay by credit card or reimbursement through an insurer; we should not prevent that transaction or interfere in any way with medical services being rendered.

Reference

POST ORDER 10-07

[Keepers in Medical Facilities](#)

12005.2 - Keeper Levies and IRS Tax Liens

Notice of Federal Tax Lien

- a) After placing a keeper, if we are notified by the defendant or the Internal Revenue Service that the IRS has assessed a lien against the defendant, and we are presented with a “Notice of Federal Tax Lien” which has been previously served on the defendant, we will:
 1. Continue with the levy and notify the levying creditor that the lien is in effect.
 2. The result will be the service on us of a “Demand” by the IRS requiring us to pay the keeper proceeds to the IRS.
- b) The creditor then has the informed option of continuing the levy or canceling.

Reference

POST ORDER 06-20

[Keeper Levies and IRS Liens](#)

California State Sheriffs’ Association Civil Procedures Manual

12006 – Sales

12006.1 - Execution of Sale - Weapons

General

This policy only pertains to the sale of weapons that are otherwise legal to possess under California and federal law.

Purchaser of Weapons

- a) Only bidders who possess all of the following will be allowed to purchase weapon(s) at a Sheriff’s auction;
 1. Federal Firearms License (FFL),
 2. Regulatory or business license required by local government,
 3. State Board of Equalization seller’s permit, and

4. A certificate of eligibility issued by the Department of Justice.
- b) Prior to selling any weapon(s) through auction, the Sheriff's representative will require all bidders to produce the required licensing.

Information given to bidders prior to auction

- a) Persons bidding will be informed that the successful bidder will be required to fill out the Weapons Auction Transaction Record form to assist the department in conducting a brief investigation prior to releasing the weapon(s).
- b) The intent of the investigation is to determine the validity of the licenses and if the bidder is an authorized agent for the entity assigned the licenses.

Releasing of Weapons

- a) The weapon(s) will be immediately released to the successful bidder once verification has been completed and payment has been received.
- b) Verification of the FFL# should be obtained by telephoning the Bureau of Alcohol, Tobacco and Firearms in Atlanta, Georgia (800) 366 5423.

References

POST ORDER 06-05

- [Execution Sale - Weapons](#)

California State Sheriffs' Association Civil Procedure Manual

[12007 – Redemption](#)

This section is currently under construction, for information please contact your supervisor.

[12008 – Writ of Possession](#)

[12008.1 - Defendants Re-entering Real Property Following Eviction](#)

Local law enforcement agencies are frequently confronted with a problem that usually occurs shortly after a Writ of Possession for Real Property has been enforced by Sheriff's Department personnel.

Attempt to Re-Enter or Re-Occupy after Eviction

Defendants who have been evicted from real properties frequently return and re-enter or re-occupy the premises, in violation of the court order. Landlords are usually directed by the local police agency to contact the Sheriff's Department, and are informed by the local police agency that the eviction process is a civil matter and must be handled exclusively by the Sheriff's Department.

- a) The re-entry of a defendant to premises following the enforcement of a Writ of Possession, without the consent of the property owner or landlord, is a criminal violation.
- b) These crimes are misdemeanors and are enforceable by the local police agency [\[1\]](#).
 1. Penal Code 419 Repossession of lands after removal by legal process
 2. Penal Code 166 Contempt of Court
 3. Penal Code 602(o) Trespass – Refusal to leave private property
 4. Penal Code 602(t) Trespass – Refusal to leave private property
 5. Penal Code 602.5 Unauthorized entry of property

Plaintiff's Receipt for Possession

- a) In addition to the posting of the "Notice of Eviction" on the subject property following a successful eviction, the landlord or plaintiff in the case is provided with a receipt by the Deputy conducting the eviction that is entitled the "Plaintiff's Receipt for Possession".

- b) This form is provided to the landlord or agent in order to provide the property owner with written documentation confirming that they have been legally provided with the right to possession of the property.
- c) The plaintiff is instructed to present the receipt to the local law enforcement agency along with a copy of the writ or court order that was enforced to obtain possession of the property, should the defendant return to the premises.
- d) This form also includes on its face the citation of Penal Code 419 [\[2\]](#), Repossession of land after removal by legal process.

Recommended Actions

- a) When a landlord presents a copy of the “Eviction Restoration Notice” and requests assistance in removing a previously evicted tenant, a peace officers should inspect both the “Writ of Possession” and court order and the “Eviction Restoration Notice” carefully.
- b) Officers should validate the case number identified in the upper left-hand corner of the receipt and compare it to the attached copy of the court order or Writ of Possession.
 - 1. The writ or court order will specifically identify the affected property location or address.
 - 2. If the Writ is not attached, the landlord should be asked to provide a copy.
- c) After determining the validity of the order and the receipt, a peace officer may proceed with the enforcement of the applicable sections of the law as shown above.

Reference

POST ORDER 11-06

[Defendants Re-entering Real Property Following an Eviction](#)

12008.2 - Eviction Addresses

- a) Civil Field Deputies will proceed with evictions as long as the property on the Writ matches either the Post Office Description or the County Recorder’s Description of the property.
 - 1. If you have legitimate doubts whether or not you are conducting the eviction at the proper address, stop the eviction until the property on the writ can positively be matched with the actual address.

Reference

POST ORDER 10-02

[Eviction Address](#)

12008.3 - Evictions with Animals

Policy:

When we respond to an eviction and animal(s) are present, the deputy will make a determination if there is reasonable grounds to believe that very prompt action is required to protect the health or safety of the animal or the health or safety of others (PC 597.1)[\[1\]](#). If the deputy believes these conditions exist, the deputy will contact Animal Control. Animal Control will take possession of the animal(s) if the elements of PC 597.1 [\[2\]](#) are met. If the elements of PC 597.1 [\[3\]](#) are not met, Animal Control will leave the animals in the care of the landlord, new owners, or their representatives and will accept the animal(s) after the time period in Civil Code 1983 has expired.

No Protective Action Necessary

If the deputy determines no protective action is necessary, the animal(s) will be left with the landlord, new owner, or their representative who must then comply with CC 1815, 1816, and CCP 1174 [\[4\]](#). The

landlord is the involuntary depositary not the Sheriff's Office. If the landlord, new owner, or their representative refuses to take possession of the animal, the deputy will not complete the eviction.

Tenant or Previous Owner Present

If the evicted tenants or previous owners are present at the time of the eviction they should be encouraged to take the animals with them when they leave. However, the Sheriff's Department has no authority to force them to take the animals when they vacate the property.

- a) The Sheriff's Department could be liable if a deputy forces the evictees to leave with an animal and the animal injures them or someone else.

Additional Information

If the plaintiff or their agent needs additional information on how to care for the left behind animals refer them to the animal control website at www.oc.ca.gov.

Reference

POST ORDER 11-01

[Evictions with Animals](#)

12008.4 - Evicting Lodgers from Hired Rooms

Civil Code Section 1946.5

- a) Civil Code Section 1946.5 [\[1\]](#) became law to assist landlords in removing a lodger who resides with the owner of a dwelling unit.
- b) When specific conditions exist, a landlord can avoid bringing an action for unlawful detainer against an occupant.

Conditions

- a) For this statute to apply, all of the following conditions must exist:
 1. The dwelling unit must also be occupied by the owner.
 2. The owner must retain a right of access to all areas of the dwelling and have overall control of the dwelling unit.
 3. Only one lodger can reside in the unit. If there is more than one lodger, even mother and child, the usual unlawful detainer process must be followed; and
 4. The lodger must have contracted either for room, or room and board.

Definitions

- a) A "Lodger" is a person who rents a room from the owner of a dwelling unit, who personally occupies the dwelling, retains the right of access to all areas of the dwelling unit occupied by the lodger, and has overall control of the entire dwelling unit.

Lease Termination

- a) Termination of the arrangement may be done by either party giving written notice to the other of the intention to terminate. The written notice is typically required at least thirty (30) days before the date of termination. However, the parties may agree to as little as seven (7) days notice to terminate when the tenancy is created.
- b) Notice shall be given by one of the following (Civil Code 1946)[\[2\]](#):
 1. Personally
 2. By substitute service and mailing a copy:
 3. By posting and mailing a copy; or
 4. By certified or registered mail, restricted delivery, with a return receipt requested.
- c) Upon expiration of the notice, any right of the lodger to remain in any part of the dwelling is terminated.

1. The person may be removed pursuant to Penal Code 602.3 [\[3\]](#), or other applicable provision of law.
 2. The lodger may be arrested by the owner pursuant to PC 837 (Private Person Arrest)[\[4\]](#).
 - i. The arrest is not made by the law enforcement agency.
 - ii. Pursuant to PC 142(a) [\[5\]](#), the officer will receive custody of the arrested person then cite and release.
 3. If the person refuses to leave, the officer is not precluded from removing the person from the premises.
- d) Removal of the lodger under authority of PC 602.3 only applies to the owner-occupied dwelling where a single lodger resided.
- e) Any personal property left on the premises will be stored by the property owner pursuant to Civil Code 1965 [\[6\]](#).

References:

POST ORDER 06-25

[Evicting Lodgers from Hired Rooms](#)

California State Sheriffs' Association Civil Procedures Manual

California Code of Civil Procedure

[12008.5 - Receipt for Possession of Real Property](#)

Signed Receipt of Possession

- a) Field deputies should make every effort to obtain a signed "Receipt of Possession" from the plaintiff when we have served a Writ of Possession Real Property and Notice to Vacate on a defendant or property.
 1. If the plaintiff refuses to sign the receipt of possession, state so on the service ticket and complete the eviction.

Plaintiff not Present

- a) In no circumstances will we complete an eviction if the plaintiff or their representative is not present at the time of the lockout.

Reference

POST ORDER 10-02

[Receipt of Possession of Real Property](#)

[12008.6 - Landlord Already in Possession](#)

- a) Civil Field Deputies will proceed with evictions even if the landlord is already in possession.
- b) The Sheriff's Department must carry out all lawful orders of the court and must complete the eviction levy even if the landlord already has possession.
- c) If the tenant is present and claims the landlord illegally evicted them and demands to make a private person's arrest:
 1. If you are in a non-sheriff jurisdiction area, contact the local police agency to handle the potential violation of CPC 418 [\[1\]](#). Make a log entry as necessary.
 2. If you are in a sheriff jurisdiction area, take appropriate actions according to the patrol manual and legal source book.
- d) If the landlord insists on going forward with the eviction, we must proceed and enforce the separate Civil Court Writ.

References

POST ORDER 10-02

[Landlord Already in Possession](#)

OCSD Field Operations Manual Section 10 [\[2\]](#) - Landlord Tenant Disputes

California Legal Source Book Section 5.14 - Search & Seizure Private Persons Arrest

[12008.7 - Writ of Possession - Claim and Delivery](#)

NOTE:

A Claim and Delivery is not an action in and of itself. It is a provisional remedy, which allows the plaintiff to recover specific property in the possession of a defendant. Until a court action determines otherwise, possession of the property is only temporary. Property may be seized from the possession of the defendant, or a person acting as an agent for the defendant with no ownership interest.

Writ

- a) The writ must have the following:
 - 1. Directed to the Sheriff.
 - 2. Describe the specific property to be seized.
 - 3. Specify any private place to be entered to take possession of property.
 - 4. Direct the Sheriff to levy on the property if found. Hold until released or sold.
 - 5. Inform the defendant of the right to object to the undertaking, or obtain redelivery by filing an undertaking.

Seizing Property

- a) The Sheriff's Department may seize the described property located in any public place.
- b) It may be seized only from the defendant or the defendant's agent.
 - 1. The definition of an agent is not always clear.
 - 2. In most cases, this is the person in possession of the property not claiming ownership or lien.

Forcible Entry

- a) If the property to be seized is located in a private place, all efforts to have the property delivered to the levying deputy must be attempted.
 - 1. Caution should be exercised when executing this type of levy.
- b) A Writ of Possession (Claim and Delivery) has a provision for an automatic break in order; if the plaintiff followed CCP 514.010(c) [\[1\]](#), the judge signed the Writ, and the address to be forcibly entered, if necessary, is located in box 2 of the writ.
 - 1. The deputy should always make every reasonable effort to obtain peaceful entry.
 - 2. If the property is not voluntarily delivered, the deputy may then make forcible entry in such a manner as she/he reasonably believes will cause the least damage to the building.
- c) If no one is present when the property is levied, the writ authorizing the levy must be posted in the most conspicuous place closest to where the property was seized.
 - 1. Copies of all documents will then be mailed to the defendant.
- d) If a deputy believes that entry and seizure will involve substantial risk or serious injury to anyone, the deputy shall not enter.
 - 1. The deputy will return the writ to court for further direction.

Property in Possession of Lien Holder

- a) If the property is in the possession of a lien holder, we shall not levy unless:
 - 1. The lien holder is a named defendant and covered by an undertaking, or
 - 2. The lien holder is paid, thus releasing the lien.

Reference

POST ORDER 08-03

[Writ of Possession - Claim & Delivery](#)

12008.8 - Completion of Prejudgment Claim of Right to Possession

Code of Civil Procedure Section 415.46 [1]

- a) There are two places on the claim form which must be completed by the server at the time copies of the Summons and Complaint for Unlawful Detainer are served, left, and posted.
- b) In order to fully comply with the requirements of this Section, servers are reminded to fill in the DATE OF SERVICE box.
 1. When possible, mailing will be completed by the civil professional staff on the same day as the posting.
 2. However, the date entered on the claim form by the server will be the date the Summons is served or delivered and posted regardless of when mailing is completed.
- c) Fill in the proper filing fee amount.
 1. The filing fee is determined by the current Court Fee Schedule.

References:

POST ORDER 06-18

- [Completion of Prejudgment Claim of Right to Possession](#)

California State Sheriffs' Association Civil Procedures Manual

12008.9 - Recreational Vehicle Park Laws

Pursuant to Section 799.58 of the Civil Code [1], law enforcement agencies are required to remove a defaulting occupant from a recreational vehicle park when all the requirements of the Civil Code have been met.

California Civil Code, Section 799.58

“Subsequent to serving a copy of the notice specified in this article to the city police or county sheriff, whichever is appropriate, and after the expiration of 72 hours following service of the notice on the defaulting occupant, the police or sheriff, shall remove or cause to be removed any person in the recreational vehicle. The management may then remove or cause the removal of a defaulting occupant’s recreational vehicle parked on the premises of the park to the nearest secured storage facility. The notice shall be void seven days after the date of service of the notice.”

Conditions Prior to Removal

The responding agency shall, proceed to remove the occupant from a recreational vehicle when all of the following conditions have been met:

- a) The appropriate law enforcement agency must have been served a copy of the 72-hour notice that was served upon the defaulting occupant.
- b) The notice must reference the date of service upon the occupant. The notice and removal procedure is void if more than 7 days has elapsed from the date of service upon the occupant.
- c) The notice served upon the occupant must state that if the defaulting occupant does not remove the recreational vehicle from the premises of the park within 72 hours after receipt of the notice, the management has authority to have the recreational vehicle removed from the lot to the nearest storage facility.
- d) In the event that the defaulting occupant is incapable of removing the occupant's recreational vehicle from the park because of a physical incapacity or because the recreational vehicle is not

motorized and cannot be moved by the occupant's vehicle, the default shall be cured within 72 hours, but the date to quit shall be no less than seven days after service of the notice.

Determining Factors

When the responding law enforcement agency arrives at the RV Park, the following must be determined to exist:

- a) Registration agreement between a park and an occupant shall be in writing and shall contain the term of the occupancy and the rent therefore, the fees, if any, to be charged for services which will be provided by the park, and a statement of the grounds for which a defaulting occupant's recreation vehicle may be removed as specified in 799.22 of the Civil Code [\[2\]](#) and containing the telephone number of the local traffic law enforcement agency. (CC 799.43 [\[3\]](#))
- b) At the entry to the recreational vehicle park, or within the separate designated section for recreational vehicles within a mobile home park, there shall be displayed in plain view on the property a sign indicating that the recreational vehicle may be removed from the premises for the reasons specified in Section 799.22 of the Civil Code and containing the telephone number of the local traffic enforcement agency. (CC 799.46 [\[4\]](#))
- c) The person to be removed must fit the legal definition of a "defaulting occupant."
 1. An "occupant" is the owner or operator of a recreational vehicle who has occupied a lot in the park for 30 days or less.
 2. A "defaulting occupant" means an occupant who fails to pay his or her occupancy in a park or who fails to comply with reasonable written rules and regulations of the park given to the occupant upon registration.
 3. If a subject has been in a park longer than 30 days, he or she is classified as a "tenant" and after nine months, he or she is classified as a "resident".
- d) Tenants and residents are not subject to the provisions of removal outlined in this section.

Reference:

POST ORDER 06-33

[Recreational Vehicle Park Laws](#)

California State Sheriffs' Association Civil Procedures Manual

California Code of Civil Procedure [\[5\]](#)

12009 – Extraordinary Writs

This section is currently under construction, for information please contact your supervisor.

12010 – Claims

12010.1 - Claims of Right to Possession

Occupants of premises who have not been named in the Summons Unlawful Detainer may file claims of right to possession. Claims of right to possession fall into two categories.

- a) The **prejudgment claim** procedure, the unnamed occupant is given notice to file a claim prior to the unlawful detainer hearing.
- b) The **post judgment** procedure, the unnamed occupant is given notice along with the Notice to Vacate.

Prejudgment Claim of Right to Possession

- a) Is an alternative procedure which plaintiffs may elect to use in place of the existing procedures that provide for the filing of a claim of right to possession after judgment.

- b) If the prejudgment claim of right to possession form has been served with the summons and complaint upon the tenants and all occupants, the levying officer will not accept claims of right to possession after judgment unless the property is involved in a foreclosure. (CCP 415.46 or 1167 [\[1\]](#))
- c) When serving the Summons and Complaint upon a defendant/tenant, the person making the service shall make a reasonably diligent effort to ascertain whether there are other adult occupants of the premises who are not named in the summons by asking the person being served to identify any other adult occupants.
 - 1. If any adult occupants are identified and available to be served, the person making the service shall serve each with a Prejudgment Claim of Right to Possession form with a Summons and Complaint attached.
 - 2. Service on occupants, which cannot be personally served, may be accomplished by the substitute service method or by leaving, posting and mailing copies as indicated.
- d) When judgment for possession is entered and a writ of possession is issued, enforcement of the writ shall apply to all tenants, subtenants, claimants and any other occupants of the premises (“Evict All”).
- e) Unlawful Detainer Cases Where the Summons and Complaint Were Not Served Pursuant To CCP Section 415.46 [\[2\]](#)
 - 1. Any person not named in the judgment for possession who resided at the premises on the date of the filing of the action may object to enforcement of the judgment against that person by filing a claim of right to possession.
 - 2. Persons asserting a claim at the premises shall be furnished the necessary Claim of Right to Possession form by the Levying officer.
- f) The court will mark the writs of possession that issue following service pursuant to CCP Section 415.46 [\[3\]](#).
 - 1. All other writs of possession will be processed in accordance with existing procedures.
 - 2. The levying officer will serve or post a Claim of Right to Possession form with the writ at the same time the Notice to Vacate is served or posted.
- g) CCP 415.46(e)(2) [\[4\]](#) allows any tenant or sub-tenant to file a claim of right of possession up until the time of eviction, if the housing unit involved in the unlawful detainer hearing was the result of a foreclosure.

Processing the Claim of Possession

- a) A claim of right to possession may be filed at any time after service or posting of the writ of possession, up to and including the time at which the levying officer returns to effect the eviction of those named in the judgment of possession.
 - 1. However, if the writ is an “Evict All” writ, no further claims will be accepted.
- b) Section 1174.3 of the California Code of Civil Procedure [\[5\]](#) prescribes that the completed Claim of Right to Possession must be filed in person.
 - 1. The occupant named on the claim shall be the person delivering the completed claim.
 - 2. The occupant presenting the completed claim must also present identification to the deputy.
 - 3. Deputies should request a driver's license or identification card issued by the California Department of Motor Vehicles.

4. If the claimant does not possess either, discretion should be used in accepting other identification, preferably with a picture, to identify the claimant. (See CCOM Section 12010.3).
- c) Upon receipt of a claim of right to possession, the levying officer shall indicate thereon the date and time of its receipt and forthwith deliver the original to the issuing court and a receipt or copy of the claim to the claimant and notify the plaintiff of that fact.

Procedure after the Claim Hearing

- a) If the claim is denied, proceed with enforcement of the original writ of possession as deemed amended to include the claimant.
- b) The defendant is still allowed the original 5-day notice before the eviction can take place.
- c) If the defendant has had the full 5-day notice, an immediate eviction can be done.
- d) If the full 5-days have not passed, wait until after the 5th day then proceed with an immediate eviction.

Reference

POST ORDER 11-10

[Claims of Right to Possession](#)

12010.2 - Third Party Claims: Appeal Undertaking Requirement

- a) California Code of Civil Procedure 917.9[1] and Witkin, CA Procedure 2nd, Appeal 178, states that an appeal does not stay the judgment or order if the court requires an undertaking in a sum fixed by the court, and the undertaking is not given.
 1. The Sheriff's Department is not authorized to turn back the plaintiff's undertaking unless an order to that effect has been included in the judgment order.

References:

POST ORDER 07-03

[Third Party Claims-Appeal Undertaking Requirement](#)

California State Sheriffs' Association Civil Procedures Manual

California Code of Civil Procedure [2]

9 Witkin Cal. Proc. Appeal § 278

12010.3 - Identification Requirement of Code of Civil Procedure Section 1174.3

California Code of Civil Procedure 1174.3

- a) California Code of Civil Procedure 1174.3 [1] requires that people filing post-judgment claims of right to possession present their completed claim form in person with identification to the levying officer.

Identifications:

- a) The following are the primary types of identification that are acceptable:
 1. Valid California Driver's License
 2. Valid California Identification Card
- b) However, any type of picture identification may also be accepted, examples include:.
 1. Passport
 2. Military I.D. card
 3. Out-of-state driver's license
- c) Other identification may be accepted at the Professional Staff Supervisor, Civil Sergeant or Justice Center Lieutenant's discretion.

Reference

POST ORDER 06-17

[Identification Requirement of Code of Civil Procedure Section 1174-3](#)

California State Sheriffs' Association Civil Procedures Manual

12011 – Exemptions

12011.1 - Claim of Exemption Policy - EWOs

These policies will apply only to cases where no court orders are issued, or where court orders are not specific.

Withholdings

- a) Withholdings already received from the employer are paid over to the employer for payment to the defendant.
- b) If additional monies are received later they are returned to the employer for disbursement to the defendant.
- c) The employer is sent a Notice of Termination of Withholding Order which advises the employer to terminate the levy and to return to the defendant any earnings which they may be holding for transmittal to the levying officer.
- d) The plaintiff receives no funds whatsoever from the levy and the EWO is no longer in force.

Modification

- a) The modification of withholding of earnings is effective as of the date of the levy.
 1. The Notice of Modification of Earnings form will have the date of the levy inserted on Part 2(b) of the form.
- b) Based on the amount of earnings per pay period the defendant has agreed to have withheld on the EWO, the employer and the levying officer must calculate;
 1. Back to the date of the levy to ascertain how much money it is proper to withhold towards satisfaction of the judgment
 2. How much excess withholdings must be returned to the defendant.
- c) Any excess amounts withheld by the employer are returned to the defendant, and the balance still due on the execution is re figured and increased accordingly.
- d) Withheld earnings in the hands of the levying officer, which exceed the proper amount as calculated back to the date of levy, are returned to the employer to be paid to the defendant.

Claims of Exemption

- a) If the defendant's Claim of Exemption is granted;
 1. An appeal by the plaintiff does not stay the order modifying or terminating the earnings withholdings order.
 2. The earnings are returned to the defendant immediately.
- b) If the defendant's claim is denied, there is an automatic appeal time of 30 days for Small Claims and Limited Jurisdiction cases, and 60 days for Superior Court cases.
 1. The appeal time begins from the date of the court order denying a claim of exemption, or modifying or terminating an earnings withholding order.

Reference

POST ORDER 08-02

[Claim of Exemption Policy](#)

12012 – Stays

12012.1 - Stays

Stay of Execution – Writ of Possession Real Property

The purpose of this section is to establish a standard response when a five-day notice to vacate on a Writ of Possession Real Property is interrupted by a stay of execution, and the stay is later lifted by the court without specifying a certain date by which the defendant must vacate the property.

Third Party Claim of Right to Possession Stay

- a) When a third party claim of right to possession is received after a five-day notice to vacate has been served or posted, but before a forcible eviction has taken place, all proceedings are stayed.
- b) When an order is received lifting the stay and no specific date is given by the court for enforcement of the writ, there is no requirement that the defendant be given an additional notice to vacate.

Bankruptcy Stay

- a) All proceedings must stop when we receive an automatic stay from the Federal Bankruptcy Court.
- b) The stay takes effect on the date it was filed with the court; it does not matter when we receive it.
 1. We are not liable for any violations of the automatic stay unless we have been given proper notice.

Third Party Claim of Right to Possession Stay

- a) Upon receipt of a Minute Order on an eviction case, the processing clerk shall:
 1. Examine the document to determine the date of the order.
- b) Calculate the new evict date.
 1. Go to CHGDEL, change EVICT DATE.
 2. Go to REPRNT, generate another service ticket, clearly highlighting the new EVICT DATE.
- c) Issue the case to the field.

Eviction Date Calculation

- a) The defendant is entitled to a full five-day Notice to Vacate before we can perform the eviction.
- b) When the five-days is interrupted by any Stay Order, the defendant is entitled to the days remaining.
 1. Since we are stayed from the day we receive the Arrieta Claim until the date the Minute Order or Stay is issued, we cannot count those days in the five-day calculation.
 2. In order to calculate the new evict date, you must first calculate the number of days that had expired on the notice prior to our receipt of the Arrieta claim.
 3. Subtract this number from five-days to compute the remaining days' notice which must be given (if any) before the eviction takes place.

Bankruptcies filed prior to the Notice to Vacate Posting

- a) If the defendant filed bankruptcy before we posted the Notice to Vacate but did not notify us until after the posting, the Posting is voided.
- b) A new Notice to Vacate will need to be posted before we can continue with the eviction.
- c) The plaintiff is required to notify us to stop all enforcement actions after the defendant files bankruptcy.
 1. The plaintiff is to be charged for the additional posting costs.

2. We will not undo a completed eviction if the defendant waits until after the eviction is completed to notify us of a bankruptcy.

References

POST ORDER 11-04

- [Stay of Execution - Writ of Possession Real Property](#)

POST ORDER 11-05

[Automatic Stay in Bankruptcy](#)

12013 – Undertakings

This section is currently under construction, for information please contact your supervisor.

12014 – Bankruptcy

12014.1 - Bankruptcy Filing on Writ of Possession-Real Property Cases

Bankruptcy Petition filed Before Unlawful Detainer Hearing

If a bankruptcy petition was filed before an unlawful detainer hearing, all enforcement actions are stayed until the Civil Bureau receives a relief of stay or a dismissal from the bankruptcy court.

Bankruptcy Petition filed after Unlawful Detainer Hearing

- a) If the bankruptcy petition was filed after the unlawful detainer hearing then we must follow one of the rules listed below:
 1. When evicting a defendant in a non-residential property, the eviction is stayed.
 2. If the lease has expired under the terms of the contract, we will go forward with the eviction after the plaintiff has given us instructions that states the lease has expired and directs us to proceed.
 3. When evicting a defendant in a residential property the eviction is stayed, we will continue with the eviction after receiving instructions from the plaintiff that states the eviction can go forward due to stay exceptions from the federal bankruptcy court or the plaintiff gets a relief of stay or the bankruptcy is dismissed.

Third Party files a Bankruptcy

- a) If a third party files a bankruptcy; we will stay the eviction so long as the property address is listed in the bankruptcy filing.
- b) We will continue with the eviction after receiving one of the following:
 1. A relief of stay
 2. Additional instructions from the plaintiff stating the automatic bankruptcy stay does not apply in their particular case.
 - i. The instructions should quote the applicable USC code section.
 3. Absent a USC code section it is recommended that county counsel review the instructions before proceeding.

Bankruptcy before Judgment date

- a) After receiving a bankruptcy filing from the defendant in an unlawful detainer hearing we will first check the date of the bankruptcy petition and compare it with the date of the judgment on the Writ of Possession.
- b) If the date on the bankruptcy petition is before the Judgment date on the Writ of Possession then all enforcement actions are stayed pending a relief of stay or dismissal from the bankruptcy court.

- c) With multiple Bankruptcies, the automatic stay provisions may have an expiration date. After confirming with the issuing Bankruptcy Court that the automatic stay has expired, a relief of stay or dismissal is not required.

Bankruptcy after Judgment date

- a) If the Judgment date on the bankruptcy petition is after the date on the Writ of Possession then we will follow the below procedures:
 1. After receiving a bankruptcy filing from a defendant in a non-residential property, we will stay the eviction unless we receive written instructions from the landlord or their attorney based on language in 11 USC 362 (b) (10).
 2. After receiving a bankruptcy filing from a defendant in a residential property, we will continue the eviction process after we receive instructions from the landlord or their attorney based on language in 11 USC 362 (b) (22).
 3. We will also continue the eviction after receiving instructions from the landlord or their attorney based on language in 11 USC 362 (b) (23).

Bankruptcies on Foreclosure Evictions

- a) The automatic stay exceptions listed above do not apply to foreclosure evictions unless there is a landlord tenant relationship between the current legal owner (Plaintiff) and the foreclosed upon former owner (Defendant)."
- b) All bankruptcy filings of a named defendant in a foreclosure will result in a stayed eviction.
- c) The plaintiff must obtain a relief of stay or dismissal from the Bankruptcy Court, unless the stay is voided due to multiple bankruptcies.

Reference

POST ORDER 12-02

[Bankruptcy Filings on Writ of Possession-Real Property Cases](#)

12014.2 - Notices of the Filing of Bankruptcies

Notices of the filing of bankruptcies are to be processed as follows:

Notification Form

- a) The form in which we receive "Notice" of the filing of a petition and thus an automatic "stay" may be a copy of any document issued by the bankruptcy court, a letter signed by the bankrupt or the bankrupt's attorney, or an oral notice.
- b) If we are unable to verify the notice, the plaintiff will be requested to verify the bankruptcy and get relief from the stay.
- c) The Civil Bureau should be presented with a "Certificate of Filing" and/or a "Notice of Stay" as issued by the bankruptcy court.
- d) The "Notice" regardless of form needs to include the:
 1. Title of the bankruptcy court.
 2. Bankruptcy case number.
 3. Name of the bankrupt.
- e) Unless the "Notice" is in the form of an official bankruptcy court document, we will verify the filing by telephoning the bankruptcy court; Orange County's number is 714-338-5401 voice mail, 714-338-5300 live contact, or by using WEBPACER at www.cacb.uscourts.gov.

Summons and Notice of Trial

- a) As soon as possible after a Bankruptcy “Summons and Notice of Trial” is received, forward the documents and a copy of the applicable "Register of Action" to the Justice Center Lieutenant, Civil Sergeant or Civil Supervisor for forwarding to County Counsel.

Automatic Stay Provisions

- a) The automatic stay provisions do not apply to:
 1. Domestic cases for collection of alimony, maintenance, or support.
 2. The exception does not apply if the filing was a Chapter 13 filing.
 3. In Chapter 13 filings, all executions are stayed and a claim must be filed with the Trustee.
 4. Non-residential property where the lease expired prior to the Bankruptcy filing.
 5. Residential property, unless the debtor follows the complex procedure listed in CCOM 12014.1, Bankruptcy Filing on Writ of Possession/Real Property Cases.
 6. CCP 1209 and CCP 1993 [\[1\]](#) (Witness) Civil Bench Warrants and PC 166 Warrants[\[2\]](#) .

Reliable or Verified Notice of Bankruptcy

- a) Immediately following receipt of a reliable or verified "Notice" of bankruptcy we will RETAIN property already under levy and in our custody.
- b) Release all other levies and return monies received after the Bankruptcy filing date to the appropriate party.
- c) We will then serve on the creditor, debtor, and trustee a “turnover notice” advising the parties that the levied property may be transferred to the trustee no earlier than five days after the 341 meeting creditors hearing date.

Trustee Refusal to Accept Property

- a) If the trustee refuses to accept the property, the property under levy shall be held until:
 1. Further order of the bankruptcy court.
 2. A release is received from the levying creditor's attorney.
 3. Assets will then be returned to the defendant unless the bankruptcy court has issued a "Temporary Restraining Order", appointed a trustee in bankruptcy or other court direction.
 4. Failure of the levying creditor to advance required storage costs (CAUTION!! require storage fees to be on deposit at least 15 days before we are required to pay them.)
 5. Expiration of the levy unless the attaching creditor or bankruptcy court has extended the levy.

Certification Requirement on Relief of Stay Orders

- a) There is no certification requirement on Relief of Stay Orders issued in eviction proceedings by the Bankruptcy Court.
- b) You may rely on signed written instructions from the plaintiff informing you that the automatic stay has been set aside; however, you may proceed with the eviction upon receipt of the written instructions.
- c) It is acceptable to require a certified copy of the bankruptcy court’s order to release levied property; if however, you believe that the order for release is valid and have sufficient other proof, you may release without a certified copy.

Reference

POST ORDER 11-15

[Notice of Filing - Automatic Stay Certification Requirement](#)

12014.3 - Automatic Stay in Bankruptcy

A federal appellate case (Knaus V. Concordia Lumber Company, 8th Cir. 1989, 889 F2d 773) holds that the automatic stay provided in the bankruptcy proceeding requires the release of property levied upon prior to the filing of a bankruptcy petition. In the past, only property levied upon after the bankruptcy filing was released.

Information Received that Property was Levied Upon Prior to the Filing of a Bankruptcy Petition, we will:

- a) Hold the property.
 1. Notify the creditor immediately and request written instructions.
- b) If the creditor instructs us in writing to maintain the levy, they must provide factual statements of the reason justifying our retention of possession of the property.
 1. Forward the written instruction to County Counsel for evaluation and opinion.
- c) County Counsel will evaluate the creditor's instructions to see if they provide an adequate reason for refusing to turn the property over to the debtor.

Reference

POST ORDER 11-05

[Automatic Stay in Bankruptcy](#)

12014.4 - Effect of Bankruptcy Chapter 13 Filing by Co-Debtor

Title 11 U.S. Code, 1301

- a) A Chapter 13 stay protects consumer debt from civil action and enforcement even when the debt is co-owned and only one of the owners of the debt files for bankruptcy protection.
 1. Although claims of automatic stay under these circumstances are rare, Civil Clerks are advised to contact the plaintiff's attorney for verification before releasing.

References

POST ORDER 06-15

[Effect of Bankruptcy Chapter 13 Filing by Co-Debtor](#)

California State Sheriffs' Association Civil Procedures Manual

12014.5 - Evictions and Bankruptcy Stays

- a) If the bankruptcy is filed at any time before the eviction is completed by the defendants named in the writ, the deputy must NOT proceed with the eviction unless and until
 1. the landlord obtains and presents to the deputy an order from bankruptcy court granting relief from the stay or dismissal by the bankruptcy court; or
 2. the landlord provides written instructions indicating that the stay provisions are void pursuant to one or more of the following United States Code sections: 11 U.S.C. § 362(c) through 11 U.S.C. 362 (g).
- b) If the plaintiff did a normal eviction we will only accept third party bankruptcy filings if they are accompanied by an Arrieta claim.
- c) This procedure does not apply to property where the lease expired prior to the bankruptcy filing.

References:

POST ORDER 06-24

[Evictions and Bankruptcy Stays](#)

12015 – Tax Liens

Refer to CCOM Section 12005.2 for information

12016 – Arrests

12016.1 - Civil Bench Warrant Procedure for CCP 1993

Civil Bench Warrants (CBW) may be issued by a court pursuant to Code of Civil Procedure (CCP) 1993 [\[1\]](#) to compel a witness, who has previously been properly served with a subpoena, to attend a civil proceeding. Such warrants should be addressed only to the Sheriff's Departments and cannot be entered into AWSS. We will receive these warrants directly from our county courts or from other county Sheriff's Departments and process them in the following manner:

Professional Staff Duties

- a) Accept the warrant, letter of instructions, the appropriate deposit amount per Government Code 26744.5 [\[2\]](#), and enter the warrant into our civil system.
- b) Ensure the warrant contains all of the following:
 1. The title and case number of the action.
 2. The name and physical description of the person to be arrested.
 3. The last known address of the person to be arrested.
 4. The date of issuance and the county in which it is issued.
 5. The signature or name of the judicial officer issuing the warrant, the title of his or her office, and the name of the court.
 6. A command to arrest the person for failing to appear pursuant to the subpoena or court order, and specifying the date of service of the subpoena or court order.
 7. A command to bring the person to be arrested before the issuing court, or the nearest court if in session, for the setting of bail in the amount of the warrant or to release on the person's own recognizance. Any person so arrested shall be released from custody if he or she cannot be brought before the court within 12 hours of arrest, and the person shall not be arrested if the court will not be in session during the 12-hour period following the arrest.
 8. A statement indicating the expiration date of the warrant as determined by the court.
 9. The amount of bail.
 10. An endorsement for nighttime service if good cause is shown, as provided in Section 840 of the Penal Code [\[3\]](#).
 11. A statement indicating whether the person may be released upon a promise to appear, as provided by Section 1993.1 [\[4\]](#). The court shall permit release upon a promise to appear, unless it makes a written finding that the urgency and materiality of the person's appearance in court precludes use of the promise to appear process.
 12. The date and time to appear in court if arrested and released pursuant to 11 above.
- c) Complete a Trip Ticket and Scan a copy of Trip Ticket and Warrant into Civil Automated System (CAS).
- d) Prepare a Notice of Warrant and mail it to the defendant.
- e) Send Original Trip Ticket and Original Warrant to the Civil Field Office.

Defendant Cited & Released

- a) If the deputy cites and releases the defendant in the field, the deputy will return the Trip Ticket, the Original Warrant and Original Citation to the professional staff.
- b) Professional staff will make a photocopy of the Original Citation and place it in the case file.
- c) The Original Citation and Original Warrant will be returned to the Orange County Court or County Sheriff's Department that sent the Original Warrant.
- d) The file copy (pink) will be sent to North Operations by the deputy. Close the case as a served warrant.

Defendant Arrested

If the defendant is arrested, he/she will be taken to Court.

- a) The warrant will be turned into the court civil division.
- b) When you get the trip ticket back, it will be marked as an arrest.
- c) Close the case as a served warrant and send the Proof of Service to the Court or Originating Sheriff's Department.

Defendant Not Found

- a) If service on the Warrant is a "Not Found", it will be handled in the same manner as all other Not Finds.

Deputy's Duty when Defendant Cited & Released

- a) Make contact with the defendant and cite and release him/her on the warrant if the court has authorized it with a statement on the warrant that allows a release on a promise to appear.
- b) Request a DR number and title it, "Civil Warrant – Cite and Release."
- c) See FOM Section 9 [\[5\]](#) for instructions on completing citations.
- d) Return the trip ticket, original copy of the citation, and the warrant to the civil professional staff.
- e) A Report Continuation form must be written and attached to the citation.
- f) Write the Citation Number just below the DR Number on the Report Continuation form, on the back of the file copy (pink) write "refer to continuation page."
- g) Attach the file copy (pink) to the front of the continuation report and submit the report per normal procedures.

Deputy Duties when Defendant Arrested

- a) If the defendant refuses to sign the citation, arrest the defendant and bring them to the court of issuance if issued in Orange County, or to the nearest magistrate if issued outside of Orange County.
- b) The defendant must be brought before the court within 12 hours from the time of the arrest or be released. Even if there is a nighttime endorsement on the warrant the person must be brought to a court within 12 hours. Therefore, arrests should not occur anytime that would not allow for the person to be presented to a court within 12 hours, i.e., no Friday or Saturday night arrests and no arrests between 1500 and 2100 hours. This will ensure that every person arrested will be presented to the Court within the 12 hours required by law.
- c) Unless the warrant contains an endorsement for nighttime service, attempts to serve CCP 1993 warrants [\[6\]](#) can only be made between 0600 and 1500 hours to ensure the defendant is brought to court on the same day an arrest is made.
- d) Request a DR # and write a Follow-Up Report, the title will be "Civil Warrant Arrest and Transport to Court."
- e) The report shall be brief but detail the events that took place, include the details of the refusal to sign the citation in the report.

- f) Void the citation and book the first three copies of the citation into evidence.
- g) Complete the "REQUEST TO DISMISS/VOID CCP 1993 CIVIL WARRANT CITATION" form and submit it through the chain of command.
- h) Turn in the trip ticket and write "defendant arrested" in red in the notes section so the professional staff knows the warrant went to the court.

Closing the Warrant as Unable to Locate

- a) If the defendant cannot be located after four attempts, close the warrant as "unable to locate" and return it to professional staff.
- b) Write "Unable to locate after Diligence" in your notes.

Citation Distribution

- a) Citations consist of 4 pages, distribute the pages as follows:
 - 1. 1st page – Court (Original)(White)
 - 2. 2nd page – Defendant's Copy (Yellow)
 - 3. 3rd page – File Copy (Pink)
- b) 4th page – Deputy Copy (Canary)(stays in Citation book)

Writing the Citation

- a) See Field Operations Manual Section 9 Subsection XV [\[7\]](#). Writing the Citation for details

References:

POST ORDER 12-01

[Civil Bench Warrant Procedures for CCP 1993](#)

California State Sheriff's Association Civil Procedures Manual

[12016.2 - Civil Bench Warrant Procedure for CCP 708.170, 491.160 and 1209](#)

Warrants

- a) Civil Bench Warrants for (CBW) failure to appear on Orders for Appearance of a Judgment Debtor, CCP 708.170 / 191.160 [\[1\]](#) (\$50.00 fee), that meet the minimum requirements will be forwarded to the Central Warrant Repository (CWR) through our office.
- b) CCP 1209 Warrants [\[2\]](#) will be served at no charge. The court will send CCP 1209 warrants directly to the CWR.

Minimum Criteria

- a) Only warrants meeting the minimum criteria may continue to be directed to the CWR for entry into Automated Warrant Service System (AWSS).

Minimum Information for AWSS

- a) The minimum information needed by the Sheriff for warrant entry into AWSS is:
 - 1. Full name of the person to be arrested.
 - 2. Date of birth of the person to be arrested.
 - 3. Full address of the person to be arrested.
 - 4. Sex and race of the person to be arrested.

Warrants Missing Minimum Information

- a) Warrant requests, which do not contain the above basic information, will not be forwarded to CWR for entry into the automated system.
- b) Warrants that do not meet the minimum standards will be held at our offices for letter or field notification.

Warrants with Name and Address Only

- a) Warrant requests, which contain a name and address, may be forwarded to the appropriate Sheriff Court Operations office for an attempt to contact the subject and obtain voluntary compliance.

Warrants Meeting the Minimum Information

- a) Once it has been determined that the warrant meets the minimum requirements to be forwarded to CWR, professional staff will open the case, enter the warrant into our field civil system and accept the fee.
- b) Once the case is entered, the warrant will be forwarded to the CWR for entry into the automated system.

Central Warrant Repository (CWR)

- a) CWR will generate a "Warrant Worksheet" and forward it to the Tactical Apprehension Team (Warrants) for assignment and further action.
- b) Warrant Bureau professional staff will mark the warrant worksheet identifying the warrant as a Civil Bench Warrant and forward it the appropriate Civil Detail for service.

Return of Warrants

- a) Notification will be sent to the originating office with the warrant disposition written on the warrant worksheet.
- b) It is important that the originating office be notified of the warrant outcome, so they may update/close the open case in the civil system.
- c) The warrant worksheet will be returned to the Tactical Apprehension Team.
- d) Recalled warrants will be returned to the Tactical Apprehension Team.

Warrants for Service Outside Orange County

- a) The Sheriff cannot accept warrants for service outside Orange County.
- b) The person requesting service outside Orange County will be directed to the appropriate county.

References

POST ORDER 08-04

- [Civil Bench Warrant Procedure for CCP 1209](#)

POST ORDER 11-07

[Civil Bench Warrant Procedure for CCP 708.170 & 491.160](#)

[12017 – Fees \(Money, Bail, Cash & Checks\)](#)

[12017.1 - Taking Bail](#)

This Section has been removed. For additional information contact your Supervisor.

[12017.2 - Field Money Collection and Safe Keeping](#)

It shall be the responsibility of the deputy installing the keeper or a designated replacement deputy to monitor levies in progress and to arrange for a pickup of money when the keeper has an excess of cash or valuables. Circumstances and environment shall be the determining factors.

Verification of Funds

- a) The keeper shall use the cash verification record found in Post Order 10-08 when collecting cash from a defendant.
 1. The keeper will have the defendant sign and verify the amount seized under levy.

Pick-up Funds

- a) The deputy making a money pickup shall count the money in the presence of the keeper.

1. Place the money in an envelope along with the copy of the receipt(s) given to the defendant by the keeper, and seal the envelope.
2. On the outside of the envelope the deputy will place the date and time, the name of the business under levy, the case number, amount of money placed in the envelope, and their signature and PIN number.
3. The cash verification record will be affixed to the outside of the envelope after it is signed by both the keeper and the deputy.

Relinquishing Funds

- a) If the money is brought to the office when professional staff is off duty, the deputy shall lock the money in the safe or other locking receptacle designated for safekeeping of money and/or valuables.
- b) When the money is turned into the chief clerk or supervisor, the money will be counted in front of the deputy in order to verify the amount.
 1. Both the chief clerk/supervisor and deputy will sign the cash verification record again.

NOTE: The utmost care shall be exercised when handling money and valuables. In the event of questions or unusual circumstances the deputy shall contact the Civil Field Sergeant for assistance.

Reference

POST ORDER 10-08

[Field Money Collection and Safe Keeping](#)

12017.3 - Professional Staff-Receiving Checks Identification Information and Non-Sufficient Funds (NSF) Checks

Payment of Fees

Court offices receive a large number of personal checks in payment of fees at their counters. On occasion, these checks are "NSF" or "Stop Payment". In order to help us to locate the check originator, the following information must be included on the check:

- a) Preprinted checks
- b) The telephone number of the check originator.
- c) The California or State Driver's License number include state of origin or, the California or State I.D. number include State of origin.
 1. We will not refuse service to a person who does not have I.D.; checks from Law firms and attorney services are not required to have I.D. information.
 2. If we receive a NSF or Stop Payment check from a customer, no further checks will be accepted; cash, cashier's check, or money order only.

NSF or other Checks Returned to Sheriff's Court Operations

- a) The following provides a standardized procedure for the treatment of NSF or other checks or money orders returned to Sheriff Court Operations.
 1. Checks and money orders received by County departments, agencies and districts and deposited with the County Treasurer are forwarded to the appropriate financial institution twice for payment.

2. If a check is returned unpaid, the amount is withdrawn from the County's bank account and the physical item is returned to the County by the bank. Wells Fargo will capture our returned items data electronically.
3. The Auditor Controller retrieves the file from the bank and automatically posts the returned items to the general ledger and notifies the appropriate department/agency by email.
4. The email contains a spreadsheet detailing the information associated with the returned item.
5. The original check is mailed directly via U.S. Mail from Wells Fargo Bank to the appropriate department/agency.

Written Demand and Damages

- a) Effective January 1, 1984, Section 1719 was added to the Civil Code [\[1\]](#) This section states that any person who fails to make good on a returned check within 30 days of a written demand, sent by certified mail, shall be liable to the payee for not only the amount of the check, but also for damages of three times the check amount.
 1. The minimum damages are to be no less than \$100 and the maximum no more than \$1,500.
 2. These damages are in addition to the existing \$25 service fee required by County policy.
 3. Thirty-five dollars will be charged for each subsequent check returned NSF from the same maker.
- b) The following procedures describe actions to be taken by Court Operations personnel to attempt collection on all returned checks or money orders, the \$25 service fee and the required triple damages amount.
- c) It shall be the policy of Court Operations to make all reasonable efforts to collect on returned items before referring such collections to the Auditor Controller.
- d) It shall be the responsibility of the Civil Manager to ensure that:
 1. All reasonable efforts are made to collect on returned items.
 2. All actions taken to effect such collections are recorded in writing and/or in automated case files for future reference.
- e) When NSF or other unpaid checks or money orders are returned, the responsible office will take the following steps:
 1. Record on the email notification from the Auditor and document on the "Action" screen on the appropriate case, the check number, date and amount shown of the returned check. Adjust case accounting on "Adjust" screen.
 2. Begin a chronological history of actions, in writing, on the email notification printout from the Auditor or the Returned Item Notice from Wells Fargo Bank. Show the date, time and method of all attempts at contact or collection.
 3. Attempt to contact the check maker by telephone with a minimum of four attempts over a two day period. If the telephone contact fails, send a letter requesting payment (See Attachment 1 of Post Order 13-03). Notification of possible legal action should be included in this correspondence.
 4. If payment is not received, send a follow-up Final Notice demand letter, by certified mail, two weeks from the date the first demand letter was mailed. (See Attachment 3 in Post Order 13-03). Allow thirty days for payment.
 5. Send all letters "Address Correction Requested" so that the Post Office will notify the office of address changes.

6. After the thirty days, if payment is still not received, a Civil Field deputy will attempt to make personal contact and arrange for payment if the check writer is in Orange County.

Special Circumstances

The procedures detailed here are applicable to all returned checks or money orders including those received with levied monies.

- a) When special circumstances, such as bankruptcy, require other actions, the Treasurer or Auditor will disseminate appropriate instructions to all Departments.
 1. See Auditor-Controller Accounting Procedure #7 for details.

Undeliverable Mail

- a) If any letter is returned as not deliverable, the office should use all means possible to determine the correct address.
 1. If this cannot be done, immediately forward the original check and the Returned Item Notice from Wells Fargo Bank along with the email notification from the Auditor with notations to the Auditor-Controller.
 2. A short cover memo should accompany the check, stating that the address is unknown and contact could not be made. Keep a copy of all documents for future reference.

Additional Steps

- a) After the above collection steps have been taken and collection is not attained, even though contact has presumably been made, the original check along with the Returned Item Notice from Wells Fargo Bank and the email notification from the Auditor with notations should be forwarded to the Auditor Controller for further collection attempts if the check is over \$100.
 1. A short cover memo stating that contact was made but collection could not be accomplished should accompany the form. Be sure to retain copies of all documents as future reference.
 2. After the Auditor has exhausted their collection attempts, they will request relief of accountability and reverse the receivable on the office general ledger.

Fees Collected

- a) If contact is made and the original amount and the \$25 service fee are collected, they will be deposited with the Treasurer and posted back to the case on "adjust" screen.
 1. The original check and a receipt for the reimbursed monies should be given to the payer.
 2. Only cash, a cashier's check or a money order will be accepted as reimbursement on a returned item.
 3. Monies are deposited with all other civil monies on the day of receipt.
 4. The service fee collected on the NSF goes directly to Court Operations revenue.
- b) Once reimbursement is made, note on the Returned Item Notice from Wells Fargo Bank the amount paid, reimbursement date, deposit order number, and a statement that the service fee was collected.
 1. Return a copy of this form to the Auditor, Accounts Receivable Section, to clear their outstanding accounts and the trust receivable.
 2. File the original for future reference.
- c) If contact is made and only the original amount is reimbursed, attempt to contact the check maker at least twice by telephone advising them of the service fee requirement.
 1. If a payment is received, deposit it on "ledgerup" and take it as a county fee.
 2. If not, make no further collection attempts for the service fee only.

3. Continued attempts to collect the service fee after the original check has been reimbursed are discretionary.

Special Procedures - Levied Monies

Wage Levies

The following action is to be taken by the responsible office in dealing with NSF or returned checks received in levying on a defendant's wages:

- a) Contact the check writer for reimbursement of the NSF or Stopped Payment check and proceed with the steps of the regular NSF check procedure outlined in the proceeding sections, including the demand for a service fee.
- b) If the monies have not been paid to the creditor, do not return it to the Auditor. Retain the check as a permanent reference in the case file. Allow the debit to the judgment to remain. Responsibility for any further collection effort lies with the defendant.
- c) If the monies have been paid to the creditor, and you are not going to receive the reimbursement from the check writer, contact the creditor to explain that the monies paid to them must be returned to the Sheriff to correct our case accounting. If the reimbursement is never received from the creditor, the deficit will need to be adjusted by the Auditor.

Keeper (Business) Levies

The following action is to be taken by the responsible office in dealing with NSF or returned checks taken by a keeper:

- a) Proceed with the steps of the regular NSF check procedure.
- b) If collection is not affected via telephone contact with the check maker, contact the defendant.
 1. If the defendant does not wish to make good the check, return the writ either partially satisfied or totally unsatisfied as appropriate.
- c) Make a copy of the NSF check and retain it and the Returned Item Notice from Wells Fargo with actions noted, in the case file.
- d) Mail the NSF or returned check to the defendant. Any further action is the defendant's responsibility.

NSF Check Follow-up

If there is a repeat problem with any check writer, the Administrative Manager and Chief Clerk at the affected Justice Center will, review the problem. If necessary, and with approval of the Division Commander, send the offender a letter suspending check-writing privileges. (See attachment 2 in Post Order 13-03). The Sheriff's Department will charge \$25 for each additional NSF check received from the same maker.

Reference

POST ORDER 13-03

[Receiving Checks - ID Information Non Sufficient Funds \(NSF\) Checks](#)

12017.4 - Fees for Service of Bench Warrants and Keepers

Processing Civil Bench Warrants

- a) All Orange County Superior Court Civil Bench Warrants to be served in Orange County will be clerically processed by the civil office that has the same jurisdiction as the Court of issuance.
 1. All Civil Bench Warrants issued by Courts in other counties will be processed by the Justice Center that has jurisdiction over the city where the warrant is to be served.
- b) Field service will be provided by the appropriate Justice Center as determined by geographical location.

- c) In the event the clerk processing the warrant cannot readily determine if the fee should be charged from the information on the face of the warrant or other attached documents, then no fee will be charged.

Order for Examination

- a) The statutory fee as established by Government Code Section 26744 [\[1\]](#) will be charged for service of bench warrants issued for failure to appear for examination; including those cases where the order is issued pursuant to a domestic relations judgment.

Order to Show Cause

- a) No fee will be charged for Bench Warrants issued as a result of a failure to appear for an Order to Show Cause hearing.

Keeper Fees

- a) Not Found.
 - 1. If the writ is not served, the attorney/litigant will be informed and the keeper shall be paid the prescribed not-found fee.
 - 2. For the purpose of standardization, if the keeper leaves the business with the levying deputy without a payoff, the writ will be considered not served.
- b) Writ Served.
 - 1. If the writ is served and the keeper placed, the keeper shall be paid the appropriate fee for their scheduled shift.
 - 2. For the purpose of standardization, if the levying deputy leaves the keeper at the business the writ will be considered served.
- c) Bankruptcy.
 - 1. The key to the payment of the keeper fee is whether or not the writ is served.
 - 2. The levying deputy can only serve the writ when they have reasonable cause to believe the levy is proper and no bankruptcy exists.
 - 3. If the debtor presents information or documentation of a bankruptcy after the writ has been served the keeper will be paid the full keeper fee.
 - 4. If proof of bankruptcy is presented prior to service of the writ, the keeper will receive a not-found fee.

References:

POST ORDER 06-09

[Fees for Service of Bench Warrants and Keepers](#)

County Counsel's Opinion 84-132 dated June 4, 1984.

California State Sheriffs' Association Civil Procedure Manual

[12017.5 - Recorder Fees](#)

County Recorder's Office

- a) The County Recorder has requested from us two (2) "Requests for Document Recording" slips with "NOT TO EXCEED \$35" written in the Recording Fee Section of the form.
 - 1. The County Recorder will then enter the appropriate dollar amount and return a copy to the Justice Center that requested the document recording.
 - 2. The dollar amount could vary depending on the document(s). However, "NOT TO EXCEED \$35" should be used in most cases.

Routing Request for Document Recording Slips

- a) Upon receipt of the "Request for Document Recording" slip back from the Recorder's Office

1. Post the costs on the case
2. Place a copy in the case file
3. Monthly, forward a copy of the slip to Sheriff Financial/Administrative Services.

12017.6 - Internal Cash Control Procedures

In order to standardize the procedures for the handling of cash activities at each civil office the following procedures will be followed:

Segregation of Duties

- a) Chief/Supervising Clerk will oversee cash activities performed by office staff when possible.
- b) The Chief/Supervising Clerk will review the deposit order and corresponding documentation and initial the documentation daily.
- c) Lieutenants at each civil office will verify that the Chief/Supervising Clerk has initialed the monthly reconciliation of the general ledger documents.
- d) Each civil office will ensure that the cashier/counter person who records cash receipts into the Sheriff's Civil System does not have custody of cash receipts or deposit orders while waiting for bank delivery.
- e) A new cash account to general ledger has been updated and adopted by all Justice Centers.

Establishing Accountability

- a) Each civil office will produce a check log by entering all checks for processing into the automated civil system.
 1. A manual log will be maintained for all case transfers and problem cases.
 2. Each check received will be immediately stamp endorsed.
- b) A procedure has been adopted to request picture identification when accepting checks at our counters.
- c) All over-the-counter transactions will be documented by computer or hand written receipt, unless refused by the customer.
- d) All Keeper collections will be verified by the Chief/Supervising Clerk.
 1. The receipt or inventory document will be initialed by the Chief/Supervising Clerk to verify the count.
- e) Each office will validate the processing of every negotiable document by checking it off the log.
 1. All deposit transactions will be verified against the daily deposit order.
- f) Cash counting will be done in the late morning and at the close of business.
- g) Each time the cashier is relieved or replaced, the cash drawer will be counted and the cash drawer log signed, for the transfer of accountability.

Physical Safeguards

- a) Cash receipts will be maintained in a locked and secure place at all times.
- b) Cash receipt books will be maintained in a locked and secure place at all times.
- c) All cash drawers will be kept locked and the key maintained by the cashier, unless the drawer is empty.
- d) Offices will keep safes secure unless empty.
- e) All receipt books will be inventoried and logged.
- f) Each office will change the safe combination(s) as necessary.
- g) Each office will check currency with a denomination of \$20.00 or more with a validating pen.

Supervisory Review and Approval

- a) Chief/Supervising Clerks will review and approve initial cash transactions and documentation.
- b) Lieutenants will be required to approve the transactions in the absence of the Chief/Supervising Clerks.

Reference:

POST ORDER 06-32

[Internal Cash Control Procedures](#)

12018 – Restraining Orders

12018.1 - Temporary Restraining Orders

Receiving Temporary Restraining Orders

- a) TROs will either be brought to us at our Civil Counters or they may be e-mailed to us from the courts. E-mailed TROs will be sent from courts to the Sheriff's Civil Office that has jurisdiction.
 1. Professional staff will send an e-mail confirmation back to issuing court confirming we received the e-mail.
- b) A TRO and the accompanying sheriff's instruction letter will be printed out and processed the same as any other restraining order.
 1. If the TRO does not contain the restrained person's date of birth, the civil deputies will ascertain that information at the time of service and note it on the "trip ticket."
- c) When we receive Out of County TRO's, the entire court order must first be sent to the OCSD Teletype Unit for input into CLETS.

Entry into CLETS

- a) Family Code 6380 (d)(1)[1] requires that information regarding proofs of service of protective order, including a TRO, input into CLETS within one business day of the service.
- b) The Chief Clerk of each Civil Office will designate a "Restraining Order" desk/basket for the deputies to place served TROs.
- c) All deputies must place served TROs on this desk by 1600 hours of each work day.
 1. If a deputy is unable to return to the office by 1600 hours, he/she will call Teletype while in the field and have the Proof of Service entered into CLETS.
 2. Deputies will place their completed worksheet with notes that it was entered into CLETS via the telephone into the Restraining Order basket by the end of their shift.
 3. The next business day prior to 0800 hours, the professional staff will close out the case and fax a courtesy copy of the Proof of Service to both Teletype and the Court.
 4. Proof of Service will indicate that it was previously sent to Teletype telephonically.
- d) The Chief Clerk will designate a professional staff member whose priority will be to process the served TROs and fax all proof of services of restraining orders to: Sheriff's Teletype [REDACTED] [REDACTED] and to the Court's Protective Order [REDACTED] "Attn: Protective Order Unit Supervisor" no later than 1700 hours of each work day.
 1. OCSD Teletype will be responsible for entering all Proofs of Services received by the Sheriff's Civil Detail into CLETS.
 2. The Court Protective Order Unit will receive a courtesy copy of the Proof of Service.

Fees:

- a) All TRO's brought to us that are based on the threat of violence or stalking will be served at no cost.
 1. These services will be billed to the court.

Reference

POST ORDER 13-02

[TRO Procedure](#)

12018.2 - Firearm Relinquishment on Domestic Violence, Child and Elder Abuse and Workplace Violence TRO's

Court Forms and Admonishment

- a) On page two of court forms DV-110, CH-120, and EA-120, the restrained person is advised they must turn in any firearms that they possess or control to the police or sell or store them to / with a licensed gun dealer within 24 hours.
 1. They then must show proof that the firearm was turned in, sold or stored within 48 hours from the time the order was served.
 2. When serving a restraining order, the deputy shall admonish the restrained person of the firearms relinquishment order. Deputies should read the firearms admonishment in the Restraining Order verbatim to the restrained person

Surrendering Firearms

- a) If the restrained person wishes to immediately surrender the firearm(s), the deputy will do the following:
 1. Ensure the turnover is done in a safe manner; request a back-up Deputy if needed.
 2. Immediately render the firearm safe and separate the ammunition.
 3. Have the weapon serial numbers run through the Automated Firearms System (AFS) to ensure they are legal and not involved in any prior crimes.
 4. Depending on the AFS data, conduct a further investigation to determine if the restrained person committed any crimes by possessing the weapon(s).
 5. Request a DR number and an FCN number.
 6. Fill out the Orange County Sheriff's Department Property Receipt Form. Mark the safekeeping box and include the serial number for each firearm that was relinquished.
 7. Give the restrained person their copy of the Property Receipt.
 8. Book the weapon(s) per Field Operations Manual Section 39 and 44 [\[1\]](#). Envelopes containing firearms should be clearly marked, "FIREARM."
 9. Complete a property report. See Field Operations Manual Sections 44 and 39 [\[2\]](#).
 10. Advise the restrained person that they may be charged the actual cost incurred by OCSD for the storage of the firearm.

Firearms Search Laws (TRO)

- a) The issuance of a temporary or permanent restraining order does not give a law enforcement agency the right to conduct a warrantless search and seizure of the restrained person's property.
 1. If the protected person claims that the restrained person has firearms and the restrained person denies possession, admonish the restrained person of his legal obligations and the risk of incarceration if they disobey the court order.
 2. If the protected person has specific information about the restrained person's possession of firearms in violation of a restraining order, consider whether there is sufficient information to obtain a search warrant.
- b) Write thorough notes on your return so the court can make a determination if the restrained person is in contempt of the order.

Reference

POST ORDER 07-11

[Firearm Relinquishment on TROs](#)

California State Sheriffs' Association Civil Procedures Manual

California Family Code

12019 - Miscellaneous

12019.1 - Maintaining Civil Safe Combinations, Key-Card Control and Alarm Systems

Civil Safe Combinations

- a) It will be the responsibility of the Lieutenant in charge of any civil office to arrange for a locksmith to change the combination to the safe whenever any person that had access to the safe is terminated or resigns.
 1. The Lieutenant will first request a work order for locksmith services through O.C. Public Works.
 2. If the lock shop cannot respond in one week or less, the Lieutenant will then contact a local locksmith and request the service via credit card or petty cash purchase.

Key/Card Control

- a) It is the responsibility of the Lieutenant in charge of each civil office (the Field Services Lieutenant for 909 N. Main St.) to maintain a record of key or card key holders for building and private office access as well as any cash box or drawer maintained in the facility.
- b) The Lieutenant will ensure that keys/card keys are retrieved from employees who separate from service or transfer out of the facility or a specialized cash handling function.

Building Alarm Systems 909 N. Main

- a) It is the responsibility of the North Civil Detail Lieutenant, or his/her designee to change the building alarm code at 909 N. Main Street whenever any person that had access to the code is terminated, retires or resigns.
 1. At a minimum the alarm code will be changed annually.

References:

POST ORDER 06-26

[Maintaining Safe Combinations and Key-Card Control](#)

12019.2 - Civil Process Elevated Risk

This section contains guidelines regarding the advanced planning for Elevated Risk Operations within the Civil Bureau.

Elevated Risk Defined:

Any court ordered eviction, restraining order service or other civil process in which information is received indicating the subject(s) involved may be hostile, mentally ill, or has otherwise shown a potential for violence.

Policy

- a) If the Elevated Risk is present, the Civil Deputy will notify the Civil Sergeant prior to proceeding with the civil process.
- b) The Civil Sergeant will notify the Civil Lieutenant, the Civil Lieutenant will notify the Division Commander of the elevated risk operation.
- c) The attached checklist will be completed and submitted to the Civil Lieutenant when preparing for an elevated risk service.

1. Additional resources can be found in the Field Operations Manual Sections 46, 51, 67, 74 and 75 [\[1\]](#).
- d) The Case Agent will prepare an Incident Action Plan (IAP) and submit it to the Civil Sergeant prior to serving the eviction.
- e) After serving the eviction, an After Action Report (AAR) will be written by the Case Agent minimally to include:
 1. Executive Summary
 2. Synopsis of the incident
 3. Major Strengths
 4. Area's for improvements
 5. Examples of the IAP and AAR can be found in the Court Operations Share Drive.

Tactical Considerations

- a) Tactical Considerations include but are not limited to:
 1. Written game plan (See OCSD Game Plan Briefing Summary. Located under OCSD Intra-net, Knowledge Center Forms).
 2. Other attempts to contact the defendant. Consider meeting at a neutral location.
 3. Time constraints – writs do not usually need to be served immediately. Use as much time as necessary, if needed, before the writ expires.
- b) Location of the nearest Hospital or Trauma Center.
 1. Plans for a tactical withdrawal, if necessary.
 2. Brief history of case file, and any additional information from Plaintiff if available.

Civil Deputy Procedure

- a) The Civil Deputy will perform the following:
 1. Records check – Warrants, restraining orders, license status, vehicles registered to, firearms registered to, VGTOF/TSC hits etc...
 2. Dispatch call history – check with local agency if necessary.
 3. Criminal history – Parole/probation status, CII, LARS etc...
 4. Arrange for aerial photos – Google or utilize OCSD Aviation Support Unit.

Elevated Risk Service Mandatory Notifications

- a) If the Elevated Risk Service is warranted, the following notifications are mandated:
 1. Notify Department Commander.
 2. Patrol resources – OCSD or outside agencies.
 3. Tactical communication needs – frequency clearance, alternate channel etc...
 4. Warrant Team support.

Elevated Risk Service Additional Information

- a) As necessary, or at the direction of the Civil Sergeant, the Civil Field Deputies will perform / request the following; they include but are not limited to:
 1. Ground photographs of the target area.
 2. OCJ Classification data – Information cannot be printed or used in report.
 3. CIRT/SWAT activation.
 4. Staging of Fire/Paramedics – ambulance.
 5. Child protective services.
 6. Health Care Agency – elderly, handicapped, mentally ill.
 7. Animal Control.

8. Code Enforcement.
9. Entry tools
- b) Drive-by of the target area, and perform the following functions::
 1. Check for vehicles
 2. DMV checks – stolen, 10-32 associated, etc.
 3. Structure analysis – fortifications, terrain, surrounding residences/business and signage on property indicating hostility towards the court system or law enforcement.
 4. Cameras.
 5. Animals.
 6. Children.
 7. Signs of additional occupants.
- c) Additionally, any time a deputy makes a forcible entry by breaking a door, window, or uses lock picking tools to gain entry to legally enforce a civil judgment, the property damage waiver shall be completed and signed by the property owner prior to the forcibly entry.

Civil Sergeant Procedures

- a) The Civil Sergeant will perform the following:
 1. Notify L.A. Clear of the address of the eviction
 2. Supervise the Elevated Risk Operation
 3. Complete the Post Elevated Risk Packet:
 4. Review Checklist
 5. Review (?) Court Order
 6. After Action Report Review
- b) Forward the completed Risk Packet to the Civil Lieutenant

Review and Retention

- a) The Elevated Risk Packet will be forwarded to the Division Commander for review and retained for 2 years or in the case of litigation, until the matter is adjudicated.

Other

- a) If it is determined that a subject meets the criteria of an elevated risk, the Civil Sergeant or his/her designee may contact the Orange County Intelligence Assessment Center (OCIAC) Analytical Unit [REDACTED] and have them run the subject through their data bases for possible additional information.

References

POST ORDER 12-03

[Elevated Risk Operations](#)

OCSD Field Operations Manual [\[2\]](#).

12019.3 - Audio Recording Devices

The purpose of this section is to establish a standard protocol for Civil Field Deputies when using an audio recording device in the performance of their duties. Deputies are required to use the Department issued recording device. Sheriff's Technicians have the option to use a Department issued recording device. Sheriff's Technicians who choose to carry a recording device will comply with the following procedure and policy; OCSD Policy Manual 446.7 [\[1\]](#) and Civil POST Order 13-01.

Procedure

- a) Prior to going into service, each uniformed Civil Deputy will be responsible for making sure that he/she is equipped with a departmentally issued digital audio recorder in good working order.

1. Sheriff's Technician that choose to use the recording device will make sure that he/she is equipped with a departmentally issued digital audio recorder in good working order.
 2. Recorders found not to be in good working order will be turned into the Civil Sergeant and replaced.
- b) Uniformed Civil Deputies and Sheriff's Technicians choosing to carry the device shall wear the recorder in an approved holder.
 - c) The digital recorder will be activated during all calls for service and during contacts with the public whenever possible.
 1. At no time should a Civil Deputy or Sheriff's Technician jeopardize his/her safety in order to activate a recorder or change the recording media.
 - d) At the beginning of each shift, the Civil Deputy and Sheriff's Technician will record on the recording device his/her name, serial number of the device and the current date and time.
 - e) At the conclusion of each shift, the Civil Deputy or Sheriff's Technician will record on the recording device the current date and time regardless of whether any activity was recorded during the shift.

Policy

- a) All digital recordings made during the course of a Civil Deputy or Sheriff's Technicians duties will be downloaded to the "Civil Deputy and Sheriff's Technician Audio Share Drive", which is a read-only system.
 1. Sheriff's Technicians may activate their digital recording device at their discretion during calls for service and contacts with the public.
- b) Sheriff Technicians may record any member of the public without notice in a public setting where there is no objectively reasonable expectation of privacy, such as in the public area of a business or outside of a residence front door.
- c) If Sheriff's Technicians serve court process in a private area of a business or residence, the Sheriff's Technicians will notify the other party that the conversation is being recorded prior to activating the recorder.
 1. Sheriff's Technicians shall not record a person in a private or confidential setting if the person does not want the conversation recorded after being notified of the recording device.
- d) Changes will not be made to any audio file once it has been captured. In any event, no changes will be made to the audio file once the file has been downloaded to the share drive.
- e) All digital recordings will be retained pursuant to OCSA Policy Manual 446.7 (c)[\[2\]](#) for a period of two one years, unless the recordings are evidence in any claim or litigation.
 1. If a notice of a "litigation hold" is issued by Risk Management, County Counsel or otherwise, any recording related to a claim or lawsuit and/or subject to a litigation hold will be retained and/or a copy provided to Risk Management Bureau at the direction of Risk Management. The arresting or initial handling Civil Deputy or Sheriff's Technician will be notified.
- f) Once an audio file has been downloaded to the audio share drive, the file will not be duplicated and /or a copy of the file released except by court order, District Attorney's discovery request, booking a copy of the file into evidence or upon written authorization of a sergeant or above.

Procedures for Downloading Audio Devices

- a) Typically, recordings should be downloaded daily to the Audio Share Drive, if possible. But, in no event later than the first day the Civil Deputy/Sheriff's Technician returns to work after any recording is made.
- b) Notwithstanding the immediately preceding paragraph, a recording shall be downloaded to the Audio Share Drive (See OCSO Policy Manual 446.7 [\[3\]](#)) no later than the end of his/her shift and a copy burned to an audio C.D. and booked into evidence by the Deputy/Technician, if a Civil Deputy or Sheriff's Technician reasonably believes that an incident recorded by him/her pursuant to this policy is likely to result in a complaint or lawsuit against the Department, or criminal charges.
- c) Notwithstanding the two immediately preceding paragraphs audio recordings of a non-criminal, but unusual nature (e.g. hostile contact), will be downloaded to the Audio Share Drive no later than the end of the Civil Deputy or Sheriff's Technicians shift.
 - 1. The Civil Deputy or Sheriff's Technician will notify his/her supervisor of the encounter and existence of the recordings.

Review of Recorded Media Files

- a) Recorded files may be reviewed in any of the following situations:
 - 1. By a supervisor investigating a specific act of a Civil Deputy and/or Sheriff's Technicians conduct.
 - 2. Upon approval by a supervisor.
 - 3. Any member of the Department who is participating in an official investigation such as a personnel complaint, administrative investigation or criminal investigation.
 - 4. By the personnel who originally recorded the incident.
 - 5. Pursuant to lawful process or by court personnel otherwise authorized to review evidence in a related case.
 - 6. By media personnel with the permission of the Sheriff or authorized designee.

Reference

POST ORDER 13-01

[Audio Recordings](#)

[12019.4 - Trip Tickets](#)

This section is currently under review, for information please contact your supervisor.

[12019.5 - Sheriff's Civil Technicians Carrying of Chemical Agents](#)

- a) Only department personnel who have completed department approved training may use authorized chemical agents.
- b) Sheriff's Civil Technicians may, when on duty, carry an authorized chemical agent, unless their assignment precludes carrying a chemical agent.
 - 1. For additional requirements see Custody & Court Operations Manual (CCOM) Section 1800.2 Force and Restraints and OCSO Policy Manual (Lexipol) Section 312.9[\[1\]](#)