

RESOLUTION 03-27-08

DIGEST

Enforcement of Judgments: Bench Warrants for Failure to Appear

Amends Code of Civil Procedure section 708.170 to provide for a statewide system for enforcement of bench warrants issued for persons who fail to appear for post-judgment oral examinations.

RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 708.170 to provide for a statewide system for enforcement of bench warrants issued for persons who fail to appear for post-judgment oral examinations. This resolution should be disapproved because a similar statewide system already exists and counties should not be required to participate in the system if they do not have the financial resources to do so.

A similar statewide computerized system under the supervision of the California Attorney General already exists. The California Law Enforcement Telecommunications System (“CLETS”) was created by the enactment of Government Code section 15150, et seq., in 1965. However, participation in CLETS is upon the application of and at the separate expense of each local law enforcement agency. (Gov. Code, § 15163.) CLETS replaced the prior system, which was at state expense. (Code Civ. Proc., § 15150(b).)

Without any statutory provisions for funding, this resolution would mandate the expenditure of funds by each California county for the purpose of identifying, arresting and transporting judgment debtors or third persons who fail to appear for post-judgment oral exams. Under the existing system, each local law enforcement department independently determines which warrants to prioritize for entry into the CLETS system.

To effect this resolution, all local law enforcement agencies would need to modernize their computer systems and increase their staffing of data entry employees to handle the additional volume of bench warrants entered into CLETS. At a time when the California Department of Corrections and Rehabilitation reports that there are approximately 2.5 million unserved warrants in California (2.2 million misdemeanor and 283,000 felony) (California Board of Corrections, Facilities Standards and Operations Division “Jail Profile Survey Annual Report 2004,” pp. 17-18, www.cdcr.ca.gov/Divisions_Boards/CSA/FSO/Docs/2004_JPS_Annual_Report.pdf), most counties will not have adequate fiscal or human resources to comply with this mandate.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that

legislation be sponsored to amend Code of Civil Procedure section 708.170 to read as follows:

1 §708.170

2 (a) If an order requiring a person to appear for an examination was served by a
3 sheriff, marshal, a person specially appointed by the court in the order, or a registered
4 process server, and the person fails to appear:

5 (1) The court may do either of the following:

6 (A) Pursuant to a warrant, have the person brought before the court to answer for
7 the failure to appear and may punish the person for contempt.

8 (B) Issue a warrant for the arrest of the person who failed to appear as required by
9 the court order, pursuant to Section 1993.

10 (2) If the person's failure to appear is without good cause, the judgment creditor
11 shall be awarded reasonable attorney's fees incurred in the examination proceeding.
12 Attorney's fees awarded against the judgment debtor shall be added to and become part of
13 the principal amount of the judgment.

14 (b) A person who willfully makes an improper service of an order for an
15 examination which subsequently results in the arrest pursuant to subdivision (a) of the
16 person who fails to appear is guilty of a misdemeanor.

17 (c) Upon issuance and transmittal of the warrant to the law enforcement agency
18 charged with executing said warrants, the existence of the warrant shall be immediately
19 inputted by said agency into a statewide system so that any law enforcement agency
20 stopping the person against whom the warrant is issued shall see said warrant information
21 when checking for outstanding warrants. Law enforcement may not remove said warrant
22 from a local or statewide system unless the warrant has been successfully executed or upon
23 recall by or other order of a court.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS:

Existing Law: Provides for the issuance of a bench warrant in various circumstances including the failure of a judgment debtor to appear at a judgment debtor examination or the failure of a witness under a subpoena to appear at a trial. There are multiple methods of enforcing such bench warrants, each with different fees. Under current law, warrants are sent to County Sheriffs where the debtor lives or works.

This Resolution: Clarifies which method shall be used for the arrest of a judgment debtor on a bench warrant issued for a failure to appear at the examination. This amendment requires a study to determine if the California Highway Patrol, a statewide law enforcement agency will be better equipped to execute the warrants on a uniform statewide basis.

The Problem: Sending warrants to the offices of County Sheriffs where the debtor lives or works as prescribed by current law often causes the execution of said warrants in various non-uniform ways, sometimes including the failure to execute the warrants.

IMPACT STATEMENT:

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

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