

RESOLUTION 10-01-2019

DIGEST

Business: Timing for Franchisor’s Refusal to Renew Franchise

Amends Business and Professions Code section 20025 to clarify that the 180 day requirement only applies if the franchisor refuses to renew a franchise.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Business and Profession Code section 20025, to read as follows:

- 1 § 20025
- 2 No franchisor may ~~fail~~refuse to renew a franchise unless such franchisor provides the
- 3 franchisee at least 180 days prior written notice of its intention not to renew; and
- 4 (a) During the 180 days prior to expiration of the franchise the franchisor permits the
- 5 franchisee to sell his business to a purchaser meeting the franchisor’s then current requirements
- 6 for granting new franchises, or if the franchisor is not granting a significant number of new
- 7 franchises, the then current requirements for granting renewal franchises; or
- 8 (b) (1) The refusal to renew is not for the purpose of converting the franchisee’s business
- 9 premises to operation by employees or agents of the franchisor for such franchisor’s own
- 10 account, provided, that nothing in this paragraph shall prohibit a franchisor from exercising a
- 11 right of first refusal to purchase the franchisee’s business; and
- 12 (2) Upon expiration of the franchise, the franchisor agrees not to seek to enforce any
- 13 covenant of the nonrenewed franchisee not to compete with the franchisor or franchisees of the
- 14 franchisor; or
- 15 (c) Termination would be permitted pursuant to Section 20020 or 20021; or
- 16 (d) The franchisee and the franchisor agree not to renew the franchise; or
- 17 (e) The franchisor withdraws from distributing its products or services through franchises
- 18 in the geographic market served by the franchisee, provided that:
- 19 (1) Upon expiration of the franchise, the franchisor agrees not to seek to enforce any
- 20 covenant of the nonrenewed franchisee not to compete with the franchisor or franchisees of the
- 21 franchisor; and
- 22 (2) The failure to renew is not for the purpose of converting the business conducted by
- 23 the franchisee pursuant to the franchise agreement to operation by employees or agents of the
- 24 franchisor for such franchisor’s own account; and
- 25 (3) Where the franchisor determines to sell, transfer, or assign its interest in a marketing
- 26 premises occupied by a franchisee whose franchise agreement is not renewed pursuant to this
- 27 paragraph:
- 28 (A) The franchisor, during the 180-day period after giving notice offers such franchisee a
- 29 right of first refusal of at least 30 days’ duration of a bona fide offer, made by another to
- 30 purchase such franchisor’s interest in such premises; or
- 31 (B) In the case of the sale, transfer, or assignment to another person of the franchisor’s
- 32 interest in one or more other controlled marketing premises, such other person in good faith
- 33 offers the franchisee a franchise on substantially the same terms and conditions currently being
- 34 offered by such other person to other franchisees; or

35 (f) The franchisor and the franchisee fail to agree to changes or additions to the terms and
36 conditions of the franchise agreement, if such changes or additions would result in renewal of the
37 franchise agreement on substantially the same terms and conditions on which the franchisor is
38 then customarily granting renewal franchises, or if the franchisor is not then granting a
39 significant number of renewal franchises, the terms and conditions on which the franchisor is
40 then customarily granting original franchises. The franchisor may give the franchisee written
41 notice of a date which is at least 30 days from the date of such notice, on or before which a
42 proposed written agreement of the terms and conditions of the renewal franchise shall be
43 accepted in writing by the franchisee. Such notice, when given not less than 180 days before the
44 end of the franchise term, may state that in the event of failure of such acceptance by the
45 franchisee, the notice shall be deemed a notice of intention not to renew at the end of the
46 franchise term.

(Proposed new language underlined; language to be deleted stricken)

PROPOSER: Bar Association of Northern San Diego County.

STATEMENT OF REASONS

The Problem: Franchisors are using this statute in an attempt to unilaterally extend the term of a franchise when the franchisee does not invoke their renewal rights. The franchisor waits until the end of the franchise term and then invokes this statute in order to extend the franchise another 180 days (past the end of the franchise agreement) in order to bind an unwilling franchisee into a franchise that they no longer want to belong to.

The Solution: This resolution clarifies that the franchisor must only give the 180 notice if the franchisor is refusing to renew the franchise. This distinguishes it from cases where the franchisee has not elected to invoke their renewal rights and is electing not to renew the franchise.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT:

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RESPONSIBLE FLOOR DELEGATE: Melissa L. Bustarde, Esq.

RESOLUTION 10-02-2019

DIGEST

Taxes: Deadline for Hearings on Petitions for Reconsideration

Amends Revenue and Taxation Code sections 19047, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, and 55083 to set deadline for hearing on Petitions for Reconsideration

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Revenue and Taxation Code sections 19047, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, and 55083, to read as follows:

1 § 19047

2 If a petition for redetermination is filed within the 30-day period, the board shall
3 reconsider the determination and, if the person has so requested in his petition, shall grant the
4 person an oral hearing and shall give him 10 days' written notice of the time and place of the
5 hearing. The board may continue the hearing from time to time as may be necessary. However,
6 in no event, except upon a showing of good cause, may a timely request for an oral hearing be
7 delayed more than one year. If an oral hearing is not set within one year, the taxpayer may bring
8 a motion to dismiss.

9
10 §30262

11 If a petition for redetermination is filed within the 30-day period, the board shall
12 reconsider the determination and, if the person has so requested in his petition, shall grant the
13 person an oral hearing and shall give him 10 days' written notice of the time and place of the
14 hearing. The board may continue the hearing from time to time as may be necessary. However,
15 in no event, except upon a showing of good cause, may a timely request for an oral hearing be
16 delayed more than one year. If an oral hearing is not set within one year, the taxpayer may bring
17 a motion to dismiss.

18
19 §38443

20 If a petition for redetermination is filed within the 30-day period, the board shall
21 reconsider the determination and, if the person has so requested in his petition, shall grant the
22 person an oral hearing and shall give him 10 days' written notice of the time and place of the
23 hearing. The board may continue the hearing from time to time as may be necessary. However,
24 in no event, except upon a showing of good cause, may a timely request for an oral hearing be
25 delayed more than one year. If an oral hearing is not set within one year, the taxpayer may bring
26 a motion to dismiss.

27
28 §40093

29 If a petition for redetermination is filed within the 30-day period, the board shall
30 reconsider the determination and, if the person has so requested in his petition, shall grant the
31 person an oral hearing and shall give him 10 days' written notice of the time and place of the
32 hearing. The board may continue the hearing from time to time as may be necessary. However,
33 in no event, except upon a showing of good cause, may a timely request for an oral hearing be

34 delayed more than one year. If an oral hearing is not set within one year, the taxpayer may bring
35 a motion to dismiss.

36
37 §41087

38 If a petition for redetermination is filed within the 30-day period, the board shall
39 reconsider the determination and, if the person has so requested in his petition, shall grant the
40 person an oral hearing and shall give him 10 days' written notice of the time and place of the
41 hearing. The board may continue the hearing from time to time as may be necessary. However,
42 in no event, except upon a showing of good cause, may a timely request for an oral hearing be
43 delayed more than one year. If an oral hearing is not set within one year, the taxpayer may bring
44 a motion to dismiss.

45
46 §43303

47 If a petition for redetermination is filed within the 30-day period, the board shall
48 reconsider the determination and, if the person has so requested in his petition, shall grant the
49 person an oral hearing and shall give him 10 days' written notice of the time and place of the
50 hearing. The board may continue the hearing from time to time as may be necessary. However,
51 in no event, except upon a showing of good cause, may a timely request for an oral hearing be
52 delayed more than one year. If an oral hearing is not set within one year, the taxpayer may bring
53 a motion to dismiss.

54
55 §45303

56 If a petition for redetermination is filed within the 30-day period, the board shall
57 reconsider the determination and, if the person has so requested in his petition, shall grant the
58 person an oral hearing and shall give him 10 days' written notice of the time and place of the
59 hearing. The board may continue the hearing from time to time as may be necessary. However,
60 in no event, except upon a showing of good cause, may a timely request for an oral hearing be
61 delayed more than one year. If an oral hearing is not set within one year, the taxpayer may bring
62 a motion to dismiss.

63
64 §46353

65 If a petition for redetermination is filed within the 30-day period, the board shall
66 reconsider the determination and, if the person has so requested in his petition, shall grant the
67 person an oral hearing and shall give him 10 days' written notice of the time and place of the
68 hearing. The board may continue the hearing from time to time as may be necessary. However,
69 in no event, except upon a showing of good cause, may a timely request for an oral hearing be
70 delayed more than one year. If an oral hearing is not set within one year, the taxpayer may bring
71 a motion to dismiss.

72
73 §50116

74 If a petition for redetermination is filed within the 30-day period, the board shall
75 reconsider the determination and, if the person has so requested in his petition, shall grant the
76 person an oral hearing and shall give him 10 days' written notice of the time and place of the
77 hearing. The board may continue the hearing from time to time as may be necessary. However,
78 in no event, except upon a showing of good cause, may a timely request for an oral hearing be

79 delayed more than one year. If an oral hearing is not set within one year, the taxpayer may bring
80 a motion to dismiss.

81
82 §55083

83 If a petition for redetermination is filed within the 30-day period, the board shall
84 reconsider the determination and, if the person has so requested in his petition, shall grant the
85 person an oral hearing and shall give him 10 days' written notice of the time and place of the
86 hearing. The board may continue the hearing from time to time as may be necessary. However,
87 in no event, except upon a showing of good cause, may a timely request for an oral hearing be
88 delayed more than one year. If an oral hearing is not set within one year, the taxpayer may bring
89 a motion to dismiss.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Contra Costa County Bar Association

STATEMENT OF REASONS

The Problem: Under the existing law, a taxpayer must appeal an adverse decision by the Franchise Tax Board (“FTB”) within 30 days of the notice of action (or in some cases 60 – 90 days, usually with respect to interest abatement). A taxpayer who desires an oral hearing in connection with their petition must request one in writing at any time prior to completion of briefing in connection with their petition (or appeal).

There is no requirement regarding when the oral hearing must take place.

Under current law, a taxpayer who meets all deadlines has no guarantee or even approximate time frame in which it must receive a timely requested oral hearing before the Office of Tax Appeals (“OTA”). In one particular case, a taxpayer filed an appeal in or around 2012 (in connection with their 2007 tax year). The hearing did not take place until April 2018.

The taxpayer paid the tax in full in excess of \$70,000.00, and converted the appeal to a claim for refund. Following the hearing, the taxpayer received a favorable opinion.

Accordingly, the taxpayer paid tax she did not owe (interest free) and did not receive an oral hearing for approximately 5 to 6 years after it was requested.

At one point, legal counsel for the taxpayer contacted Fiona Ma (a member of the Board of Equalization at the time) to try to find the taxpayer’s case, as it was assumed it had been lost and there was no response from the BOE with respect to its location.

The taxpayer has already been unduly burdened and paid a tax for which she is not liable. The taxpayer is entitled to a timely hearing. This is wholly burdensome and onerous on the taxpayer, with little to no burden on the State or the OTA.

The Solution: This resolution would require that an oral hearing take place within one year of its timely request, unless there is a showing of good cause for further delay.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT:

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RESPONSIBLE FLOOR DELEGATE: Christina Weed

RESOLUTION 10-03-2019

DIGEST

Taxes: Deadline for Hearings on Petitions for Redetermination

Amends Revenue and Taxation Code section 19346 to set deadline for hearings on petitions for redetermination.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Revenue and Taxation Code section 19346, to read as follows:

1 § 19346
2 If a petition for redetermination is filed within the 30-day period, the board shall
3 reconsider the determination and, if the person has so requested in his petition, shall grant the
4 person an oral hearing and shall give him 10 days' written notice of the time and place of the
5 hearing. The board may continue the hearing from time to time as may be necessary. However,
6 in no event, except for a showing of good cause, may a timely request for an oral hearing be
7 delayed more than one year.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Contra Costa County Bar Association

STATEMENT OF REASONS

The Problem: Under the existing law, a taxpayer must appeal an adverse decision by the Franchise Tax Board (“FTB”) within 30 days of the notice of action (or in some cases 60 – 90 days, usually with respect to interest abatement). A taxpayer who desires an oral hearing in connection with their petition must request one in writing at any time prior to completion of briefing in connection with their petition (or appeal).

There is no requirement regarding when the oral hearing must take place.

Under current law, a taxpayer who meets all deadlines has no guarantee or even approximate time frame in which it must receive a timely requested oral hearing before the Office of Tax Appeals (“OTA”). In one particular case, a taxpayer filed an appeal in or around 2012 (in connection with their 2007 tax year). The hearing did not take place until April 2018.

The taxpayer paid the tax in full in excess of \$70,000.00, and converted the appeal to a claim for refund. Following the hearing, the taxpayer received a favorable opinion.

Accordingly, the taxpayer paid tax she did not owe (interest free) and did not receive an oral hearing for approximately 5 to 6 years after it was requested.

At one point, legal counsel for the taxpayer contacted Fiona Ma (a member of the Board of Equalization at the time) to try to find the taxpayer’s case, as it was assumed it had been lost and

there was no response from the BOE with respect to its location.

The taxpayer has already been unduly burdened and paid a tax for which she is not liable. The taxpayer is entitled to a timely hearing. This is wholly burdensome and onerous on the taxpayer, with little to no burden on the State or the OTA..

The Solution: This resolution would require that an oral hearing take place within one year of its timely request, unless there is a showing of good cause for further delay.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT:

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RESPONSIBLE FLOOR DELEGATE: Christina Weed

RESOLUTION 10-04-2019

DIGEST

Corporations Code: Establish Valuation Date for Buyout Price

Amends Corporations Code section 2000 to establish a valuation date for its buyout procedure.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Corporations Code section 2000 to read as follows:

- 1 § 2000
2 a) Subject to any contrary provision in the articles, which may include a reference to a
3 separate written agreement between two or more shareholders pertaining to the purchase of
4 shares: In any suit for involuntary dissolution, or in any proceeding for voluntary dissolution
5 initiated by the vote of shareholders representing only 50 percent of the voting power, the
6 corporation or, if it does not elect to purchase, the holders of 50 percent or more of the voting
7 power of the corporation (the “purchasing parties”) may avoid the dissolution of the corporation
8 and the appointment of any receiver by purchasing for cash the shares owned by the plaintiffs or
9 by the shareholders so initiating the proceeding (the “moving parties”) at their fair value.
10 The fair value shall be determined on the basis of the liquidation value as of the valuation date
11 but taking into account the possibility, if any, of sale of the entire business as a going concern in
12 a liquidation. In fixing the value, the amount of any damages resulting if the initiation of the
13 dissolution is a breach by any moving party or parties of an agreement with the purchasing party
14 or parties may be deducted from the amount payable to the moving party or parties, unless the
15 ground for dissolution is that specified in paragraph (4) of subdivision (b) of Section 1800. The
16 election of the corporation to purchase may be made by the approval of the outstanding shares
17 (Section 152) excluding shares held by the moving parties.
18 (b) If the purchasing parties (1) elect to purchase the shares owned by the moving parties,
19 and (2) are unable to agree with the moving parties upon the fair value of those shares, and (3)
20 give bond with sufficient security to pay the estimated reasonable expenses (including attorneys'
21 fees) of the moving parties if those expenses are recoverable under subdivision (c), the court
22 upon application of the purchasing parties, either in the pending action or in a proceeding
23 initiated in the superior court of the proper county by the purchasing parties in the case of a
24 voluntary election to wind up and dissolve, shall stay the winding up and dissolution proceeding
25 and shall proceed to ascertain and fix the fair value of the shares owned by the moving parties.
26 The purchasing parties must make application not later than the response date of the purchasing
27 parties to the suit for involuntary dissolution or proceeding for voluntary dissolution is due.
28 (c) The court shall appoint three disinterested appraisers to appraise the fair value of the
29 shares owned by the moving parties, and shall make an order referring the matter to the
30 appraisers so appointed for the purpose of ascertaining the value. The order shall prescribe the
31 time and manner of producing evidence, if evidence is required. The award of the appraisers or
32 of a majority of them, when confirmed by the court, shall be final and conclusive upon all
33 parties. The court shall enter a decree, which shall provide in the alternative for winding up and
34 dissolution of the corporation unless payment is made for the shares within the time specified by
35 the decree. If the purchasing parties do not make payment for the shares within the time

36 specified, judgment shall be entered against them and the surety or sureties on the bond for the
37 amount of the expenses (including attorneys' fees) of the moving parties. Any shareholder
38 aggrieved by the action of the court may appeal the court's decision.

39 (d) If the purchasing parties desire to prevent the winding up and dissolution, they shall
40 pay to the moving parties the value of their shares ascertained and decreed within the time
41 specified pursuant to this section, or, in case of an appeal, as fixed on appeal. On receiving
42 payment or the tender thereof, the moving parties shall transfer their shares to the purchasing
43 parties.

44 (e) For the purposes of this section, "shareholder" includes a beneficial owner of shares
45 who has entered into an agreement under Section 300 or 706.

46 (f) For the purposes of this section, the valuation date shall be (1) in the case of a suit for
47 involuntary dissolution under Section 1800, the date upon which that action was commenced, or
48 (2) in the case of a proceeding for voluntary dissolution initiated by the vote of shareholders
49 representing only 50 percent of the voting power, the date upon which that proceeding was
50 initiated. However, in either case the court may, upon the hearing of a motion by any party, and
51 for good cause shown, designate some other date as the valuation date.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: Corporations Code section 2000 provides, where shareholders file suit or initiate other proceedings to dissolve a corporation, the corporation itself or holders of at least 50 percent of the shares can apply for court order that a procedure be implemented to establish the valuation of the shares of the parties seeking dissolution and for the corporation or applying parties to buyout the others. The proceeding enables parties to maintain a going concern and as a protection from the misuse of the dissolution cause of action. However, the section does not provide any deadline for the application for the order imposing the procedure. As long as the dissolution suit or procedure is pending, there is always the potential that the section 2000 proceeding application can be filed, regardless of the state of the litigation generally. A significant point of this legislation is to resolve these cases without full court procedures, much like arbitration. This benefit is lost if the parties fully litigate the case, and the prospective purchasers then decide to invoke the procedure. This is particularly true given the provision for in subdivision (f) that the valuation date is tied to the date of initiation of the original dissolution proceeding.

The Solution: This resolution would require the purchasing corporation or shareholders to initiate the application process within the time frame for response to the original pleading seeking the dissolution, thereby enabling all parties to know at the outset whether the section 2000 proceeding will be invoked, and eliminate any potential for prejudice to the party seeking dissolution from having to fully litigate the question up to trial, only to be met with a buyout procedure with a valuation date tied to the filing date of the original proceeding. As an example of the effect of this delay, see *Ontiveros v. Constable* (2018) 27 Cal.App.5th 259, where the action was originally filed on December 19, 2012, the section 2000 proceeding was not sought

until late 2016 after an appeal on an unrelated issue, was denied, the denial was appealed, and the procedure would not have been implemented until sometime after the September 18, 2018 opinion became final.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR RELATED LEGISLATION

None Known.

AUTHOR AND/OR PERMANENT CONTACT: K. Martin White, Post Office Box 1826, Carlsbad, CA 92018, marnew@sbcglobal.net, (760) 434-6787

RESPONSIBLE FLOOR DELEGATE: K. Martin White

RESOLUTION 10-05-2019

DIGEST

Defining “person” for purposes of Section 708.120

Amends Code of Civil Procedure section 708.120 to require court to order a third-party entity to appear for examination by judgment creditor

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 708.120 to read as follows:

- 1 §708.120
- 2 (a) Upon ex parte application by a judgment creditor who has a money judgment and
- 3 proof by the judgment creditor by affidavit or otherwise to the satisfaction of the proper court
- 4 that a third person has possession or control of property in which the judgment debtor has an
- 5 interest or is indebted to the judgment debtor in an amount exceeding two hundred fifty dollars
- 6 (\$250), the court shall make an order directing the third person to appear before the court, or
- 7 before a referee appointed by the court, at a time and place specified in the order, to answer
- 8 concerning such property or debt. The affidavit in support of the judgment creditor's application
- 9 may be based on the affiant's information and belief. As used in this section “person” means any
- 10 individual, trust, firm, joint stock company, or corporation, including, but not limited to, a
- 11 partnership, limited liability company and association.
- 12 (b) Not less than 10 days prior to the date set for the examination, a copy of the order
- 13 shall be:
 - 14 (1) Served personally on the third person.
 - 15 (2) Served personally or by mail on the judgment debtor.
- 16 (c) If the property in the third person's possession or control in which the judgment debtor
- 17 has an interest or the debt owed by the third person to the judgment debtor is described in the
- 18 affidavit or application for an order under subdivision (a) in a manner reasonably adequate to
- 19 permit it to be identified, service of the order on the third person creates a lien on the judgment
- 20 debtor's interest in the property or on the debt for a period of one year from the date of the order
- 21 unless extended or sooner terminated by the court.
- 22 (d) The judgment debtor may claim that all or any portion of the property or debt is
- 23 exempt from enforcement of a money judgment by application to the court on noticed motion,
- 24 filed with the court and personally served on the judgment creditor not later than three days
- 25 before the date set for the examination. The judgment debtor shall execute an affidavit in support
- 26 of the application that includes all of the matters set forth in subdivision (b) of Section 703.520.
- 27 If a claim of exemption is made pursuant to this section, a notice of opposition to the claim of
- 28 exemption is not required. The court shall determine any claim of exemption made pursuant to
- 29 this section. Failure of the judgment debtor to make a claim of exemption does not preclude the
- 30 judgment debtor from later claiming the exemption unless the property or debt is described in the
- 31 order in a manner reasonably adequate to permit it to be identified and the judgment debtor
- 32 receives notice of the examination proceeding at least 10 days before the date set for the
- 33 examination.

34 (e) An order made pursuant to subdivision (a) shall contain the following statements in
35 14-point boldface type if printed or in capital letters if typed:

36 (1) "NOTICE TO PERSON SERVED. If you fail to appear at the time and place
37 specified in this order, you may be subject to arrest and punishment for contempt of court and the
38 court may make an order requiring you to pay the reasonable attorney's fees incurred by the
39 judgment creditor in this proceeding."

40 (2) "NOTICE TO JUDGMENT DEBTOR. The person in whose favor the judgment was
41 entered in this action claims that the person to be examined pursuant to this order has possession
42 or control of property which is yours or owes you a debt. This property or debt is as follows:
43 (Description of property or debt). If you claim that all or any portion of this property or debt is
44 exempt from enforcement of the money judgment, you must file your exemption claim in writing
45 with the court and personally serve a copy on the judgment creditor not later than three days
46 before the date set for the examination. You must appear at the time and place set for this
47 examination to establish your claim of exemption or your exemption may be waived."

48 (f) An order made pursuant to subdivision (a) is not effective unless, at the time it is served on
49 the third person, the person serving the order tenders to the third person fees for the mileage
50 necessary to be traveled from the third person's residence to the place of examination. The
51 mileage fees shall be in the same amount generally provided for witnesses when legally required
52 to attend civil proceedings in the court where the examination proceeding is to be conducted.

1

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem: Code of Civil Procedure section 708.150 requires a corporation, partnership, association, trust, or other organization served with an order appear for examination to designate one or more officers or other person familiar with its property and assets. However, some courts refuse to issue an order for an entity to appear for an examination under Section 708.120. When judgment creditors do not know the names of individuals associated with the business entities, they have no recourse. Entities are required to register an agent for service of process with the Secretary of State. Many times, these agents are themselves entities. Judgment creditors should be able to obtain an order requiring an entity to appear for examination.

The Solution: This resolution clarifies that an order for examination may be issued to entities as well as individuals

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None

AUTHOR AND/OR PERMANENT CONTACT:

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RESPONSIBLE FLOOR DELEGATE: Elaine B. Alston

RESOLUTION 10-06-2019

DIGEST

Limited Liability Companies: Persons Most Knowledgeable

Amends Code of Civil Procedure section 708.150 to add limited liability companies to list of organizations required to designate person(s) most knowledgeable

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 708.150 to read as follows:

- 1 §708.150
2 (a) If a corporation, partnership, association, trust, limited liability company or other
3 organization is served with an order to appear for an examination, it shall designate to appear and
4 be examined one or more officers, directors, managing agents, or other persons who are familiar
5 with its property and debts.
6 (b) If the order to appear for an examination requires the appearance of a specified
7 individual, the specified individual shall appear for the examination and may be accompanied by
8 one or more officers, directors, managing agents, or other persons familiar with the property and
9 debts of the corporation, partnership, association, trust, limited liability company or other
10 organization.
11 (c) If the order to appear for the examination does not require the appearance of a
12 specified individual, the order shall advise the corporation, partnership, association, trust, limited
13 liability company or other organization of its duty to make a designation under subdivision (a).
14 (d) A corporation, partnership, association, trust, limited liability company or other
15 organization, whether or not a party, may appear at an examination through any authorized
16 officer, director, or employee, whether or not the person is an attorney.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem: The list of entities required to designate persons most knowledgeable in response to an order for examination by a judgment creditor does not specifically list a limited liability company. When this statute was last amended in the 1980s limited liability companies did not exist in California. However, this form of entity is quite common now and should be specifically listed to prevent confusion and abuse by limited liability companies.

The Solution: This resolution adds a limited liability company as a type of entity required to designate person(s) most knowledge to appear for an ordered examination under Section 708.150.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT:

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RESPONSIBLE FLOOR DELEGATE: Elaine B. Alston