

**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 Berle, Chair
Patrick O'Donnell, Committee Counsel
Small Claims and Limited Cases Subcommittee
Hon. Mary Thornton House, Chair
Cara Vonk, Subcommittee Counsel, 415-865-7669, cara.vonk@jud.ca.gov
Daniel A. Pone, Senior Attorney, Office of Governmental Affairs,
916 323-3121, daniel.pone@jud.ca.gov

DATE: October 25, 2004

SUBJECT: Small Claims: Time for Scheduled Hearing (Code Civ. Proc., § 116.330)
(Action Required)

Issue Statement

The three statutory times for scheduling a small claims hearing complicate case processing and increase costs. The small window within which a small claims hearing must be scheduled and the order to appear served on the defendant limits the range of available hearing dates, with the result that there may be frequent requests for continuances. Processing continuances also increases small claims court costs.

Recommendation

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend that the Judicial Council sponsor legislation to amend Code of Civil Procedure section 116.330 to replace the code's three time periods for scheduling a small claims hearing with a single provision that all small claims hearings must be scheduled no sooner than 20 days but not more than 70 days from the date the order is issued. This would (1) give the plaintiff a wider choice of hearing dates and more time to serve the order to appear on the defendant, (2) reduce requests for continuances, and (3) save the courts processing time and costs.¹

¹ Although the Civil and Small Claims Advisory Committee recommended that the Judicial Council sponsor legislation last fall, the Office of Governmental Affairs requested that the proposal first be circulated for comment to better assess support for the recommended changes. If there were substantial support, the proposed legislation could be recommended for inclusion in the Civil Omnibus Bill.

The text of the proposed legislation is attached at pages 4–5.

Rationale for Recommendation

The proposal to amend Code of Civil Procedure section 116.330 was submitted by a superior court clerk as a suggested cost-saving measure for the courts.

Currently, Code of Civil Procedure section 116.330 provides three sets of minimum and maximum time periods for scheduling a small claims hearing. The appropriate time frame for the hearing depends on whether (1) the defendant resides within the county (at least 15 days but not more than 40 days), or (2) the defendant resides outside the county (at least 30 days but not more than 70 days), or (3) the defendant is a public entity that files more than 10 claims at one time (not more than 70 days if all defendants reside in the county; not more than 90 days in other cases). (See Code Civ. Proc., § 116.330(c), (d), and (e).)

The use of a single time frame for setting a hearing would reduce the complexity of scheduling small claims hearing dates. Less staff time would be required because the court clerk would no longer have to scrutinize each case in order to set the hearing in the appropriate time frame. All cases could be processed and scheduled quickly within the single time frame, thereby reducing court costs. Computer programming for automated scheduling systems would also be less complicated and less costly.

Increasing the range of possible hearing dates to 50 days—from 20 to 70 days after the complaint is filed—could also be more convenient for the plaintiff, who could take into account the anticipated time needed to serve the defendant. Currently, a defendant who resides within the county must be served at least 15 days before the hearing, and a defendant who resides outside the county must be served at least 20 days before the hearing. (Code Civ. Proc., § 116.340(b).) If the minimum time for scheduling the hearings is selected under the current statutory procedure (15 days for an in-county and 20 days for an out-of-county defendant), the defendant must be served with the order to appear on the same day the claim is filed.

The proposed uniform range for scheduling a hearing appears to be more convenient for the plaintiff. It should result in fewer requests for small claims hearing date continuances, which also would also save court time and costs. The proposed range for setting the hearing in all small claims cases would be consistent with the trial court delay reduction disposition goals that encourage the disposal of 90 percent of all small claims cases within 70 days after filing and 100 percent within 90 days after filing. (See Cal. Stds. Jud. Admin., § 2.3(c).)

Comments From Interested Parties

Of the 15 comments received, all commentators generally supported the proposal, and some made additional suggestions for modification. The Superior Court of San Diego

County said it was a “great idea.” Others, including court personnel, a self-help coordinator, a small claims advisor, and the State Bar of California Committee on the Administration of Justice also supported a single time span for setting the small claims hearing.

This proposal was circulated with a suggested minimum of 30 days to set the hearing, but requested comment on other suggested times. One court and one small claims advisor suggested a shorter time of 20 days to accommodate plaintiffs who are in a hurry. For example, if the plaintiff is leaving the country, moving out of state, deployed in the military, or returning to school. The committee agreed and recommends the shorter time 20-day minimum time for setting a hearing.

One commentator expressed concern that continuances may affect the case-disposition time standard that sets as a goal disposition of 90 percent of all cases within 70 days. The committee will put on its work plan for future review the effect of this proposal on case-disposition times.

A chart with comments and committee responses is attached at pages 6–9.

Alternative Actions Considered

Although the statute could be left unchanged, the proposal would promote greater efficiency for the courts and convenience for the parties in scheduling a small claims hearing.

Implementation Requirements and Costs

The Judicial Council small claims forms would not have to be amended because the four statutory times for setting the hearing are not explained on the forms. The California Courts Online Self-Help Center would, however, be updated to conform to the revised statute if enacted. Other publications, including the California Judges Benchbook *Small Claims Court and Consumer Law* would be updated. The anticipated court savings in processing small claims cases should offset these minor implementation costs.

Attachments

Code of Civil Procedure section 116.330 would be amended to read:

1 **§ 116.330. Filing of Claim Form—Order to Appear—Hearing Date.**
2

3 (a) When a claim is filed, the clerk shall schedule the case for hearing ~~in accordance~~
4 ~~with subdivision (e)~~ and shall issue an order directing the parties to appear at the
5 time set for the hearing with witnesses and documents to prove their claim or
6 defense. The case shall be scheduled for hearing no sooner than 20 days but not
7 more than 70 days from the date of the order.
8

9 (b) In lieu of the method of setting the case for hearing
10 described in subdivision (a), at the time a claim is filed the clerk
11 may do all of the following:
12

13 (1) Cause a copy of the claim to be mailed to the defendant by any
14 form of mail providing for a return receipt.
15

16 (2) On receipt of proof that the claim was served as provided in
17 paragraph (1), issue an order scheduling the case for hearing in
18 accordance with subdivision ~~(e)~~ (a) and directing the parties to appear
19 at the time set for the hearing with witnesses and documents to prove
20 their claim or defense.
21

22 (3) Cause a copy of the order setting the case for hearing and
23 directing the parties to appear, to be served upon the parties by any
24 form of mail providing for a return receipt.
25

26 ~~(e) If the defendant resides in the county in which the action is filed, the case shall be~~
27 ~~scheduled for hearing at least 15 days but not more than 40 days from the date of~~
28 ~~the order. If the defendant resides outside the county in which the action is filed,~~
29 ~~the case shall be scheduled for hearing at least 30 days but not more than 70 days~~
30 ~~from the date of the order.~~
31

32 ~~(d) If there are two or more defendants and one or more of them~~
33 ~~resides outside the county in which the action is filed, the date for~~
34 ~~the appearance of all the defendants shall be at least 30 days but~~
35 ~~not more than 70 days from the date of the order.~~
36

37 ~~(e) A public entity, as defined in Section 811.2 of the Government~~
38 ~~Code, which files more than 10 claims at one time may request a date~~
39 ~~for the appearance of the defendant later than that otherwise~~
40 ~~specified in this section, and the clerk may set the case for hearing~~
41 ~~at that later date subject to the following limits:~~

1 ~~(1) If all defendants reside in the county in which the action is~~
2 ~~filed, the date for appearance shall not be more than 70 days from~~
3 ~~the date of the order.~~

4
5 ~~(2) In other cases, the date for appearance shall not be more than~~
6 ~~90 days from the date of the order.~~

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(amend Code Civ. Proc., section 116.330)**

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Judge Ronald L. Bauer Superior Court of Orange County Santa Ana, California	AM	Y	Judge Ronald L. Bauer and the Rules & Forms Committee members from Orange County Superior Court believe the proposed statutory amendment should be modified. The current budget crunch has substantially diminished opportunities for night court. It is very helpful for small claims litigants to be able to come to night court even though it may be held once a month. The rule should be flexible enough to allow the parties to agree to a waiver of time for trial, particularly those courts that allow small claims hearings at night court.	The proposal directs the clerk to schedule the hearing not more than 70 days from the date of the order setting the hearing. This is 40 days more than required for an in-county defendant under current law. The proposal would not preclude the parties from agreeing to seek a postponement if more time is needed. The increased time to 70 days for setting a hearing was designed to allow for night court in counties where night court sessions are infrequently scheduled.
2.	Mr. Greg Blevins Small Claims Advisor Blevins Law Firm Tulare, California	A	N	None.	No response needed.
3.	Ms. Naida Castro Division Chief, LASC Los Angeles, California	A	N	None.	No response needed.
4.	Ms. Linda Durand Court Program Manager-Senior Superior Court of Ventura County Ventura, California	A	N	None.	No response needed.
5.	Judicial Assistant Small Claims Clerk of the Superior Court Santa Barbara, California	A	N	None.	No response needed.
6.	Ms. Kim Hubbard President	AM	Y	It is proposed that the hearing be scheduled not less than 40 days but not more than 70 days. This would	Because small claims philosophy provides for expeditious resolution of small claims

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	Orange County Bar Association Irvine, California			allow additional time within which to accomplish service.	cases under the Small Claims Act, the committee believes that 40 days would be too long to wait for a hearing. See also response to comments 7 and 12.
7.	Mr. Stephen V. Love Executive Officer Superior Court of San Diego County San Diego, California	AM	Y	The following comments were received from our court managers: <ol style="list-style-type: none"> 1. The new setting time requirements are a great idea. This will simplify the case initiation and trial setting process. Recommend that the range of time be 20 to 70 days. Some litigants request short sets for various reasons, e.g., leaving the country, deployment in the military or returning to school. 2. CCP 116.330(b) – seems to indicate that the claim may be served first, then after receiving the proof that the defendant was served, THEN the court is to notify the parties of the trial date. This is double service. Why not have the claim and order reflecting the trial date served as they are now? This will cause extra expense for the court. 	Agree. This would give the court flexibility in setting an early hearing that is consistent with service requirements under CCP 116.340. See revised proposal. Subdivision (b) was not changed and reflects current law, which is an alternative method for setting the hearing when the claim is mailed with a return receipt. The committee is recommending that all service by certified mail be discontinued under LEG04-05, including deleting this subdivision.
8.	Ms. Sandra Mason Director of Civil Operations Superior Court of San Luis Obispo San Luis Obispo, California	A	N	The proposed range of “at least 30 days but not more than 70 days from the date of the order” would give the court more flexibility than the 45-90 range in that OSC’s can go out and the case disposed within 90 days. If the case were set for hearing close to the 90th day and no one appeared, the OSC would be set closer to the 120th day.	No response needed. Commentator agrees with proposed 70 day limit for setting the hearing.
9.	Ms. Erica A. Ochoa Legal Process Supervisor	A	Y	We are in agreement with the new changes to this form. Also, we would like the AOC to choose the	No response needed.

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	Superior Court of San Joaquin Stockton, California			30–70 days setting option. This will facilitate the need for staff to be checking addresses for which time to set the trial.	
10.	Ms. Jody Patel Court Executive Officer Superior Court of Sacramento County	AM	Y	<p>We support the idea that there be a single time span during which cases may be set for trial. If the parties choose an outer limit date for hearing and the current service by certified mailing by the court is discontinued as proposed in LEG 04-05, there will likely be an increase in the number of requests for continuance, however.</p> <p>Given the issues that will arise from this proposal and the one regarding service (supra), we strongly urge AOC to revisit the current performance standards which require 90% of small claims cases to be disposed of within 70 days from the date of filing.</p>	<p>If the legislative proposal is enacted, its effect can be monitored. The committee is recommending that all service by certified mail be discontinued under LEG04-05, which should offset this concern regarding continuances.</p> <p>This proposal will still allow cases to be resolved within the small claims case-disposition time standards. The committee will put on its work plan for future review the effect of this proposal on case-disposition time.</p>
11.	Ms. Tina Rasnow SHLA Center Coordinator Superior Court of Ventura County Ventura, California 93009	A	N	I support this proposed legislation.	No response needed.
12.	Mr. Scott Reep Superior Court of Contra Costa County Benicia, California	A	N	Not sure why there would be a 30-day minimum. Sometimes a P is moving out of state in 20 days. If the court calendar can accommodate the request, why not allow the hearing 18 days away, which will give P 3 days to personally serve the D? 20–70 days may be better.	Agree. See revised proposal. See also response to comment 7.
13.	Ms. Susan Sheehan Small Claims Advisor Sonoma County Legal Aid Santa Rosa, California	A	N	None.	No response needed.

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14.	Sharon Ngim Staff Liaison to the Standing Committee on the Delivery of Legal Services San Francisco, California	A	Y	We support this proposed legislation.	No response needed.
15.	State Bar of California – Committee on Administration of Justice	A	Y	CAJ supports the proposal that the Judicial Council sponsor legislation to amend Code of Civil Procedure section 116.330 to replace the code’s three time periods for scheduling a small claims hearing with a single provision that all small claims hearings must be scheduled at least 30 days but not more than 70 days from the date the order to appear is issued, for the reasons stated in the staff report. In response to the request for comments on whether the proposed range of time should be shorter or longer, CAJ believes the proposed range of 30–70 days is sufficient.	No response needed. The commentator supports the proposal.