Item 8
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JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

FROM: Task Force on Civil Fees
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DATE: February 22, 2007

SUBJECT: Report to the Judicial Council and the Legislature on the Uniform Civil Fees and Standard Fee Schedule Act of 2005

Issue Statement

The Task Force on Civil Fees is made up of representatives from the trial courts, the State Bar, Consumer Attorneys of California, the California Defense Counsel, the Council of California County Law Librarians, the California State Association of Counties, the California Court Reporters Association, and the California Dispute Resolution Council and is chaired by Justice Richard Aldrich. The task force was appointed in October 2006 and has met three times. This report contains the final recommendations of the task force.

Recommendation

1. The Task Force on Civil Fees recommends that the Judicial Council approve the following recommendations to the Legislature:

   a. Amend the UCF to clarify specific fees and improve the effectiveness of the fee structure.

   b. Do not adopt a fee differential based on the number of cases a party files in a year.

2. The Task Force on Civil Fees recommends the establishment of a Commission on Civil Fees in the Courts. The Judicial Council should direct staff to develop a proposal for review by the Policy Coordination and Liaison Committee that addresses which aspects of the commission are appropriate for rule and whether any part should be adopted in statute.

3. The Task Force on Civil Fees recommends that the Judicial Council direct staff to convene a meeting of interested parties, including task force members and representatives of the Legislature, to discuss and consider fee issues in 2007 that cannot wait until the establishment and recommendations of the fee commission.

Background

In December 2003, the Chief Justice appointed the Court Fees Working Group (CFWG) to undertake a comprehensive review of civil fees and make policy recommendations in order to achieve several goals. The CFWG recommended the creation of a uniform civil fee structure to streamline and simplify civil fees; provide for uniformity of fees across the state; address the funding shortfall occurring under the fee structure at the time; and improve financial stability, accountability, and predictability in the courts.

After the CFWG recommendations were issued in April 2004, AOC staff met with counties, county law libraries, dispute resolution program representatives, legislative staff, and others about the proposal. Representatives from counties, dispute resolution programs, and law libraries raised concerns about maintaining county authority over programs that are supported through filing fees and ensuring that a reliable method would be in place to allow necessary increases in the future. Although substantial progress was made, it was not possible to resolve all of the outstanding issues in time for the Legislature to consider a comprehensive uniform fee proposal in the 2004 session.

Refinements of the proposal continued, and in December 2004 the Judicial Council approved sponsorship of legislation to establish a uniform civil fee structure. The legislation, approved as part of the 2005–2006 Budget Act and the Uniform Civil Fees and Standard Fee Schedule Act of 2005 (UCF) took effect on January 1, 2006.

Specific changes made

The new fee structure streamlined and simplified the civil fees collected by the courts by folding the previously varied surcharges and add-on fees into uniform statewide filing fees. The UCF structure made the following changes:

- Established statewide, uniform first paper and first responsive paper fees at three graduated levels:
    - Limited civil fee (less than or equal to $10,000): $180
    - Limited civil fee (greater than $10,000 and not exceeding $25,000): $300
    - Unlimited civil and family law fee: $320
- Consolidated the court security fee, $25 court reporter fee, amended and cross-complaint fee, and AB 3000 (10 percent) surcharge as they relate to first paper filing and response fees. Revenue was included in the new, consolidated fee.

- Established facilities surcharges at $20, $25, and $35 and included them in the consolidated filing fee.
- Established a new distribution of $4.80 for the Equal Access Fund program.
- Consolidated fees for children's waiting rooms, dispute resolution, judges' retirement, and law libraries into the first paper fee and distributed them at the current levels.
- Established a moratorium on fee changes—the uniform civil fee amounts stay in effect through December 31, 2007, except for possible changes by the Legislature to implement recommendations of the Task Force on County Law Libraries or revise the graduated filing fee for probate petitions.
- Established a set-aside for increases in dispute resolution, law library, and children's waiting rooms during the proposed moratorium, ending December 31, 2007.
- The UCF also added Government Code section 70601(b), which requires the Judicial Council to establish a Task Force on Civil Fees to make recommendations to the Judicial Council and the Legislature on the following:

  (1) The effectiveness of the uniform fee structure, any operational or revenue problems, and how to address these issues.

  (2) Whether a fee differential should be implemented based on the number of cases a party files in a year.

  (3) A process to adjust fees in the future to accommodate inflation and other factors affecting operating costs for trial courts, county law libraries, and county programs that rely on court fees.

Rationale for Recommendation

1.a. Amend the UCF to clarify specific fees and improve the effectiveness of the fee structure.

The primary objective of the Uniform Civil Fees and Standard Fee Schedule Act of 2005 (UCF) was to standardize trial court fees for filing and other services as well as to streamline and simplify first paper civil fees by rolling various surcharges and add-on fees that differed from county to county into statewide uniform fees. This primary objective has been met. With a few exceptions, including fees set by the courts based on actual costs and fees that include a surcharge for local courthouse construction, the fees for the same types of cases and services are the same across all 58 counties.

In terms of revenue under the UCF thus far, total civil fees collected for the first 11 months since the UCF was implemented have been at the level generally expected. Attachment 1 shows the actual revenue from July 2004 through December 2006 in six-

month periods (except that the December 2006 data is projected.) This data indicates that the revenue for the three-tiered uniform first paper fee deposited into the Trial Court Trust Fund (TCTF) under UCF for the support of trial courts has been slightly but not significantly lower than the revenue deposited into TCTF for the same first paper fees and associated surcharges and add-on fees prior to UCF.

At the October 26, 2006, meeting of the Task Force on Civil Fees, representatives of various stakeholder groups were given the opportunity to discuss their experiences with the UCF structure so far. The stakeholder groups represented included process servers, attorneys, law libraries, dispute resolution programs, court reporters, and court staff. The stakeholder representatives had positive feedback and acknowledged the success of the fee and distribution structure under the UCF. Comments on the UCF included the following:

- Court users, including attorneys and process servers, find the fee structure much simpler and easier to work with.
- Uniformity of fees across counties and stability over time (fees not changing every year) makes it easier to know the amount of fees a court will charge for a filing. The problem of a court receiving a check for an incorrect amount for a filing fee occurs less frequently.
- Court users urged that if changes need to be made to the UCF, they should be made in a way that does not disturb fee uniformity.
- The new process for distribution of portions of the fees that go to local programs, such as law libraries and dispute resolution, is successful.
- Accurate information on the revenue to local programs that receive revenue from court fees is more readily obtainable than before.

In the process of implementing the UCF, courts have contacted AOC staff with various questions about the fees to be charged under the UCF in particular circumstances. Some of these questions have identified areas where specific fees need to be clarified or changed. Because some of these questions raised policy issues, they were brought to the task force for consideration rather than being addressed in the cleanup legislative proposal that was approved by the Judicial Council on December 1, 2006. The amendments recommended by the task force are described in the attached report (see Attachment 2).

1.b. Do not adopt a fee differential based on the number of cases a party files in a year.

The Task Force on Civil Fees recommends that the Legislature not adopt a fee differential based on the number of cases a party files in a year because it is not justified by workload demands of such cases on the courts, would be difficult to administer, and is unlikely to generate revenues significant enough to justify the additional administrative

burden or possible inequity and the public opposition that might be created by such a fee differential.

A fee differential already exists under current law in small claims. A “frequent filer” in small claims is a person who has filed more than 12 cases in the previous 12 months, and that person is charged a higher filing fee regardless of the amount at issue in the current claim. (Code Civ. Proc. § 116.230(c).) It is not known whom the Legislature intended in the category of frequent filers outside of small claims, but task force members believe that frequent filers outside of the small claims arena are likely to be collection agencies, landlords, trust companies, private professional fiduciaries, large corporations, and some public interest organizations, including civil rights and environmental groups. Informal data-gathering in two courts indicated that 80 to 90 percent of cases by frequent filers would be collections cases, and the rest would be primarily in unlawful detainer actions.

The task force does not believe that imposing a higher fee on these groups effectively furthers a policy goal. The likely result of the imposition of a frequent filer surcharge in collections cases would be that the added cost would simply be passed on to the debtors. Moreover, the task force does not believe the fee differential is justified to offset costs based on the workload demands placed on the courts by frequent filers. While cases brought by these groups may be frequent, courts indicate that collections cases often end in default judgments, and the other entities tend to be the best-prepared parties. The task force also notes that the existing filing fee structure does include a sizable differential for cases designated complex ($550 for plaintiff and $550 for each defendant capped at $10,000). The complex case fee is appropriately meant to offset the cost of court resources required in these cases. A review of a survey of fees in other courts by the National Center for State Courts indicated that while a few states have provisions for charging parties to offset exceptional services or unusual costs, no “frequent filer” fee was found that would apply simply because of the number of cases a party had filed in a period of time.

Of significant concern to the task force members is the administration of a fee differential for frequent filers. A key goal of the UCF was to streamline and simplify the civil fee structure. Reaction to the UCF has been universally positive, with attorneys, judges, court administrators, and representatives of programs that rely on filing fees (law libraries and dispute resolution programs) pleased with the simplicity and predictability of the new structure. Task force members believe the fee differential could be a step backward that would unnecessarily complicate the filing fees.

It would be exceedingly difficult for courts, litigants, attorneys, corporations, trust entities, etc. to track the number of filings a party makes statewide. In small claims cases where a frequent filer fee exists today, the litigant is responsible for tracking the number of filings annually and must sign a declaration stating that no more than 12 filings have been made. The tracking in small claims is possible because the knowledge and

responsibility rests with one individual. But in limited and unlimited civil cases, the task force does not believe it is reasonable to expect national and international law firms to track the number of cases filed by the parties they represent.

Finally, it is estimated that a fee for frequent filers would not generate revenues significant enough to offset the ongoing costs of implementation. The burden on those affected would also likely encourage opposition to the surcharge. Staff of the Administrative Office of the Courts reviewed information from courts to determine the likely percentage of filings that would be subject to a frequent filer fee. It is difficult to determine precise numbers because the necessary data is not normally collected by the courts, but for unlimited civil cases, based on informal data gathering in three courts, frequent filings would probably be less than 2 percent of cases. For limited civil cases, the estimates range between 5 and 40 percent. Because most limited civil cases (about 85 percent) fall into the under $10,000 category, most of the cases affected would probably be in that value range. Such cases are already difficult for parties to bring to court in a way that is cost effective because of the small amount at issue. A surcharge that falls disproportionately on low-value cases may impede access to the courts. Additionally, many limited civil collections cases brought by assignees fall within the small claims jurisdictional limit (below $5,000) because assignees are prohibited from suing in small claims court. The impact on assignees could encourage efforts to make the small claims forum available to them, which is not consistent with the intent that small claims courts be tailored to small disputes between individuals.

2. The Task Force on Civil Fees recommends the establishment of a Commission on Civil Fees in the Courts.

The Task Force on Civil fees recommends the establishment of a Commission on Civil Fees in the Courts, with broad membership similar to that of the Task Force on Civil Fees and with staff and services to the commission provided by the Administrative Office of the Courts.

The Judicial Council should direct staff to develop a full proposal for review by the Policy Coordination and Liaison Committee that would address which aspects of the commission are appropriate for rule and whether any part should be adopted in statute.

The Task Force on Civil Fees recommends that the commission should meet biennially to consider civil fees in the courts. Based on objective criteria, the commission would make recommendations to the Judicial Council and the Legislature regarding the levels and distributions of fees and any other changes in the uniform fee structure that may be necessary. It is envisioned that the commission would receive information from representatives of each entity that relies on civil fee revenues, including, but not limited to, courts, counties, law libraries, dispute resolution programs, and small claims advisory

programs. It is also anticipated that proposals for new filing fees would be reviewed by the commission, including any proposals the Legislature referred to the commission.

The commission's first charge should be to determine the process by which the commission will receive requests and how best to review and analyze the justification for any proposed fee increases. Issues for the commission to consider include whether the needs of locally based entities, such as law libraries and dispute resolution programs, should be considered county by county or statewide.

The commission should have as its primary mission the preservation of the key goals of the UCF: uniformity, simplicity, fairness, and equal access to justice. An important advantage of this proposed process is that it would depoliticize decision-making regarding whether fee increases or changes in distribution are needed.

The establishment of a commission also will bring regularity and predictability to the process to ensure that programs that rely on filing fee revenues and that historically saw regular fee increases will not be unfairly disadvantaged under the uniform civil fee structure. Including a broad range of representatives on the commission will ensure credibility with all stakeholders.

3. Critical interim fee determinations in 2007

Because the fee commission is unlikely to be established prior to 2008, any recommendations for fee increases would not be effective until January 1, 2009, at the earliest. For this reason, the task force recommends that the Judicial Council direct staff to convene a meeting of interested parties, including task force members and representatives of the Legislature, to meet and consider fee issues in 2007 that cannot wait until the establishment of the fee commission.

Several fee issues require immediate action by the Judicial Council, including:

- On January 1, 2008, county boards of supervisors will no longer have the statutory authority to approve filing fee distribution increases to support law libraries. Additionally, the set-aside of revenues to allow law libraries an increased distribution of the UCF revenue will be exhausted. Without immediate consideration of a filing fee increase or identification of alternative revenue sources, law libraries will not be able to fund their increased operating costs in 2008.
- The California Dispute Resolution Council has proposed legislation to increase by $4 the distributions that dispute resolution programs currently receive from first paper filing fee revenues in unlimited civil cases. While the proposal also includes a reduction to the distribution from limited civil case filing fees, the overall impact of the proposal is about $2.5 million. Without a corresponding filing fee increase,

the $2.5 million would have to be taken from other recipients of filing fee revenue (e.g., courts, law libraries, Equal Access Fund program).

- Legislative staff has contacted the AOC staff with a proposal to use filing fees to fund centers for supervised visitation in child custody cases. It is not clear whether the Legislature will wait until a fee commission is established or propose the fee legislation in 2007.

Alternative Actions Considered

Task force members discussed other options to adjust filing fees, including automatic increases indexed to inflationary factors such as the Consumer Price Index (CPI). In recognition that the Legislature generally disfavors automatic adjustments to fees and would be hesitant to approve a process to adjust fees that does not require Legislative approval, the task force developed the fee commission model.

Comments From Interested Parties

None. This proposal has not been circulated for comment.

Implementation Requirements and Costs

The proposed changes to the UCF in some cases will result in a higher fee being charged and in others a lower fee or no fee. Because most of the fees in question are for cases types that are rarely brought before the courts, staff does not anticipate a significant fiscal impact. The courts may incur a one-time cost to update their case management systems accordingly.

In addition, there will be costs associated with the AOC's providing staff support and services to the proposed Commission on Civil Fees in the Courts and the meetings on critical interim fee determinations in 2007. These are expected to be similar to the costs associated with the Task Force on Civil Fees.

Attachment 1

First Paper and Associated Surcharges and Add-on Fees Deposited Into the Trial Court Trust Fund[1]

Pre-UCF[2]					UCF[3]	
July 2004 - December 2004	January 2005 - June 2005	July 2005 - December 2005	January 2006 - June 2006[4]	July 2006 - December 2006[4]	January 2006 - June 2006	July 2006 - December 2006[5]
$ 100,907,575	$ 105,107,194	$ 107,360,528	$ 3,287,168	$ 1,485,946	$ 101,389,634	$ 101,690,919

1. First paper civil fees are those charged for limited, unlimited, family, and probate cases. Associated fees (court reporter, continuance, 10% surcharge, security, and security assessment) are those that were charged separate from first paper fees prior to January 1, 2006, and have been rolled into the uniform first paper civil fees as of January 1, 2006. The amounts represent first paper civil revenues deposited into the Trial Court Trust Fund, less distributions earmarked for specific purposes that were not deposited into the Trial Court Trust Fund prior to the UCF, including children's waiting room, automated recordkeeping and micrographics, equal access, and the set-aside for increases in dispute resolution, children's waiting room, and law libraries.
2. Fee structure prior to implementation of the Uniform Civil Fees and Standard Fee Schedule Act (UCF).
3. Fee structure after implementation of the Uniform Civil Fees and Standard Fee Schedule Act (UCF).
4. Pre-UCF fees on cases opened prior to January 1, 2006, but paid after January 1, 2006.
5. Projection based on July 2006 through November 2006 collections.

Attachment 2 - Amendments Recommended by Task Force on Civil Fees

1. Clarify fee for action to compel voter registration and request for order to count provisional ballot (amend Elec. Code, §§ 2142, 14310; Gov. Code, § 70633)

Issue Statement

Under Elections Code section 2142, a person may file an action in superior court to compel the county elections official to register that person to vote when the official has refused to do so. No fee is specified in the Elections Code or Government Code for such filings. No filing fee would be charged for the first responsive pleading because it would be filed by a government entity. However, it appears that the plaintiff would be charged the $320 fee under Government Code section 70611 for the "first paper in a civil action or proceeding in the superior court" in an unlimited civil case,[1] because filings under section 2142 would fall within that description, and there is no applicable exemption.

The limited civil filing fees would not apply because in order to be classified as a limited civil case, a case must meet the other requirements of Code of Civil Procedure section 85 in addition to the limitation on the amount at issue to $25,000 or less. These requirements are (1) that the relief sought is of a type that may be granted in a limited civil case, and (2) that the relief sought is described in a statute that either defines such cases as limited civil cases or gives the municipal court jurisdiction. Before trial court unification, the superior court and not the municipal court had jurisdiction in proceedings under section 2142. Additionally, an order to register a person to vote can be understood as a kind of permanent injunction. A permanent injunction may not be granted in a limited civil case. (Code Civ. Proc. § 580(b).) Thus, proceedings under section 2142 are not limited civil cases.

A similar issue is presented by proceedings under Elections Code section 14310(c)(2). If a person claims to be registered to vote but that cannot be confirmed at the time of the election, the person is entitled to vote a provisional ballot. The provisional ballot is counted in the official canvass only if the elections official establishes the claimant's right to vote from the records in the official's office before the official canvass has been completed, or the superior court orders the provisional ballot to be counted. The voter can seek such a court order at any time before the completion of the official canvass.[2] (§ 14310(c)(2).)

The filing fee for the request for an order under section 14310(c)(2) is not specified in either the Elections Code or the Government Code. It is not a limited civil case for the same reason that an action under Elections Code section 2142 is not a limited civil case,

[1] A case is an unlimited civil case if the amount at issue exceeds $25,000 or relief is demanded that is not available in a limited civil case. (Code Civ. Proc., §§ 85, 88.)

[2] "Official canvass" is the public process of processing and tallying all ballots received in an election, including provisional ballots and absentee ballots not included in the semifinal official canvass. It also includes the process of reconciling ballots and attempting to prohibit duplicate voting by absentee and provisional voters. (§ 335.5.) "Semifinal official canvass" means "the public process of collecting, processing, and tallying ballots and, for state or statewide elections, reporting results to the Secretary of State on election night." It may include some or all of the absentee and provisional vote totals. (§ 353.5.)

so it appears that the applicable fee would be the $320 fee under Government Code section 70611.

The task force considered whether these fee levels were appropriate.

Recommendation
The task force recommends that no fee should be charged to a plaintiff filing an action under Elections Code section 2142. For the same policy reasons, the task force recommends that no filing fee should be charged for filings under Elections Code section 14310(c)(2).

To make clear that no filing fee should be charged for proceedings under Elections Code sections 2142 or 14310, the task force recommends amendments to those sections and to Government Code section 70633, which sets forth various fee exemptions. (See pages 22–24 and 27.)

Rationale for Recommendation
Voting is an important right, and exercising it should not be impeded by a requirement to pay a high filing fee. At least two courts have informed AOC staff that it has been their practice in the past not to charge a filing fee for first papers under section 2124. Exempting such filings from filing fees would have a minimal impact on court revenue, because actions of this kind are not common.

Additionally, in contrast to many other types of cases, a prevailing plaintiff in an action under section 2142 cannot recover the cost of the filing fee unless the plaintiff can show that the elections official acted in a knowing and willful violation of duty. (Elec. Code § 2143.)[3] A prevailing plaintiff may be able to recover the filing fee as part of costs in an action under section 14310, in contrast to proceedings under section 2142, because there is no provision comparable to section 2143 limiting the recovery of costs. However, a $320 filing fee may still pose an obstacle to enforcing voting rights in some instances.

Alternative Actions Considered
The task force considered charging a fee lower than $320 for filings under Elections Code sections 2142 and 14310. It was decided that charging no fee was more appropriate because of the importance of the right to vote.

Implementation Requirements and Costs
The statewide fee schedule will need to be updated to show that no filing fee is charged for first papers in actions under Elections Code sections 2142 and 14310. The impact on court revenue is expected to be minimal because these kinds of actions are uncommon, and some courts currently do not charge a filing fee. The courts may incur a one-time cost to update their case management systems.

[3] The full text of section 2143 is as follows: "Costs shall not be recovered against the county elections official in any action under this chapter, unless it is alleged in the complaint, and established on the trial, that the county elections official knowingly and willfully violated his or her duty."

2. Clarify fee for claim opposing forfeiture petition (amend Health & Saf. Code § 11488.5)

Issue Statement

Health and Safety Code sections 11470 and 11488 authorize the seizure and forfeiture of specified property when an arrest is made for certain kinds of offenses. Section 11488.5 sets forth procedures for a person whose property has been seized to file a claim. No filing fee may be charged if the property is worth $5,000 or less. (§ 11488.5(a)(3).) For property worth more than $5,000, it appears that the filing fee is $320. This is true even if the value of the property is within the range at issue in a limited civil case (that is, $25,000 or less).

The limited civil filing fees do not apply because a forfeiture proceeding under section 11488.5 does not meet the other requirements of Code of Civil Procedure section 85 in addition to the limitation on the amount at issue: (1) that the relief sought is of a type that may be granted in a limited civil case, and (2) that the relief sought is described in a statute that either defines such cases as limited civil cases or gives the municipal court jurisdiction. A permanent injunction or a determination of title to real property may not be granted in a limited civil case. (Code Civ. Proc. § 580(b).) A forfeiture may be understood as a kind of permanent injunction, and proceedings under section 11488.5 may involve the forfeiture of real property. Additionally, before trial court unification, the superior court and not the municipal court had jurisdiction in proceedings under section 11488.5. Thus, forfeiture proceedings under section 11488.5 are not limited civil cases even if the amount at issue is $25,000 or less.

The task force considered whether to set a fee lower than $320 for filing claims for property with a value in the limited civil case range.

Recommendation

The task force recommends retaining the current fee structure. An amendment to section 11488.5 would clarify that the filing fee is the $320 fee under Government Code section 70611 if the property is worth more than $5,000. (See page 30.)

Rationale for Recommendation

The amendment to section 11488.5 will clarify that the fee to be charged is $320 when the exemption for property worth $5,000 or less does not apply.

Alternative Actions Considered

Because the difference between no fee and $320 is large, the task force considered proposing a fee lower than $320 for a claim opposing the forfeiture of property worth more than $5,000 but no more than $25,000. A graduated fee structure (for example, $180 if the property value is $10,000 or less, as for limited civil cases) was discussed. This alternative was not recommended, however, because of difficulty in implementation. The property involved in such cases often is not cash, and a graduated structure would require estimating the value of the property, which may be uncertain or difficult to determine.

Implementation Requirements and Costs
None, except possibly updating the statewide fee schedule. The courts may incur a one-time cost to update their case management systems.

3. Clarify fee for writ petition in limited civil case; increase fee for appeal and writ petition (amend Gov. Code, §§ 68085.4 and 70621)

Issue Statement
In an unlimited civil case, an appeal and a petition for a writ of review, mandate, or prohibition are both made to the court of appeal. The fee is the same for both of these: $655 (that is, $485 under Gov. Code § 68926, plus $170 under § 68926.1(b)). This fee is much larger than the fee for filing the first paper in the original case, $320.

In a limited civil case, an appeal and a petition for a writ of review, mandate, or prohibition are both made to the appellate division of the superior court. The filing fee for an appeal is $100 under Government Code section 70621. However, this section does not mention a writ petition. Several courts interpret the fee statutes to mean that a writ petition to the appellate division should be treated as an unlimited civil case and that it therefore requires a filing fee of $320 under section 70611, but this interpretation is not consistent among the courts.

Additionally, the level of the filing fee for an appeal or writ petition in a limited civil case was considered. In contrast to the fee levels in an unlimited civil case, the $100 fee for an appeal or writ petition in a limited civil case is lower than the original filing fee of $180 or $300.

Recommendation
The task force recommends clarifying the fee for a writ petition by amending section 70621 to apply to writ petitions as well as to appeals to the appellate division. The language used in the draft amendment is modeled on that used in Government Code section 68926 (fee for appeals and writ petitions to the court of appeal).[4] The task force also recommends raising the fee for an appeal or writ petition to the same level as the first paper filing fee in a limited civil case. To show the distribution of this fee, section 70621 should be added to the list of fee sections in section 68085.4. (See pages 24–26.)

Rationale for Recommendation
The task force did not believe there was a policy reason to charge appeals and writ petitions the same fee in unlimited civil cases but different fees in limited civil cases. Nor did it appear reasonable to charge a lower fee for an appeal or writ petition than for the original complaint in a limited civil case, while charging a higher fee in an unlimited civil case. The proposed amendment will provide a more consistent fee structure while maintaining the policy of charging lower fees for small cases. Because the fee levels of $180 and $300 are the same as those for the first papers in limited civil cases, they are likely to be easy to understand because they are already familiar to litigants.

[4] The provision for that fee reads as follows: "The fee for filing a petition for a writ within the original civil jurisdiction of a court of appeal is four hundred eighty-five dollars ($485)."

Alternative Actions Considered
The task force initially approved a proposal to set the fee for a writ petition in a limited civil case at the same level as the fee for an appeal ($100) without raising the amount of the fee. However, the Appellate Advisory Committee also considered this issue and recommended raising the fee to the same amount as the filing fee for the original complaint. The task force considered whether having two fee levels ($180 and $300) could create confusion but concluded that it was unlikely because they were the same as the first paper fees.

Implementation Requirements and Costs
The statewide fee schedule and the TC-145 (form used by courts to report uniform civil fees) will need to be updated. The change may result in a slight increase in fee revenue. The courts may incur a one-time cost to update their case management systems.

4. Fee for amending complaint to increase amount at issue in limited civil case (add Gov. Code, § 70613.5)

Issue Statement
The filing fee for a complaint in a limited civil case is $180 if the amount at issue is $10,000 or less, and $300 if the amount at issue is more than $10,000 but does not exceed $25,000. (Gov. Code § 70613.) However, if a case is filed at the lower level, and the complaint is later amended so that the amount at issue is more than $10,000, there is no provision for collecting the difference between the filing fees or charging a "reclassification" fee. This contrasts with the $140 fee charged when a complaint in a limited civil case is amended so that the case falls within the unlimited civil case jurisdictional classification. (Gov. Code, § 70619.) Code of Civil Procedure sections 403.010 through 403.090 set forth detailed procedures for reclassification, which can also occur by motion or stipulation, as well as amendment of a complaint.

Recommendation
The task force recommends a new section, section 70613.5, to clearly authorize a charge, equal to the difference between the filing fees, for filing an amendment that increases the amount at issue in a limited civil case to more than $10,000. (See pages 25–26.)

Rationale for Recommendation
Staff at several courts have asked AOC staff whether the difference in the filing fees should be charged when a complaint in a limited civil case is amended so that the amount at issue falls within the range for which the higher fee must be charged, even though it remains a limited civil case. Some courts may already be charging such a fee. The task force concluded that such a charge was equitable. A party should not be charged a lower filing fee because the initial amount demanded was lower than that demanded in a later amendment.

Alternative Actions Considered
The task force considered an alternate version of section 70613.5 in which the amounts of the original filing fees ($180 and $300) and the difference that would be charged for

filing the amended pleading ($120) were specified. The task force decided that it was better not to specify the amounts because if the amounts of the filing fees in sections 70613 and 70614 were changed, it would not be necessary to make conforming changes to the new section 70613.5.

The task force also considered permitting or requiring the return of the difference in filing fees to a party if a complaint originally filed with the higher filing fee was later amended so that the amount demanded fell within the range for the lower filing fee. This would require deletion of or a change in subdivision (c). While many task force members agreed with providing refunds in principle, further discussion indicated that the administrative problems in implementing such refunds would be significant, so the task force decided not to make this change.

Implementation Requirements and Costs
The statewide fee schedule and some forms will need to be updated. The change may result in a slight increase in fee revenue. The courts may incur a one-time cost to update their case management systems.

5. Fee for amending claim to increase amount at issue in small claims case (amend Code Civ. Proc., § 116.230)

Issue Statement
The task force considered a problem in small claims filing fees similar to the problem described in limited civil case filing fees. The filing fee for a small claim is $30 if the amount at issue is $1,500 or less, $50 if the amount at issue is more than $1,500 but no more than $5,000, and $75 if the amount at issue is more than $5,000 but does not exceed $7,500.[5] (Code Civ. Proc. § 116.230(b).) However, if a claim is filed at one of the lower levels, and later amended so that the amount at issue falls within a level to which a higher filing fee applies, there is no provision for collecting the difference between the filing fees or charging a "reclassification" fee. (Note that the defendant can also file a claim against the plaintiff, and if this happens, the defendant is treated as the plaintiff and the plaintiff is treated as the defendant for purposes of that claim. No answer is required in a small claims case, and no fee is charged to the defendant for appearing.)

The task force considered the question raised by several courts as to whether a fee should be charged when a claim is amended to demand an amount that would require a higher filing fee than the fee originally paid.

Recommendation
The task force recommends an amendment to section 116.230 to authorize charging the difference in filing fees when a claim is amended to demand an amount that falls within a range to which a higher filing fee applies. To maintain general consistency in the distribution of this additional amount, $2 of the additional fee would be distributed to the law library in that county, and $3 would be distributed to the small claims advisory program. These amounts are designed to ensure that when the difference in filing fees is

[5] Note that a claim above $5,000 can be filed only by a natural person. (Code Civ. Proc., § 116.221.)

paid, the local programs will receive approximately the same amount from small claims filing fees as they would have if the claims had been filed for the "correct" amount initially. (See pages 20–21.)

Rationale for Recommendation
Imposing a fee for changing the amount of the claim is equitable because a party should not be able to reduce the filing fee by understating the amount of the claim in the original filing. Additionally, some courts may already be charging the difference in fees when a claim is amended to fall within a higher range.

Because the local programs receive higher amounts from the higher filing fees in small claims, distributing part of the additional fee to those programs is equitable. For the sake of simplicity, these amounts would be the same proportion for each fee.

Alternative Actions Considered
The task force considered permitting or requiring the return of the difference in filing fees to a party if a claim originally filed with a higher filing fee was later amended so that the amount demanded fell within the range for a lower filing fee. While many task force members agreed with providing refunds in principle, further discussion indicated that the administrative problems in implementing such refunds would be significant, so the task force decided not to make this change.

Comments From Interested Parties
The proposal was circulated by e-mail to the Small Claims and Limited Cases Subcommittee of the Civil and Small Claims Advisory Committee. Several members commented. Two commissioners and a judge who hear small claims cases agreed with the amendment and said that it was consistent with the practice in their court. One attorney raised the question of how the payment would be collected. Virginia Davidow, Director of Civil Operations at the Superior Court of Orange County, replied, "It's been done in the past on other case types and it's not a clean process. The judge may order the party to pay the difference to the clerk before ordering judgment to be entered. While it's rare that a judge will allow a case to be amended for a higher amount, my experience is that the judge orders the fee increase waived."

Implementation Requirements and Costs
The statewide fee schedule and some forms will need to be updated. The change may result in a slight increase in fee revenue. The courts may incur a one-time cost to update their case management systems.

6. Change payment schedule for graduated probate fee (amend Gov. Code, § 70650)

Issue Statement
Practitioners have raised concerns about burdens imposed by the graduated probate fee as it currently is structured. If the value of the estate is not known precisely when proceedings begin, the fee must be paid based on an estimated value. If the estimate is wrong, the fee must be adjusted later. Unsuccessful petitioners for letters of

administration who paid the graduated probate fee when filing their petition have to be reimbursed for the amount over $320. Additionally, the attorney may have to advance the fee if the petitioner does not have enough cash initially. Finally, courts have been inconsistent in their application of the fee; some have been charging only the minimum at the beginning of the case, and others have been charging the full fee.

Recommendation

The task force recommends an amendment so that at the time the original petition for letters of administration is filed, $320 would be charged, regardless of the value of the estate. The remainder of the graduated fee, if any, would be payable no later than at the time that the personal representative of the estate files a final account or report or petition for final distribution, under rules to be adopted by the Judicial Council. The proposed amendments to subdivisions (b) and (d) of Government Code section 70650 are shown at pages 28–29. Also shown are unrelated changes that were proposed in the UCF cleanup legislation and approved by the Judicial Council on December 1, 2006.

Rationale for Recommendation

Under the proposed recommendation, the value of the estate will not have to be estimated when the petition for letters is filed. For estates of larger value, where the graduated fee will be more than $320, the amount of the fee over $320 will not have to be paid until liquid assets are more likely to be available from the estate. These changes will make the fee easier to implement, payment will often be easier, and implementation will be more consistent across the state. Additionally, by removing some of the problems that have most concerned practitioners, there may be greater acceptance of the graduated fee.

If the amount of the graduated fee over $320 does not have to be paid until a final distribution or the final accounting, the fiscal impact of this change will be to delay the receipt of some revenue from the graduated fee for about a year. The additional revenue brought to the Trial Court Trust Fund by the graduated probate fee appears to be about $4.8 million per year. Thus, the amount of revenue affected by this delay could be expected to be somewhat less than $4.8 million, since some courts are already delaying the collection of the amount of the fee over $320. Current revenues to the Trial Court Trust Fund under the UCF appear to be sufficient to cover the temporary decrease created by this change.

Alternative Actions Considered

The time of inventory and appraisal was suggested as the time at which the remainder of the fee would be required, instead of the time of the final account or final distribution. This would have had the advantage of being earlier (about six months after the initial filing) than the time of the final account. However, this structure would be more difficult to administer. The inventory and appraisal does not have a firm deadline in practice, and more than one inventory and appraisal may be done. Additionally, there is no simple enforcement mechanism at that time, so enforcement might cost more than the money gained by the remainder of the fee being paid earlier.

Implementation Requirements and Costs

The statewide fee schedule and the TC-145 (form used by courts to report uniform civil fees) will need to be updated. The change will likely result in a temporary decrease in fee

revenue because of the delay in collecting part of the graduated fee. The courts may incur a one-time cost to update their case management systems.

7. Revise search fee (amend Gov. Code, § 70627)

Before the UCF was implemented, the fee "for searching records or files" was $5 "for each file." (Former Gov. Code, § 26854.) Effective January 1, 2006, the UCF replaced this provision with Government Code section 70627(c): "The fee for a search of records or files conducted by a court employee that requires more than 10 minutes is fifteen dollars ($15) for each search." The intent was to relate the fee charged to court staff time needed to respond to search requests and to eliminate the requirement that a fee be charged for every search request, regardless of time needed, results, or the requester's need for the information.

However, the new fee structure did not work well when long lists of names were submitted to courts with search requests. To address this problem, the UCF cleanup legislation proposed an amendment, approved by the Judicial Council on December 1, 2006, that would return to the fee structure of $5 per search, with an exception for a party requesting a single search of records:

> The fee for a search of records or files conducted by a court employee is five dollars ($5) for each name, file, or other information for which a search is requested. This fee shall not be charged when a person requests one search for records of a case in which that person is a party, but if the party requests more than one search at a time, $5 shall be charged for each search after the first search.

While the task force agreed that this was an improvement, several members were concerned that there would still be problems in implementation. For example, a fee would be required if a person requested information over the telephone about two cases in which they were a party, but a party requesting information at the counter when they could access it freely at a kiosk could not be charged a fee.

Recommendation

The task force recommends an amendment to allow the fee of $5 per search (currently proposed in cleanup) to be waived in appropriate circumstances, and providing for uniform guidance by the Judicial Council:

> The fee for a search of records or files conducted by a court employee is five dollars ($5) for each name, file, or other information for which a search is requested. The fee may be waived in appropriate circumstances. The Judicial Council may provide uniform guidance to courts on waiving the fee.

(See proposed Government Code section 70627(c) on page 26. The changes to section 70627 also include changes unrelated to the search fee (they have to do with color copies) that were proposed in the UCF cleanup legislation and approved by the Judicial Council on December 1, 2006.)

The task force also suggests the following policy factors as a basis for uniform guidance on waiving the fee:

- Accessibility of information by other means. For example, through the court's Web site, at a kiosk at the court facility, or other information electronically available to the public free of charge.

- The manner in which information is requested. For example, billing may be inconvenient, inefficient, or inappropriate when an inquiry is made by phone.

- Ease of obtaining information. Where obtaining the information consumes minimal time or imposes a minimal burden, waiving the fee may be appropriate.

- Requester's need for the information or the purpose for which it is requested. For example, does the person need it because of his or her own participation in a case (the person may be a party or an attorney for a party), or is it requested as part of business-related research (background check, heir search, etc.)?

Another source of draft guidelines would be guidelines previously used by courts for searches under former Government Code section 26854.

Rationale for Recommendation

Because of differences in court technology, availability of information, and the requester's need for the information, the circumstances in which a search fee might appropriately be waived could vary from time to time and from court to court. A technical, literal application of a search fee requirement has not been workable in practice. Before the UCF was enacted, many courts had guidelines for applying the search fee, including circumstances in which it could be waived. A statute that permits a more flexible waiver of the fee likely would be easier for the courts to implement and more readily accepted by the public.

Regarding the fiscal effects of permitting waivers, the AOC's Finance Division reviewed the data on search fee revenues and found that the statewide annualized revenue, based on 2006 receipts, is about $370,000 per year. This is a very small amount, compared with total court fee revenue. Thus, even if waivers of the search fee caused a reduction in search fee revenue, the impact on court revenues would not be significant. Moreover, search fee revenues may increase over current levels when the courts go back to charging $5 per search. Anecdotally, courts have told AOC staff that they receive less for search fees under the current statute than they did under the previous search fee provision (charging $15 for any search requiring more than 10 minutes, instead of $5 per search).

Alternative Actions Considered

The task force formed a Committee on Specific Fee Issues that reviewed the search fee problem in detail. The committee initially proposed developing a definition of "search" to be provided to the courts in the Frequently Asked Questions on the UCF, and perhaps eventually by a rule of court. After further discussion, the committee concluded that a

more flexible waiver, based on uniform policy guidelines, would better address the concerns.

Implementation Requirements and Costs
The statewide fee schedule will need to be updated. The effect on court fee revenue will probably be minimal; the most likely change is a slight increase. The courts may incur a one-time cost to update their case management systems.

8. Clarify fees for responses to petitions regarding return of firearm (amend Pen. Code, § 12028.5 and Welf. & Inst. Code, § 8102)

Issue Statement
When a person is detained for examination of his or her mental condition, any firearm or other deadly weapon that person possesses is required to be retained by law enforcement under Welfare and Institutions Code section 8102(a).[6] The person must be notified of the procedure for the return of the weapon. Upon the person's release, the law enforcement agency can either make the weapon available for return or initiate a petition in superior court for "a hearing to determine whether the return of a firearm or other deadly weapon would be likely to result in endangering the person or others." (§ 8102(c).) If the person does not respond within 30 days, the weapon is forfeited. If the person responds and requests a hearing, the court shall set a hearing no later than 30 days after receiving the request. (§ 8102(f).)

A similar procedure exists under Penal Code section 12028.5 in domestic violence cases. If the weapon is not retained for use as evidence in related criminal charges and was not illegally possessed, but the law enforcement agency has reasonable cause to believe that the weapon would likely result in endangering the victim or the person reporting the assault or threat, the agency must initiate a petition in superior court to determine if it should be returned. (Pen. Code, § 12028.5(b), (f).) The person must be notified that failure to respond shall result in a default order forfeiting the weapon. (§ 12028.5(g).) If the person requests a hearing, the hearing must be set no later than 30 days after the court receives the request. (§ 12028.5(h).)

The law enforcement agency is not required to pay a filing fee for filing either type of petition because government agencies are exempt from filing fees under Government Code sections 6103 and 70633(c). No filing fee for the respondent is specified. Because neither proceeding falls within the definition of a limited civil case, the applicable fee for the respondent appears to be the $320 fee under Government Code section 70612 for the "first paper in the action described in section 70611 on behalf of any defendant, intervenor, respondent, or adverse party." However, it is not obvious from the statutory

[6] This section also requires confiscation of deadly weapons when found in the possession of psychiatric inpatients who are a danger to themselves or to others, mentally disordered sex offenders, persons found not guilty by reason of insanity for specified violent crimes, persons found mentally incompetent to stand trial for criminal charges, persons placed under conservatorship due to disability by mental disorder or chronic alcoholism, and persons involuntarily committed to mental health institutions because they are a danger to themselves or others. (Welf. & Inst. Code, §§ 8100, 8102, 8103.)

language that this fee should be charged, and some courts in the past have not charged a fee to the respondent.

Recommendation
The task force recommends amendments to clarify that the $320 fee under Government Code section 70612 should be charged to the respondent in cases under Penal Code section 12028.5 and Welfare and Institutions Code section 8102. (See pages 34–36.)

Rationale for Recommendation
In practice, some courts have been charging no fee and some have been charging the respondent's first paper fee in an unlimited civil case, now $320 under section 70612. Specifying what fee should be charged would be desirable for clarity and for statewide uniformity.

Alternative Actions Considered
The task force considered eliminating the fee to the respondent but decided that there was not a good policy reason for exempting respondents in such cases from the usual first paper fee. Although the task force believes that some people affected by these sections would not be able to afford to pay the $320 fee, in such instances they would most likely qualify for a fee waiver.

Implementation Requirements and Costs
The statewide fee schedule should be updated to clarify that the first paper fee for respondents applies to proceedings under Penal Code section 12028.5 and Welfare and Institutions Code section 8102. The effect on court fee revenue will probably be minimal, because these proceedings are not common. The courts may incur a one-time cost to update their case management systems accordingly.

9. Fee for postponement of small claims trial before defendant has been served (amend Code Civ. Proc., § 116.570)

Issue Statement
Under the current statutes, a fee for postponing the trial date for a small claims case can be charged only after the defendant has been served with the claim. Some plaintiffs make repeated requests to postpone the trial date without pursuing service on the defendant. This results in the use of valuable court resources to reschedule small claims trials.

The Coalition of Trial Court Clerk Associations developed a proposal to charge a $10 fee to a small claims plaintiff for postponement of a small claims trial before the defendant has been served. The new $10 fee would help to reimburse court costs for postponements and encourage claimants to serve defendants promptly. The coalition asked the Judicial Council to jointly sponsor this legislation.

The proposal was circulated for statewide public comment in spring 2006. It was also provided for comment to the legislative subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees. To date, the proposal has been well

received. Additionally, it is supported by the Civil and Small Claims Advisory Committee.

Because of the moratorium on fee increases until 2008, the proposal could not be presented to the Legislature in 2006. Instead, the Task Force on Civil Fees was asked to review the proposal and include it in their recommendations if they agreed with it.

The task force approved the proposal for an amendment to Code of Civil Procedure section 116.570, presented in the following August 9, 2006, report of the Civil and Small Claims Advisory Committee.

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Elihu M. Berle, Chair
Patrick O'Donnell, Committee Counsel

Small Claims and Limited Cases Subcommittee
Hon. Esther Castellanos, Chair
Cara Vonk, Subcommittee Counsel, 415-865-7669
cara.vonk@jud.ca.gov

DATE: August 9, 2006

SUBJECT: Small Claims: New $10 Postponement Fee (Code Civ. Proc., § 116.570) (Action Required)

Issue Statement

The Coalition of Trial Court Clerk Associations has expressed concerns that courts encounter a number of plaintiffs who file small claims actions, but then do not pursue service on the defendant. Instead, they make repeated requests to postpone the trial date, which results in the use of valuable court resources to reschedule small claims trials. Under current statutory procedure, a postponement fee can be charged only after the defendant has been properly served.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council seek legislation to amend the Small Claims Act, Code of Civil Procedure section 116.570, to authorize the court to charge and collect a nonrefundable postponement fee from either party who makes more than one preservice request to postpone the trial.

The text of the legislative proposal is attached at pages 21 to 22.

Rationale for Recommendation

The Coalition of Trial Court Clerk Associations has asked the Judicial Council to jointly sponsor legislation authorizing the court to charge and collect a $10 fee for postponements of small claims trials under specified circumstances. If adopted,

Request to Postpone Small Claims Hearing (form SC-110), would be revised to conform to the new legislation, effective on the same day as the new legislation.

The Civil and Small Claims Advisory Committee has reviewed the proposal and recommends that a $10 nonrefundable fee be charged to process the second and subsequent requests for postponement of a hearing before the claim has been served. The committee also recommends that the same fee be charged to process the second and subsequent requests for postponement by a defendant who has failed to serve a cross-claim. This fee would only be assessed after a party has already been granted a prior postponement. A self-represented party who filed a claim should know by the time the first free request for a postponement is made what procedures are available to serve his or her claim and whether any extra effort in effecting service may be required. By the second request for postponement, a minimum of 40 days to a maximum of 140 days will have passed from the date the claim was filed. This should be sufficient time for effecting service. Any additional requests for rescheduling the trial would be subject to a $10 fee under this proposal.

The Uniform Civil Fees and Standard Fee Schedule Act of 2005 creates a moratorium on court filing fee increases until January 1, 2008, with limited exceptions. The committee will consult and coordinate with the Judicial Council Task Force on Civil Fees (Gov. Code, § 70601) in seeking legislation that is consistent with the moratorium and any other policy considerations.

In addition to circulating the request for comment to the Administrative Office of the Court's usual mailing list of courts, bar associations, publishers, small claims advisors, and other interested parties, the committee intends to solicit comment from Consumers Union and other consumer advocacy organizations.

Alternative Actions Considered

This proposal was submitted by the Coalition of Trial Court Clerk Associations before introduction and implementation of the Uniform Civil Fees and Standard Schedule Act of 2005, which resulted in a two-year moratorium on civil fees. Because of concerns over repeated requests to postpone small claims trials, the Civil and Small Claims Advisory Committee decided that it should move forward with the proposal if supported, so that it can be timely implemented consistent with the moratorium and any other policy considerations.

Comments From Interested Parties

The proposed amendment to Code of Civil Procedure section 116.570 was circulated for statewide public comment in spring 2006. Eleven comments were received from court executive officers, court attorneys, court clerks including a supervisor, civil/small claims program manager and senior legal processor, a court referee, the Orange County Bar Association, and the legislative subcommittee of

the Judicial Council Presiding Judges and Court Executive Officers Advisory Committees. Ten commentators agreed with the proposal as drafted. One commentator, a court senior legal processor, agreed with the proposal but only if modified to provide that "requests should not be accepted if they are submitted less than 5 days before the hearing." The committee responded that Code of Civil Procedure section 116.570 currently states that the request shall be filed 10 days before the hearing unless the court determines that the requesting party has good cause to file it at a later date. The committee noted that there may be circumstances that should allow for a late-filed request. The law provides for a good cause emergency.

A chart of the comments and the committee's responses is attached at pages 17 to 19.

Implementation Requirements and Costs

Request to Postpone Small Claims Hearing (form SC-110), would be amended to conform to the new legislation, effective on the same day as the new legislation. The fee schedule would be amended and procedures to collect the new $10 fee would be implemented in the courts.

LEG06-04
Small Claims: New $10 Postponement Fee
(Code Civ. Proc., § 116.570)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Julie M. McCoy, President Orange County Bar Association Irvine	A	Y		No response required.
2.	Diana Landmann, Court Manager Superior Court of California, County of San Joaquin Stockton	A	N		No response required.
3.	Melissa Soracco, Senior Legal Processor Superior Court of California, County of Sonoma	AM	N	These requests should not be accepted if they are submitted less than 5 days before the hearing.	Code Civ. Proc., § 116.570 currently states that the request shall be filed 10 days before the hearing unless the court determines that the requesting party has good cause to file the request at a later date. There may be circumstances that should allow for a late-filed request. The law provides for a good cause emergency.
4.	Janet Garcia, Manager Planning and Research Unit Superior Court of California, County of Los Angeles Los Angeles	A	N	No comments.	No response required.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
5.	Tressa S. Kentner and Ms. Debra Meyers Executive Officer and Chief of Staff Counsel Services Superior Court of California, County of San Bernardino San Bernardino	A	N	No comments.	No response required.
6.	Pam Moraida Civil/Small Claims Program Manager Superior Court of California, County of Solano Fairfield	A	N	Hopefully, this would discourage continuing cases before service is made.	No response required.
7.	Kim Baskett, Referee Superior Court of California, County of Santa Cruz Santa Cruz	A	N	No comments.	No response required.
8.	Michael M. Roddy, Executive Officer Superior Court of California, County of San Diego San Diego	A	N	No additional comments.	No response required.
9.	Cydney Fowler Court District Supervisor Superior Court of California, County of San Bernardino San Bernardino	A	N	I agree with the proposed change/legislation. Clerks do have large volume filers who do file a lot of cases and then don't have time to pursue service on all of them. The repeated request for reset affects the calendar.	No response required. The commentator agrees with the proposal.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				The filer may have reserved a significant portion of a day's calendar and then resets a significant number. The spaces created on the calendar cannot be filled due to time constraints. So the large volume pushes the calendaring further out and then creates "holes" in existing calendars as well as compounding the calendar issues created by large volume filers. Certain procedures can be enforced to limit the impact such as not putting all the cases on one day, but a monetary solution would be more effective.	
10.	Cheryl Kanatzar Deputy Executive Officer Superior Court of California, County of Ventura Ventura	A	N	No comments.	No response required.
11.	Legislative Subcommittee Judicial Council Presiding Judges and Court Executives Advisory Committees	A	Y	Support proposal.	No response required.

Draft Legislative Proposal:

Code Civ. Proc. § 116.230. Filing fees

(a) In a small claims case, the clerk of the court shall charge and collect only those fees authorized under this chapter.

(b) If the party filing a claim has filed 12 or fewer small claims in the state within the previous 12 months, the filing fee is the following:

(1) Thirty dollars ($30) if the amount of the demand is one thousand five hundred dollars ($1,500) or less.

(2) Fifty dollars ($50) if the amount of the demand is more than one thousand five hundred dollars ($1,500) but less than or equal to five thousand dollars ($5,000).

(3) Seventy-five dollars ($75) if the amount of the demand is more than five thousand dollars ($5,000).

(c) If the party has filed more than 12 other small claims in the state within the previous 12 months, the filing fee is one hundred dollars ($100).

(d) (1) If, after having filed a claim and paid the required fee under paragraph (1) of subdivision (b), a party files an amended claim or amendment to a claim that raises the amount of the demand so that the filing fee under paragraph (2) of subdivision (b) would be charged, the filing fee for the amended claim or amendment is twenty dollars ($20).

(2) If, after having filed a claim and paid the required fee under paragraph (2) of subdivision (b), a party files an amended claim or amendment to a claim that raises the amount of the demand so that the filing fee under paragraph (3) of subdivision (b) would be charged, the filing fee for the amended claim or amendment is twenty-five dollars ($25).

(3) If, after having filed a claim and paid the required fee under paragraph (1) of subdivision (b), a party files an amended claim or amendment to a claim that raises the amount of the demand so that the filing fee under paragraph (3) of subdivision (b) would be charged, the filing fee for the amended claim or amendment is forty-five dollars ($45).

(4) The additional fees paid under this subdivision are due upon filing. The court shall not reimburse a party if the party's claim is amended to demand a lower amount that falls within the range for a filing fee lower than that originally paid.

~~(d)~~ (e) Each party filing a claim shall file a declaration with the claim stating whether that party has filed more than 12 other small claims in the state within the last 12 months.

~~(e)~~ (f) The clerk of the court shall deposit fees collected under this section into a bank account established for this purpose by the Administrative Office of the Courts and maintained under rules adopted by or trial court financial policies and procedures authorized by the Judicial Council under subdivision (a) of Section 77206 of the Government Code. The deposits shall be made as required under Section 68085.1 of the Government Code and trial court financial policies and procedures authorized by the Judicial Council.

~~(f)~~ (g) (1) The Administrative Office of the Courts shall distribute six dollars ($6) of each thirty-dollar ($30) fee, eight dollars ($8) of each fifty-dollar ($50) fee, ten dollars ($10) of each seventy-five-dollar ($75) fee, and fourteen dollars ($14) of each one hundred-dollar ($100) fee collected under subdivision (b) or (c) to a special account in the county in which the court is located to be used for the small claims advisory services described in Section 116.940, or, if the small claims advisory services are administered by the court, to the court. The Administrative Office of the Courts shall also distribute two dollars ($2) of each seventy-five-dollar ($75) fee collected under subdivision (b) to the law library fund in the county in which the court is located.

(2) From the fees collected under subdivision (d), the Administrative Office of the Courts shall distribute two dollars ($2) to the law library fund in the county in which the court is located, and three dollars ($3) to the small claims advisory services described in Section 116.940, or, if the small claims advisory services are administered by the court, to the court.

(3) Records of these moneys shall be available for inspection by the public on request.

(4) Nothing in this section precludes the court or county from contracting with a third party to provide small claims advisory services as described in Section 116.940.

~~(g)~~ (h) The remainder of the fees collected under subdivisions (b), (c), and ~~(c)~~ (d) shall be transmitted monthly to the Controller for deposit in the Trial Court Trust Fund.

~~(h)~~ (i) ~~This section and Section 116.940 shall not be applied in any manner that results in a reduction of the level of services, or the amount of funds allocated for providing the services described in Section 116.940, that are in existence in each county during the 2004-05 fiscal year.~~ All money distributed under this section to be used for small claims advisory services shall be used only for providing such services as described in Section 116.940. Nothing in this section shall preclude the county or the court from procuring other funding to comply with the requirements of Section 116.940.

Code Civ. Proc. § 116.570. Postponement of hearing

(a) Any party may submit a written request to postpone a hearing date for good cause.

(1) The written request may be made either by letter or on a form adopted or approved by the Judicial Council.

(2) The request shall state whether any previous requests to postpone the hearing date were made by the requesting party and whether the court granted those requests.

~~(2)~~ (3) The request shall be filed at least 10 days before the hearing date, unless the court determines that the requesting party has good cause to file the request at a later date.

~~(3)~~ (4) On the date of making the written request, the requesting party shall mail or personally deliver a copy to each of the other parties to the action.

~~(4)~~ (5) (A) If the court finds that the interests of justice would be served by postponing the hearing, the court shall postpone the hearing, and shall notify all parties by mail of the new hearing date, time, and place.

(B) On one occasion, upon the written request of a defendant guarantor, the court shall postpone the hearing for at least 30 days, and the court shall take this action without a hearing. This subparagraph does not limit the discretion of the court to grant additional postponements under subparagraph (A).

~~(5)~~ (6) The court shall provide a prompt response by mail to any person making a written request for postponement of a hearing date under this subdivision.

(b) If service of the claim and order upon the defendant is not completed within the number of days before the hearing date required by subdivision (b) of Section 116.340, and the defendant has not personally appeared and has not requested a postponement, the court shall postpone the hearing for at least 15 days. If a postponement is ordered under this subdivision, the clerk shall promptly notify all parties by mail of the new hearing date, time, and place.

(c) This section does not limit the inherent power of the court to order postponements of hearings in appropriate circumstances.

(d) A nonrefundable fee of ten dollars ($10) shall be charged and collected for the filing of a request for postponement and rescheduling of a hearing date after timely service pursuant to subdivision (b) of Section 116.340 has been made upon the defendant.

(e) A nonrefundable fee of ten dollars ($10) shall be charged and collected for the filing of a request for postponement and rescheduling of a hearing date before service has been made pursuant to subdivision (b) of Section 116.340 or subdivision (b) of Section 116.360 if the court granted a prior postponement to the party making the request.

Elec. Code § 2142. Court action to compel registration

(a) If the county elections official refuses to register any qualified elector in the county, the elector may proceed by action in the superior court to compel his or her registration. In an action under this section, as many persons may join as plaintiffs as have causes of action.

(b) If the county elections official has not registered any qualified elector who claims to have registered to vote through the Department of Motor Vehicles or any other public agency designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), the elector may proceed by action in the superior court to compel his or her registration. In an action under this section, as many persons may join as plaintiffs as have causes of action.

(c) No fees shall be charged by the clerk of the court for services rendered in an action under this section.

Elec. Code § 14310. Provisional ballots

(a) At all elections, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the index of registration for the precinct or upon examination of the records on file with the county elections official, shall be entitled to vote a provisional ballot as follows:

(1) An election official shall advise the voter of the voter's right to cast a provisional ballot.

(2) The voter shall be provided a provisional ballot, written instructions regarding the process and procedures for casting the provisional ballot, and a written affirmation regarding the voter's registration and eligibility to vote. The written instructions shall include the information set forth in subdivisions (c) and (d).

(3) The voter shall be required to execute, in the presence of an elections official, the written affirmation stating that the voter is eligible to vote and registered in the county where the voter desires to vote.

(b) Once voted, the voter's ballot shall be sealed in a provisional ballot envelope, and the ballot in its envelope shall be deposited in the ballot box. All provisional ballots voted shall remain sealed in their envelopes for return to the elections official in accordance with the elections official's instructions. The provisional ballot envelopes specified in this subdivision shall be a color different than the color of, but printed substantially similar to, the envelopes used for absentee ballots, and shall be completed in the same manner as absentee envelopes.

(c) (1) During the official canvass, the elections official shall examine the records with respect to all provisional ballots cast. Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on

the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected. A variation of the signature caused by the substitution of initials for the first or middle name, or both, shall not invalidate the ballot.

(2) Provisional ballots shall not be included in any semiofficial or official canvass, except upon: (A) the elections official's establishing prior to the completion of the official canvass, from the records in his or her office, the claimant's right to vote; or (B) the order of a superior court in the county of the voter's residence. A voter may seek the court order specified in this paragraph regarding his or her own ballot at any time prior to completion of the official canvass. Any judicial action or appeal shall have priority over all other civil matters. No fee shall be charged to the claimant by the clerk of the court for services rendered in an action under this section.

(3) The provisional ballot of a voter who is otherwise entitled to vote shall not be rejected because the voter did not cast his or her ballot in the precinct to which he or she was assigned by the elections official.

(A) If the ballot cast by the voter contains the same candidates and measures on which the voter would have been entitled to vote in his or her assigned precinct, the elections official shall count the votes for the entire ballot.

(B) If the ballot cast by the voter contains candidates or measures on which the voter would not have been entitled to vote in his or her assigned precinct, the elections official shall count only the votes for the candidates and measures on which the voter was entitled to vote in his or her assigned precinct.

(d) The Secretary of State shall establish a free access system that any voter who casts a provisional ballot may access to discover whether the voter's provisional ballot was counted and, if not, the reason why it was not counted.

(e) The Secretary of State may adopt appropriate regulations for purposes of ensuring the uniform application of this section.

(f) This section shall apply to any absent voter described by Section 3015 who is unable to surrender his or her unvoted absent voter's ballot.

(g) Any existing supply of envelopes marked "special challenged ballot" may be used until the supply is exhausted.

Gov. Code § 68085.4. Certain fees to be deposited into bank account; distribution; transmittal

(a) Fees collected under Sections 70613, 70614, 70621, 70654, 70656, and 70658 of this code, Section 103470 of the Health and Safety Code, and Section 7660 of the Probate Code, shall be deposited in a bank account established by the Administrative Office of the Courts for deposit of fees collected by the courts.

(b) For each three hundred-dollar ($300) fee and each one hundred eighty-dollar ($180) fee listed in subdivision (a), the Administrative Office of the Courts shall distribute specified amounts in each county as follows:

(1) To the county law library fund, the amount described in Sections 6321 and 6322.1 of the Business and Professions Code.

(2) To the account to support dispute resolution programs, the amount described in Section 470.5 of the Business and Professions Code.

(c) The remainder of the fees in subdivision (a) shall be transmitted monthly to the Treasurer for deposit. For each three hundred-dollar ($300) fee and each one hundred eighty-dollar ($180) fee listed in subdivision (a), the Controller shall make deposits as follows:

(1) To the State Court Facilities Construction Fund, as provided in Article 6 (commencing with Section 70371) of Chapter 5.7, twenty-five dollars ($25) if the fee is three hundred dollars ($300), and twenty dollars ($20) if the fee is one hundred eighty dollars ($180).

(2) To the Judges' Retirement Fund, as established in Section 75100, two dollars and fifty cents ($2.50).

(3) To the Trial Court Trust Fund for use as part of the Equal Access Fund program administered by the Judicial Council, four dollars and eighty cents ($4.80).

(4) To the Trial Court Trust Fund, as provided in Section 68085.1, the remainder of the fee.

(d) If any of the fees listed in subdivision (a) are reduced or partially waived, the amount of the reduction or partial waiver shall be deducted from the amount to be distributed to each fund or account in the same proportion as the amount of each distribution bears to the total amount of the fee.

Gov. Code § 70613.5. Payment of difference in filing fees if amount at issue is changed

(a) Notwithstanding Section 472 of the Code of Civil Procedure, if a plaintiff or petitioner who previously was charged the filing fee under subdivision (b) of Section 70613 files an amended complaint or other initial pleading that increases the amount demanded to an amount that exceeds $10,000 but does not exceed $25,000, so that the higher filing fee under subdivision (a) of Section 70613 would have been required if such a demand had been made in the original pleading, a fee equal to the difference between the fee for the original filing fee and the filing fee for the new amount demanded shall be charged to make up the difference between the filing fees. This fee shall be distributed to the Trial Court Trust Fund.

(b) Notwithstanding Section 472 of the Code of Civil Procedure, if a party who previously was charged the filing fee under subdivision (b) of Section 70614 files a cross-complaint, amended cross-complaint, or amendment to a cross-complaint demanding an amount that exceeds $10,000 but does not exceed $25,000, a fee equal to the difference between the fee for the original filing fee and the filing fee under subdivision (a) of Section 70614 shall be charged to make up the difference between the filing fees. This fee shall be distributed to the Trial Court Trust Fund.

(c) The court shall not reimburse a party if the party's complaint or cross-complaint is amended to demand a lower amount that falls within the range for a filing fee lower than that originally paid.

Gov. Code § 70621. Fee for filing notice of appeal or writ petition in limited civil case

(a) (1) The fee for filing a notice of appeal to the appellate division of the superior court in a limited civil case is ~~one hundred dollars ($100)~~ three hundred dollars ($300), except as provided in subdivision (b). ~~The Judicial Council may make rules governing the time and method of payment and providing for excuse.~~

(2) The fee for filing a petition for a writ within the original jurisdiction of the appellate division of the superior court is three hundred dollars ($300), except as provided in subdivision (b).

(b) Where the amount demanded in the limited civil case, excluding attorney's fees and costs, is ten thousand dollars ($10,000) or less, the fee for filing a petition for a writ or a notice of appeal to the appellate division of the superior court is one hundred eighty dollars ($180).

~~(b) The fee shall be distributed as follows:~~

~~(1) To the county law library fund as provided in Section 6320 of the Business and Professions Code, the amount specified in Sections 6321 and 6322.1 of the Business and Professions Code.~~

~~(2) To the Trial Court Trust Fund, the remainder of the fee.~~

(c) The fees provided for in this section shall be distributed as provided in Section 68085.4.

(d) The Judicial Council may make rules governing the time and method of payment of the fees in this section and providing for excuse.

Gov. Code § 70627. Fees for copying, comparing, and search of records or files

The fees collected under this section shall be distributed to the court in which they were collected.

(a) The clerk of the court shall charge fifty cents ($0.50) per page to cover the cost of preparing copies of any record, proceeding, or paper on file in the clerk's office, except as provided in subdivision (d).

(b) For comparing with the original on file in the office of the clerk of any court, the copy of any paper, record, or proceeding prepared by another and presented for the clerk's certificate, the fee is one dollar ($1) per page, in addition to the fee for the certificate.

(c) The fee for a search of records or files conducted by a court employee ~~that requires more than 10 minutes is fifteen dollars ($15)~~ is five dollars ($5) for each ~~search~~ name, file, or other information for which a search is requested. This fee shall not be charged when a person requests one search for records of a case in which that person is a party, but if the party requests more than one search at a time, $5 shall be charged for each search after the first search.

(d) For preparing color copies of any document, the clerk may charge a reasonable fee not to exceed costs.

Gov. Code § 70633. Fees for adoption proceedings, proceedings to declare a minor free from parental custody or control, proceedings to compel voter registration and counting of provisional ballots, criminal actions, and service to public entities

(a) No fee shall be charged by the clerk for service rendered to the petitioner in any adoption proceeding except as provided in Section 103730 of the Health and Safety Code, nor shall any fees be charged for any service to the state or for any proceeding brought pursuant to Section 7841 of the Family Code to declare a minor free from parental custody or control. No fee shall be charged by the clerk for services rendered in an action to compel registration of a voter under Section 2142 of the Elections Code or to compel counting of provisional ballots under Section 14310 of the Elections Code.

(b) No fee shall be charged by the clerk for services rendered in any criminal action unless otherwise specifically authorized by law, except that the clerk may charge ~~the fee specified in Section 70627~~ a fee for making or certifying to a copy of any filed paper, record, or proceeding in a criminal action. If a criminal defendant has been granted a fee waiver or the court finds that the defendant does not have the ability to pay the fee, the court may reduce or waive the fee.

(c) Except as permitted in subdivision (b), no fee shall be charged by the clerk for service to any municipality or county in the state, to the state government, nor to the United States of America or any of its officers acting in his or her official capacity.

Gov. Code § 70650. Fees for filing papers in probate proceedings

(a) The uniform filing fee for the first petition for letters of administration or letters testamentary, or the first petition for special letters of administration with the powers of a general personal representative pursuant to Section 8545 of the Probate Code, or

a first account of a trustee of a testamentary trust that is subject to the continuing jurisdiction of the court pursuant to Chapter 4 (commencing with Section 17300) of Part 5 of Division 9 of the Probate Code is, as follows:

(1) Three hundred twenty dollars ($320) for estates or trusts under two hundred fifty thousand dollars ($250,000).

(2) Three hundred eighty-five dollars ($385) for estates or trusts of at least two hundred fifty thousand dollars ($250,000) and less than five hundred thousand dollars ($500,000).

(3) Four hundred eighty-five dollars ($485) for estates or trusts of at least five hundred thousand dollars ($500,000) and less than seven hundred fifty thousand dollars ($750,000).

(4) Six hundred thirty-five dollars ($635) for estates or trusts of at least seven hundred fifty thousand dollars ($750,000) and less than one million dollars ($1,000,000).

(5) One thousand one hundred thirty-five dollars ($1,135) for estates or trusts of at least one million dollars ($1,000,000) and less than one million five hundred thousand dollars ($1,500,000).

(6) Two thousand one hundred thirty-five dollars ($2,135) for estates or trusts of at least one million five hundred thousand dollars ($1,500,000) and less than two million dollars ($2,000,000).

(7) Two thousand six hundred thirty-five dollars ($2,635) for estates or trusts of at least two million dollars ($2,000,000) and less than two million five hundred thousand dollars ($2,500,000).

(8) Three thousand six hundred thirty-five dollars ($3,635) for estates or trusts of at least two million five hundred thousand dollars ($2,500,000) and less than three million five hundred thousand dollars ($3,500,000).

(9) Three thousand six hundred thirty-five dollars ($3,635) plus 0.2 percent of the amount over three million five hundred thousand dollars ($3,500,000) for estates or trusts of three million five hundred thousand dollars ($3,500,000) or more.

(b) The full uniform filing fee for a petition for letters in a decedent's estate or the first account of a trustee under subdivision (a) shall be determined based on the final appraised value of the estate without reference to encumbrances or other obligations on estate property, or the value of the trust shown in the first account, and is payable as follows:

(1) The petitioner for letters under subdivision (a) shall ~~estimate the fair market value of the decedent's estate at the date of the decedent's death in~~ pay the sum of three hundred twenty dollars ($320) at the time of filing the petition~~,~~.

(2) In a decedent's estate under subdivision (a), the balance of the uniform filing fee, if any, shall be paid by the general personal representative of the estate no later than the date the general personal representative files its final account or report and petition for settlement or for final distribution ~~or without reference to encumbrances or other obligations on estate property. The filing fee shall be determined based on the estimate by the petitioner at the time the petition is filed. If the final appraised value of the decedent's estate would result in a filing fee different from the filing fee actually paid, an adjustment shall be made at the time of the final account,~~ under rules adopted by the Judicial Council, without regard to whether the representative was appointed by the court on a petition under subdivision (a) or a petition under subdivision (d).

(3) The full uniform filing fee for a ~~trustee~~ trust under subdivision (a) ~~shall be based on the value of the trust shown in the first account~~ shall be paid when the first account is filed.

(c) The uniform filing fee for ~~the first petition for special letters of administration without the powers of a general personal representative of the Probate Code,~~ the first objections to the probate of any will or codicil under Section 8250 of the Probate Code, or the first petition for revocation of probate of any will or codicil under Section 8270 of the Probate Code is three hundred twenty dollars ($320). The uniform filing fee for the first petition for special letters of administration without the powers of a general personal representative is the fee provided in Section 70657.5. Where objections to the probate of a will or codicil or a petition for revocation of probate of a will or codicil are filed together with a petition for appointment of a personal representative described in subdivision (d) filed by the same person, only the fee provided in subdivision (d) shall be charged to that person.

(d) A fee of three hundred twenty dollars ($320) shall also be charged for filing each subsequent petition or objections of a type described in subdivision (a) ~~or (c)~~ in the same proceeding by a person other than the original petitioner or contestant. The same fee as provided in subdivision (c) shall be charged for filing each subsequent petition or objections of a type described in that subdivision in the same proceeding by a person other than the original petitioner or contestant. ~~If a person is appointed on a subsequent petition and qualifies as administrator, executor, or special administrator with the powers of a general personal representative under subdivision (a), the successful personal representative shall reimburse the original petitioner in the amount of the filing fee paid by the original petitioner in excess of three hundred twenty dollars ($320), less any unpaid costs awarded to the successful petitioner against the original petitioner, under rules adopted by the Judicial Council. The reimbursement shall be an expense of administration in the estate.~~

(e) Notwithstanding Section 70658.5, if a petition for special letters of administration without the powers of a general personal representative is filed together with a petition for appointment of an administrator with general powers under subdivision (a) or subdivision (d) by the same person, the person filing the petitions shall be charged the applicable filing fees for both petitions.

~~(e)~~ (f) The first three hundred twenty dollars ($320) of the filing fee charged under this section shall be distributed as provided in Section 68085.3. The remainder shall be distributed to the Trial Court Trust Fund.

Hlth. & Saf. Code § 11488.5. Claim of interest procedure; default judgment; forfeiture hearing; burden of proof; continuance; order of release

(a) (1) Any person claiming an interest in the property seized pursuant to Section 11488 may, unless for good cause shown the court extends the time for filing, at any time within 30 days from the date of the first publication of the notice of seizure, if that person was not personally served or served by mail, or within 30 days after receipt of actual notice, file with the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized or, if there was no seizure, in which the property is located, a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 30 days of the filing of the claim. The Judicial Council shall develop and approve official forms for the verified claim that is to be filed pursuant to this section. The official forms shall be drafted in nontechnical language, in English and in Spanish, and shall be made available through the office of the clerk of the appropriate court.

(2) Any person who claims that the property was assigned to him or to her prior to the seizure or notification of pending forfeiture of the property under this chapter, whichever occurs first, shall file a claim with the court and prosecuting agency pursuant to Section 11488.5 declaring an interest in that property and that interest shall be adjudicated at the forfeiture hearing. The property shall remain under control of the law enforcement or prosecutorial agency until the adjudication of the forfeiture hearing. Seized property shall be protected and its value shall be preserved pending the outcome of the forfeiture proceedings.

(3) The clerk of the court shall not charge or collect a fee for the filing of a claim in any case in which the value of the respondent property as specified in the notice is five thousand dollars ($5,000) or less. <u>If the value of the property as specified in the notice is more than five thousand dollars ($5,000), the clerk of the court shall charge the filing fee specified in Section 70611 of the Government Code.</u>

(4) The claim of a law enforcement agency to property seized pursuant to Section 11488 or subject to forfeiture shall have priority over a claim to the seized or forfeitable property made by the Franchise Tax Board in a notice to withhold issued pursuant to Section 18817 or 26132 of the Revenue and Taxation Code.

(b) (1) If at the end of the time set forth in subdivision (a) there is no claim on file, the court, upon motion, shall declare the property seized or subject to forfeiture pursuant to subdivisions (a) to (g), inclusive, of Section 11470 forfeited to the state. In moving for a default judgment pursuant to this subdivision, the state or

local governmental entity shall be required to establish a prima facie case in support of its petition for forfeiture.

(2) The court shall order the forfeited property to be distributed as set forth in Section 11489.

(c) (1) If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases. Notice of the hearing shall be given in the same manner as provided in Section 11488.4. Such a verified claim or a claim filed pursuant to subdivision (j) of Section 11488.4 shall not be admissible in the proceedings regarding the underlying or related criminal offense set forth in subdivision (a) of Section 11488.

(2) The hearing shall be by jury, unless waived by consent of all parties.

(3) The provisions of the Code of Civil Procedure shall apply to proceedings under this chapter unless otherwise inconsistent with the provisions or procedures set forth in this chapter. However, in proceedings under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this chapter.

(d) (1) At the hearing, the state or local governmental entity shall have the burden of establishing, pursuant to subdivision (i) of Section 11488.4, that the owner of any interest in the seized property consented to the use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4.

(2) No interest in the seized property shall be affected by a forfeiture decree under this section unless the state or local governmental entity has proven that the owner of that interest consented to the use of the property with knowledge that it would be or was used for the purpose charged. Forfeiture shall be ordered when, at the hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4.

(e) The forfeiture hearing shall be continued upon motion of the prosecution or the defendant until after a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have been decided. The forfeiture hearing shall be conducted in accordance with Sections 190 to 222.5, inclusive, Sections 224 to 234, inclusive, Section 237, and Sections 607 to 630, inclusive, of the Code of Civil Procedure if a trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure if by the court. Unless the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the person it determines is entitled thereto.

If the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose for which forfeiture is permitted and consented to that use, the court shall order the seized property released to the claimant.

(f) All seized property which was the subject of a contested forfeiture hearing and which was not released by the court to a claimant shall be declared by the court to be forfeited to the state, provided the burden of proof required pursuant to subdivision (i) of Section 11488.4 has been met. The court shall order the forfeited property to be distributed as set forth in Section 11489.

(g) All seized property which was the subject of the forfeiture hearing and which was not forfeited shall remain subject to any order to withhold issued with respect to the property by the Franchise Tax Board.

Penal Code § 12028.5. Domestic violence incidents; temporary custody of firearms by officers; subsequent procedures

(a) As used in this section, the following definitions shall apply:

(1) "Abuse" means any of the following:

(A) Intentionally or recklessly to cause or attempt to cause bodily injury.

(B) Sexual assault.

(C) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

(D) To molest, attack, strike, stalk, destroy personal property, or violate the terms of a domestic violence protective order issued pursuant to Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

(2) "Domestic violence" means abuse perpetrated against any of the following persons:

(A) A spouse or former spouse.

(B) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.

(C) A person with whom the respondent is having or has had a dating or engagement relationship.

(D) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent

under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(E) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(F) Any other person related by consanguinity or affinity within the second degree.

(3) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer, as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered, the time limit for recovery as required by this section, and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (f), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than five business days after the owner or person who was in lawful possession demonstrates compliance with Section 12021.3. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within five business days following the initial seizure, except as provided in subdivision (d), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the

firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located.

(d) Any firearm or other deadly weapon that has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership, and after the law enforcement agency has complied with Section 12021.3.

(e) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(f) In those cases in which a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an ex parte request, a petition must be filed within 90 days of the date of seizure of the firearm or other deadly weapon.

(g) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. If the request for a hearing is the first responsive paper as described in Section 70612 of the Government Code, the clerk shall charge the fee prescribed in that section. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by a preponderance of the evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(i) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If there is a petition for a second hearing, unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(k) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

Welf. & Inst. Code § 8102. Confiscation and custody of firearms or other deadly weapons; procedure for return of weapon; notice

(a) Whenever a person, who has been detained or apprehended for examination of his or her mental condition or who is a person described in Section 8100 or 8103, is found to own, have in his or her possession or under his or her control, any firearm whatsoever, or any other deadly weapon, the firearm or other deadly weapon shall be confiscated by any law enforcement agency or peace officer, who shall retain custody of the firearm or other deadly weapon.

"Deadly weapon," as used in this section, has the meaning prescribed by Section 8100.

(b) Upon confiscation of any firearm or other deadly weapon from a person who has been detained or apprehended for examination of his or her mental condition, the

peace officer or law enforcement agency shall notify the person of the procedure for the return of any firearm or other deadly weapon which has been confiscated.

Where the person is released, the professional person in charge of the facility, or his or her designee, shall notify the person of the procedure for the return of any firearm or other deadly weapon which may have been confiscated.

Health facility personnel shall notify the confiscating law enforcement agency upon release of the detained person, and shall make a notation to the effect that the facility provided the required notice to the person regarding the procedure to obtain return of any confiscated firearm.

(c) Upon the release of a person as described in subdivision (b), the confiscating law enforcement agency shall have 30 days to initiate a petition in the superior court for a hearing to determine whether the return of a firearm or other deadly weapon would be likely to result in endangering the person or others, and to send a notice advising the person of his or her right to a hearing on this issue. The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an ex parte request, a petition must be filed within 60 days of the release of the person from a health facility.

(d) If the law enforcement agency does not initiate proceedings within the 30-day period, or the period of time authorized by the court in an ex parte order issued pursuant to subdivision (c), it shall make the weapon available for return.

(e) The law enforcement agency shall inform the person that he or she has 30 days to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond will result in a default order forfeiting the confiscated firearm or weapon. For the purpose of this subdivision, the person's last known address shall be the address provided to the law enforcement officer by the person at the time of the person's detention or apprehension.

(f) If the person responds and requests a hearing, the court clerk shall set a hearing, no later than 30 days from receipt of the request. The court clerk shall notify the person and the district attorney of the date, time, and place of the hearing. <u>If the request for a hearing is the first responsive paper as described in Section 70612 of the Government Code, the clerk shall charge the fee prescribed in that section.</u>

(g) If the person does not respond within 30 days of the notice, the law enforcement agency may file a petition for order of default.