Admin. October 23, 1998

First Supplement to Memorandum 98-56

New Topics and Priorities

The Commission commenced, but did not complete, consideration of Memorandum 98-56, relating to new topics and priorities. For action on the two matters considered at the meeting, see the discussions below of informal probate administration and common interest developments.

This supplemental memorandum provides additional information on these and other matters involving the suggested new topics and priorities. This memorandum also reports the response of Professor Kelso, of the Institute for Legislative Practice, to the staff's request for his perspective on these issues.

Evidence (Memo. 98-56, p. 11)

The memorandum discusses the status of the Commission's dormant study comparing California law with the Federal Rules of Evidence. Professor Kelso believes California law is generally sound and better organized than federal law. He believes there is room for improvement on some issues. For example, the hearsay exceptions could be rationalized.

Arbitration (Memo. 98-56, p. 11)

Arbitration statute. The existing arbitration statute was enacted on Commission recommendation, and the Commission maintains authority in case the need for revision arises. Professor Kelso is strongly in favor of a contemporary review of the entire statute, particularly as it relates to consumer arbitration, court-annexed arbitration, and judicial review of arbitration. The Winter 1998 issue of McGeorge Law Review is a symposium devoted to current issues in the use of contractual arbitration. 29 McGeorge L. Rev. 177 (1998). Professor Kelso cautions, however, about the politics of this since it is a matter of some concern to plaintiffs' attorneys.

Arbitration representation by out of state attorney. Commissioner Orr has brought to our attention AB 2086 (Keeley). This bill is enacted as Chapter 915 of the Statutes of 1998. The measure adds a provision to the arbitration statute allowing an out of state attorney to represent a party in an arbitration proceeding

in this state. In enacting this measure, "it is the intent of the Legislature to respond to the holding in Birbrower v. Superior Court (1998) 17 Cal. 4th 117, as modified at 17 Cal. 4th 643a (hereafter Birbrower), to provide a procedure for nonresident attorneys who are not licensed in this state to appear in California arbitration proceedings." Code Civ. Proc. § 1282.4(i)(1). The bill has a sunset clause, providing for its own repeal on January 1, 2001.

The author's office reports that the debate on this bill was highly political and involved numerous interest groups, including consumer attorneys and arbitrators. The only way they were able to get the bill enacted was to add the sunset clause. Their intent is to monitor experience under the new law during the next year, and then propose followup legislation in 2000. Based on the politics of it, it may be necessary to deal in the followup legislation with details concerning the extent to which nonattorneys may represent parties and appear in arbitration proceedings.

Given this state of affairs, the staff believes it would not be appropriate for the Commission to get involved with this matter at this point.

Uniform Unincorporated Nonprofit Association Act (Memo. 98-56, p. 12)

Nine states have now adopted the Uniform Act. We have received a copy of a report of the Michigan Law Revision Commission recommending its adoption in that state.

Judicial Rulemaking; Summary Judgments (Memo. 98-56, pp. 15-17)

The memorandum discusses a suggestion that civil procedures be prescribed by judicial rules rather than by statutes. The suggestion is supported with a description of the inadequacies of summary judgment law.

Two short articles in the San Francisco Daily Journal of September 3, 1998, at p. 5, focus on problems in summary judgment law. See Mitchell, *Unclear Burden* (confusion persists regarding California's summary judgment standard); Thomas, *Thumb Nail* (end runs around legislative intent struck down). These articles are reproduced at Exhibit pages 1-3.

Mixed Community and Separate Property Assets (Memo. 98-56, pp. 21-22)

The memorandum discusses a proposal of the Commission's community property consultant to recast California law governing treatment of mixed community and separate property assets so the law is based on a theory of buy-in to title with right of reimbursement.

The theoretical approach used in the law can impact bankruptcy as well as division of property at dissolution. The Ninth Circuit has now held that where a community property family home was sold in dissolution proceedings and the proceeds of sale held in escrow pending division by the court, the nondebtor spouse's reimbursement right for separate property contributions was inchoate and the proceeds remained community property and were part of the debtor spouse's bankruptcy estate. *In re Mantle*, 98 Daily Journal D.A.R. 9650 (Sept. 4, 1998).

Informal Probate Administration (Memo. 98-56, pp. 22-24)

At the September 1998 meeting the Commission heard a presentation from Bob Sullivan, former Chair of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section, concerning the need for informal probate administration in California. The Commission deferred action on this matter, until the Commission can hear from advocates of the other side of the issue. The staff has put together a presentation for the Commission's December meeting. See Memorandum 98-84.

Common Interest Developments (Memo. 98-56, pp. 27-29)

At the September 1998 meeting the Commission decided to request specific legislative sanction for a study of the statutes governing common interest housing developments. Although a comprehensive revision was suggested, the Commission's request would identify specific issues to be included in the study, and in fact the Commission could focus on specific issues rather than on a comprehensive statute covering the area.

The staff suggests the following language for inclusion in our annual report, which will be the basis for the resolution submitted to the Legislature on this matter:

> **Common Interest Developments**
>
> Common interest housing developments are characterized by (1) separate ownership of dwelling space coupled with an undivided interest in common areas, (2) covenants, conditions, and restrictions that run with the land, and (3) administration of common property by a homeowner association.
>
> The main body of law governing common interest developments is the Davis-Stirling Common Interest Development Law. Civ. Code § 1350 *et seq.* Other key statutes include the Subdivision Map Act, the Subdivided Lands Act, the Local

Planning Law, and the Nonprofit Mutual Benefit Corporation Law, as well as various environmental and land use statutes. In addition, statutes based on separate, rather than common, ownership models still control many aspects of the governing law. See, e.g., Civ. Code §§ 1102 *et seq.*, 2079 *et seq.* (real estate disclosure).

The complexities and inconsistencies of this statutory arrangement have been criticized by homeowners and practitioners, among others. See, e.g., SR 10 (Lee and Sher) (April 10, 1997); California Research Bureau, *Residential Common Interest Developments: An Overview* (March 1998).

The association boards that administer common interest developments, composed of elected unit owners, encounter a statutory framework that is unduly complex; the lay volunteers often make mistakes and violate procedures for conducting hearings, adopting budgets, establishing reserves, enforcing parking, and collecting assessments. The statutes provide no practical enforcement provisions to deter violations. Housing consumers do not readily understand and cannot easily exercise their rights and obligations.

The statutes affecting common interest developments should be reviewed with the goal of setting a clear, consistent, and unified policy with regard to their formation and management and the transaction of real property interests located within them. The objective of the review is to clarify the law and eliminate unnecessary or obsolete provisions, to consolidate existing statutes in one place in the codes, and to determine to what extent common interest housing developments should be subject to regulation.

Procedure for Removal of Invalid Liens (Memo. 98-56, p. 30)

The memorandum refers to Senate Bill 1759 (Ayala), which would provide an expeditious procedure for removal of liens. The bill has been enacted as Chapter 779 of the Statutes of 1998. This makes a Commission study of the matter unnecessary.

Exhaustion of Administrative Remedies (Memo. 98-56, pp. 30-31)

The memorandum notes that a recent Court of Appeal decision suggests that the Legislature abrogate the rule in *Alexander v. State Personnel Board*, 22 Cal. 2d 198, 137 P. 2d 433 (1943). The Supreme Court has now accepted the case for review, vacating that decision. The Court notes that, "This case concerns whether, under the doctrine of exhaustion of administrative remedies, opponents of a decision of a local agency formation commission must seek reconsideration of a final decision of the agency before seeking judicial review".

The staff would like to bring to the Supreme Court's attention the Commission's recommendation to overrule the *Alexander* case. However, given our experience with an amicus curiae submission concerning the business judgment rule (see discussion below), we are inclined to think it's not worth it. We have transmitted the Commission's recommendation to the parties in this case.

Public Records Law (Memo. 98-56, pp. 31-32)

Professor Kelso agrees that the public records law needs to be reviewed, and on a priority basis — this is an important law, and privacy issues are directly impacted by electronic transmission and storage of information.

Administrative and Judicial Review of Parking Citations (Memo. 98-56, pp. 32-33)

The staff notes in the memorandum that although the filing fee for judicial review of an administrative parking citation determination is $25, that fee is reimbursable if the contestant prevails. Gerald Genard reports that this information is not made public; he was not aware of the reimbursement provision until he raised the issue with us. "However, at the very least, there ought to be a requirement that the local enforcement agency and the court give out truthful and complete information. The failure to do so only makes the process more of a farce. Right now, the only documentation involved tells the appellant to contact the police department for information on processing appeals. There is no requirement to provide written procedures with the correct information." Exhibit p. 4.

Professor Kelso notes that significant improvements were made in the parking citation review procedures in 1995. The real problem is the basic legislative decision to privatize enforcement, removing the responsibility of the local agency. The experience of McGeorge's Institute for Administrative Justice, which handles many of these proceedings, is that the hearing process is OK, given the context in which it occurs. "This is as good as it gets."

Criminal Sentencing (Memo. 98-56, pp. 33-34)

Professor Kelso indicates there is general consensus that some overhaul of criminal sentencing law is needed. Past reform efforts have invariably foundered on the fact that in order to rationalize the system, some sentences have to be raised or others have to be lowered, or both. This engenders opposition from

intransigent interests affected. The question is whether there is the political will to do what is necessary to reform the system. Professor Kelso suggests that a sense of this might be obtained from the new Governor, Attorney General, and Legislature.

In any event, a moratorium on changes might be beneficial and give the parties an opportunity to reflect. This view has been expressed also by legislative committee staff with whom we have spoke.

Computation of Traffic Fines (Memo. 98-56, p. 34)

Professor Kelso thinks that a consolidation or cross-referencing of the fine statutes would be admirable.

Derivative Actions (Memo. 98-56, p. 35)

The staff submitted for filing with the Supreme Court and served on the parties a letter transmitting the Commission's recommendation to codify the business judgment rule, for consideration in connection with the Court's review of *Lamden v. La Jolla Shores Clubdominium Homeowners Ass'n*, 72 Cal. Rptr. 906 (1998) (applicability of business judgment rule to homeowner association's duty of repair and maintenance). The Clerk of the Supreme Court would not accept our submittal on the basis that, once a hearing has been granted, court rules will allow amicus curiae submissions only by appearance in the proceeding and the filing of a formal brief.

The staff elected not to make an appearance and submit a brief because we are concerned that stretches the boundaries of the Commission's statutory authority. This is something the Commission needs to discuss. Meanwhile, we have encouraged other interested persons involved with the Commission's recommendation to submit an amicus brief.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Focus

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The Practitioner Trial Practice

Unclear Burden

Confusion Persists Regarding California's Summary Judgment Standard

By John Aral Mitchell

By permitting a court to dismiss an action that has no merit or to which there is no defense, California Code of the Civil Procedure Section 437(c) serves a critical function to both litigants and judges. From a litigant's perspective, a summary judgment motion is the most effective mechanism for halting costly and time-consuming litigation. Similarly, courts appreciate that summary judgment procedures reduce judicial costs by eliminating meritless cases from crowded court dockets.

When a court determines whether the defendant has met its initial burden of proof on a summary judgment motion, it balances the utility of summary judgment against the danger of dismissing a case prematurely. These competing considerations result in two divergent views of summary judgment in California courts. Although the conflict in California law regarding a defendant's initial burden may appear academic, the uncertainty surrounding the summary judgment standard has practical consequences for California litigators.

Prior to 1992, California courts applied a burden-shifting standard that made it difficult for a defendant seeking summary judgment to sustain its initial burden of proof. A defendant was required to "negative the matters which the resisting party would have to prove at trial" to establish that a cause of action was without merit. *Barnes v. Blue Haven Pools*, 1 Cal.App.3d 123 (1969). A defendant could not shift the burden of proof merely by showing that the plaintiff could present no evidence supporting its case.

In 1992 and 1993, the Legislature amended Section 437(c) and "legislatively overrule[d]" the *Blue Haven Pools*. *Union Bank v. Superior Court*, 31 Cal.App.4th 573 (1995). Pursuant to Section 437(c), the moving party now bears the initial burden of proof and must set forth admissible evidence establishing "that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Accordingly, a defendant must show that "one or more of the elements of the cause of action cannot be established, or [that] there is a complete defense to that cause of action." Section 437(c)(o)(2). As amended in 1992 and 1993, Section 437(c) mirrors the language of Rule 56 of the Federal Rules of Civil Procedure and reflects the movement to align California civil procedure with the federal rules.

It is unclear, however, whether the Legislature intended Section 437(c) to embrace fully the federal summary judgment standard as articulated in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). In *Celotex*, the U.S. Supreme Court held that judgment may be entered against a plaintiff if a defendant can establish the insufficiency of the plaintiff's supporting evidence. Thus, in federal court, a defendant need not negate the plaintiff's claims to carry its evidentiary burden on summary judgment.

California courts have grappled with the uncertainty created by the 1992 and 1993 amendments to Section 437(c) and have developed two views about California's summary judgment standard. These views simultaneously reflect and reinforce the policy conflict between two competing objectives: disposing of meritless causes of action expeditiously and exercising caution in dismissing a lawsuit without a trial.

In Union Bank, one of the first cases that addressed the effect of the 1992 and 1993 amendments, the court adopted the Celotex standard. Specifically, the court held that a defendant may shift the burden of proof merely by relying on discovery responses that reveal an absence of evidence of liability or damages.

In *Union Bank*, the plaintiff alleged that the defendant was liable for, among other things, misrepresentation and fraudulent conspiracy. The defendant moved for summary judgment. As support for its motion, the defendant offered the plaintiffs' responses to form interrogatories and requests for admission, which contained no facts supporting the plaintiffs' misrepresentation or fraudulent conspiracy causes of action. The trial court denied the motion for summary judgment with regard to the misrepresentation and fraudulent conspiracy causes of action.

The appellate court reversed the trial court, directing it to enter an order granting the defendant's summary judgment motion. The court examined carefully the express language and the legislative history surrounding the 1992 and 1993 amendments. It concluded that the defendant satisfied its evidentiary burden by offering the plaintiff's discovery responses, which were devoid of evidence supporting its causes of action.

Until the uncertainty is resolved, litigators should consider the unsettled state of the law when developing their strategies.

A majority of California courts accept the analysis and conclusion of Union Bank, holding that a defendant may meet its burden of proof merely by showing that a plaintiff has no evidence to support its case. Certain Underwriters at Lloyd's of London v. Superior Court, 56 Cal.App.4th 952 (1997); Rio Linda Unified School Dist. v. Superior Court, 52 Cal.App.4th 732 (1997); Lopez v. Superior Court, 45 Cal.App.4th 705 (1996); Leslie G. v. Perry & Assoc., 43 Cal.App.4th 472 (1996); Brantley v. Pisaro, 42

Cal.App.4th 1591 (1996); Hunter v. Pacific Mechanical Corp., 37 Cal.App.4th 1282 (1995). Accordingly, most California courts apply the federal standard outlined in Celotex to summary judgment motions filed by a defendant.

Contrary to the majority view, the 6th District California Court of Appeal rejected the *Celotex* standard and demanded that a defendant do more than show an absence of evidence supporting a plaintiff's causes of action. *Travelers Casualty & Surety Co. v. Superior Court*, 63 Cal.App.4th 1440 (1998); *Addy v. Bliss & Glennon*, 44 Cal.App.4th 205 (1996); *Hagen v. Hickenbottom*, 41 Cal.App.4th 168 (1995).

> The 6th District requires a defendant to produce evidence that the plaintiff does not and cannot reasonably be expected to establish a prima facie case. There is no reported case in which a court in that district found that a defendant met its burden of proof under this standard. Instead, 6th District courts affirm the entry of summary judgment only where a defendant negates a plaintiff's cause of action.

For example, in *Addy*, the plaintiff commenced an employment discrimination action against her former employer. In its motion for summary judgment, the defendant offered evidence that it made the employment decisions at issue on the basis of legitimate nondiscriminatory reasons. The trial court granted the defendant's motion for summary judgment.

The 6th District affirmed, relying on the defendant's evidence showing affirmatively that the plaintiff could not establish a prima facie case of unlawful discrimination. The court noted that the defendant did not merely indicate the plaintiff lacked evidence supporting her cause of action.

Although only dicta and inconclusive, this proposition in *Addy* was recently cited favorably by the California Supreme Court. See *Toland v. Sunland Housing Group Inc.*, 18 Cal.4th 253 (1998) ("Summary judgment practice imposes on a moving defendant the burden of proving that a necessary element of the plaintiff's case cannot be established"). However, the Supreme Court has not rejected explicitly the holding in *Union Bank*.

Until the uncertainty surrounding the summary judgment standard is resolved, litigators should consider the unsettled state of the law when coordinating their litigation strategy generally and their discovery strategy in particular.

Under the majority standard, a plaintiff responding to a defendant's summary judgment motion must offer evidence of the elements of its case in its discovery responses. If the plaintiff's responses are inadequate, they may serve as evidence that no facts support its cause of action. Accordingly, a defendant should tailor its discovery requests, such as interrogatories and requests for admission, so that the plaintiff must reveal the factual evidence that establishes its cause of action, or the lack thereof.

Under the minority view, a defendant bears a greater burden and must show that the plaintiff cannot reasonably be expected to establish a prima facie case. When opposing a motion for summary judgment, a plaintiff should argue that the minority view is the applicable summary judgment standard. The minority view is decidedly advantageous to plaintiffs in that it puts little pressure on a plaintiff to offer evidence of the elements of its case in its discovery responses.

John Arai Mitchell is a litigation associate at the Los Angeles office of White & Case. **Lisa Pfeffer**, a student at the University of Southern California Law School, assisted in research for this article.

Thumb Nail

End Runs Around Legislative Intent Struck Down

By Michael Paul Thomas

All judges must be tempted at one time or another to correct perceived inequities or inefficiencies in the law. Some judges succumb to that temptation by placing their judicial thumbs on the balancing already done by the legislature. Recently, several appellate cases have sought to identify and correct such judicial thumbprints found on California's summary judgment statute.

In *Lokeuak v. City of Irvine*, 98 Daily Journal D.A.R. 7298 (4th Dist. May 30, 1998), an Orange County Superior Court judge has long found fault with California's summary judgment procedure. As a result, he instituted a written "policy" in his courtroom to discourage parties from ever filing a motion for summary judgment. The policy stated that the statutory procedure is unduly time-consuming for the parties and the court, cumbersome and expensive. The motions are often a "waste of time" because they are usually denied due to procedural flaws or because of finding "triable issues of material fact." The "questions of law and/or fact" could be quickly and finally resolved if an "alternative format" were used, such as a minitrial, pretrial motion or referral to a private judge.

The policy then instructed the parties that before a motion for summary judgment may be filed, they must contact any opposing party and set up a meeting with the court to discuss a possible alternative format for addressing those issues the moving party seeks to present. If an agreement can be reached, the alternative format "shall be used"; if not, then the moving party may proceed with the motion.

The California Court of Appeal rejected the policy, noting that although trial judges have inherent power to control litigation before them, they have no authority to issue local courtroom rules that conflict with any statute or are inconsistent with the law. The court also recognized that California's summary judgment statute, Code of Civil Procedure Section 437(c), "provides a detailed procedural scheme for motions for summary judgment." Thus, the trial judge's policy requiring a party wishing to make such a motion to consult first with the trial judge and the other party and agree on a different procedure if possible "improperly interferes" with a party's right to move for summary judgment pursuant to established statutory procedures.

The 4th District also recently struck down Orange County Superior Court rule 518(l), which purportedly authorized a trial court to grant summary judgment in favor of a party opposing such a motion under certain circumstances. In *Sierra Craft Inc. v. Magnum Enterprises Inc.*, 98 Daily Journal D.A.R. 6557 (June 16, 1998), the court ruled that although California Code of Civil Procedure Section 575.1 authorizes trial courts to adopt local rules, such rules may implement, but may not be inconsistent with, statutory requirements.

Because summary judgment, a useful litigation tool, is also a drastic remedy, the appellate court emphasized the importance of satisfying *all* of the detailed procedural requirements for granting such a motion before the trial court in fact grants the remedy. Because the Orange County local rule ignored the requirement of Section 437(c) permitting a party opposing summary judgment to file a responsive separate statement, it was not consistent with the summary judgment statute and was therefore invalid. Thus the appellate court re-emphasized that "[l]ocal rules may not provide a shortcut for these requirements."

In *Gatton v. A.P. Green Services Inc.*, 98 Daily Journal D.A.R. 6004 (July 1, 1998), the 1st District affirmed that courts must adhere to statute when considering evidence submitted in support of a summary judgment motion. In *Gatton*, the appellate court agreed with the trial court's denial of a summary judgment motion supported by a deposition transcript from another proceeding. Although summary judgment contemplates the use of deposition transcripts, they are subject to admissibility objections made and sustained by the trial court.

In *Gatton*, the trial court implicitly sustained the defendant's objection under California Evidence Code Section 1292 to the plaintiff's use of a deposition transcript from another proceeding to support her summary judgment motion. Section 1292 requires that before hearsay evidence may be used, the party offering the evidence must show that the deponent is unavailable as a witness and that parties in the other proceeding had a similar interest and motive to cross-examine the deponent as the party against whom the transcript was being offered would have in their case. The defendant in *Gatton* simply did not meet its burden of showing the deposition transcript was admissible under Section 1292.

On appeal, the defendant argued that any deposition transcript should be treated just like a declaration when offered to support a motion for summary judgment, citing a footnote in *Williams v. Saga Enter. Inc.*, 225 Cal.App.3d 142 (1990). However, the appellate court rejected this "pernicious footnote," stating that it could not "abide by *Williams's* disregard" of the statutory scheme set forth by the summary judgment statute and Evidence Code.

Noting that no subsequent case has ever relied on the *Williams* footnote for the proposition that a court may overlook defects in deposition testimony offered in support of a motion for summary judgment by treating the testimony as a declaration, the appellate court insisted on adherence to statute and rejected the *Williams* footnote outright.

In *Linden Partners v. Wilshire Linden Assoc.*, 98 Daily Journal D.A.R. 2183 (March 4, 1998), the 2nd District held that on a motion for summary adjudication, the trial court may rule whether a defendant owes or does not owe a duty to the plaintiff without regard for the dispositive effect of such ruling on other issues in the litigation (except that the ruling must completely dispose of the issue of duty). The appellate court specifically rejected language from *Regan Roofing Co. Inc. v. Superior Court*, 24 Cal.App.4th 425 (1994), noting that such language "seems clearly at variance from the language of section 437c(f)."

After quoting directly from the portion of the summary judgment statute allowing summary adjudication of "an issue of duty" without qualification, the *Linden* court concluded that the language of the statute is clear and unequivocal: A plaintiff may seek a determination of whether a defendant owed a duty to the plaintiff regardless of any dispositive effect. The court also went on to note prior criticism of the *Regan* holding in *Transamerica Ins. Co. v. Superior Court*, 29 Cal.App.4th 1705 (1994).

In *Mediterranean Construction Co. v. State Farm Fire & Casualty Co.*, 98 Daily Journal D.A.R. 9151 (Aug. 25, 1998), the 4th District rejected the judicial practice occasionally dispensing with oral argument on summary judgment motions. After reviewing the mandates of the summary judgment statute, the court concluded: "While judges retain considerable discretion to limit oral argument, they cannot do away with it altogether. There is a fundamental difference between demanding brevity and imposing silence."

Michael Paul Thomas, a partner with Kelegian & Thomas in Newport Beach, specializes in insurance, civil litigation and appellate practice and is co-author of the West Group's five-volume "California Civil Practice: Procedure."

From: "Genard, Gerald (PBD)" <Gerald.Genard@pbdir.com>
To: "'nsterling@clrc.ca.gov'" <nsterling@clrc.ca.gov>
Subject: FW: parking citation appeals-Your Memorandum 98-56
Date: Tue, 8 Sep 1998 11:12:00 -0700
X-Priority: 3
MIME-Version: 1.0
X-Rcpt-To: nsterling@clrc.ca.gov

Regarding my letter to the Commission, included in your memorandum referenced above,and discussed on pages 32-3 thereof, I thought you might be interested in my e mail to the Judicial Council concerning the failure of both the local police department and the court clerk to point out the fact that a winning appellant will obtain reimbursement of the "non-refundable" $25 filing fee. I spoke to the person at the Capitola Police Department who also checked with the court clerk. She reported that both the police and the court were unaware of the reimbursement provision in the Vehicle Code. She further told me that the instructions for what to tell persons were based upon information received from "the state".As the note below indicates, the idea of a fee so large as to discourage an appeal is absurd in the first instance, even if the appellant has a chance to recover it. However, at the very least, there ought to be a requirement that the local enforcement agency and the court give out truthful and complete information. The failure to do so only makes the process more of a farce. Right now, the only documentation involved tells the appellant to contact the police department for information on processing appeals. there is no requirement to provide written procedures with the correct information.
Gerald H. Genard
> -----Original Message-----
> From: Genard, Gerald (PBD)
> Sent: Tuesday, September 08, 1998 10:53 AM
> To: 'accfairness@courtinfo.ca.gov'
> Subject: parking citation appeals
>
> I recently decided not to appeal a parking citation to the Santa
> Cruz municipal Court because both the Capitola Police Department and
> the Court Clerk's office told me that the $25 appeal fee was
> non-refundable.They neglected to mention that if I won, the court
> would order "the processing agency" to reimburse the $25 (Vehicle code
> section 40230(b)). In didn't learn of this until I contacted the
> California Law Revision Commission. I learned that the personnel of
> the police department and the court do not have a clue at the
> reimbursement provision.
> If as the e mail title suggests, someone is truly concerned
> about fairness of access to courts, what about the $25 fee? The
> parking ticket here was $33. Even if the court had given me the
> correct information, don't you think that a $25 fee, which I get back
> only if I win, put a chilling effect on my appeal right given the fact
> that the ticket is only $33 ?
> In any event, how about the situation described where appeals
> are effectively discouraged through deception-stating that the fee is
> non-refundable(technically correct) but not stating that it is
> reimbursable?