#41 2/21/69

Memorandum 69-46

Subject: Study 41 - Small Claims Court Law

At the February meeting, the Commission determined that the study of the small claims court law should be dropped from the agenda. Attached as Exhibit I is a statement drafted for inclusion in the next Annual Report authorizing the Commission to drop this topic.

Exhibit II is an extract from the Report prepared for the Assembly Committee on Judiciary.

Exhibit III consists of Extracts from the Annual Reports that requested authority to make the Small Claims Court Law study.

Respectfully submitted,

John H. DeMoully
Executive Secretary

EXHIBIT I

STUDIES TO BE DROPPED FROM CALENDAR OF TOPICS

Study Relating to the Small Claims Court Law

In 1957, the Commission was authorized to make a study to determine whether the Small Claims Court Law should be revised.[1] The Commission requested authority to make this study because it had received communications from judges in various parts of the state suggesting that defects and gaps exist in the Small Claims Court Law. The communications suggested that a variety of matters merited study, including such matters as whether the monetary jurisdiction of the small claims court should be increased and whether the plaintiff should be permitted to appeal when the defendant prevails on a counterclaim. Some--but far from all--of the questions which motivated the Commission to request authority to study this topic have been dealt with by the Legislature[2] or by the courts.[3]

The Commission has concluded that any study of the Small Claims Court Law should be a comprehensive one and that such a study would be a substantial undertaking. The Commission is now devoting substantially all its resources to two major studies--condemnation law and procedure and inverse condemnation--and is unable to commence work on another major study at this time. It is likely that the Small Claims Court Law will receive continuing

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1 This study was authorized by Cal. Stats. 1957, Res. Ch. 202, p. 4589. For a description of the topic, see 1 Cal. L. Revision Comm'n Reports, 1957 Report at 16 (1957).

2 For example, the jurisdictional limit was increased from $100 to $150 in 1957, from $150 to $200 in 1961, and from $200 to $300 in 1967.

3 For example, Skaff v. Small Claims Court for Los Angeles Judicial Dist. of Los Angeles County, 68 A.C. 73, 65 Cal. Rptr. 65, 435 P.2d 825 (1968), held that where the defendant recovered on a counterclaim against the plaintiff, the plaintiff was entitled to appeal to the Superior Court from the judgment on the counterclaim.

legislative attention.[4] Moreover, a revision of the Small Claims Court Law would present policy questions concerning judicial administration that would be appropriate for study by the Judicial Council. Accordingly, the Commission recommends that this topic be dropped from its agenda.

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[4] A report prepared for the Assembly Committee on Judiciary in 1969 suggested that legislative hearings on the small claims courts would be worthwhile. See Goldfarb, Problems in the Administration of Justice in California 96 (1969).

Small Claims Courts. The California Legislature has attempted to provide in the small claims courts a forum for the settlement of minor issues. The idea is for litigants to be able to come into court and have petty disputes resolved with a minimum of delay and expense. The spirit behind the creation of small claims courts has been abused by some corporations and occasionally by state agencies.

These courts often are captured by business interests who find them a useful tool for the collection of debts. A study of the Oakland-Piedmont Small Claims Court, published in the University of California Law Review in 1964, showed that two out of three users were either business firms (jewelry and department stores, mail order houses, finance companies) or, to a lesser extent, local government agencies (principally the County of Alameda with claims for hospital services rendered and for unpaid taxes). Most (85 percent) of these organization plaintiffs filed several claims at a time, and most were frequent users of the court. Over 85 percent of the defendants in the Oakland-Piedmont Small Claims Court were individuals; the remainder were businesses or government agencies. It is principally the business community, not the poor, that reaps the advantage of the inexpensive and speedy processes of small claims courts.

In the small claims courts of many other states, there is a great disparity in representation. Corporations are represented by attorneys and individual defendants are not. California attempted to meet this inequity by forbidding attorneys in the small claims court. But under the California law, any officer of a corporation is allowed to prosecute his corporation's suit. And many of the corporate officers who go to this court to collect payments just happen to be lawyers. Even if the corporate agent is not an attorney, the procedure frequently pits a sophisticated business representative against an unskilled, often inexperienced poor person.

One way to equalize the procedures in small claims courts would be to guarantee both sides lawyers. But the introduction of attorneys could defeat the fundamental purpose of the small claims courts to settle

disputes quickly and simply. These courts do serve a useful purpose, and they should be preserved for the benefit of litigants who do not use courts regularly and who need a forum to settle small disputes.

Those litigants who use the courts regularly in their businesses probably should be using the municipal courts or the justice courts, where all parties can be represented by attorneys. One way to assure that frequent litigants use the regular courts would be to prohibit plantiffs from bringing suit in small claims more than once a year. Another, and perhaps more easily enforceable, means of achieving the same objective would be to preclude corporations from suing in small claims courts. The California Code of Civil Procedure (Section 117(f)) already excludes all assignees from small claims. In New York only natural persons may bring suits in small claims courts.

Corporations, through their attorneys, would still be able to prosecute their legitimate collection claims, and the small claims court would be preserved for less sophisticated suitors who cannot afford attorneys and who lack the know-how and resources to prosecute claims in the higher courts.

Suits by corporations should not be moved from the small claims to the municipal courts without some assessment of the potential impact of the change on the workload of the municipal courts. (Small claims and municipal court cases often are handled by the same judges in the same courtrooms, but with different procedures.) Any hearings on this subject must also deal with this administrative question.

Two additional problems are associated with the current operations of small claims courts: the need to post bonds for appeals and the need for expeditious procedures to execute judgments.

If a small claims plaintiff loses his suit, he has no appeal. If the defendant loses, he has an appeal to the Superior Court, where he may have a trial de novo. But to appeal he must post a bond equal to the amount of the judgment against him in small claims court. C.R.L.A. currently is challenging the bond requirement for indigent defendants, seeking an "in forma pauperis bond."

Although plaintiffs may be able to manage in small claims without a lawyer, once they get a judgment, they have no idea of how to execute it. The need for a lawyer could be avoided if the sheriff's departments would help in executing judgments.

Hearings on the operations of the state's small claims courts would be worthwhile. Although California lower courts, particularly small claims, are neither as visible nor as impressive as the Superior Courts and the Supreme Court, they are vital in dealing with the mass of the small disputes that must be solved if citizens are to be treated justly and if they are to have confidence in their courts.

EXHIBIT III

Topic No. 4: A study to determine whether the Small Claims Court Law should be revised.

In 1955 the commission reported to the Legislature[12] that it had received communications from several judges in various parts of the State relating to defects and gaps in the Small Claims Court Law.[13] These suggestions concerned such matters as whether fees and mileage may be charged in connection with the service of various papers, whether witnesses may be subpoenaed and are entitled to fees and mileage, whether the monetary jurisdiction of the small claims courts should be increased, whether sureties on appeal bonds should be required to justify in all cases, and whether the plaintiff should have the right to appeal from an adverse judgment. The commission stated that the number and variety of these communications suggested that the Small Claims Court Law merited study.

The 1955 Session of the Legislature declined to authorize the commission to study the Small Claims Court Law at that time. No comprehensive study of the Small Claims Court Law has since been made. Meanwhile, the commission has received communications making additional suggestions for revision of the Small Claims Court law: *e.g.*, that the small claims court should be empowered to set aside the judgment and reopen the case when it is just to do so; that the plaintiff should be permitted to appeal when the defendant prevails on a counterclaim; and that the small claims form should be amended to (1) advise the defendant that he has a right to counterclaim and that failure to do so on a claim arising out of the same transaction will bar his right to sue on the claim later and (2) require a statement as to where the act occurred in a negligence case.

This continued interest in revision of the Small Claims Court Law has induced the commission again to request authority to make a study of it.

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[12] 1955 REP. CALIF. LAW REV. COMM'N 25.
[13] CAL. CODE CIV. PROC. § 117.

Topic No. 10. A study to determine whether the Small Claims Court Law should be revised.

The commission has received communications from several judges of municipal and justice courts in various parts of the State relating to defects and gaps in the Small Claims Courts Law.[13] These suggestions have concerned such matters as whether the monetary jurisdiction of the small claims courts should be increased, whether fees and mileage may be charged in connection with the service of various papers, whether witnesses may be subpoenaed and are entitled to fees and mileage, whether sureties on appeal bonds should be required to justify in all cases, and whether the plaintiff should have the right to appeal from an adverse judgment. The number and variety of these communications suggests that the Small Claims Court law is open to considerable improvement.