JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
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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
Small Claims and Limited Cases Subcommittee
Hon. Mary Thornton House, Chair
Patrick O'Donnell, Committee Counsel
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DATE: October 25, 2004

SUBJECT: Small Claims: Transfer of Judgment After Appeal (Code Civ. Proc., § 116.780) (Action Required)

Issue Statement

Currently, Code of Civil Procedure section 116.780(d) provides a 10-day waiting period after judgment in a small claims appeal before the appeal and judgment may be transferred for enforcement proceedings to the small claims court in which the action was originally filed. Judgment creditors may be frustrated because they cannot begin collection activity immediately after obtaining a judgment in their favor. A delay to allow for transfer of the case file is no longer necessary under California's unified trial court system.

Recommendation

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend that the Judicial Council sponsor legislation to repeal the 10-day time period before the small claims appeal and judgment can be transferred to the small claims court for enforcement proceedings under Code of Civil Procedure section 116.780(d). This delay period is no longer necessary now that the trial court system has been unified statewide and the proposed repeal would allow enforcement proceedings to commence immediately.

The text of the proposed legislation is attached at page 4.

Rationale for Recommendation

A proposal to repeal Code of Civil Procedure section 116.780(d) has been urged by several small claims advisors because the current waiting period for transfering the physical file to the small claims court is no longer necessary. Now that trial courts are unified into one superior court, transfer of files between departments can be handled quickly and in some courts is now accomplished electronically. Advisors report that small claims judgment creditors are frustrated by rules that do not allow them to start collection proceedings immediately, giving judgment debtors an opportunity to hide assets.

In 1993, the Judicial Council sponsored legislation to amend Code of Civil Procedure section 116.780(d) to allow the superior court to retain jurisdiction over a small claims case on appeal for 10 days before transferring the action back to municipal court for enforcement of the judgment. The November 8, 1993, Judicial Council report states at page 4, "The superior court would still have jurisdiction to address, for example, a motion to set aside a default by a party who had good cause for not appearing at the hearing on appeal." The court also has authority to correct a clerical error or set aside a judgment on the ground that the legal basis for the decision under the small claims court chapter, which includes the article governing "appeal," was incorrect or erroneous. (Code Civ. Proc., § 116.725.)

Comments From Interested Parties

The proposal to repeal the statute was suggested by several small claims advisors. The Civil and Small Claims Subcommittee circulated the proposal for comment. The invitation to comment requested comments on (1) whether immediate enforcement could be achieved in the commentator's court and, if not, whether the proposal might result in client dissatisfaction if the file did not reach the right location immediately; and (2) whether subdivision (d) should be amended, and not repealed, to allow the court to set aside a default or make a correction for good cause consistent with the legislative intent of the 1993 amendment discussed above. Of the 11 comments received, one commentator opposed the proposal, nine commentators supported the proposal, and one commentator supported the proposal if it were amended.

The proposal as drafted (repeal) was supported by small claims advisors, a self-help law center attorney at the Superior Court of Ventura County, the staff liaison to the Standing Committee on Delivery of Legal Services, the Superior Court of San Francisco County, and others. The Superior Court of San Diego County supported repeal of the 10-day waiting period because "this would greatly simplify our procedure and eliminate the waiting period for a judgment creditor to enforce the judgment," even though there would

be a "1 to 2-day delay in its Central court division since small claims court is 10 miles away."

Representatives of two bar associations did not support outright repeal of subdivision (d). The president of the Orange County Bar Association recommended delaying enforcement for 10 days following the decision on appeal. The State Bar of California Committee on the Administration of Justice opposed repeal of subdivision (d), urging instead the following alternative language:

> (d) ~~Upon the expiration of 10 days following the completion of the appeal process,~~ The superior court shall forthwith order the appeal and any judgment transferred to the small claims court in which the action was originally filed for purposes of enforcement and other proceedings under Article 8 (commencing with Section 116.810) of this chapter. For good cause, the judgment may be stayed for up to ten (10) days or may be recalled by the superior court on its own motion or on motion setting forth facts that justifies the granting of a motion."

The committee considered this proposal but concluded that repeal of the waiting period was consistent with enforcement of judgment procedures in other general civil cases. If necessary, the judgment debtor can file for a stay. The general rules of enforcement apply to small claims cases as they apply to any other civil case. (See Code Civ. Proc., § 116.820.)

A chart with comments and committee responses is attached at pages 5–9.

Alternative Actions Considered

As discussed above, the committee considered several alternatives to outright repeal.

Implementation Requirements and Costs

The Judicial Council small claims forms would not have to be amended because the statutory time for transferring the judgment after appeal is not reflected on the forms. The California Courts Self-Help Web site would 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 change is anticipated to generate much greater client satisfaction with the small claims system if judgment creditors are allowed to immediately enforce their judgments.

Attachments

Code of Civil Procedure section 116.780 would be amended to read:

§ 116.780. Transfer of Judgment to Small Claims Court for Enforcement

(a)–(c) ***

~~(d) Upon the expiration of 10 days following the completion of the appeal process, the superior court shall order the appeal and any judgment transferred to the small claims court in which the action was originally filed for purposes of enforcement and other proceedings under Article 8 (commencing with Section 116.810) of this chapter.~~

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Mr. Greg Blevins Small Claims Advisor Blevins Law Firm Tulare, California	A	N	None.	No response needed.
2.	Ms. Naida Castro Division Chief Superior Court of Los Angeles County, Los Angeles, California	A	N	None.	No response needed.
3.	Mr. Thomas M. Gordon Senior Counsel Director, Small Claims Reform Project HALT—*An Organization of Americans For Legal Reform* Washington, D.C.	A	Y	HALT—*An Organization of Americans For Legal Reform* is a national advocacy organization committed to improving accessibility and increasing accountability in the civil justice system. On behalf of our 50,000 members nationwide and our 11,000 members in California, I urge you to adopt proposal LEG04–07, which would repeal the 10-day time period between a small claims judgment and enforcement proceedings. Proposal LEG04-07 addresses an important element of the user-friendliness of small claims courts: the collection process. According to a study by the National Center for State Courts, prevailing plaintiffs are able to collect a judgment in only 25 to 50 percent of uncontested cases. Even in contested cases, over 25 percent of prevailing plaintiffs are unable to collect. Far too often, small claims litigants face a hollow victory when a court rules in their favor yet leaves them powerless to enforce that judgment. Now that California's trial court system has been unified statewide, repealing the 10-day time period, as laid out in § 116.780(d), would be a tremendous	No response needed. Commentator agrees with the proposal.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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				step toward accelerating the collection process for prevailing parties. Furthermore, eliminating this delay would reduce the likelihood that a losing party could shift his or her assets in order to evade collection of a judgment. Small claims courts remain the only forum where most Californians can seek a legal resolution of their everyday disputes without facing exorbitant legal fees and complex proceedings. In many ways, California's small claims courts are a nationwide model, with their small claims advisors, evening hours and ban of lawyers. The collection processes in these courts, however, represent an area in which California's small claim courts need substantial reform. Beyond repealing the 10-day delay, California also does not assist plaintiffs who win a case with collecting their judgment from the defendant. Small claims courts should be required to make losing defendants reveal what and where their assets are. They should also be required to inform people about the options available to them in enforcing a court judgment. HALT believes proposal LEG04-07 would be a step toward easing the collection process for prevailing litigants and enhancing the user-friendliness of California's small claims courts. We urge you to adopt this proposal.	California does require losing defendants to reveal their assets. See case of Code of Civil Procedure section 116. 830 and form SC-133. It also informs people about options for enforcing a court judgment through the small claims advisor program and the California Court Self-Help Web site, which is written in English and Spanish.
4.	Ms. Kim Hubbard President Orange County Bar	AM	N	Section 116.780 should be changed since a transfer no longer occurs between the superior court and the small claims court. However, a provision should be	The committee believes that the process for enforcing a small claims judgment should be the same as

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Association Irvine, California			substituted that would delay the enforcement of the judgment for a period of 10 days following the decision on the appeal.	enforcing a general civil judgment.
5.	Judicial Assistant I Small Claims Clerk Superior Court of Santa Barbara County Santa Barbara, California	A	N	None.	No response needed.
6.	Mr. Stephen V. Love Executive Officer Superior Court of San Diego County San Diego, California	A	N	This would greatly simplify our procedure and eliminate the waiting period for a judgment creditor to enforce the judgment. However, there will be a 1-2 day delay in our Central court division since the small claims court is 10 miles away.	The committee acknowledges that there is some inherent delay in processing files.
7.	Ms. Mary Majich Davis Chief Deputy Executive Officer Superior Court of San Francisco County	A	N	No comments.	No response needed.
8.	Ms. 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.
9.	Ms. Erica A. Ochoa Legal Process Supervisor Superior Court of San Joaquin Stockton, California	A	N	None.	No response needed.
10.	Ms. Tina Rasnow SHLA Center Coordinator Superior Court of Ventura County Ventura, California	A	N	I agree with the proposed legislation.	No response needed.

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11.	State Bar of California – CAJ	N	Y	CAJ opposes the proposal to sponsor legislation that would result in the outright repeal of Code of Civil Procedure section 116.780(d), which currently provides a ten-day time period before the small claims appeal and judgment can be transferred from the superior court to the small claims court for enforcement proceedings. CAJ does, instead, support an amendment along the lines of the alternative proposal that is posed by staff, with some modifications. Specifically, CAJ recommends that Code of Civil Procedure section 116.780(d) be amended to read as follows: "116.780. Transfer of Judgment to Small Claims for Enforcement. (a)–(c) *** (d) ~~Upon the expiration of 10 days following the completion of the appeal process,~~ The superior court shall forthwith order the appeal and any judgment transferred to the small claims court in which the action was originally filed for purposes of enforcement and other proceedings under Article 8 (commencing with Section 116.810) of this chapter. For good cause, the judgment may be stayed for up to ten (10) days or may be recalled by the superior court on its own motion or on motion setting forth facts that justifies the granting of a motion." Based on the experience of CAJ's members, there are still some small claims courts in locations that are separate from the superior courts, and CAJ understands that it might still be necessary, in some cases, to transfer the physical file. Therefore, CAJ does not believe subdivision (d) should be eliminated	The committee recommends repeal of the waiting period for consistency with enforcement of judgment procedures in other general civil cases. If necessary, the judgment debtor can file for a stay. The general rules of enforcement should apply to small claims cases.

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				entirely. CAJ also believes the amendment that it has proposed is consistent with the legislative intent of the 1993 amendment, as stated in the staff memo. CAJ feels, however, that the suggested language of "a reasonable time" contained in question 2 of the staff memo is too vague, and recommends a ten-day period instead. <u>Disclaimer</u> This position is only that of the State of California's Committee on Administration of Justice. This position has not been adopted by the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.	