

Invitation to Comment

Title	Small Claims Post-Judgment Fees (amend Code Civ. Proc., § 116.829(b))
Summary	The proposed amendment to Code of Civil Procedure section 116.829(b) would clarify that the court will charge and collect all fees associated with the enforcement of a small claims judgment as it would in the enforcement of a general civil judgment under Title 9 of the Code of Civil Procedure.
Source	Civil and Small Claims Advisory Committee Hon. Lee Smalley Edmon, Chair
Staff	Cara Vonk, Attorney, 415-865-7669, cara.vonk@jud.ca.gov
Discussion	<p>The Small Claims Act makes it unclear whether a court may charge statutory fees for all post-judgment proceedings in a small claims case or just for those proceedings identified in Code of Civil Procedure section 116.820(b).</p> <p>The Small Claims Act provides that small claims judgments may be enforced like other judgments as provided in Title 9 (commencing with Section 680.010) of the Code of Civil Procedure. (See Code Civ. Proc., § 116.820(a).) However, Code of Civil Procedure section 116.820(b), provides that only the following specified post-judgment fees “shall be charged” in a small claims case: fees for the issuance of a writ of execution; application for an order of examination of a judgment debtor; and an abstract of judgment.</p> <p>No fee is currently identified in Title 9 for motions related to a claim of exemption. Opposition to a claim of exemption (Code Civ. Proc., § 703.550), or a motion to “reset” or continue examination of a judgment debtor, occur routinely in the enforcement of a small claims judgment. Since such motions are similar to motions for the enforcement of any other civil judgment, it appears that the fee for such a motion in a general civil case would be the appropriate fee to be charged in all circumstances. The fee for a motion requiring a hearing is \$40 (Gov. Code, § 70617(a)) and a stipulation or motion that does not require a hearing is \$20 (Gov. Code, § 70617(c).) A court should be able to charge the same fees for post-judgment motions related to the enforcement of a small claims judgment as a court must charge for the enforcement of a regular civil judgment under Title 9 (commencing with Section 680.010).</p>

To remedy the uncertainty created by the current language in Code of Civil Procedure section 116.820, which requires that “fees shall be charged” for only three specified types of small claims post-judgment proceedings, the Civil and Small Claims Advisory Committee recommends that the statute be amended to clarify that the clerk will charge a small claims litigant all fees associated with the enforcement of judgments under Title 9 of the Code of Civil Procedure.

Attachment

Code of Civil Procedure section 116.820(b) would be amended effective January 1, 2009, to read:

1 **§ 116.820.**

2
3 (a) The judgment of a small claims court may be enforced as provided in Title 9
4 (commencing with Section 680.010) of Part 2 and in Sections 674 and 1174
5 on the enforcement of judgments of other courts. A judgment of the superior
6 court after a hearing on appeal, and after transfer to the small claims court
7 under subdivision (d) of Section 116.780, may be enforced like other
8 judgments of the small claims court, as provided in Title 9 (commencing with
9 Section 680.010) of Part 2 and in Sections 674 and 1174 on the enforcement
10 of judgments of other courts.

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

25
26 (c) The prevailing party in any action subject to this chapter is entitled to the
27 costs of enforcing the judgment and accrued interest.

Item LEG07-05 Response Form

Title: Small Claims Post-Judgment Fees (amend Code Civ. Proc., § 116.829(b))

- 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: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Camilla Kieliger,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Camilla Kieliger
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 20, 2007

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council,
the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action.*