

**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: Policy Coordination and Liaison Committee  
Hon. Marvin R. Baxter, Chair  
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  
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DATE: October 26, 2006

SUBJECT: Small Claims: Electronic and Fax Filing (Code Civ. Proc., § 116.320(a))  
(Action Required)

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Issue Statement

Under the Small Claims Act, Code of Civil Procedure section 116.320(a) authorizes a plaintiff to commence a small claims action by filing a claim with the court clerk in person or by mail. Some courts allow a party to electronically file his or her claim, although this is not expressly authorized under section 116.320. Fax filing agencies have requested permission to file a small claims party's faxed claim, although this also is not expressly authorized under that section.

Recommendation

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend that the Judicial Council sponsor legislation to amend the Small Claims Act, Code of Civil Procedure section 116.320(a), to clarify that a small claims plaintiff may commence an action by filing a claim by fax or electronic means as authorized by sections 1010.5 and 1010.6.

The text of the legislative proposal is attached at page 5.

### Rationale for Recommendation

Various statutes authorize fax and electronic filing in civil cases. The Small Claims Act directs that small claims cases may be filed in person or by mail. Small claims cases are considered civil cases (Code Civ. Proc., § 87). To harmonize the statutes, promote access to the courts, and help self-represented small claims litigants understand the different ways a claim may be filed, the Small Claims Act should be amended to expressly provide that fax and electronic means for filing a small claims case are available, as authorized by Code of Civil Procedure sections 1010.5 and 1010.6 and the California Rules of Court.

#### *Electronic filing*

Several courts have adopted local rules that authorize a small claims plaintiff to initiate an action by electronic means. In these courts, the plaintiff is prompted through a series of online questions, which results in a completed electronic claim form that can be electronically transmitted to the clerk for filing. Some electronic forms can be completed off site, while others can be completed only at the courthouse.

Electronic filing is authorized by Code of Civil Procedure section 1010.6(a), which states that “[a] trial court may adopt local rules permitting electronic filing and service of documents, subject to rules adopted [by the Judicial Council] . . . .” Rule 2052<sup>1</sup> of the California Rules of Court permits “electronic filing of a document in any action or proceeding unless these rules or other legal authority expressly prohibit electronic filing.” Further procedures for processing electronically filed documents are specified in other rules.

The Small Claims Act should be clarified by expressly providing for electronic filing, as authorized by Code of Civil Procedure section 1010.6, to avoid any confusion and uncertainty and to enhance access to the courts for parties in small claims cases.

#### *Fax filing*

Fax filing agencies have requested authorization to file a faxed printout of a small claims action with the court. Code of Civil Procedure section 1010.5 authorizes the Judicial Council to adopt rules “permitting the filing of papers by facsimile transmission, both directly with the courts and through third parties.” Rule 2002<sup>2</sup> provides that the fax filing rules apply to “civil, probate, and family law proceedings in all trial courts.” Small claims cases are considered civil cases under Code of Civil Procedure section 87, which states that a limited civil case may be brought in the small claims division if the case is within the jurisdiction of the small claims division. Under rule 2005,<sup>3</sup> a third-party fax filing

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<sup>1</sup> Effective January 1, 2007, this rule will be numbered 2.252.

<sup>2</sup> Effective January 1, 2007, this rule will be numbered 2.300.

<sup>3</sup> Effective January 1, 2007, this rule will be numbered 2.303.

agency is authorized to file faxed papers, following specified procedures. Direct fax filing with the court is authorized under rule 2006<sup>4</sup> *only* if the court has adopted a local rule providing for it. This gives the courts flexibility to decide whether they wish to permit direct fax filing of small claims actions.

The Small Claims Act should be clarified to specifically provide for fax filing, as authorized by Code of Civil Procedure section 1010.5. This would help avoid any confusion or uncertainty and would enhance access to the courts for small claims litigants.

#### Alternative Actions Considered

Courts could continue to adopt local rules and follow local practice for filing faxed and electronic small claims cases. However, the Civil and Small Claims Advisory Committee considered it preferable to harmonize the statutes authorizing fax and electronic filing to clarify the permitted use of these procedures in small claims court.

#### Comments From Interested Parties

The proposed amendment to Code of Civil Procedure section 116.320 was circulated for statewide public comment in spring 2006. Eleven comments from court executive officers, court legal processors, court attorneys, a court program manager, a court referee, and a process server were received.

Eight commentators agreed with the proposal as drafted. Two commentators agreed with the proposal if modifications are made, and one disagreed with the proposal. The court legal processor who disagreed with the proposal gave no reasons, but a colleague from the same court noted that the court “will be forced to design and implement new programs to allow processing of faxed and electronically submitted documents,” including costs of sending back documents that are incomplete or otherwise unacceptable for filing as submitted, a situation in which the court should be authorized to charge an additional fee. It was also suggested that clerks be allowed to “print only selected submissions” to “control the amount of paper used by multiple submissions or fax errors.” The Civil and Small Claims Advisory Committee believes the commentator may have misunderstood the proposal, because third-party faxed filings are treated the same as any regular paper filing. Direct fax filing in the court is only authorized if a local court rule authorizes it.

Finally, a suggestion that courts be permitted to file electronic forms with only those boxes that have been checked appearing on the final version of the form, thereby eliminating the extra unchecked boxes and the additional paper the unchecked boxes generate, is beyond the scope of the invitation to comment. This proposal has previously

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<sup>4</sup> Effective January 1, 2007, this rule will be numbered 2.304.

been made and the Civil and Small Claims Advisory Committee has put it on its work plan for further review.

The Joint Legislative Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees supports the proposal to amend Code of Civil Procedure section 116.320 as circulated by the Civil and Small Claims Advisory Committee.

A chart of the comments and responses is attached at page 6.

#### Implementation Requirements and Costs

The proposed legislation imposes no new requirements. Many courts are already accepting faxed and electronically filed documents in small claims cases under the provisions of Code of Civil Procedure sections 1010.5 and 1010.6.

Attachments

Code of Civil Procedure section 116.320(a) would be amended to read:

1 **§ 116.320**

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3 (a) A plaintiff may commence an action in the small claims court by filing a claim  
4 under oath with the clerk of the small claims court in person, ~~or by mail,~~ or by fax  
5 or electronic means as authorized by sections 1010.5 and 1010.6.

**LEG06-03**  
**Small Claims: Electronic and Fax Filing**  
**(Code Civ. Proc., § 116.320)**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Mr. Tony Klein Process Server Institute Attorney Service of San Francisco San Francisco	A	N	Agree with proposal. There is no reason why a small claims filing should not be filed electronically or by fax.	No response required.
2.	Mr. Thi Lam Campbell	AM	N	Case No. 106CV059133.	The committee has no information to assess the commentator's proposed modification as he only listed a case number.
3.	Ms. Julie M. McCoy, President Orange County Bar Association	A	Y	No comments.	No response required.
4.	Ms. Melissa Soracco Senior Legal Processor Superior Court of California, County of Sonoma	N	N	Do not agree with proposed changes.	See commentator 11 for reasons.
5.	Ms. Janet Garcia Manager Planning and Research Unit Superior Court of California, County of Los Angeles Los Angeles	A	N	No comments.	No response required.
6.	Ms. Tressa S. Kentner and Ms. Debra Meyers Executive Officer and Chief of Staff Counsel Services Superior Court of California,	A	N	No comments.	No response required.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
	County of San Bernardino San Bernardino				
7.	Ms. Pam Moraida Civil/Small Claims Program Manager Superior Court of California, County of Solano Fairfield	A	N	No comments.	No response required.
8.	Ms. Kim Baskett Referee Superior Court of California, County of Santa Cruz Santa Cruz	A	N	No comments.	No response required.
9.	Mr. Michael M. Roddy Executive Officer Superior Court of California, County of San Diego San Diego	A	Y	No additional comments.	No response required.
10.	Ms. Cheryl Kanatzar Deputy Executive Officer Superior Court of California, County of Ventura Ventura	A	Y	No additional comments.	No response required.
11.	Ms. Heide Keeble Senior Legal Processor Superior Court of California,	AM	N	Electronic filing and direct fax filing has potential. However, with the implementation of any new process will	Third-party faxed filings are treated the same as any direct paper filing. Direct fax filing in

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
	County of Sonoma Santa Rosa			come additional costs. The courts will be forced to design and implement new programs to allow processing of faxed and electronically submitted documents. It would likely be more beneficial to the courts to translate faxed submissions into an electronic format, in an effort to control the amount of paper used by multiple submissions or fax errors. This would allow processing clerks the ability to print only selected submissions. Also, if documents are submitted by fax and electronic filing directly to the courts, there is going to be an increased cost (envelopes and postage) to the courts to send the filed or unfiled documents back to the filing parties. If such a system is allowed, there likely will need to be some sort of additional fee, at the very least, to cover the cost of returning mail to the submitting parties.	the court is only authorized if a local court rule authorizes it. The court has suggested that courts be permitted to file electronic forms with only those boxes that have been checked to appear on the final version of the form, thereby eliminating the extra unchecked boxes and the additional paper that these superfluous boxes create. This proposal is beyond the scope of this invitation to comment. However, the committee will put this proposal on its work plan for review as time and resources permit.