

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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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. Mary Thornton House, Chair
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DATE: September 23, 2004

SUBJECT: Small Claims Rules on Appeal (amend Cal. Rules of Court,
rules 151–156) (Action Required)

Issue Statement

The rules for trial de novo of small claims cases on appeal still refer to an appeal “from municipal and justice courts.” This language is outdated because all courts are now unified superior courts.¹

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2005, amend rules 151–156 of the California Rules of Court under Chapter III of Title I, with a new title Trial of Small Claims Cases on Appeal, to reflect the small claims de novo appeal procedure in a post unification court system and to make other technical and clarifying amendments.

The text of the proposed rules is attached at pages 4–6.

¹ The Judicial Council Rules and Projects Committee (RUPRO) requested that the civil committee review and make recommendations for amending the rules as part of the overall rules revision project. This proposal is part of that project.

Rationale for Recommendation

The rules for trial de novo of small claims cases on appeal no longer reflect current practice under a unified superior court system.

References in the text to “trial court” have been replaced with “small claims court.” Although the small claims court is part of the superior court, this text tracks the language under the Small Claims Act of Code of Civil Procedure section 116.210, which states: “In each superior court there shall be a small claims division. The small claims division may be known as the small claims court.”

Rule 153 is amended to delete the requirement for transmittal of a certified copy of the record and to replace it with transmittal of “the file and all related papers,” because transmittal is occurring within the same superior court and therefore no longer requires transfer of the certified record to another court. In some courts the transmittal is done electronically. The proposal would require that the records be transmitted to the clerk of the “court assigned to hear the appeal” instead of the “superior court” to distinguish the small claims trial court from the court division hearing the small claims appeal.

Stylistic changes also have been made, including changing “shall” to “must” among other changes, to conform to current style for drafting rules of court.

All of the definitions in existing rule 156 are duplicated in the appellate rules under title I, rule 40, and in the trial court rules, rules 200.1 and 200.2, except for two that refer specifically to small claims court processes. Therefore, definitions for “small claims court” and “appellant” are the only ones retained in the definitions section of this rule.

Alternative Actions Considered

Although the rules could be left unchanged, parties may be misled if the rules do not conform to the current court structure.

Comments From Interested Parties

Of the 17 comments received, no one opposed amending the small claims rules on appeal. Six commentators made recommendations for amending the rules, most of which were adopted by the committee. These included suggestions for improved style and simpler language, as well as some procedural changes. For example, the committee agreed that notice of abandonment of the appeal should be filed in the court assigned to hear the appeal and not in the small claims court because the physical file would likely have been transferred and no longer be located in the small claims court.

After specifically requesting comment on whether the proposed phrase “clerk of the court assigned to hear the appeal” should read clerk of the “department” or “division” assigned to hear the appeal, the committee preferred to use the broader language “clerk of the court assigned to hear the appeal.” The small claims appeal is a trial de novo, and not all courts assign small claims appeals to the appellate department or division of the superior court.

One judge opposed current rule 154, which provides that a continuance may not be granted beyond 30 days on application of the appellant alone unless there is an extreme hardship. The judge believed that continuances should be left to court discretion and should not be micromanaged in a rule of court. The committee believes that the limitation in the current rule is consistent with the philosophy of the Small Claims Act to resolve minor civil disputes “expeditiously, inexpensively, and fairly.” (See Code Civ. Proc., §116.120.) The council’s Rules and Projects (RUPRO) Committee suggested that any party, not just the appellant, be permitted to seek a hardship continuance. The Civil and Small Claims Advisory Committee agreed with this suggestion.

The RUPRO Committee also suggested, in rule 155 (a) and (e), eliminating the word “jurisdiction” when returning the case to small claims court, or proceeding with the case as if no appeal had been taken. The Civil and Small Claims Advisory Committee agreed with this suggestion.

Several commentators stated that all the definitions should be retained in the rules. However, the committee felt that most of the definitions would not be helpful to a layperson. It kept just two definitions—of “small claims court” and “appellant”—that would be directly relevant to a party appearing in small claims court.

A chart with comments and committee responses is attached at pages 7–12.

Implementation Requirements and Costs

The rules clarify existing law and do not create any new requirements or costs. Some counties may still be charging a fee for a certified copy of the record, which is no longer necessary because the file can simply be transferred to the appropriate department under a unified court system.

Attachments

Rules 151–156 of the California Rules of Court are amended, effective January 1, 2005, to read:

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TITLE I
DIVISION II
CHAPTER III

Trial of Small Claims Cases on Appeal ~~From Municipal and Justice Courts~~

Rule 151. Scope

This chapter applies to appeals to the superior court from municipal and justice courts in small claims cases.

Rule 152. Filing notice of appeal

(a) [Small claims case] A notice of appeal ~~shall~~ must be signed by the appellant or by appellant’s attorney and ~~shall be~~ is sufficient if it states in substance that the appellant appeals from a specified judgment or, in the case of a defaulting defendant, from the denial of a motion to vacate the judgment. A notice of appeal ~~shall~~ must be liberally construed in favor of its sufficiency.

(b) [Notification by clerk] When a notice of appeal is filed ~~pursuant to subdivision (a) of this rule~~, the clerk of the ~~trial~~ small claims court ~~shall~~ must promptly mail a notification of the filing of the notice to each other party at the party’s last known address. The notification ~~shall~~ must state the number and title of the action or proceeding and the date the notice of appeal was filed. ~~In the event of the death of a party prior to the court’s giving~~ If a party dies before the court gives notice, the mailing is a sufficient performance of the clerk’s duty. The failure of the clerk to give notice of judgment or notification of the filing of notice of appeal ~~shall~~ does not extend the time for filing notice of appeal or affect the validity of the appeal.

(c) [Premature notice] A notice of appeal filed ~~prior to~~ before entry of the judgment, but after its rendition, ~~shall be~~ is valid and ~~shall be~~ is deemed to have been filed immediately after entry. A notice of appeal filed ~~prior to~~ before rendition of the judgment, but after the judge has announced an intended ruling, may, in the discretion of the reviewing court for good cause, be treated as filed immediately after entry of the judgment.

Rule 153. Record on appeal

Upon the filing of the notice of appeal and the payment of any fees required by law, the clerk of the ~~trial~~ small claims court ~~shall~~ must within five days transmit the file and all related papers, including the notice of appeal, to the clerk of the superior court assigned

1 ~~to hear the appeal a certified copy of the entries in the register of actions or docket~~
2 ~~relating to the action, together with the pleadings, exhibits, notices, motions, other papers~~
3 ~~and documents filed in the action, and notice of appeal.~~

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5 **Rule 154. Continuances**

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7 ~~Continuances of the trial in the superior court may be granted for good cause but, except~~
8 ~~in cases of extreme hardship, shall not be granted, on application of the appellant alone,~~
9 ~~for a period of time which in the aggregate exceeds 30 days. For good cause, the court~~
10 ~~assigned to hear the appeal may continue the trial. A request for a continuance may be~~
11 ~~presented by one party or by stipulation. The court may grant a continuance not to~~
12 ~~exceed 30 days, but in a case of extreme hardship the court may grant a continuance~~
13 ~~exceeding 30 days. If after trial anew or new trial a new trial is ordered, there shall be a~~
14 ~~similar limitation on continuances.~~

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16 **Rule 155. Abandonment, dismissal, and judgment for failure to bring to trial**

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18 (a) **[Before appeal filed]** ~~At any time before the filing of the appeal in the superior court~~
19 ~~file has been transmitted to the court assigned to hear the appeal, the appellant may~~
20 ~~file in the office of the clerk of the trial small claims court a written abandonment of~~
21 ~~the appeal; or the parties may file in that office a stipulation for abandonment. The~~
22 ~~filing of either document shall operate to dismiss the appeal and to restore the~~
23 ~~jurisdiction of return the case to the trial small claims court.~~

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25 (b) **[After record filed]** ~~After the filing of an appeal in the superior court it file has been~~
26 ~~transmitted to the court assigned to hear the appeal, the appeal may be dismissed by~~
27 ~~that court on written request of the appellant or stipulation of the parties filed with the~~
28 ~~clerk of the superior clerk court assigned to hear the appeal.~~

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30 (c) **[Dismissal or judgment by court]** ~~The appeal shall must be dismissed if not brought~~
31 ~~to trial within one year from the date of filing the appeal in the superior court. If after~~
32 ~~trial anew a new trial is ordered, the appeal in the case shall must be dismissed if the~~
33 ~~case is not brought to trial within one year from the date of entry of the order for the~~
34 ~~new trial. Notwithstanding the foregoing provisions, dismissal shall must not be~~
35 ~~ordered or judgment entered if there was in effect a written stipulation extending the~~
36 ~~time for the trial or if the appellant shows that he or she exercised reasonable~~
37 ~~diligence to bring the case to trial. In any event the appeal shall must be dismissed, if~~
38 ~~the case is not brought to trial within three years after either the appeal is filed in the~~
39 ~~superior court or the most recent new trial order is entered in the superior court~~
40 ~~assigned to hear the appeal.~~

41
42 (d) **[Notification by clerk]** ~~When an appellant files an abandonment of appeal, the clerk~~
43 ~~of the court in which the abandonment is filed shall must immediately notify the~~

1 adverse party or parties of the filing. The clerk of the ~~superior court shall~~ court
2 assigned to hear the appeal must immediately notify the parties of any order of
3 dismissal or of any judgment for defendant made by the court pursuant to subdivision
4 under (c) made by that court.

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6 (e) **[Return of papers]** Upon dismissal ~~by the superior court~~ of an appeal from a
7 ~~municipal or a justice court~~, the clerk of the superior court assigned to hear the appeal
8 ~~shall must~~ transmit to the ~~trial~~ small claims court a copy of the order of dismissal and
9 all original papers and exhibits transmitted to the ~~superior court~~ assigned to hear the
10 appeal. Thereafter the trial small claims court shall thereafter have the same
11 jurisdiction will proceed with the case as if no appeal had been taken.

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13 (f) **[Approval of compromise]** Whenever the guardian of a minor or of an insane or
14 incompetent person seeks approval of a proposed compromise of a case on appeal
15 ~~required to be tried anew or~~ in which a new trial has been ordered, the superior court
16 assigned to hear the appeal may hear and determine whether the proposed
17 compromise is for the best interest of the ward.

18 19 **Rule 156. Definitions**

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21 In this chapter, unless the context or subject matter otherwise requires:

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23 (a) ~~The past, present, and future tenses each include the other; the masculine, feminine,~~
24 ~~and neuter genders each include the other; and the singular and plural numbers each~~
25 ~~include the other.~~

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27 (b) ~~“Shall” is mandatory and “may” is permissive.~~

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29 (e)(1) ~~“Trial Small claims court”~~ means the ~~municipal or justice~~ trial court from which
30 the appeal is taken.

31
32 (d)(2) ~~“Appellant”~~ means the party appealing; “plaintiff” and “defendant” refer to the
33 parties as they were designated in the ~~trial~~ small claims court.

34
35 (e) ~~Designation of a party by any terminology includes such party’s attorney of record.~~
36 ~~Whenever under this chapter notice is required to be given to or served on a party, the~~
37 ~~notice or service shall be made upon the attorney of record if the party has one.~~

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39 (f) ~~“Clerk” with respect to a justice court means the judge if there is no clerk.~~

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41 (g) ~~Rule and subdivision headings do not in any manner affect the scope, meaning, or~~
42 ~~intent of the provisions of these rules.~~

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(rules 151–156, Division III, Trial of Small Cases of Appeal)
SPR04-16

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Judge Ronald L. Bauer Superior Court of California, County of Orange Santa Ana	AM	Y	Judge Ronald L. Bauer and the Rules & Forms Committee members from Orange County Superior Court reviewed this item and felt the rules should be modified. (1) Modify Rule 152(b), line 24, by replacing the word “shall” with “does.” (2) Modify Rule 154, line 11, by deleting the word “anew.”	Agree. See revised rule. Agree. See revised rule.
2.	Mr. Greg Blevins Small Claims Advisor Blevins Law Firm Tulare	AM	N	Correction in wording of statute (typos).	The committee could not correlate this comment with the proposed rules; no statute was cited in the rules.
3.	Ms. Naida Castro Division Chief Superior Court of California, County of Los Angeles	A	N	None.	No response needed.
4.	Ms. Linda Durand Court Program Manager Superior Court of California, County of Ventura	A	N	None.	No response needed.
5.	Mr. Harold Garcia-Shelton Attorney	A	N	It’s good, especially use of Plain English. The change from “shall” to <u>must</u> is very good.	Agree. See revised rule.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Bay Area Legal Aid San Jose			I suggest more Plain English. For example, Lines 21-23. If a party dies before the court gives notice, the mailing ...	
6.	Ms. Kim Hubbard President Orange County Bar Association Irvine, California	A	N	None.	No response needed.
7.	Judicial Assistant Small Claims Clerk of the Superior Court of California, County of Santa Barbara	A	N	None.	No response needed.
8.	Mr. Stephen V. Love Executive Officer Superior Court of California, County of San Diego	AM	N	Retain language clerk of the “court assigned to hear the appeal.” Retain definitions.	Agree. No change needed. Because most of the definitions are already found in the appellate rules under title I, rule 40, the committee recommends that only two definitions relevant to small claims appeals and not found in rule 40 be retained in title I, division II. These are definitions for “Appellant” and

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				* In addressing the issue of “division” or “department” that is “assigned to hear the appeal,” I believe that “division” would be the appropriate terminology to use as division III, chapter I is entitled “Appellate Division Rules.” Rule 100 specifies all references in the CRC to “appellate department” mean “appellate division.” If a notice of appeal is filed, then the “appellate division “ is where the file goes ...	assigned to hear the appeal.” The small claims appeal is a trial de novo and not all courts assign small claims appeals to the appellate division of the superior court.
11.	Hon. Dennis E. Murray Presiding Judge Superior Court of California, County of Tehama Red Bluff	AM	N	I oppose Rule 154 regarding continuances. I see no reason for the “extreme hardship” restriction. The issue should be left to trial court discretion. These kinds of things used to be in the “standards,” not the “Rules.” If the advisory committee believes such micromanagement is necessary, they have not made a case for it.	The rule provides that a continuance may not be granted beyond 30 days on application of the appellant alone unless there is an extreme hardship. The committee believes that this limitation is consistent with the philosophy of expeditious resolution of small claims cases articulated in the Small Claims Act.
12.	Sharon Ngim Staff Liaison to the Standing Committee on the Delivery of Legal Services	A	Y	We support the proposed changes	No response needed.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	San Francisco				
13.	Ms. Jody Patel Court Executive Officer Superior Court of California, County of Sacramento	AM	Y	We support the proposal to revise the rule to properly reflect that small claims is a division of the Superior Court. The proposal seeks comment on whether definitions contained in Rule 156 should be retained or deleted from the section as they appear elsewhere in the Rules. We would urge that they be retained here. While we acknowledge the redundancy, we believe that leaving them here provides better access for pro se litigants who are already often confused by the small claims appeals process.	The committee is keeping two definitions that relate specifically to small claims appeals. See also comment 8.
14.	Ms. Tina Rasnow SHLA Center Coordinator Superior Court of California, County of Ventura	A	N	I agree with the proposed changes.	No response needed.
15.	Ms. Susan Sheehan Small Claims Advisor Sonoma County Legal Aid Santa Rosa	A	N	None.	No response needed.
16.	Mr. Scott Reep	A	N	None.	No response needed.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Small Claims Legal Advisor Superior Court of California, County of Contra Costa Benicia				
17.	Mr. Kent Vander Schuit Director, Public Law Center Superior Court of California, County of Nevada Nevada City	A	N	None.	No response needed.