

# **Small Claims Legal Update**

**June 10, 2011**

**2011 California Conference on Self-Represented Litigants  
Milton Marks Conference Center, San Francisco, CA**

# Program Materials

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## **Pending Small Claims Legislation**

AMENDED IN SENATE MAY 19, 2011

AMENDED IN SENATE MAY 17, 2011

AMENDED IN SENATE MAY 2, 2011

**SENATE BILL**

**No. 221**

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**Introduced by Senator Simitian**

February 9, 2011

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An act to amend and repeal Section 116.221 of, and to add and repeal Section 116.224 of, the Code of Civil Procedure, relating to small claims court.

LEGISLATIVE COUNSEL'S DIGEST

SB 221, as amended, Simitian. Small claims court: jurisdiction.

Existing law specifies that the jurisdiction of the small claims court includes various actions in which the demand does not exceed \$7,500, with specified exceptions.

This bill would increase the jurisdiction of the small claims court by increasing that amount to \$10,000, except as specified. The bill would also make a technical change by deleting a duplicate code section that contains identical provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 116.221 of the Code of Civil Procedure,  
2 as added by Section 2 of Chapter 600 of the Statutes of 2005, is  
3 amended to read:

1 116.221. In addition to the jurisdiction conferred by Section  
 2 116.220, the small claims court has jurisdiction in an action brought  
 3 by a natural person, if the amount of the demand does not exceed  
 4 ten thousand dollars (\$10,000), except for actions specified in  
 5 Section 116.224, or otherwise prohibited by subdivision (c) of  
 6 Section 116.220 or subdivision (a) of Section 116.231.

7 SEC. 2. Section 116.221 of the Code of Civil Procedure, as  
 8 added by Section 2 of Chapter 618 of the Statutes of 2005, is  
 9 repealed.

10 SEC. 3. Section 116.224 is added to the Code of Civil  
 11 Procedure, to read:

12 116.224. (a) Notwithstanding Section 116.221, the small claims  
 13 court has jurisdiction in an action brought by a natural person for  
 14 damages for bodily injuries resulting from an automobile accident  
 15 if the amount of the demand does not exceed seven thousand five  
 16 hundred dollars (\$7,500).

17 (b) This section shall apply only if a defendant is covered by  
 18 an automobile insurance policy that includes a duty to defend.

19 (c) This section shall remain in effect only until January 1, ~~2014~~  
 20 2015, and as of that date is repealed, unless a later enacted statute,  
 21 that is enacted before January 1, ~~2014~~ 2015, deletes or extends  
 22 that date.

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**California Law Revision Commission**  
**Recommendations on Small Claims Matters**

## Memorandum 2011-23

**Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case  
(Draft Recommendation)**

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In April, the Commission considered the comments on its tentative recommendation on *Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case* (Oct. 2010). To address the comments, the Commission decided to revise the proposal in a number of respects.

Attached for the Commission's consideration is a draft of a final recommendation. As directed by the Commission, the draft is similar to the tentative recommendation, except for the following changes:

- (1) The jurisdictional rules relating to small claims writs are stated in a new code section in the Small Claims Act (proposed Code Civ. Proc. § 116.798), instead of in three new code sections relating to writs of review, mandate, and prohibition, respectively.
- (2) The new code section makes clear that there is no appeal from a judgment granting or denying a writ petition relating to an initial hearing in the small claims division. See proposed Code Civ. Proc. § 116.798(a)(6).
- (3) The new code section does not expressly require that "[t]he judge did not make any ruling that is challenged by the writ petition." Instead, the proposal relies on the general provisions governing judicial disqualification.
- (4) The new code section does not expressly state that the Supreme Court, and, in some instances, also a court of appeal, may deny a writ petition on the ground that it was not first presented to a lower tribunal. Instead, the proposed Comment refers to case law and other sources that establish this principle.
- (5) The Comment to the new code section expressly states that the section "neither expands nor contracts the circumstances under which a small claims litigant may seek an extraordinary writ." Similar adjustments were made in the preliminary part (narrative discussion) of the proposal.

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Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

- (6) The preliminary part was revised to make clear that although writ relief is sometimes appropriate in a small claims case, that situation is not common. As discussed at the April meeting, the staff tried to express this concept carefully, so as not to discourage legitimate writ petitions. See especially page 1 of the attached draft, at lines 2-4, and the accompanying footnote.

The staff also added a list of acknowledgments, revised the preliminary part to conform to the new statutory language, and made various other minor revisions.

**Commission members and interested parties should review the attached new draft, and consider whether any further revisions are necessary.** To allow ample time for comment, **the staff suggests that the Commission hold off on approval of a final recommendation.** There is no urgency to take that step, given where we are in the legislative cycle. So long as the Commission approves a final recommendation at the August meeting or the October meeting, it will be in a good position to seek introduction of the proposal next year.

Respectfully submitted,

Barbara Gaal  
Chief Deputy Counsel

# CALIFORNIA LAW REVISION COMMISSION

**STAFF DRAFT**

RECOMMENDATION

Trial Court Restructuring:  
Writ Jurisdiction in a Small Claims Case

May 2011

California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, CA 94303-4739  
650-494-1335  
<commission@clrc.ca.gov>

## SUMMARY OF RECOMMENDATION

A writ proceeding sometimes provides an important means of obtaining redress that is not available through other judicial processes. Although it is not common, courts occasionally grant writ relief in connection with a small claims case.

The proper tribunal for seeking a writ relating to a small claims case is currently unclear, due largely to unification of the municipal and superior courts. That uncertainty should be eliminated, so a litigant can readily determine where to file a petition for a writ relating to a small claims case.

The Law Revision Commission recommends that the proper tribunal be dependent on the stage of the small claims case at the time of the act that is challenged in the writ petition. This would closely mirror the pre-unification situation.

Specifically, the Commission recommends legislation providing as follows:

- A writ petition relating to the initial hearing in the small claims division of the superior court may be heard by a judge who is assigned to the court's appellate division.
- A writ petition relating to a small claims appeal may be heard by the court of appeal.
- A writ petition relating to a postjudgment enforcement order of the small claims division may be heard by the appellate division of the superior court.

In each instance, the writ petition could also be filed in a higher court, but that court could deny the writ on the ground that the petition should first be presented to a lower tribunal.

The sole purpose of this proposed legislation is to clarify which tribunal has jurisdiction of a writ petition relating to a small claims case after trial court unification. The legislation would not alter the circumstances under which writ relief is appropriate.

The proposed legislation would conform to constitutional constraints, minimize peer review concerns, and conserve judicial resources. By providing clear guidance, it would also prevent confusion, decrease disputes, and reduce associated expenses.

This recommendation was prepared pursuant to Government Code Section 71674 and Resolution Chapter 98 of the Statutes of 2009.

## ACKNOWLEDGMENTS

Comments from knowledgeable persons are invaluable in the Commission's study process. The Commission would like to express its appreciation to the individuals and organizations who have taken the time to share their thoughts with the Commission.

Inclusion of the name of an individual or organization should not be taken as an indication of the individual's opinion or the organization's position on any aspect of this recommendation. The Commission regrets any errors or omissions that may have been made in compiling these acknowledgments.

HEATHER ANDERSON, *Administrative Office of the Courts*

CIVIL AND SMALL CLAIMS ADVISORY COMMITTEE, JUDICIAL COUNCIL

MARYANNE GILLIARD, *Presiding Judge, Appellate Division, Superior Court of Sacramento County*

PROF. J. CLARK KELSO, *McGeorge School of Law*

DANIEL PONE, *Office of Governmental Affairs*

JOHN HAMILTON SCOTT, *Office of the Los Angeles County Public Defender, Appellate Branch*

PAUL SLAVIT, *Court Commissioner, Superior Court of the County of San Francisco*

STATE BAR COMMITTEE ON APPELLATE COURTS

SUPERIOR COURT OF SAN DIEGO COUNTY

CARA VONK, *Administrative Office of the Courts*

ALAN WIENER, *Administrative Office of the Courts*

DOUG WONG

## TRIAL COURT RESTRUCTURING: WRIT JURISDICTION IN A SMALL CLAIMS CASE

1       When other judicial processes are unavailable, a proceeding for an extraordinary  
2 writ may be the only way to secure a just result. For example, a writ proceeding  
3 may be needed to obtain relief from an incorrect ruling in a small claims case. This  
4 situation does not arise often, but at times it is an important avenue of redress.<sup>1</sup>

5       At present, however, it is unclear where a person should file a writ proceeding  
6 relating to a small claims case. This uncertainty is due primarily to the unification  
7 of the municipal and superior courts that occurred in the past decade.

8       The Law Revision Commission recommends that the proper jurisdiction for  
9 such a writ proceeding be made clear. The Commission further recommends that

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1. See, e.g., *Green v. Superior Court*, 10 Cal. 3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974) (breach of warranty of habitability could be asserted as defense to unlawful detainer action in small claims case); *Miller v. Municipal Court*, 22 Cal. 2d 818, 142 P.2d 297 (1943) (small claims court had jurisdiction of action under Emergency Price Control Act); *ERA-Trotter Girouard Assoc. v. Superior Court*, 50 Cal. App. 4th 1851, 58 Cal. Rptr. 2d 381 (1996) (judgment on small claims appeal was not subject to motion to vacate under Code Civ. Proc. § 473); *Township Homes, Inc. v. Superior Court*, 22 Cal. App. 4th 1587, 27 Cal. Rptr. 2d 852 (1994) (superior court had jurisdiction to offset defendant's claim against plaintiff's award when defendant prevailed in small claims appeal); *Houghtaling v. Superior Court*, 17 Cal. App. 4th 1128, 1131, 21 Cal. Rptr. 2d 855 (1993) (hearsay evidence was admissible in small claims case); *Anderson v. Superior Court*, 226 Cal. App. 3d 698, 276 Cal. Rptr. 18 (1990) (in trial de novo on plaintiff's claim, defendant was not entitled to offset for amount defendant unsuccessfully sought in small claims division); *Calvao v. Superior Court*, 201 Cal. App. 3d 921, 247 Cal. Rptr. 470 (1988) (county had no fiduciary duty to employee and thus employee had no viable claim); *Reyes v. Superior Court*, 118 Cal. App. 3d 159, 173 Cal. Rptr. 267 (1981) (purchaser of car was entitled to Spanish translation of deficiency notice); *Davis v. Superior Court*, 102 Cal. App. 3d 164, 162 Cal. Rptr. 167 (1980) (small claims defendant had no right to appeal from adverse judgment on cross-claim); *Gardiana v. Small Claims Court*, 59 Cal. App. 3d 412, 130 Cal. Rptr. 675 (1976) (indigent small claims defendant who did not speak English was entitled to interpreter at public expense); *Yoakum v. Small Claims Court*, 53 Cal. App. 3d 398, 403, 125 Cal. Rptr. 882 (1975) (small claims court erred in denying motion to be relieved of default summarily, without affording opportunity to be heard); *Lee v. Small Claims Court*, 46 Cal. App. 2d 530, 116 P.2d 170 (1941) (small claims judgment against defendant was annulled because administrator had not been properly substituted for plaintiff); *Lee v. Small Claims Court*, 34 Cal. App. 2d 1, 92 P.2d 937 (1939) (annulment of small claims judgment was improper because judgment creditor had no notice of proceeding to set aside judgment).

For an example of a situation that led to repeated requests for writ relief in the small claims context, see Civil Code Sections 1363.09 and 1365.2(f). These provisions give the small claims court jurisdiction to consider certain types of requests for equitable relief relating to common interest developments. Despite the express language of these provisions, small claims courts sometimes refused to consider such requests. Writ relief was the only means of redress for this wrong. This situation arose sufficiently often that the Small Claims Act was recently amended to expressly state that the small claims court has jurisdiction of a request for an injunction or other equitable relief "when a statute expressly authorizes a small claims court to award that relief." See Code Civ. Proc. § 116.220(a)(5); 2009 Cal. Stat. ch. 468 (AB 712 (Evans)), § 1; Senate Committee on Judiciary Analysis of AB 712 (June 9, 2009). It is too early to judge the effectiveness of this revision, but some evidence suggests it has been helpful.

1 the proper jurisdiction depend on the stage of the small claims case at the time of  
2 the act that is challenged in the writ petition.

3 The sole purpose of the proposed legislation is to clarify which tribunal has  
4 jurisdiction of a writ petition relating to a small claims case after trial court  
5 unification. The legislation would not alter the circumstances under which writ  
6 relief is appropriate.

7 To explain the Commission’s recommendations, it is first necessary to present  
8 some background material on extraordinary writs and small claims cases. Then the  
9 Commission examines how small claims writs were handled before trial court  
10 unification, describes the unification process, and explains the current uncertainty  
11 regarding how to handle small claims writs after trial court unification. Finally, the  
12 Commission demonstrates the need for clarification, analyzes the best means of  
13 providing clarification, and identifies potential benefits of the proposed legislation.

#### 14 **Extraordinary Writs**

15 A writ is a written court order, which directs a person or entity to perform or  
16 cease a specified act. In California, there are several types of extraordinary writs,  
17 including in particular:<sup>2</sup>

- 18 (1) *A writ of review (also known as a writ of certiorari).* A writ of review is a  
19 means of reviewing judicial action when no other means of review is  
20 available.<sup>3</sup> A court may issue a writ of review when an inferior tribunal,  
21 board, or officer, exercising judicial functions, has exceeded its jurisdiction  
22 and there is no appeal or any plain, speedy, and adequate remedy.<sup>4</sup>
- 23 (2) *A writ of mandamus (also known as a writ of mandate).* A writ of mandamus  
24 is a broad remedy to compel performance of a ministerial duty or to restore  
25 rights and privileges of a public or private office.<sup>5</sup> A writ of mandamus  
26 “may be issued by any court to any inferior tribunal, corporation, board, or  
27 person, *to compel the performance of an act* which the law specifically  
28 enjoins, as a duty resulting from an office, trust, or station, or to *compel the*  
29 *admission of a party to the use and enjoyment of a right or office* to which  
30 the party is entitled, and from which the party is unlawfully precluded by  
31 such inferior tribunal, corporation, board, or person.”<sup>6</sup>

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2. Another important type of writ is a writ of habeas corpus, which is used in criminal proceedings. See Cal. Const. art. VI, § 10; 6 B. Witkin & N. Epstein, *California Criminal Law Criminal Writs* § 1, at 519 (3d ed. 2000). This recommendation focuses only on the three types of extraordinary writs described in the text: a writ of review, a writ of mandamus, and a writ of prohibition.

3. 8 B. Witkin, *California Procedure Extraordinary Writs* § 4, at 784-85 (4th ed. 1997) (hereafter “1997 Witkin”).

4. Code Civ. Proc. § 1068(a). In purpose and effect, certiorari is quite similar to appeal. 8 B. Witkin, *California Procedure Extraordinary Writs* § 6, at 888 (5th ed. 2008) (hereafter “2008 Witkin”).

5. 2008 Witkin, *supra* note 4, *Extraordinary Writs* § 23, at 902.

6. Code Civ. Proc. § 1085(a) (emphasis added).

1 (3) *A writ of prohibition.* A writ of prohibition is a writ to restrain judicial  
2 action in excess of jurisdiction when there is no other adequate remedy.<sup>7</sup> A  
3 writ of prohibition “arrests the proceedings of any tribunal, corporation,  
4 board, or person exercising judicial functions, when such proceedings are  
5 without or in excess of the jurisdiction of such tribunal, corporation, board,  
6 or person.<sup>8</sup> The writ “may be issued by any court to an inferior tribunal or to  
7 a corporation, board, or person, in all cases where there is not a plain,  
8 speedy, and adequate remedy in the ordinary course of law.”<sup>9</sup>

9 To obtain a writ, it is necessary to file a petition in court, requesting that the  
10 court issue the writ. The court in which the petition is filed may summarily deny  
11 the writ, without considering the merits. Alternatively, the court may issue an  
12 order to show cause.<sup>10</sup> If the court issues an order to show cause, the matter is fully  
13 briefed by the parties and decided by the court on the merits, either by granting the  
14 relief requested in the petition or by denying such relief.<sup>11</sup>

15 As a general rule, the court has discretion about whether to hear a writ petition  
16 on its merits. But the court must exercise that discretion within reasonable bounds  
17 and for a proper reason.<sup>12</sup>

### 18 **Small Claims Procedures**

19 The small claims process is intended to facilitate quick, inexpensive, and  
20 informal resolution of small disputes through simple proceedings conducted so as  
21 to promote compromise.<sup>13</sup> If a dispute satisfies certain jurisdictional requirements,  
22 the plaintiff has the *option* of seeking resolution through the small claims process,

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7. 2008 Witkin, *supra* note 4, *Extraordinary Writs* § 18, at 899.

8. Code Civ. Proc. § 1102.

9. Code Civ. Proc. § 1103(a).

10. The order to show cause is often in the form of an alternative writ, which essentially directs the respondent to do what is sought by the petition and/or show cause why the respondent should not have to do so. In rare instances, the court proceeds directly to a determination on the merits, without issuing an order to show cause.

11. See, e.g., *Lewis v. Superior Court*, 19 Cal. 4th 1232, 1240, 970 P.2d 872, 82 Cal. Rptr. 2d 85 (1999); 1997 Witkin, *supra* note 3, *Extraordinary Writs* § 159, at 959-60, § 182, at 981; Scott, *Writs in California State Courts Before and After Conviction, in Appeals and Writs in Criminal Cases* §§ 2.121-2.134, at 461-75 (Cal. Cont. Ed. Bar 2006).

12. *Powers v. City of Richmond*, 10 Cal. 4th 85, 113, 893 P.2d 1160, 40 Cal. Rptr. 2d 839 (1995) (plurality); see also *Scott v. Municipal Court*, 40 Cal. App. 3d 995, 997, 115 Cal. Rptr. 620 (1974). “The discretionary aspect of writ review comes into play primarily when the petitioner has another remedy by appeal and the issue is whether the alternative remedy is adequate.” *Powers*, 10 Cal. 4th at 113. “[W]hen writ review is the exclusive means of appellate review of a final order or judgment, an appellate court may not deny an apparently meritorious writ petition, timely presented in a formally and procedurally sufficient manner, merely because, for example, the petition presents no important issue of law or because the court considers the case less worthy of its attention than other matters.” *Id.* at 114. In those circumstances, it would be an abuse of discretion to deny the writ. *Id.*; *but see id.* at 171-73 (Lucas, C.J., dissenting).

13. See, e.g., *Sanderson v. Niemann*, 17 Cal. 2d 563, 574, 110 P.2d 1025 (1941); *Houghtaling v. Superior Court*, 17 Cal. App. 4th 1128, 1136, 21 Cal. Rptr. 2d 855 (1993).

1 instead of using more formal court procedures. Having elected to use that process,  
2 however, the plaintiff forfeits the right to appeal.<sup>14</sup>

3 In contrast, a small claims defendant is entitled to appeal an adverse decision by  
4 the small claims tribunal, but the appeal consists of a retrial (also known as a “trial  
5 de novo”).<sup>15</sup> There is no right to appeal a judgment after a small claims trial de  
6 novo.<sup>16</sup>

### 7 **Small Claims Writs Before Trial Court Unification**

8 In the early 1990’s, California had three different types of trial courts: superior  
9 courts, municipal courts, and justice courts.<sup>17</sup> At that time, a “small claims court”  
10 was actually a division of a municipal or justice court.<sup>18</sup> These were lower courts  
11 with limited jurisdiction. They were only permitted to hear certain types of cases,  
12 and only authorized to grant monetary relief up to a statutorily-specified amount.<sup>19</sup>

13 If a defendant appealed from a judgment of a small claims court, the trial de  
14 novo was conducted by a judge of the superior court.<sup>20</sup> The superior court was a  
15 countywide entity with unlimited jurisdiction.<sup>21</sup> It had an appellate department,  
16 which sat as a three-judge panel, but small claims appeals were not heard there.<sup>22</sup>  
17 Rather, the appellate department heard other types of appeals from the municipal  
18 and justice courts.<sup>23</sup>

19 After judgment was entered in a small claims case, any postjudgment  
20 enforcement proceedings were conducted in the small claims division. If the

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14. “A small claims court plaintiff, taking advantage of the speedy, inexpensive procedures and other benefits of that court, accepts all of its attending disadvantages such as the denial of the right to ... an appeal.” *Cook v. Superior Court*, 274 Cal. App. 2d 675, 677-78, 79 Cal. Rptr. 285 (1969); see also *Superior Wheeler Cake Corp. v. Superior Court*, 203 Cal. 384, 387, 264 P. 488 (1928).

15. Code Civ. Proc. §§ 116.710(b), 116.770.

16. Code Civ. Proc. § 116.780(a).

17. *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm’n Reports 1, 14 (1994); see also former Cal. Const. art. VI, § 1.

18. See 1990 Cal. Stat. ch. 1305, § 3 (former Code Civ. Proc. § 116.210).

19. See former Cal. Const. art. VI, § 5; 2 B. Witkin, *California Procedure Courts* § 164, at 236-37 (5th ed. 2008).

20. *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 75 (1998); see former Code Civ. Proc. § 116.770.

21. Former Cal. Const. art. VI, § 4; former Cal. Const. art. VI, § 10.

22. The appellate department of the superior court was created by statute, not by a constitutional provision. See 1984 Cal. Stat. ch. 704, § 1 (former Code Civ. Proc. § 77). In contrast, today’s appellate division is a constitutional entity, and its members are appointed by the Chief Justice “for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.” Cal. Const. art. VI, § 4. These features were intended to address the problem of peer review in a unified superior court. See *Revision of Codes*, *supra* note 20, at 30-31.

23. *Trial Court Unification: Constitutional Revision*, *supra* note 17, at 27; see former Cal. Const. art. VI, § 11.

1 judgment was entered by the superior court in a trial de novo, the case would be  
2 transferred back to the small claims division of the municipal or justice court for  
3 postjudgment enforcement proceedings.<sup>24</sup>

4 Small claims litigants occasionally sought writ relief, in a variety of  
5 circumstances. The proper court to hear the writ proceeding depended on the stage  
6 of the small claims case. Invariably, however, the writ proceeding was heard by a  
7 court of higher jurisdiction than the court that made the challenged ruling. Thus,  
8 the situation was:

- 9 • *Initial hearing.* If a writ petition challenged a ruling made at the initial  
10 hearing before the small claims division of a municipal or justice court, the  
11 petition was heard by a judge of the superior court, or by a court of higher  
12 jurisdiction.<sup>25</sup>
- 13 • *Small claims appeal.* If a writ petition challenged a ruling made by the  
14 superior court in a small claims appeal, the petition was heard by the court  
15 of appeal or by the Supreme Court.<sup>26</sup>

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24. 1994 Cal. Stat. ch. 587, § 3 (former Code Civ. Proc. § 116.780(d)); 1991 Cal. Stat. ch. 915, § 26 (former Code Civ. Proc. § 116.780(d)).

25. See, e.g., *Skaff v. Small Claims Court*, 68 Cal. 2d 76, 435 P.2d 825, 65 Cal. Rptr. 65 (1968) (writ proceeding was originally heard by one superior court judge); *City and County of San Francisco v. Small Claims Court*, 141 Cal. App. 3d 470, 190 Cal. Rptr. 340 (1983) (same); *Yoakum v. Superior Court*, 53 Cal. App. 3d 398, 125 Cal. Rptr. 882 (1975) (same); but see *Mendoza v. Small Claims Court*, 49 Cal. 2d 668, 321 P.2d 9 (1958) (writ proceeding was originally heard by appellate department).

In some cases, the writ petition challenged a *prejudgment ruling*, such as whether an indigent defendant was entitled to an interpreter at public expense. See, e.g., *Gardiana v. Small Claims Court*, 59 Cal. App. 3d 412, 130 Cal. Rptr. 675 (1976). In other cases, the writ petition challenged a *judgment* entered by the small claims division. See, e.g., *Lee v. Small Claims Court*, 46 Cal. App. 2d 530, 116 P.2d 170 (1941). In still other cases, the writ petition challenged a *postjudgment act*, such as a small claims court's refusal to permit the filing of an appeal. See, e.g., *Skaff*, 68 Cal. 2d 76.

In general, a small claims defendant has no reason or basis to seek a writ to overturn a judgment entered by the small claims division, because the defendant has a right of appeal. "Because there is an adequate remedy at law, writ relief is unavailable to the defendant to challenge an adverse small claims court judgment." California Civil Writ Practice *Writ Petitions in Limited Civil and Small Claims Cases* § 12.26, at 287 (4th ed. 2008); but see *Lee v. Small Claims Court*, 46 Cal. App. 2d 530, 116 P.2d 170 (1941); *Lee v. Small Claims Court*, 34 Cal. App. 2d 1, 92 P.2d 937 (1939).

Similarly, some authority holds that a small claims plaintiff cannot seek a writ to overturn a judgment entered by the small claims division, because the plaintiff forfeited the right of appeal by selecting the small claims forum, and thereby also forfeited the right to seek a writ. See, e.g., *Parada v. Small Claims Court*, 70 Cal. App. 3d 766, 769, 139 Cal. Rptr. 87 (1977); *Yoakum*, 53 Cal. App. 3d at 404; see also *Pitzen v. Superior Court*, 120 Cal. App. 4th 1374, 1380, 16 Cal. Rptr. 3d 628 (2004). The extent to which this doctrine applies is not altogether clear, particularly when the judgment is based on jurisdictional grounds rather than on the merits. See *Taliaferro v. Locke*, 179 Cal. App. 2d 777, 780-81, 4 Cal. Rptr. 223 (1960); see also *Mendoza*, 49 Cal. 2d 668; *Parada*, 70 Cal. App. 3d at 770, 772 (Roth, P.J., concurring and dissenting). The recommended legislation is not intended to resolve or in any way affect the extent to which a small claims plaintiff is entitled to seek writ relief.

26. See, e.g., *Crouchman v. Superior Court*, 45 Cal. 3d 1167, 755 P.2d 1075, 248 Cal. Rptr. 626 (1988); *Universal City Nissan, Inc. v. Superior Court*, 65 Cal. App. 4th 203, 75 Cal. Rptr. 2d 910 (1998); *Eloby v. Superior Court*, 78 Cal. App. 3d 972, 144 Cal. Rptr. 597 (1978).

- 1 • *Postjudgment enforcement order.* If a writ petition challenged a  
2 postjudgment enforcement order of the small claims division of a municipal  
3 or justice court, the petition was heard by the appellate department of the  
4 superior court.<sup>27</sup>

5 **Trial Court Unification**

6 California no longer has three different types of trial courts. In 1994, the voters  
7 approved a measure to eliminate the justice courts, leaving only the municipal and  
8 superior courts.<sup>28</sup> A few years later, the voters approved a measure permitting the  
9 municipal and superior courts in each county to unify on a vote of a majority of  
10 the municipal court judges and a majority of the superior court judges in the  
11 county.<sup>29</sup>

12 By early 2001, the courts in every county had unified.<sup>30</sup> Each county now has a  
13 unified superior court, which handles all of the matters previously heard in  
14 municipal court, as well as all of the matters previously heard in superior court.<sup>31</sup>  
15 The municipal courts no longer exist.<sup>32</sup>

16 The small claims division is now part of the superior court, not the municipal or  
17 justice court.<sup>33</sup> A small claims appeal is heard by a judicial officer of the superior  
18 court “other than the judicial officer who heard the action in the small claims  
19 division.”<sup>34</sup> Thus, the initial hearing and the small claims appeal are both  
20 conducted within the superior court.

21 Similarly, cases that used to be heard in the municipal and justice courts are now  
22 known as limited civil cases.<sup>35</sup> An appeal in a limited civil case is heard by the  
23 appellate division of the superior court.<sup>36</sup> Thus, again the initial hearing and the  
24 appeal are both conducted within the superior court.

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27. See *General Electric Capital Auto Financial Services, Inc. v. Appellate Division*, 88 Cal. App. 4th 136, 145, 105 Cal. Rptr. 2d 552 (2001).

For further discussion of small claims writs before trial court unification, see Commission Staff Memorandum 2010-18, pp. 5-15.

28. 1994 Cal. Stat. res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994).

29. Former Cal. Const. art. VI, § 5(c), approved by the voters June 2, 1998 (Proposition 220).

30. The courts in Kings County were the last to unify, on February 8, 2001.

31. *Revision of Codes*, supra note 20, at 64.

32. *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm’n Reports 305, 309 (2006).

33. See Code Civ. Proc. § 116.210.

34. See Code Civ. Proc. § 116.770(a).

35. See Code Civ. Proc. § 85 & Comment.

36. See Code Civ. Proc. § 904.2.

1 **Small Claims Writs After Trial Court Unification**

2 To accommodate trial court unification, the constitutional provision governing  
3 writ jurisdiction was amended to read:

4 SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges  
5 have ... original jurisdiction in proceedings for extraordinary relief in the nature  
6 of mandamus, certiorari, and prohibition. The appellate division of the superior  
7 court has original jurisdiction in proceedings for extraordinary relief in the nature  
8 of mandamus, certiorari, and prohibition directed to the superior court in causes  
9 subject to its appellate jurisdiction.

10 ....<sup>37</sup>

11 From this language, it seems evident that a small claims litigant could seek an  
12 extraordinary writ in the Supreme Court or in the court of appeal.<sup>38</sup> Where a lower  
13 tribunal also has writ jurisdiction, however, the Supreme Court and courts of  
14 appeal have discretion to deny a writ petition on the ground that it should first be  
15 presented to the lower tribunal.<sup>39</sup>

16 From the constitutional language and other sources, it is less clear whether a  
17 small claims litigant could seek a writ within the superior court, instead of having  
18 to go to a higher court. Possible means of review within the superior court include  
19 (1) review by a superior court judge, and (2) review by the appellate division.

20 ***Review by a Superior Court Judge***

21 Although the constitutional provision says that “superior courts, and their  
22 judges” have original jurisdiction in writ proceedings, there is a well-established  
23 body of case law indicating that a superior court judge cannot constitutionally  
24 enjoin, restrain, or otherwise interfere with a judicial act of another superior court  
25 judge.<sup>40</sup> The California Supreme Court has explained, however, that a superior  
26 court judge who considers an order entered earlier by another judge of the same

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37. Cal. Const. art. VI, § 10.

38. For a recent case in which a small claims litigant successfully sought a writ in a court of appeal, see *Bricker v. Superior Court*, 133 Cal. App. 4th 634, 35 Cal. Rptr. 3d 7 (2005). The court of appeal offered the following guidance regarding small claims writs:

The Courts of Appeal have historically been reluctant to review rulings in small claims matters. The reason for this is obviously to promote the policy of speedy and inexpensive resolution of cases falling within the jurisdiction of the small claims court. But while disfavored, it has been held that review of small claims judgments may be available by extraordinary writ where there is “statewide importance of the general issues presented” and “in order to secure uniformity in the operations of the small claims courts and uniform interpretation of the statutes governing them.” Writ review is appropriate under the foregoing authorities in light of the due process problem raised by petitioner.

*Id.* at 637 (citations omitted).

39. See *In re Ramirez*, 89 Cal. App. 4th 1312, 1316, 1320, 108 Cal. Rptr. 2d 229 (2001); *In re Hillery*, 202 Cal. App. 2d 293, 294, 20 Cal. Rptr. 759 (1962); Cal. R. Ct. 8.486; 2 B. Witkin, *California Procedure Jurisdiction* § 397, p. 1041 (5th ed. 2008).

40. See, e.g., *Ford v. Superior Court*, 188 Cal. App. 3d 737, 742, 233 Cal. Rptr. 607 (1986).

1 court does not enjoin, restrain, or otherwise interfere with the judicial act of  
2 another superior court judge *when the later judge acts under statutory authority*.<sup>41</sup>

3 The Commission is not aware of any statutory authority expressly authorizing a  
4 superior court judge to consider a writ petition relating to a small claims case. It is  
5 possible that some statute might be construed to implicitly provide such authority,  
6 but none seems to address the matter clearly.

7 ***Review by the Appellate Division***

8 The constitutional provision says that the appellate division has original  
9 jurisdiction in writ proceedings “directed to the superior court *in causes subject to*  
10 *its appellate jurisdiction*.”<sup>42</sup> It is debatable what this provision means in the  
11 context of a writ relating to a small claims case.

12 To some extent, the answer appears to depend on the stage of the small claims  
13 case at the time of the act challenged by the writ petition. Suppose, for example,  
14 the petition challenges the judgment in a small claims appeal. Such a ruling would  
15 not seem to be a “cause subject to appellate jurisdiction,” because the judgment in  
16 a small claims appeal is final and not appealable.<sup>43</sup> It follows that a writ petition  
17 challenging such a judgment is not within the jurisdiction of the appellate division,  
18 as constitutionally defined.

19 The answer might be different for a writ petition challenging a decision made by  
20 the small claims division in the initial hearing. Such a decision is appealable, but  
21 the appeal consists of a trial de novo, as opposed to a traditional appeal. Whether  
22 the matter qualifies as a “cause subject to appellate jurisdiction” within the  
23 meaning of the constitutional provision is not altogether clear.<sup>44</sup>

24 Further, the constitutional provision only gives the appellate division jurisdiction  
25 in writ proceedings “directed to the superior court in causes subject to *its* appellate  
26 *jurisdiction*.”<sup>45</sup> Courts might interpret this language to mean that the appellate  
27 division only has writ jurisdiction in the same types of causes that are subject to  
28 the appellate jurisdiction *of the appellate division*. If so, then a writ petition  
29 relating to a decision in the initial small claims hearing would not seem to qualify,  
30 because such a decision is appealable to a judicial officer of the superior court, not  
31 to the appellate division.

32 Alternative interpretations of the constitutional language are possible, however,  
33 under which the appellate division of the superior court could consider a writ  
34 petition relating to a decision in the initial small claims hearing. For example, a  
35 court could interpret the constitutional provision to mean that the appellate

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41. See *People v. Konow*, 32 Cal. 4th 995, 1019-21, 88 P.3d 36, 12 Cal. Rptr. 3d 301 (2004).

42. Cal. Const. art. VI, § 10 (emphasis added).

43. Code Civ. Proc. § 116.780.

44. For further discussion of this point, see Commission Staff Memorandum 2010-25, pp. 24-26.

45. Cal. Const. art. VI, § 10 (emphasis added).

1 division has writ jurisdiction in causes subject to the appellate jurisdiction of the  
2 superior court. That interpretation could encompass a small claims case, because a  
3 small claims appeal is heard by a superior court judge.<sup>46</sup> As yet, courts have not  
4 provided guidance on which of the possible interpretations is correct, so it is  
5 unclear whether the appellate division may constitutionally consider a writ petition  
6 relating to a decision in the initial small claims hearing.

7 The only point a court has clearly addressed relates to the postjudgment  
8 enforcement phase of a small claims case. In *General Electric Capital Auto*  
9 *Financial Services, Inc. v. Appellate Division*,<sup>47</sup> the court of appeal considered  
10 whether the appellate division had jurisdiction of a writ petition relating to a  
11 postjudgment enforcement order entered by the small claims division. The court of  
12 appeal concluded that the appellate division did have such jurisdiction.<sup>48</sup>

13 The court of appeal explained that a small claims case is a limited civil case.<sup>49</sup>  
14 Where a statute or rule applicable to a small claims case conflicts with a statute or  
15 rule applicable to a limited civil case, the statute or rule applicable to a small  
16 claims case governs.<sup>50</sup> A special statute governs a small claims appeal,<sup>51</sup> so the  
17 general rule giving the appellate division jurisdiction of an appeal in a limited civil  
18 case<sup>52</sup> is inapplicable. But there is no special statute governing appeal of a  
19 postjudgment enforcement order in a small claims case. The court of appeal  
20 therefore concluded that the situation is governed by the general rule giving the  
21 appellate division jurisdiction of an appeal in a limited civil case.<sup>53</sup> The court of  
22 appeal further concluded that because the appellate division has appellate  
23 jurisdiction of a postjudgment enforcement order in a small claims case, the  
24 appellate division also has extraordinary writ jurisdiction of a postjudgment  
25 enforcement order in a small claims case.<sup>54</sup>

26 To summarize, the situation appears to be:

- 27 • The appellate division cannot constitutionally consider a writ petition that  
28 challenges a judgment or other act of the superior court in a small claims  
29 appeal.
- 30 • It is unclear whether the appellate division may constitutionally consider a  
31 writ petition relating to a decision in the initial small claims hearing.

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46. For possible alternative interpretations, see Commission Staff Memorandum 2010-25, pp. 12, 28.  
For analysis of the possible interpretations, see *id.* at 29-37.

47. 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001).

48. *Id.* at 138.

49. *Id.*; see Code Civ. Proc. § 87.

50. Code Civ. Proc. § 87.

51. Code Civ. Proc. § 116.770.

52. Code Civ. Proc. § 904.2.

53. *General Electric Capital*, 88 Cal. App. 4th at 138, 144.

54. *Id.* at 145; see Cal. Const. art. VI, § 10.

- 1       • Under *General Electric Capital*, the appellate division can constitutionally  
2       consider a writ petition that challenges a postjudgment enforcement order of  
3       the small claims division.

4       The situation is therefore complicated and not readily understandable.

5       **Need for Clarification**

6       The lack of clear guidance on where to file a writ petition relating to a small  
7       claims case is not merely a theoretical problem. Litigants are confused, some are  
8       seeking assistance, and some are having writs denied due to filing in the wrong  
9       court.<sup>55</sup> Past history demonstrates that small claims writs can be important in  
10      achieving justice in individual cases, and sometimes on a broader scale.<sup>56</sup> Neither  
11      litigants nor court personnel should have to expend undue effort trying to figure  
12      out the proper jurisdiction for a small claims writ petition.

13      **Proposed Clarification**

14      The Law Revision Commission recommends that the proper jurisdiction for a  
15      writ petition relating to a small claims case be made clear. In achieving such  
16      clarification, key principles include:

- 17      • Judges of equal rank and dignity should not issue writs to each other,  
18      because that may generate friction and impede court collegiality and  
19      functioning.<sup>57</sup>
- 20      • The workload of the courts of appeal should not be expanded unless truly  
21      necessary, because those courts already have a heavy workload.<sup>58</sup>
- 22      • Within each superior court, judicial and other resources should be conserved  
23      as much as possible, while still ensuring that justice is served.
- 24      • The small claims process should facilitate quick, inexpensive, and informal  
25      yet fair resolution of small disputes.<sup>59</sup>
- 26      • Any statutory clarification of writ jurisdiction must comply with  
27      constitutional constraints.

28      To implement those principles after trial court unification, writ jurisdiction  
29      should follow a hierarchical approach similar to the one that existed before

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55. See Commission Staff Memorandum 2010-44.

56. See, e.g., *Green v. Superior Court*, 10 Cal. 3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974) (warranty of habitability); *Houghtaling v. Superior Court*, 17 Cal. App. 4th 1128, 1131, 21 Cal. Rptr. 2d 855 (1993) (admission of hearsay evidence in small claims case); *Gardiana v. Small Claims Court*, 59 Cal. App. 3d 412, 130 Cal. Rptr. 675 (1976) (indigent defendant's right to interpreter at public expense); see also cases cited in note 1 *supra*.

57. *Trial Court Unification: Constitutional Revision*, *supra* note 17, at 30.

58. *Id.* at 26-27.

59. See *supra* note 13; see also Code Civ. Proc. § 116.120.

1 unification, in which a writ could only be sought from a higher authority than the  
2 judicial officer whose action is challenged. But the courts of appeal should not  
3 have to hear all writ petitions relating to small claims cases, because that would  
4 increase their already heavy caseloads beyond pre-unification levels.

5 Instead, the Commission recommends that the proper jurisdiction continue to  
6 depend on the stage of the small claims case at the time of the act that is  
7 challenged in the writ petition. Specifically, the proper jurisdiction would continue  
8 to depend on whether the petition challenges: (1) an act at the initial hearing in the  
9 small claims division, (2) an act in connection with a small claims appeal, or (3) a  
10 postjudgment enforcement order in a small claims case.

11 ***Writ Petition Relating to the Initial Hearing in the Small Claims Division***

12 If a writ petition relates to the initial hearing in the small claims division of the  
13 superior court, the Commission recommends that it be heard by judge who is  
14 assigned to the court's appellate division.<sup>60</sup> Alternatively, the proposed legislation  
15 would permit the petitioner to seek relief in the court of appeal or the Supreme  
16 Court,<sup>61</sup> but those courts could deny the petition on the ground that it was not first  
17 presented to a member of the appellate division.<sup>62</sup>

18 This approach would comply with constitutional constraints, because a judge of  
19 the superior court is authorized to issue an extraordinary writ, and the judge can  
20 even do so to another judicial officer of the same court if the judge acts pursuant to  
21 statutory authority.<sup>63</sup> The proposed legislation would constitute the necessary  
22 statutory authority.<sup>64</sup>

23 The approach would avoid the unresolved issue of whether the appellate  
24 division may constitutionally hear a writ petition relating to the initial hearing in a  
25 small claims case.<sup>65</sup> The Commission is not proposing to give jurisdiction of such  
26 a petition to the appellate division as an entity, to adjudicate as a three-judge panel  
27 in accordance with its normal procedures.<sup>66</sup> Instead, the Commission is proposing  
28 to give jurisdiction to a single individual who is a member of the appellate  
29 division, to adjudicate independently in accordance with procedures to be

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60. See proposed Code Civ. Proc. § 116.798(a)(1) *infra*. Normal rules regarding judicial disqualification (Code Civ. Proc. §§ 170-170.9) would apply.

61. See proposed Code Civ. Proc. § 116.798(a)(2) *infra*.

62. See proposed Code Civ. Proc. § 116.798 Comment *infra*. See also *In re Ramirez*, 89 Cal. App. 4th 1312, 1316, 1320, 108 Cal. Rptr. 229 (2001); *In re Hillery*, 202 Cal. App. 2d 293, 294, 20 Cal. Rptr. 759 (1962); Cal. R. Ct. 8.486; 2 B. Witkin, California Procedure *Jurisdiction* § 397, p. 1041 (5th ed. 2008).

63. See *supra* notes 40-41 and accompanying text.

64. See proposed Code Civ. Proc. § 116.798(a)(3) *infra*.

65. See *supra* notes 42-46 and accompanying text.

66. See Code Civ. Proc. § 77.

1 established by the Judicial Council.<sup>67</sup> Those procedures could be relatively quick,  
2 inexpensive, and informal, consistent with the nature of a small claims case.<sup>68</sup>

3 Yet the requirement that the writ petition be heard by a member of the appellate  
4 division would still provide a hierarchical structure, minimizing the likelihood that  
5 a judge would have to issue a writ to another judge of equal rank and dignity. That  
6 is especially true because many small claims hearings are conducted by  
7 subordinate judicial officers instead of judges.

8 A further advantage of the proposed approach is that it would conserve judicial  
9 resources. Instead of consuming the attention of a three-judge panel in the  
10 appellate division, it would only require one judge's time. In that way too it would  
11 be similar to the pre-unification situation, in which one superior court judge would  
12 have jurisdiction of a writ petition relating to a hearing in the small claims division  
13 of a municipal court.<sup>69</sup>

14 ***Writ Petition Relating to a Small Claims Appeal***

15 If a writ petition relates to a small claims appeal, the Commission recommends  
16 that it be heard by the court of appeal.<sup>70</sup> Alternatively, the proposed legislation  
17 would permit the petitioner to seek relief in the Supreme Court,<sup>71</sup> but the Supreme  
18 Court could deny the petition on the ground that it was not first presented to the  
19 court of appeal.<sup>72</sup>

20 This approach would be identical to the pre-unification situation (except that the  
21 appellate department of the superior court is now known as the appellate division,  
22 and is subject to constitutional requirements).<sup>73</sup> The approach is plainly consistent  
23 with the constitutional provision governing writ jurisdiction, which expressly  
24 gives the courts of appeal and the Supreme Court jurisdiction to issue an  
25 extraordinary writ.<sup>74</sup> Further, it totally avoids any problem of peer review, because  
26 the writ petition would be heard in a court of higher jurisdiction than the one that  
27 made the decision challenged by the writ.

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67. See proposed Code Civ. Proc. § 116.798(a)(5) *infra*.

68. The filing fee would be the same as for a small claims appeal. See proposed Code Civ. Proc. § 116.798(a)(4) *infra*. The judge's decision would not be appealable. See proposed Code Civ. Proc. § 116.798(a)(6) *infra*.

69. See *supra* note 25 and accompanying text.

70. See proposed Code Civ. Proc. § 116.798(b) *infra*.

71. *Id.*

72. See proposed Code Civ. Proc. § 116.798 Comment *infra*. See also *In re Ramirez*, 89 Cal. App. 4th 1312, 1316, 1320, 108 Cal. Rptr. 229 (2001); *In re Hillery*, 202 Cal. App. 2d 293, 294, 20 Cal. Rptr. 759 (1962); Cal. R. Ct. 8.486; 2 B. Witkin, California Procedure *Jurisdiction* § 397, p. 1041 (5th ed. 2008).

73. See *supra* note 26 and accompanying text. For the features of the appellate division as opposed to the appellate department, see *supra* note 22.

74. Cal. Const. art. VI, § 10.

1 **Writ Petition Relating to a Postjudgment Enforcement Order**

2 Finally, if a writ petition relates to a postjudgment enforcement order in a small  
3 claims case, the Commission recommends that it be heard by the appellate  
4 division of the superior court.<sup>75</sup> Alternatively, the proposed legislation would  
5 permit the petitioner to seek relief in the court of appeal or the Supreme Court,<sup>76</sup>  
6 but those courts could deny the petition on the ground that it was not first  
7 presented to the appellate division.<sup>77</sup>

8 This approach would codify *General Electric Capital Auto Financial Services,*  
9 *Inc. v. Appellate Division.*<sup>78</sup> A significant advantage of the approach is that it treats  
10 all judgments in limited civil cases the same way for enforcement purposes. A  
11 judgment in a small claims case is handled just like any other judgment in a  
12 limited civil case.

13 **Summary of the Proposed Legislation**

14 To summarize, the Commission recommends adoption of statutory provisions  
15 that would implement the following jurisdictional rules:

- 16 • *Initial hearing.* If a writ petition challenges a ruling made at the initial  
17 hearing before the small claims division of a superior court, the petition  
18 could be heard by a member of the court’s appellate division, or it could be  
19 heard by a court of higher jurisdiction.
- 20 • *Small claims appeal.* If a writ petition challenges a ruling made by the  
21 superior court in a small claims appeal, the petition could be heard by the  
22 court of appeal or by the Supreme Court.
- 23 • *Postjudgment enforcement order.* If a writ petition challenges a  
24 postjudgment enforcement order of the small claims division of the superior  
25 court, the petition could be heard by the appellate division of the superior  
26 court, or it could be heard by a court of higher jurisdiction.

27 This would closely mirror the pre-unification situation.<sup>79</sup>

28 **Benefits of the Proposed Clarification**

29 By providing clear guidance to small claims litigants and court personnel, the  
30 recommended legislation would prevent confusion, decrease disputes, and reduce  
31 associated expenses. The legislation would also conform to constitutional  
32 constraints, minimize peer review concerns, and conserve judicial resources.

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75. See proposed Code Civ. Proc. § 116.798(c) *infra*.

76. *Id.*

77. See proposed Code Civ. Proc. § 116.798 Comment *infra*. See also *In re Ramirez*, 89 Cal. App. 4th 1312, 1316, 1320, 108 Cal. Rptr. 229 (2001); *In re Hillery*, 202 Cal. App. 2d 293, 294, 20 Cal. Rptr. 759 (1962); Cal. R. Ct. 8.486; 2 B. Witkin, California Procedure *Jurisdiction* § 397, p. 1041 (5th ed. 2008).

78. 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). For discussion of this case, see *supra* notes 47-54 and accompanying text.

79. See *supra* notes 25-27 and accompanying text.

- 1 Enacting the legislation would thus further significant objectives and serve the
  - 2 needs of the public.
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PROPOSED LEGISLATION

1 **Heading of Article 7 (commencing with Section 116.710) (amended)**

2 SECTION 1. The heading of Article 7 (commencing with Section 116.710) of  
3 Chapter 5.5 of Title 1 of Part 1 of the Code of Civil Procedure is amended to read:

4 Article 7. Motion to Vacate, ~~and Appeal,~~ and Related Matters

5 **Comment.** The heading “Motion to Vacate and Appeal” is amended to broaden its scope and  
6 reflect the addition of Section 116.798 (writ petition).

7 **Code Civ. Proc. § 116.798 (added). Writ petition**

8 SEC. 2. Section 116.798 is added to the Code of Civil Procedure, to read:

9 116.798. (a)(1) A petition that seeks a writ of review, a writ of mandate, or a  
10 writ of prohibition relating to an act of the small claims division, other than a  
11 postjudgment enforcement order, may be heard by a judge who is assigned to the  
12 appellate division of the superior court.

13 (2) A petition described in paragraph (1) may also be heard by the court of  
14 appeal or by the Supreme Court.

15 (3) Where a judge described in paragraph (1) grants a writ directed to the small  
16 claims division, the small claims division is an inferior tribunal for purposes of  
17 Title 1 (commencing with Section 1067) of Part 3.

18 (4) The fee for filing a writ petition in the superior court under paragraph (1) is  
19 the same as the fee for filing a notice of appeal under Section 116.760.

20 (5) The Judicial Council shall promulgate procedural rules for a writ proceeding  
21 under paragraph (1).

22 (6) An appeal shall not be taken from a judgment granting or denying a petition  
23 under paragraph (1) for issuance of a writ. An appellate court may, in its  
24 discretion, upon petition for extraordinary writ, review the judgment.

25 (b) A petition that seeks a writ of review, a writ of mandate, or a writ of  
26 prohibition relating to an act of a superior court in a small claims appeal may be  
27 heard by the court of appeal or by the Supreme Court.

28 (c) A petition that seeks a writ of review, a writ of mandate, or a writ of  
29 prohibition relating to a postjudgment enforcement order of the small claims  
30 division may be heard by the appellate division of the superior court, by the court  
31 of appeal, or by the Supreme Court.

32 **Comment.** Section 116.798 is added solely to clarify which tribunal has jurisdiction of a writ  
33 petition relating to a small claims case after trial court unification. This provision neither expands  
34 nor contracts the circumstances under which a small claims litigant may seek an extraordinary  
35 writ. The proper tribunal for seeking such a writ depends on the stage of the case at the time of  
36 the act that is challenged in the writ petition.

37 Subdivision (a) makes clear that a writ petition relating to the initial hearing in the small claims  
38 division of the superior court may be heard by a member of the court’s appellate division. See

1 Cal. Const. art. VI, § 10 (“The ... superior courts, and their judges have original jurisdiction ... in  
2 proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition.”); see  
3 also *People v. Konow*, 32 Cal. 4th 995, 1019-21, 88 P.3d 36, 12 Cal. Rptr. 3d 301 (2004)  
4 (superior court judge who considers order entered by another superior court judge does not  
5 unconstitutionally enjoin, restrain, or otherwise interfere with judicial act of another superior  
6 court judge if later judge acts under statutory authority). A ruling on such a writ petition is not  
7 appealable. For a similar restriction, see Section 904.3.

8 Under subdivision (a), the court of appeal and the Supreme Court also have jurisdiction to  
9 consider a writ petition relating to the initial hearing in the small claims division. See Cal. Const.  
10 art. VI, § 10 (“The Supreme Court, courts of appeal, ... and their judges have original jurisdiction  
11 ... in proceedings for extraordinary relief in the nature of mandamus certiorari, and prohibition.”).  
12 In addition to other grounds for denying the writ, however, those courts may deny the writ on the  
13 ground that it was not first presented to a lower tribunal pursuant to subdivision (a). See generally  
14 *In re Ramirez*, 89 Cal. App. 4th 1312, 1316, 1320, 108 Cal. Rptr. 229 (2001); *In re Hillery*, 202  
15 Cal. App. 2d 293, 294, 20 Cal. Rptr. 759 (1962); Cal. R. Ct. 8.486; 2 B. Witkin, *California*  
16 *Procedure Jurisdiction* § 397, p. 1041 (5th ed. 2008).

17 Subdivision (b) makes clear that a writ petition relating to a small claims appeal may only be  
18 heard by the court of appeal or by the Supreme Court. This rule is consistent with historical  
19 practice. See, e.g., *Crouchman v. Superior Court*, 45 Cal. 3d 1167, 755 P.2d 1075, 248 Cal. Rptr.  
20 626 (1988); *Universal City Nissan, Inc. v. Superior Court*, 65 Cal. App. 4th 203, 75 Cal. Rptr. 2d  
21 910 (1998); *Houghtaling v. Superior Court*, 17 Cal. App. 4th 1128, 21 Cal. Rptr. 2d 855 (1993);  
22 see generally Cal. Const. art. VI, § 11 (Except for death penalty cases, “courts of appeal have  
23 appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the  
24 appellate jurisdiction of the courts of appeal on June 30, 1995 ...”). For the filing fee for such a  
25 writ petition, see Gov’t Code §§ 68926, 68926.1. For guidance on the applicable procedures, see  
26 Cal. R. Ct. 8.485-8.493.

27 Subdivision (c) makes clear that a writ petition relating to a postjudgment enforcement order of  
28 the small claims division may be heard by the appellate division of the superior court. This  
29 codifies *General Electric Capital Auto Financial Services, Inc. v. Appellate Division of the*  
30 *Superior Court*, 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). For the filing fee for such a  
31 writ petition, see Gov’t Code § 70621. For guidance on the applicable procedures, see Cal. R. Ct.  
32 8.930-8.936.

33 Subdivision (c) further makes clear that the court of appeal and the Supreme Court also have  
34 jurisdiction to consider a writ petition relating to a postjudgment enforcement order of the small  
35 claims division. See Cal. Const. art. VI, § 10. In addition to other grounds for denying the writ,  
36 however, those courts may deny the writ on the ground that it was not first presented to the  
37 appellate division of the superior court. See sources cited *supra*.

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

RECOMMENDATION

## **Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part 1)**

December 2010

California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, CA 94303-4739  
[www.clrc.ca.gov](http://www.clrc.ca.gov)

Similarly, subdivision (b) is amended to replace the reference to fines, bail forfeitures, and bail deposits under the Act “in any municipal court.” The amendment generally tracks the criminal jurisdiction of the municipal court as it existed before trial court unification.

Subdivision (c) makes clear how this section applies to a case in which both a felony and a misdemeanor were charged. The case is to be treated as a felony, even if the felony charge was dismissed. This is consistent with pre-unification practice. See generally *People v. Leney*, 213 Cal. App. 3d 265, 268, 261 Cal. Rptr. 541 (1989) (superior court has jurisdiction to try remaining misdemeanor even if felony charge eliminated before trial); *People v. Clark*, 17 Cal. App. 3d 890, 897-98, 95 Cal. Rptr. 411 (1971) (same).

**Code Civ. Proc. § 116.940 (amended). Advisory services**

SEC. \_\_\_\_\_. Section 116.940 of the Code of Civil Procedure is amended to read:

116.940. (a) Except as otherwise provided in this section or in rules adopted by the Judicial Council, which are consistent with the requirements of this section, the characteristics of the small claims advisory service required by Section 116.260 shall be determined by each county, or by the superior court in a county where the small claims advisory service is administered by the court, in accordance with local needs and conditions.

(b) Each advisory service shall provide the following services:

(1) Individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance. The topics covered by individual personal advisory services shall include, but not be limited to, preparation of small claims court filings, procedures, including procedures related to the conduct of the hearing, and information on the collection of small claims court judgments.

(2) Recorded telephone messages may be used to supplement the individual personal advisory services, but

shall not be the sole means of providing advice available in the county.

(3) Adjacent counties, superior courts in adjacent counties, or any combination thereof, may provide advisory services jointly.

(c) In any county in which the number of small claims actions filed annually is 1,000 or less as averaged over the immediately preceding two fiscal years, the county or the superior court may elect to exempt itself from the requirements set forth in subdivision (b). ~~This~~ If the small claims advisory service is administered by the county, this exemption shall be formally noticed through the adoption of a resolution by the board of supervisors. If the small claims advisory service is administered by the superior court, this exemption shall be formally noticed through adoption of a local rule. If a county or court so exempts itself, the county or court shall nevertheless provide the following minimum advisory services in accordance with rules adopted by the Judicial Council:

(1) Recorded telephone messages providing general information relating to small claims actions filed in the county shall be provided during regular business hours.

(2) Small claims information booklets shall be provided in the court clerk's office of each superior court, ~~the county administrator's office, other~~ appropriate county offices, and in any other location that is convenient to prospective small claims litigants in the county.

(d) The advisory service shall operate in conjunction and cooperation with the small claims division, and shall be administered so as to avoid the existence or appearance of a conflict of interest between the individuals providing the advisory services and any party to a particular small claims action or any judicial officer deciding small claims actions.

(e) Advisers may be volunteers, and shall be members of the State Bar, law students, paralegals, or persons experienced in resolving minor disputes, and shall be familiar with small claims court rules and procedures. Advisers may not appear in court as an advocate for any party.

(f) Advisers, including independent contractors, other employees, and volunteers have the immunity conferred by Section 818.9 of the Government Code with respect to advice provided as a public service on behalf of a court or county to small claims litigants and potential litigants under this chapter.

(g) Nothing in this section precludes a court or county from contracting with a third party to provide small claims advisory services as described in this section.

**Comment.** Section 116.940 is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655). See Gov't Code §§ 77003 ("court operations" defined), 77200 (state funding of "court operations"); see also Cal. R. Ct. 10.810(d), Function 10 ("small claims advisor program costs").

As amended, Section 116.940 makes explicit that a small claims advisory service can be run by the county, by the court, or by a third party who has contracted with the county or the court to provide small claims advisory services. For a similar provision, see Section 116.230 (filing fees for small claims cases).

**Code Civ. Proc. § 631.1 (repealed). Option to pay jury fees in civil case**

SEC. \_\_\_\_\_. Section 631.1 of the Code of Civil Procedure is repealed.

~~631.1. Notwithstanding any other provision of law, the county may pay jury fees in civil cases from general funds of the county available therefor. Nothing in this section shall be construed to change the requirements for the deposit of jury fees in any civil case by the appropriate party to the litigation at the time and in the manner otherwise provided by law.~~

## Recently Revised Small Claims Forms

<u>Form</u>	<u>Date Revised</u> ▲	<u>Description</u>
SC-108	July 1, 2011	Request to Correct or Cancel Judgment and Answer
<a href="#"><u>SC-100*</u></a>	January 1, 2011	Plaintiff's Claim and ORDER to Go to Small Claims Court
<a href="#"><u>SC-104B</u></a>	January 1, 2011	What Is "Proof of Service"? (Small Claims)
<a href="#"><u>SC-120*</u></a>	January 1, 2011	Defendant's Claim and ORDER to Go to Small Claims Court (Small Claims)
<a href="#"><u>SC-133*</u></a>	January 1, 2011	Judgment Debtor's Statement of Assets (Small Claims)
<a href="#"><u>SC-100-INFO S</u></a>	July 1, 2010	Information for the Plaintiff (Small Claims) (Spanish)
<a href="#"><u>SC-100-INFO*</u></a>	July 1, 2010	Information for the Plaintiff (Small Claims)
<a href="#"><u>SC-112A</u></a>	July 1, 2010	Proof of Service by Mail (Small Claims)
<a href="#"><u>SC-113A</u></a>	July 1, 2010	Clerk's Certificate of Mailing
<a href="#"><u>SC-130*</u></a>	July 1, 2010	Notice of Entry of Judgment (Small Claims)
<a href="#"><u>SC-132*</u></a>	July 1, 2010	Attorney-Client Fee Dispute (Attachment to Notice of Entry of Judgment)
<a href="#"><u>SC-150</u></a>	July 1, 2010	Request to Postpone Trial (Small Claims)
<a href="#"><u>SC-152</u></a>	July 1, 2010	Order on Request to Postpone Trial (Small Claims)
<a href="#"><u>SC-200*</u></a>	July 1, 2010	Notice of Entry of Judgment (Small Claims)
<a href="#"><u>SC-200-INFO</u></a>	July 1, 2010	What to Do After the Court Decides Your Small Claims Case (Small Claims)
<a href="#"><u>SC-200-INFO S</u></a>	July 1, 2010	What to Do After the Court Decides Your Small Claims Case (Small Claims) (Spanish)

<u>Form</u>	<u>Date Revised</u> ▲	<u>Description</u>
<a href="#"><u>SC-202A*</u></a>	July 1, 2010	Decision on Attorney-Client Fee Dispute (Small Claims)
<a href="#"><u>SC-220</u></a>	July 1, 2010	Request to Make Payments (Small Claims)
<a href="#"><u>SC-220-INFO</u></a>	July 1, 2010	Payments in Small Claims Cases (Small Claims)
<a href="#"><u>SC-220-INFO S</u></a>	July 1, 2010	Payments in Small Claims Cases (Small Claims) (Spanish)
<a href="#"><u>SC-221</u></a>	July 1, 2010	Response to Request to Make Payments (Small Claims)
<a href="#"><u>SC-222</u></a>	July 1, 2010	Order on Request to Make Payments (Small Claims)
<a href="#"><u>SC-290</u></a>	July 1, 2010	Acknowledgment of Satisfaction of Judgment

**Judicial Council Invitations to Comment**  
**on**  
**Small Claims Forms**

# Judicial Council of California • Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

### SPR11-18

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Title	Action Requested
Small Claims: Forms to Request Dismissal and Give Notice of Entry of Dismissal	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve forms SC-198 and SC-199	July 1, 2012
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Alan Wiener, 818-558-3051 alan.wiener@jud.ca.gov

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### Summary

This is a proposal for the adoption of two Judicial Council forms to be used by parties in small claims cases to request dismissals of their actions and to give notice of entry of dismissal.

### Discussion

Small claims procedures are less formal than procedures for other civil actions, but are often not simple or easy for small claims litigants to correctly follow. In addition, as a result of increases in the small claims jurisdictional limit and the cost of hiring counsel, the monetary value of cases filed in small claims court is increasing, raising the stakes for all involved.

The Civil and Small Claims Advisory Committee considers forms and instruction sheets an important means of guiding litigants through the small claims process. This guidance helps to provide self-represented litigants with effective access to justice and to promote the efficient operation of the small claims court.

Code of Civil Procedure section 581(c) provides that a plaintiff may dismiss his or her complaint in any action or a special proceeding, in its entirety, or as to any defendant or defendants, with or without prejudice before the commencement of trial. And rule 3.1290 of the California Rules of Court provides that a party that requests dismissal of an action must serve on all parties and file notice of entry of the dismissal.

Currently, no Judicial Council forms are specifically designed for requesting dismissal and giving notice of entry of dismissal of small claims cases. The Judicial Council has adopted

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

*Request for Dismissal* (form CIV-110) and *Notice of Entry of Dismissal and Proof of Service* (form CIV-120) for use in civil actions and proceedings. However, these forms are not ideal for use in small claims proceedings because they are not in the plain language format of other small claims forms, they do not include instructions written for self-represented litigants, and they include many references to attorneys, who may not represent parties in small claims court.

This proposal would create two new forms specifically to request and give notice of the entry of dismissal of small claims cases:

- *Request to Dismiss Claim* (form SC-198) would facilitate the dismissal of a small claims case because the claim has been settled or for any reason. Item 4 of this proposed form would solicit information about whether the matter was resolved through an agreement and, if so, how and when that agreement was reached, so that this data will be available to assess the benefits of mediation and settlement programs for small claims cases.
- *Notice of Dismissal of Claim* (form SC-199) would help litigants comply with rule 3.1390 of the California Rules of Court, which provides that a party that requests dismissal of an action must serve on all parties and file notice of entry of the dismissal.

### **Comments Requested**

Comments are invited on all aspects of the proposal, and on the following additional question:

1. Should Judicial Council small claims forms request the parties' e-mail addresses and, if so, should the forms indicate that this information is optional?

Attachments

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

*Clerk stamps here when form is filed.*

**Not approved by the Judicial Council**

Draft Rev. 4-15-11

Read the other side before you fill out this form.

① I am asking the court to dismiss a plaintiff’s claim or a defendant’s claim that I filed in this case.

My name is: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail (optional): \_\_\_\_\_

② I am asking the court to dismiss this claim (check and complete one):

a.  Completely, against all other plaintiffs and defendants

b.  Against only the following plaintiffs or defendants:

(Name): \_\_\_\_\_

(Name): \_\_\_\_\_

(Name): \_\_\_\_\_

(Name): \_\_\_\_\_

(Name): \_\_\_\_\_

Check here if you are also asking the court to dismiss your claim against other plaintiffs or defendants. List their names on a separate page and write “SC-198, Item 2” at the top.

③ After this claim is dismissed (check one):

a.  I want to be able to file another claim about the same facts or dispute against the plaintiffs or defendants listed in ②. (I am asking the court to dismiss my claim **without prejudice** to my filing it again if I do so by the legal deadline.)

b.  I give up my right to file another claim about the same facts or dispute against the plaintiffs or defendants listed in ②. (I am asking the court to permanently dismiss my claim **with prejudice** to my filing it again.)

④  I am asking the court to dismiss this claim because I have reached an agreement with one or more of the plaintiffs or defendants listed in ②. (Check all that apply.)

a.  The agreement was made through direct negotiations, without assistance from a mediator or settlement officer.

b.  The agreement was made during or after a mediation or a settlement conference conducted by (check one):

(1)  The court.

(2)  Another organization or person.

c.  The agreement was made (check one):

(1)  Before the day of the small claims trial.

(2)  On the day of the small claims trial.

(3)  After the small claims trial.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or print your name

\_\_\_\_\_  
Sign here

Fill in the court name and street address:

**Superior Court of California, County of**

Fill in your case number and case name:

**Case Number:**

**Case Name:**

## Dismissing Your Claim

**If you have filed a plaintiff's claim or a defendant's claim in a small claims case, you can ask the court to dismiss your claim for any reason any time before the trial begins.**

**To ask the court to dismiss your claim:**

- Fill out Form SC-198, *Request to Dismiss Claim*.
- Have your *Request* served on all other plaintiffs and defendants in your case. (See Form SC-112A, *Proof of Service by Mail*.)
- File your *Request* and *Proof of Service* with the small claims court clerk.

**Important:** Do not use Form SC-198 to dismiss a claim after a judgment has been entered or an appeal has been filed.

The court will send the plaintiff or defendant who asked to dismiss the claim a notice stating whether the claim was dismissed. That plaintiff or defendant must serve a copy of the notice on each other plaintiff and defendant in the case. (See Form SC-112A, *Proof of Service by Mail*.)

**Important.** The dismissal of a claim does not always resolve the entire small claims case, and a trial or hearing may still be held after some claims are dismissed.

- Only the plaintiff or defendant who has filed a claim can ask the court to dismiss that claim. If more than one plaintiff or defendant has filed a claim, the claims filed by those who do not ask the court to dismiss their claims will remain active.
- If a plaintiff or defendant has filed a claim against more than one other plaintiff or defendant, that claim will remain active against any who are not dismissed.

## Answers to Common Questions

**Why should I ask the court to dismiss my claim?**

Some reasons you may want to dismiss your claim are:

- You have settled or resolved your disagreement.
- You have decided not to pursue your claim.
- You have not been able to locate or serve a plaintiff or defendant that you filed your claim against.

**If I ask the court to dismiss my claim, can I file it again?**

It depends, and the law in this area is complicated. You may want to talk with a lawyer or a small claims advisor. But, in general:

- If you dismiss your claim **without prejudice**, you can file it again if you do so within the original legal time limit (statute of limitations).
- If you dismiss your claim **with prejudice**, you cannot file another claim about the same dispute or disagreement against the same plaintiffs or defendants or against some others who are related to them.

**Can I use Form SC-198 to ask the court to dismiss a claim that someone else filed?**

No. Only the plaintiff or defendant who filed a claim can use Form SC-198, *Request to Dismiss Claim*, to ask the court to dismiss that claim. If you disagree with a claim filed by another plaintiff or defendant, and that party does not ask the court to dismiss it, you should go to court on the scheduled hearing date or file other papers asking the court to dismiss or transfer the case for a legal reason or to postpone the hearing.

**What if only part of a claim or case is dismissed?**

If a claim is not dismissed as to all plaintiffs and defendants, or if all of the claims that were filed in a case are not dismissed, the remaining plaintiffs and defendants should go to court on the scheduled hearing date.



### Need help?

For free help, contact your county's small claims advisor:  
[local info here]

Or go to "County-Specific Court Information" at [www.courts.ca.gov/selfhelp/smallclaims](http://www.courts.ca.gov/selfhelp/smallclaims)

*Clerk stamps here when form is filed.*

**Not approved by the Judicial Council**

Draft Rev. 3-17-11

*Fill in the court name and street address:*

**Superior Court of California, County of**

*Fill in your case number and case name:*

**Case Number:**

**Case Name:**

**Important:** The party named in ① must serve this *Notice of Dismissal* on all other plaintiffs and defendants and then file the *Notice* and *Proof of Service* with the court. (See *Form SC-112A, Proof of Service by Mail, for instructions.*)

① A *Request to Dismiss Claim* was filed:

- a. By (*name*): \_\_\_\_\_
- b. On (*date*): \_\_\_\_\_

② The claim is dismissed:

- a.  Completely, against all plaintiffs and defendants
- b.  Against only the following plaintiffs or defendants:

- (*Name*): \_\_\_\_\_

Against the plaintiffs and defendants listed on Attachment 2.

③ The claim is dismissed and:

- a.  May be filed again, if this is done within the legal time limits. (The claim is dismissed without prejudice.)
- b.  May not be filed again against the parties who were dismissed. (The claim is dismissed with prejudice.)

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

## Item SPR11-18 Response Form

**Title:** **Small Claims: Forms to Request Dismissal and Give Notice of Entry of Dismissal** (approve forms SC-198 and SC-199)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: [www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

Email: [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

Mail: Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

**DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011**

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# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT

**SPR11-19**

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Title	Action Requested
Small Claims: Forms to Address Default in Payment of Judgment in Installments	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve forms SC-223 and SC-224	July 1, 2012
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Alan Wiener, 818-558-3051 alan.wiener@jud.ca.gov

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### Summary

This is a proposal for two new Judicial Council forms for use by parties in small claims cases when a judgment creditor alleges there has been a default in the payment of a judgment in installments. These forms supplement and help make more effective the forms previously adopted and approved effective July 2010, relating to the payment of small claims judgments in installments.

### Discussion

Small claims procedures are less formal than procedures for other civil actions, but are often not simple or easy for small claims litigants to correctly follow. In addition, as a result of increases in the small claims jurisdictional limit and the cost of hiring counsel, the monetary value of cases filed in small claims court is increasing, raising the stakes for all involved.

The Civil and Small Claims Advisory Committee considers forms and instruction sheets an important means of guiding litigants through the small claims process. This guidance helps to provide self-represented litigants with effective access to justice and to promote the efficient operation of the small claims court.

Code of Civil Procedure section 116.620 authorizes the court to order that a small claims judgment be paid in installments. Effective July 1, 2010, the Judicial Council adopted and approved five forms that address or pertain to the payment of a small claims judgment in installments. (See *Notice of Entry of Judgment* (form SC-200), *Payments in Small Claims Cases*

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

(form SC-220-INFO), *Request to Make Payments* (form SC-220), *Response to Request to Make Payments* (form SC-221), and *Order on Request to Make Payments* (form SC-222).)

Forms SC-200 and SC-222 provide: “[i]f any payment is not made in full and on time, the judgment creditor may notify the court to cancel the payment plan, and the entire unpaid balance will become due and collectible.” There are, however, currently no forms or instructions for the judgment creditor to notify the court of the alleged default in payment or for the judgment debtor to respond to the allegation that there was a default.

The proposed *Declaration of Default in Payment of Judgment* (form SC-223) and *Response to Declaration of Default in Payment of Judgment* (form SC-224) are intended for use when a judgment creditor alleges there has been a default in the payment of a judgment in installments. The description of the court’s payment order in item 4 of form SC-223 is based on the payment order provisions in forms SC-200 and SC-222. Items 5 through 7 of forms SC-223 and SC-224 are parallel to each other, so that the court can readily determine whether and, if so, about what issues the parties disagree.

### **Comments Requested**

Comments are invited on all aspects of the proposal and on the following additional questions:

1. Should a form order be developed for use when the court rules on an allegation that there has been a default in payment of a judgment in installments?
2. Should Judicial Council small claims forms request the parties’ e-mail addresses, and, if so, should the forms indicate that this information is optional?
3. Are additional instructions, forms, or other tools necessary to help small claims litigants compute postjudgment interest? If so, what type of assistance would be most helpful?

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**Declaration of Default  
in Payment of Judgment**

*Clerk stamps here when form is filed.*

**Not approved by the Judicial Council**

Draft Rev. 3-17-11

Read the other side before you fill out this form.

① I am asking the court to order that the remaining balance of a small claims judgment is now due and collectible because payments were not made as the court ordered.

My name is: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail (optional): \_\_\_\_\_

② The plaintiff or defendant (judgment debtor) who has not made payments as the court ordered is (complete a separate form for each plaintiff or defendant who has not paid as ordered):

Name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail (optional): \_\_\_\_\_

③ On (date): \_\_\_\_\_ the court ordered that the plaintiff or defendant named in ② must pay me, or someone who assigned the judgment to me, the total amount of \$ \_\_\_\_\_.

④ On (date): \_\_\_\_\_ the court ordered that the plaintiff or defendant named in ② may pay the judgment as follows:

a.  Payments of \$ \_\_\_\_\_ on the \_\_\_\_\_ day of each (month, week, other): \_\_\_\_\_ starting (date): \_\_\_\_\_, until (date of final payment): \_\_\_\_\_; amount of final payment: \$ \_\_\_\_\_

b.  Other payment schedule (specify): \_\_\_\_\_

⑤ The payments listed below, and no others, have been made on the judgment described in ③.

Check here if there is not enough space below. List the date, amount, and maker of each payment on a separate page and write "SC-223, Item 5" at the top.

Date	Amount	Paid by	Date	Amount	Paid by

⑥ The total amount of the payments that have been made on the judgment described in ③ is \$ \_\_\_\_\_, and the balance due, without adding any interest after the judgment, is \$ \_\_\_\_\_.

⑦ I request interest on the judgment, in the amount of \$ \_\_\_\_\_, calculated as follows:

Check here if there is not enough space below. Explain how you calculated interest on a separate page and write "SC-223, Item 7" at the top.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: \_\_\_\_\_

Type or print your name

▶  
Sign here



# Default in Payments on Small Claims Judgment

## General Information

If the court ordered that another plaintiff or defendant may pay a small claims judgment in payments, and that plaintiff or defendant has not made the payments as ordered, you can ask the court to order that the full balance of the judgment is due and collectible. Here's how:

- Read this form.
- Fill out Form SC-223, *Declaration of Default in Payment of Judgment*. Fill out a separate form for each plaintiff or defendant (judgment debtor) who did not make payments as ordered.
- File your completed forms with the small claims court clerk.

The court will mail all other plaintiffs and defendants in the case copies of your *Declaration* and a blank Form SC-224, *Response to Declaration of Default in Payments of Judgment*.

The other parties will have 10 days to file a **Response**. Then the court will mail all plaintiffs and defendants in the case:

- A decision or
- A notice to go to a hearing.

If the court ordered that you may make payments on a judgment and another plaintiff or defendant has filed Form SC-223, *Declaration of Default in Payment of Judgment*, asking the court to order that the full balance is now due and collectible because you did not make the payments:

- Read this form and the *Declaration*.
- If you agree with the court ordering that the amounts claimed in the *Declaration* are now due in full, you do not need to do anything.
- **If you do not agree with the *Declaration* or with the court ordering that the amounts it claims are now due in full, file a *Response* within 10 calendar days after the court clerk mailed the *Declaration* to you.** (This date is on the *Clerk's Certificate of Mailing*.)

**To file your *Response*:**

- Fill out Form SC-224, *Response to Declaration of Default in Payment of Judgment*.
- Have your *Response* served on all other plaintiffs and defendants in your case. (See Form SC-112A, *Proof of Service By Mail*.)
- File your *Response* and *Proof of Service* with the small claims court clerk.

## Answers to Common Questions

### When is the judgment due?

Unless the court orders otherwise, small claims judgments are due immediately. If the judgment is not paid in full within 30 days, the judgment creditor (person to whom the money is owed) can take legal steps to collect any unpaid amount. (Collection may be postponed if an appeal or a request to vacate (cancel) or correct the judgment is filed.)

### When can the judgment debtor make payments?

A party who was ordered to pay a small claims judgment (the judgment debtor) can ask the court for permission to make payments. If the court agrees, the party who is owed money (the judgment creditor) cannot take any other steps to collect the money as long as the payments are made on time. If payments are not made on time, the judgment creditor can ask the court to order that the remaining balance of the judgment is due and collectible.

### Is interest added after the judgment?

Interest (10 percent per year) is usually added to the unpaid amount of the judgment from the date the judgment is entered until it is paid in full. Interest can only be charged on the unpaid amount of the judgment (the principal); interest cannot be charged on any unpaid

interest. If a partial payment is received, the money is applied first to unpaid interest and then to unpaid principal.

When the court allows payments, the court often does not order any interest, as long as all payments are made in full and on time. Unless the creditor asks for interest to be included in the order allowing payments, the creditor may lose any claims for interest. But, if the debtor does not make full payments on time, interest on the missed payment or the entire unpaid balance might become due and collectible.

### How do I calculate interest?

If you are asking for interest or disagreeing with a request for interest, you need to explain your interest calculation. Interest, at the rate of 10 percent per year (.0274 percent per day), may be added to the full unpaid balance of the judgment or only to payments that were not made on time. To calculate interest, show the unpaid principal balance, the dates and number of days you want the court to allow interest on that amount, and the total interest for that period. If payments were made, you will need to make separate calculations for the reduced principal balance after each payment.



### Need help?

For free help, contact your county's small claims advisor:  
[local info here]

Or go to "County-Specific Court Information" at [www.courts.ca.gov/selfhelp/smallclaims](http://www.courts.ca.gov/selfhelp/smallclaims)

*Clerk stamps here when form is filed.*

**Not approved by the Judicial Council**

Draft Rev. 3-17-11

Read the other side before you fill out this form.

① I am responding to a *Declaration of Default in Payment of Judgment* (Form SC-223).

My name is: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail (optional): \_\_\_\_\_

② The plaintiff or defendant (judgment creditor) who filed the *Declaration of Default* is:

Name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail (optional): \_\_\_\_\_

③  I agree with the information in the *Declaration of Default*.

④  I do not agree that the court ordered the payment schedule stated in item ④ of the *Declaration of Default*. The court actually ordered (describe payment schedule that court ordered):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

⑤  I do not agree with the dates or amounts of the payments listed in item ⑤ of the *Declaration of Default*. The payments listed below have been made on the judgment.

Check here if there is not enough space below. List the date, amount, and maker of each payment on a separate page and write "SC-224, Item 5" at the top.

Date	Amount	Paid by	Date	Amount	Paid by

⑥ The total amount of the payments that have been made on the judgment is \$ \_\_\_\_\_, and \_\_\_\_\_ the balance due, without adding any interest after the judgment, is \$ \_\_\_\_\_.

⑦  I agree that interest in the amount of \$ \_\_\_\_\_ may be added to the balance of the judgment. This interest is calculated as follows:

Check here if there is not enough space below. Explain how you calculated interest on a separate page and write "SC-224, Item 7" at the top.

⑧  I ask the court not to order that the judgment is now due and collectible in full, even though I have not made the payments that the court ordered, because (explain):

Check here if there is not enough space below. Explain why you are asking the court not to order that the judgment is now due in full on a separate page and write "SC-224, Item 8" at the top.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*

\_\_\_\_\_  
*Sign here*

# Default in Payments on Small Claims Judgment

## General Information

If the court ordered that you may make payments on a judgment and another plaintiff or defendant has filed Form SC-223, *Declaration of Default in Payment of Judgment*, asking the court to order that the full balance is now due and collectible because you did not make the payments:

- Read this form and the *Declaration*.
- If you agree with the court ordering that the amounts claimed in the *Declaration* are now due in full, you do not need to do anything.
- If you do not agree with the *Declaration* or with the court ordering that the amounts it claims are now due in full, file a *Response* within 10 calendar days after the court clerk mailed the *Declaration* to you. (This date is on the *Clerk's Certificate of Mailing*.) If you do not do this, the court may order that the balance of the judgment is now due and collectible in full and may also order interest on the unpaid amount of the judgment.

To file your *Response*:

- Fill out Form SC-224, *Response to Declaration of Default in Payment of Judgment*.
- Have your *Response* served on all other plaintiffs and defendants in your case. (See Form SC-112A, *Proof of Service By Mail*.)
- File your *Response* and *Proof of Service* with the small claims court clerk.

The court will mail all plaintiffs and defendants in the case

- A decision or
- A notice to go to a hearing.

## Answers to Common Questions

### When is the judgment due?

Unless the court orders otherwise, small claims judgments are due immediately. If the judgment is not paid in full within 30 days, the judgment creditor (person to whom the money is owed) can take legal steps to collect any unpaid amount. (Collection may be postponed if an appeal or a request to vacate (cancel) or correct the judgment is filed.)

### When can the judgment debtor make payments?

A party who was ordered to pay a small claims judgment (the judgment debtor) can ask the court for permission to make payments. If the court agrees, the party who is owed money (the judgment creditor) cannot take any other steps to collect the money as long as the payments are made on time. If payments are not made on time, the judgment creditor can ask the court to order that the remaining balance of the judgment is due and collectible.

### Is interest added after the judgment?

Interest (10 percent per year) is usually added to the unpaid amount of the judgment from the date the judgment is entered until it is paid in full. Interest can only be charged on the unpaid amount of the judgment (the principal); interest cannot be charged on any unpaid

interest. If a partial payment is received, the money is applied first to unpaid interest and then to unpaid principal.

When the court allows payments, the court often does not order any interest, as long as all payments are made in full and on time. Unless the creditor asks for interest to be included in the order allowing payments, the creditor may lose any claims for interest. But, if the debtor does not make full payments on time, interest on the missed payment or the entire unpaid balance might become due and collectible.

### How do I calculate interest?

If you are asking for interest or disagreeing with a request for interest, you need to explain your interest calculation. Interest, at the rate of 10 percent per year (.0274 percent per day), may be added to the full unpaid balance of the judgment or only to payments that were not made on time. To calculate interest, show the unpaid principal balance, the dates and number of days you want the court to allow interest on that amount, and the total interest for that period. If payments were made, you will need to make separate calculations for the reduced principal balance after each payment.



### Need help?

For free help, contact your county's small claims advisor:  
[local info here]

Or go to "County-Specific Court Information" at [www.courts.ca.gov/selfhelp/smallclaims](http://www.courts.ca.gov/selfhelp/smallclaims)

## Item SPR11-19 Response Form

**Title: Small Claims: Forms to Address Default in Payment of Judgment in Installments** (approve forms SC-223 and SC-224)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_  
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Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

- Commenting on behalf of an organization**

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: [www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

Email: [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

Mail: Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

**DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011**