

# The Zacher Firm

JUNE 21, 2011 · 4:30 PM

## A Summary of the Legal Process in California

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The following is a very brief overview of the California legal process. Please keep in mind that this is a short summary, and much of the procedure and court costs change at least once a year.

If the amount in controversy in the matter is \$25,000.00 or less, the Superior Court-limited jurisdiction (formerly municipal court) has jurisdiction. At this writing, it costs \$370.00 to file a lawsuit between \$10,000.00 and \$25,000.00, \$395.00 to file a lawsuit over \$25,000.00. Any amounts over \$25,000.00 must be filed in Superior Court-general jurisdiction. These fees vary from county to county.

After the lawsuit is filed, it must then be served. The sheriff charges roughly \$30.00 for personal service and an additional \$20.00 for each document served. The average cost of service of process is roughly \$50.00-\$85.00 per defendant. Needless to say, in a case where there are multiple defendants, service of process can be quite costly. On the average, it takes a process server or sheriff three weeks to effect service of process. Generally, a defendant can be served the same day for a nominal additional charge.

Once a defendant is served, the next step is for the defendant to either answer the lawsuit or have its default entered. Entry of Default is a separate step from obtaining a default judgment. The entry of default merely cuts off the defendant's right to answer. This is a relatively simple step which occurs by following a one-page document. In a simple case based upon a book account, the clerk can enter judgment with little documentation. However, in a more complex case involving a bad check, lease payment, etc., the attorney may need to obtain an affidavit or declaration under penalty of perjury signed by the client along with appropriate supporting information. It typically takes two to four months to obtain a default judgment in most courts. Other branch courts in other counties require significantly less time. This time frame may get worse with budget cuts.

If the defendant files an answer to the lawsuit, the next step is to initiate discovery in appropriate cases. Discovery consists of interrogatories (written questions), demand for production of documents, depositions and requests for admissions. If the defendant does not respond to the discovery, the defendant can be liable for monetary sanctuary, and worse, the defendant's answer can be stricken and a default judgment entered.

After an answer is filed and any required discovery has been answered, the case must be evaluated for the possibility of prejudgment attachment or a summary judgment. Prejudgment attachment allows the creditor to levy on the debtor's assets before trial or a judgment is obtained by showing a reasonable probability of prevailing at an eventual trial.

Summary judgment is an expedited procedure to obtain a final judgment in a case by showing that there is no triable issue of material fact and that the plaintiff is entitled to judgment as a matter of law. Essentially, the summary judgment asks the court to rule that the defendant's case has no legal merit. Unlike most motions, which only require a \$40.00 filing fee, the filing fee for a summary judgment is \$500.00.

Many courts require a judicial arbitration prior to trial. This is a non-binding arbitration, as opposed to the more familiar binding arbitration under the rules of the American Arbitration Association. The judicial arbitration is generally conducted before an attorney or retired judge. The attorney can attempt to have the client's declaration introduced as evidence and avoid the personal appearance of a witness. However, the defendant has a right to request the physical presence of the client upon at least 10 days' notice. In such an event, the client may have to attend the arbitration proceeding and then attend again at the time of trial. Typically, the losing defendant will request a new trial after a judicial arbitration. Occasionally, the cases do settle after arbitration. Many courts require mediation as an alternative to judicial arbitration. Generally, the mediator is an attorney or experienced layperson who offers services on the court's panel. In many instances, if the case does not settle after arbitration or mediation, the cases will settle at a mandatory settlement conference which precedes the actual trial.

If all else fails, the case must go to trial. Most courts are now initiating periodic status conferences where the attorney must attend. Many courts then have a mandatory settlement conference where the client must either attend or be available by telephone if they are out of state. If the case is not settled, the case will go to trial and appropriate witnesses must be provided. Most southern California courts are currently taking anywhere between one year to eighteen months for a case to go to trial. This is a significant improvement over the 4-5 years that it took to go to trial before the onset of so-called "fast track" procedures. We attempt to give as much notice as possible of a trial date, and we attempt to minimize the expense to the client of travel and staying at hotels in the event of such a trial. Most collection-type cases are bench trials before a judge and typically take two days or less. In the event that the defendant requests a jury trial, the length of trial is generally doubled.

After a judgment is obtained, either through trial or default judgment, the attorney can obtain a lien on the defendant's real estate (called an Abstract of Judgment) and in appropriate cases, a lien on personal property. The personal property lien is filed with the Secretary of State, in a form similar to the UCC-1 financing statement. In order for the sheriff to execute upon the judgment, the attorney must designate specifically upon what the sheriff is to levy. The attorney must also have the court issue a Writ of Execution. The courts take between several days and several weeks to issue these writs.

It costs additional money to enforce a judgment after the judgment has been obtained. The least expensive mechanism is to levy on a bank account. This procedure costs roughly \$30.00-\$50.00. If the client does not have a copy of the defendant's check and has no way of knowing where the debtor banks, a private investigator can obtain this information. Another possible way to effect execution is to install a sheriff (a so-called "keeper") in the defendant's place of business. This works especially well in restaurants and other retail establishments. A keeper runs roughly \$250.00 for an 8-hour period at this writing. It costs substantially more money to install a keeper for several days. The sheriff can also levy upon a vehicle which is owned outright and can inventory the defendant's business and sell it. Both of these procedures are quite costly and should be used as a last resort.

When no asset information is available, the defendant can be required to go to court for a Judgment Debtor Examination. The examination is also called an ORAP or OREX. The difficulty with this procedure in most courts is that, first the debtor must be personally served with the process. It is not uncommon to schedule an examination date and then be unable to serve the defendant. Secondly, even if the defendant is served, if they fail to appear at the

examination, while most jurisdictions will issue a bench warrant, often times the sheriff will just hold the warrant and just send a postcard to the debtor. Finally, in order for the examination to be meaningful, records should be subpoenaed, which increases the cost of the Judgment Debtor Examination. The examination runs roughly \$175.00, including the cost of service of process. If a subpoena is also required, the cost is increased to roughly \$75.00 per subpoena.

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