

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

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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. Lee Smalley Edmon, Chair
Patrick O'Donnell, Committee Counsel
Small Claims and Limited Cases Subcommittee
Hon. L. Thomas Surh, Chair
Cara Vonk, Subcommittee Counsel, 415-865-7669,
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DATE: October 26, 2007

SUBJECT: Small Claims: Postjudgment Fees (Code Civ. Proc., § 116.820)
(Action Required)

Issue Statement

The Small Claims Act does not make clear whether a court may charge fees for all postjudgment proceedings in a small claims case or for only those proceedings specifically identified in the act, which currently include issuance of a writ of execution, abstract of judgment, and application for an order of examination of a judgment debtor. (See Code Civ. Proc., § 116.820(b)). As a result, practices differ from court to court.

Recommendation

The Policy Coordination and Liaison Committee (PCLC) and the Civil and Small Claims Advisory Committee (advisory committee) recommend that the Judicial Council sponsor legislation to amend the Small Claims Act, Code of Civil Procedure section 116.820, to clarify that the court shall charge and collect all fees associated with the enforcement of a small claims judgment as provided under title 9 of the Code of Civil Procedure.

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

Rationale for Recommendation

The Small Claims Act states that small claims judgments may be enforced like other judgments as provided in title 9 (commencing with section 680.010) of the

Code of Civil Procedure. (See Code Civ. Proc., §116.820(a).) However, Code of Civil Procedure section 116.820(b) provides that only the following postjudgment fees “shall be charged” in a small claims case: fees for the issuance of a writ of execution, application for an order of examination of a judgment debtor, and issuance of an abstract of judgment. The fee charged in such matters is the same as that charged for the enforcement of any civil judgment.

Title 9 currently does not identify a fee for motions related to a claim of exemption, opposition to a claim of exemption (Code Civ. Proc., § 703.550), or a motion to “reset” or continue examination of a judgment debtor, which occur routinely in the enforcement of a small claims judgment. Since such motions are similar to motions for the enforcement of any other civil judgment, the fee for such a motion in a general civil case would also be the appropriate fee to be charged in small claims cases. A court should be authorized to charge the same fees for postjudgment motions related to the enforcement of a small claims judgment as a court charges for the enforcement of a regular civil judgment under title 9.

To remedy the uncertainty created by the language in Code of Civil Procedure section 116.820, which requires that “fees shall be charged” for only three specified types of small claims postjudgment proceedings, the PCLC and the advisory committee recommend that the statute be amended to clarify that the clerk shall charge a small claims litigant all fees associated the enforcement of judgments under title 9 of the Code of Civil Procedure.

Alternative Actions Considered

The existing statute could be left unchanged, with the result that courts would continue to charge small claims postjudgment fees based on their own interpretations of this postjudgment fee provision in the Small Claims Act. However, the PCLC and the advisory committee considered it preferable to remedy the statute’s uncertainty by clarifying those postjudgment fees that may be charged, thereby promoting the fees’ uniform statewide application and ease of administration.

Comments From Interested Parties

The proposed amendment to Code of Civil Procedure section 116.820 was circulated for public comment in spring 2007. Nine comments were received from two courts, court attorneys, the Orange County Bar Association, and the State Bar Committee on Administration of Justice. All commentators agreed with the proposal as drafted.

Implementation Requirements and Costs

Because the proposal clarifies the fees that may be charged in small claims enforcement of judgment proceedings, it is possible that some courts may

experience enhanced collection of fees. Implementation costs are anticipated to be minor and absorbable.

Attachments

1 Code of Civil Procedure section 116.820 would be amended to read:

2
3 **§ 116.820**

4
5 (a) * * *

6
7 (b) ~~The fees specified in subdivision (a) of Section 70626 of the Government~~
8 ~~Code shall be charged and collected by the clerk for the issuance of a writ of~~
9 ~~execution, or an abstract of judgment. The fee specified in Section 70617 of~~
10 ~~the Government Code shall be charged for an application for an order of~~
11 ~~examination of a judgment debtor. The clerk of the court shall charge and~~
12 collect all fees associated with the enforcement of judgments under Title 9.
13 The clerk shall immediately deposit all the fees collected under this section
14 into a bank account established for this purpose by the Administrative Office
15 of the Courts. The money shall be remitted to the State Treasury under rules
16 adopted by, or trial court financial policies and procedures authorized by, the
17 Judicial Council under subdivision (a) of Section 77206 of the Government
18 Code. The Controller shall distribute the fees to the Trial Court Trust Fund as
19 provided in Section 68085.1 of the Government Code.

20
21 (c) * * *

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Saul Bercovitch Staff Attorney Committee on Administration of Justice State Bar of California	A	Y	CAJ supports this proposal.	No response required.
2.	Joseph Chairez President Orange County Bar Association Irvine	A	Y	A court should be able to charge the same fees for the enforcement of a small claims judgment as are charged for the enforcement of a regular civil judgment.	No response required.
3.	Christine Copeland Staff Attorney Superior Court of Santa Clara County	A	N	No specific comments.	No response required.
4.	Theresa Gary Family Law Facilitator Superior Court of Kern County	A	N	No specific comments.	No response required.
5.	Nancy Iler Court Manager Superior Court of San Benito County	A	N	No specific comments.	No response required.
6.	Superior Court of Los Angeles County	A	Y	No specific comments.	No response required.
7.	Adrienne McMillan Staff Attorney Superior Court of San Francisco County	A	N	No specific comments.	No response required.
8.	Pam Moraida, Program Manager Superior Court of Solano County	A	N	No specific comments.	No response required.
9.	Michael M. Roddy Executive Officer Superior Court of San Diego County	A	Y	No specific comments.	No response required.