Study J-1321 October 23, 2002

# Memorandum 2002-53

## Jurisdictional Limits for Small Claims and Limited Civil Cases (Discussion of Issues)

Civil cases in California are currently separated into three main procedural tracks: small claims cases, limited civil cases, and unlimited civil cases. With exceptions and qualifications, the jurisdictional limit is $5,000 for a small claims case and $25,000 for a limited civil case. At the direction of the Legislature, the Commission and the Judicial Council are jointly reexamining this three track system for civil cases, particularly the jurisdictional limits. To aid in assessing the system, the Judicial Council hired Policy Studies Inc. ("PSI") to collect empirical data. PSI recently completed its work and submitted a report, which is available on the Commission's website (www.clrc.ca.gov). Weller, et al., *Report on the California Three Track Civil Litigation Study* (July 31, 2002) (hereafter "PSI Report"). Now that the empirical research is complete, it is time for the Commission to consider the results, determine whether it agrees with PSI's recommendations, and work towards preparing a legislative proposal. The Judicial Council has already begun that process. The goal is to develop a joint proposal for introduction in the Legislature in 2004. To achieve that goal, the Commission will need to issue a tentative recommendation in early 2003.

(We have assigned a new study number (J-1321) to this project on the jurisdictional limits for small claims and limited civil cases. Materials relating to the procedure for this joint study can be found under Study J-1320, which also encompasses other projects on civil procedure after trial court unification.)

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## BACKGROUND

This study originated from the Commission's work on trial court unification. Before delving into the issues, it is necessary to provide some background information on trial court unification, the three track system, the history of this study, the procedure for this study, PSI's empirical research, and the Judicial Council's progress in considering PSI's recommendations.

### Trial Court Unification

In the early 1990's, California had three types of trial courts: superior, municipal, and justice courts. Although the term "small claims court" was frequently used, both in statutes and in common usage, each small claims court was actually a division of a municipal or justice court. (The Commission considered cleaning up this terminology in implementing trial court unification, but decided that the terminology was entrenched and trying to change it might jeopardize legislation needed to implement unification.)

In 1993, then Senator Bill Lockyer introduced a resolution in the Legislature to amend the state Constitution to replace the superior, municipal, and justice courts with a single trial level court called the district court (SCA 3). The Legislature also passed a resolution directing the Law Revision Commission to study how to revise the state Constitution and statutes to implement trial court unification. 1993 Cal. Stat. res. ch. 96.

The next year, the Commission issued a report on the constitutional revisions necessary to implement trial court unification. *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1 (1994). The voters also approved a constitutional amendment eliminating the justice courts. 1994 Cal. Stat. res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994). Unexpectedly, however, the Legislature failed to pass SCA 3.

In 1996, the Legislature passed a proposed constitutional amendment authorizing trial court unification on a county-by-county basis: The municipal and superior courts in each county could unify on a vote of a majority of the municipal court judges and a majority of the superior court judges in that county. 1996 Cal. Stat. res. ch. 36 (SCA 4). In anticipation that the voters would approve that amendment, the Legislature authorized the Commission to study statutory revisions that would be necessary to implement the constitutional amendment. 1997 Cal. Stat. res. ch. 102.

In 1998, the Commission issued a lengthy report proposing legislation to implement county-by-county unification. *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51 (1998). The voters approved SCA 4 (Proposition 220 at the June 2, 1998 election) and the Legislature enacted the Commission's proposed statutory revisions. 1998 Cal. Stat. ch. 931.

The trial courts in many counties unified shortly after SCA 4 was approved. By February 2001, the trial courts in all counties had unified their operations in the superior court. A major bill revising the codes to reflect that development was recently enacted on Commission recommendation (2002 Cal. Stat. ch. 784); the Commission is in the process of preparing further legislation along those lines.

**The Three Track System**

Before unification, the small claims court was a division of the municipal court. Subject to certain exceptions and qualifications, a plaintiff could file a case for $5,000 or less in the small claims court, and the case would be subject to

informal small claims procedures. Most other civil cases within the jurisdiction of the municipal court were subject to simplified procedures known as economic litigation procedures. The jurisdictional limit of the municipal court was $25,000. Civil cases in which the amount in controversy exceeded that limit, and certain other civil cases, were within the jurisdiction of the superior court. Those cases were subject to standard civil procedures, including full-fledged discovery.

In revising the codes to accommodate trial court unification, the Commission was tempted to assess the merits of this three track procedural system. In particular, the Commission considered raising the monetary limits for application of small claims procedures and economic litigation procedures.

The Commission recognized, however, that such steps might engender controversy and delay the reforms necessary to implement trial court unification. Thus, instead of reevaluating the three track system at that time, the Commission narrowly limited its proposed legislation to preserve the existing procedures but make them workable in the context of unification. *Trial Court Unification: Revision of Codes*, *supra*, at 60-61, 64-65, 82.

To that end, the term "limited civil case" was introduced to refer to civil cases traditionally within the jurisdiction of the municipal court, and the term "unlimited civil case" was introduced to refer to civil cases traditionally within the jurisdiction of the superior court. Provisions prescribing municipal court procedures were revised to apply to limited civil cases, and provisions prescribing superior court procedures were revised to apply to unlimited civil cases. Code Civ. Proc. §§ 85, 88 & Comments. (Unless otherwise specified, all further statutory references are to the Code of Civil Procedure.) A provision was added to make clear that a small claims case is a special type of limited civil case, which is subject to small claims procedures in the small claims division of the superior court. Section 87 & Comment.

Accordingly, the current three track system mirrors the pre-unification system, and consists of:

(1) *Small claims cases*. Subject to certain exceptions and qualifications, a plaintiff seeking $5,000 or less may pursue recovery in the small claims division of the superior court. Section 116.220.

(2) *Limited civil cases (former municipal court cases)*. The amount in controversy in a limited civil case may not exceed $25,000. Section 85. Most limited civil cases are subject to economic litigation procedures. Section 91. A case for $5,000 or less may, at the plaintiff's option, be pursued as a limited civil case subject to

economic litigation procedures, even if the case would also qualify for treatment as a small claims case.

(3) *Unlimited civil cases (traditional superior court cases)*. All other civil cases are unlimited civil cases, which are subject to traditional superior court procedures.

**History of This Study**

Although the Commission refrained from revising the three track system in the course of implementing trial court unification, it "strongly recommend[ed] that the Legislature direct a study reexamining this three-track system and its underlying policies in light of unification." *Trial Court Unification: Revision of Codes*, *supra*, at 82. "Such a study may entail elimination of unnecessary procedural distinctions, reassessment of the jurisdictional limits for small claims procedures and economic litigation procedures, and reevaluation of which procedures apply to which type of case." *Id*. at 82-83 (footnotes omitted). The Commission identified the Judicial Council and itself as organizations with expertise suitable for conducting such a study. *Id.* at 83. The Commission counseled that a "joint study and report is advisable." *Id*. The Commission also identified a number of narrower issues for study, and made recommendations regarding responsibility for studying those issues. *Id*. at 83-86.

The Legislature responded by enacting Government Code Section 70219, which provides:

> 70219. On submission by the California Law Revision Commission of its report to the Governor and Legislature pursuant to Resolution Chapter 102 of the Statutes of 1997 recommending statutory changes that may be necessitated by court unification, the Judicial Council and the California Law Revision Commission shall study and make recommendations to the Governor and Legislature on the issues identified in the report as appropriate for future study, including consideration of the experience in counties in which the courts have unified. Each agency shall assume primary or joint responsibility for the studies and recommendations as outlined in the report, and each agency shall consult with the other in the studies and recommendations. This section does not limit any authority of the Judicial Council or the California Law Revision Commission to conduct studies and make recommendations authorized or directed by law.
>
> **Comment.** Section 70219 is intended to provide an institutional mechanism for continuing improvement of judicial administration and procedure in light of unification of the courts. Issues identified

> by the California Law Revision Commission as appropriate for future study in its report on trial court unification, and recommended primary and joint responsibility of the Judicial Council and Law Revision Commission, may be found in *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51 (1998). The studies include such matters as repeal of obsolete statutes relating to expired pilot projects and prior court and personnel restructurings, reorganization of statutes governing court fees, adjustment of jurisdictional limits for economic litigation and small claims procedures, clarification of provisions appearing to give municipal and superior courts concurrent jurisdiction in certain cases, and cataloging cases within the appellate jurisdiction of the courts of appeal on June 30, 1995.

(Section 70219 was mistakenly repealed as obsolete in 2001, but reenacted without change in 2002. See 2001 Cal. Stat. ch. 745, § 113; 2002 Cal. Stat. ch. 784, § 340.)

Most of the studies referenced in Section 70219 have already been completed. The Commission and the Judicial Council began working on the broad study of the three track system in 1999. A group of experts was assembled for a brainstorming session to identify key issues. Much effort was devoted to developing a procedure for the study, because the Commission and the Judicial Council had not conducted a joint study before. To test that procedure, the Commission and the Judicial Council studied some procedural differences between limited and unlimited civil cases, and jointly developed a legislative proposal. See *Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases*, 30 Cal. L. Revision Comm'n Reports 443 (2000). The proposal was enacted with only minor revisions. 2001 Cal. Stat. ch. 812.

Staff from the Commission and the Administrative Office of the Courts ("AOC") also sought to gather information that would be helpful in reassessing the three track system. Under the supervision of Professor David Jung, the Public Law Research Institute (Hastings College of Law) provided much useful material. In 2001, the Judicial Council hired PSI to conduct empirical research for the study. PSI completed its report in July 2002.

**Procedure for This Study**

The Commission proposed a number of approaches for conducting this joint study, including the possibility of creating a working group consisting of members of the Commission and members of the Judicial Council. See Memorandum 99-88. The AOC requested that each organization follow its usual

procedures in conducting the study, supplemented by extensive cooperation and communication between Commission staff and AOC staff.

At the Judicial Council, a proposal is usually developed and considered by one or more standing advisory committees before being presented to the Judicial Council or its Policy Coordination and Liaison Committee for final approval. Sometimes a task force, subcommittee, or working group is used. Proposals may consist of legislation, rules of court, administrative reforms, Judicial Council forms, etc.

In contrast, the Commission is only authorized to propose legislation. Gov't Code §§ 8280-8298. In considering the AOC's requested procedure, the Commission sought assurance that proposed legislation was an anticipated end-product (not necessarily the only end-product) of the proposed process. The Commission also sought assurance that the Judicial Council would engage in reconciliation efforts if the Commission and the Judicial Council ultimately reached different conclusions in the study.

AOC staff provided such assurance, and the Commission agreed to the AOC's proposed procedure. A reconciliation procedure was not developed.

**PSI's Empirical Study**

AOC staff used a competitive bidding process in selecting PSI to do the empirical work for this study. PSI's qualifications, methodology, and conclusions are briefly summarized below.

*PSI's Qualifications*

PSI is a consulting firm located in Denver, Colorado, which has extensive experience conducting empirical research on the state and federal justice systems. Among the PSI researchers assigned to this study were Steven Weller, Ph.D., J.D., and John Martin, Ph.D., who are nationally known for their work on court programs, including such topics as small claims courts and simplified litigation. *See, e.g.*, Ruhnka & Weller, Small Claims Courts: A National Examination (1978). Drs. Weller and Martin participated in evaluating California's Economic Litigation Pilot Program in the late 1970's and early 1980's, before economic litigation procedures were adopted on a statewide basis.

*Methodology*

To evaluate the effectiveness of small claims procedures and economic litigation procedures in California, and the desirability of changing the

jurisdictional limits or other aspects of those procedures, PSI conducted a statewide web-based survey of attorneys (PSI Report, Appendix A), to which 160 attorneys representing all 58 California counties and a variety of types of practice responded.

After consulting with AOC staff, Commission staff, and others (see PSI Report, Acknowledgments), PSI also selected three counties for in-depth study: San Diego, San Francisco, and Fresno. Criteria for selection of these counties included geography, case processing times, jury verdicts in personal injury cases, and manageability of the data collection. PSI Report at 7. The intent was to obtain (as much as possible with only three counties) solid data from a representative sampling of the state.

In each of the three counties, PSI staff spent one week interviewing judges, commissioners, and court administrative staff, and one week interviewing attorneys. About 15-20 judges and court staff, and 15-20 attorneys were interviewed in each county. PSI staff also interviewed 10-15 small claims litigants in both Fresno and San Diego. PSI Report at 11, Appendices B-D (interview protocols).

PSI also collected case descriptive data from automated court records in Fresno and San Francisco, and from the AOC's ongoing evaluation of the Early Mediation Pilot Program in San Diego County. PSI Report at 11.

*Summary of PSI's Recommendations*

PSI designed its study to address four key questions about California's three track system for civil cases:

- Is there a continued need for different case processing tracks?
- What should be the jurisdictional scope and procedural characteristics of the different case processing tracks?
- What types of court infrastructure are required to support each of the different case processing tracks?
- How can the California courts implement changes to the current system to make an effective transition to an improved system?

PSI Report, Executive Summary at I.

PSI reached the following conclusions:

- The need for three different civil case processing tracks remains great.

- Some relatively modest changes in jurisdictional claim limits are warranted.
- The success of each processing track in providing effective and efficient access to the courts while maintaining the quality of justice — especially the success of the small claims and limited civil tracks — is highly dependent on the adequacy of supporting infrastructure within a particular jurisdiction, such as the availability and sophistication of commissioners or judge pro tems, and the availability of assistance programs for self-represented litigants.
- An incremental, jurisdiction-by-jurisdiction, and pilot project focused change strategy should be used to implement alterations to the existing three track system.

*Id.*, Executive Summary at I-II.

PSI also made three main recommendations for reform:

(1) The state should retain the present small claims jurisdiction, but should establish and closely monitor pilot projects to test the effects of raising the limit to $7,500 and $10,000.

(2) The state should test the effects of raising the limit for economic litigation procedures to $50,000.

(3) The state should establish a pilot project to test the effects of providing an additional procedural option for resolving cases with amounts in controversy of $5,000-$15,000. This option would involve a blend of small claims and economic litigation procedures.

*Id.*, Executive Summary at II-IV. PSI was careful to explain that "the points of view, opinions, concepts, conclusions, and recommendations expressed in [its] report are those of the authors and do not represent the positions of the Judicial Council or the Law Revision Commission." *Id.*, Preface. PSI's recommendations and the bases for them are discussed in greater detail below, after a brief description of the Judicial Council's progress on this study.

**Progress of the Judicial Council**

AOC staff have organized a Three Track Study Working Group, which is chaired by Judge Mary Thornton House of the Los Angeles County Superior Court. The group also includes several other superior court judges (James Bascue, Kathleen Butz, John Conway, Robert Freedman, Michael Garcia, Frederick Horn, Margaret Johnson, Quentin Kopp, Douglas Miller, and Laurie Zelon), a retired superior court judge (Roderic Duncan), a superior court

commissioner (Douglas Carnahan), a number of court administrators (Tina Burkhart, Jeanne Caughell, Jacqueline Davenport, Mary Lou Des Rochers, Larry Jackson, Tina Rasnow, and Sandra Silva), a law professor (Glenn Koppel), and two attorneys (Kenneth Babcock and Albert Balingit).

The group met for the first time in September, for a full day. It reached a preliminary consensus that the jurisdictional limit for economic litigation procedures should be raised to $50,000. The group did not reach a consensus regarding the jurisdictional limit for small claims procedures. Some members thought that the limit should be raised, others said that the limit should remain unchanged, and one even floated the idea of decreasing the limit.

During part of the meeting, the group separated into three discussion groups: one on small claims procedures, one on cases for $5,000-$15,000, and one on temporary judges. The subgroup on small claims procedures expressed tentative interest in establishing pilot projects extending the small claims limit to $10,000. The subgroup on cases for $5,000-$15,000 was disinclined to adopt PSI's suggestion to establish a new procedural track for cases in this range. The subgroup did, however, discuss possible refinements of the economic litigation procedures. The subgroup on temporary judges discussed ways to improve the use of temporary judges, such as improving training requirements, increasing supervision, and establishing standards for selection. Further detail on these discussions is provided in the analysis of each topic below.

In considering the substantive issues, the Commission should bear in mind that the ultimate goal is a joint recommendation with the Judicial Council. The Judicial Council might address a broader range of matters than the Commission (e.g., suggested rule changes and administrative reforms). But at least with respect to the jurisdictional limits for small claims cases and limited civil cases, the goal is to achieve consensus.

We start by analyzing small claims procedures and then turn to economic litigation procedures. These analyses are followed by a brief discussion of the use of temporary judges.

## SMALL CLAIMS PROCEDURES

As set forth in Section 116.120, the Legislature created the small claims court to provide an accessible forum for resolution of minor civil disputes:

116.120. The Legislature hereby finds and declares as follows:

(a) Individual minor civil disputes are of special importance to the parties and of significant social and economic consequence collectively.

(b) In order to resolve minor civil disputes expeditiously, inexpensively, and fairly, it is essential to provide a judicial forum accessible to all parties directly involved in resolving these disputes.

(c) The small claims divisions have been established to provide a forum to resolve minor civil disputes, and for that reason constitute a fundamental element in the administration of justice and the protection of the rights and property of individuals.

(d) The small claims divisions, the provisions of this chapter, and the rules of the Judicial Council regarding small claims actions shall operate to ensure that the convenience of parties and witnesses who are individuals shall prevail, to the extent possible, over the convenience of any other parties or witnesses.

The theory behind the small claims court is that "only by escaping from the complexity and delay of the normal courts of litigation could anything be gained in a legal proceeding which may involve a small sum." *Sanderson v. Niemann*, 17 Cal. 2d 563, 573, 110 P.2d 1025 (1941). "Consequently, the small claims court functions informally and expeditiously." *Id*. "The awards — although made in accordance with substantive law — are often based on the application of common sense; and the spirit of compromise and conciliation attends the proceedings." *Id*.

A basic understanding of small claims procedures and their history is necessary before discussing PSI's research on small claims procedures, other relevant information, and the policy considerations relating to the jurisdictional limits for small claims court.

**Existing Law**

The small claims division of the superior court has jurisdiction of the following cases:

(1) An action for money damages not exceeding $5,000, other than an action on a guaranty. Section 116.220(a)(1).

(2) An action to enforce payment of unsecured personal property taxes not exceeding $5,000, if the legality of the tax is not contested. Section 116.220(a)(2).

(3) An action to issue a writ of possession pursuant to Civil Code Sections 1861.5 and 1861.10 if the amount of the demand does not exceed $5,000. Section 116.220(a)(3).

(4) An action involving a fee dispute between an attorney and client, where the amount at stake does not exceed $5,000, and certain other conditions are satisfied. Section 116.220(a)(4).

(5) An action on a guaranty if the amount of the demand does not exceed $2,500 ($4,000 if the guarantor charged a fee for its guarantee). Section 116.220(c).

A plaintiff whose claim falls within the jurisdiction of the small claims court has a choice of whether to pursue the claim as a small claims case. If the plaintiff prefers, the claim may be pursued as a normal limited civil case. See Section 85.

If a claim exceeds the monetary limit of the small claims court but would otherwise be within the court's jurisdiction, the plaintiff may waive the excess and file the claim as a small claims case. The waiver does not become operative until the small claims court enters judgment. Section 116.220(d).

A person may file only two actions for more than $2,500 in the small claims court each year. This limit does not apply to a local public entity. Section 116.231.

With limited exceptions, "[n]o claim shall be filed or maintained in small claims court by the assignee of the claim." Section 116.420. This provision is "aimed at preventing professional collection agencies from using the small claims court." Pagter, et al., *The California Small Claims Court*, 52 Cal. L. Rev. 876, 890 (1964).

The following procedural rules apply in small claims court:

- *No formal pleading requirements*. Only a simple claim form is necessary to initiate a small claims case. Section 116.310(a).
- *No pretrial discovery*. No discovery is permitted in a small claims case. Section 116.310(b).
- *No representation by counsel, except on appeal.* Subject to very limited exceptions, "no attorney may take part in the conduct or defense of a small claims action." Section 116.530; *Prudential Ins. Co. v. Small Claims Court*, 76 Cal. App. 2d 379, 383-84, 173 P.2d 38 (1946).
- *Small claims advisors*. Each county is required to have small claims advisors who provide free advice to small claims litigants. Sections 116.260, 116.940; see also Cal. R. Ct. 1725 (training and qualifications of small claims advisors).
- *Interpreters permitted but not provided*. If a party does not speak English well, the small claims court may permit an interpreter to assist the party. The court does not provide an interpreter; the

party must arrange for one. The court is, however, required to maintain a list of interpreters who will assist small claims litigants free of charge or for a reasonable fee. Section 116.550.

- *No reclassification if plaintiff's damages exceed $5,000*. If the defendant in a small claims case has a counterclaim that exceeds the jurisdictional limits of the small claims court, the defendant may file that claim as a limited civil case or an unlimited civil case, as appropriate, and request that the small claims case be "transferred." Section 116.390. In contrast, if a plaintiff files a claim as a small claims case and later discovers that the damages exceed $5,000, the plaintiff can pursue the full amount only by dismissing the small claims case and filing a new action. *Jellinek v. Superior Court*, 228 Cal. App. 3d 652, 279 Cal. Rptr. 6 (1991); R. Brown & I. Weil, Jr., California Practice Guide: Civil Procedure Before Trial, *Jurisdiction and Venue* § 3:54.2, at 3-16 (2002).
- *Sessions on evenings and weekends*. All courts are permitted, and some courts are required, to hold sessions of the small claims court during non-business hours. Section 116.250.
- *No right to jury trial*. A small claims case is tried to a judicial officer or, on stipulation of the parties, to a temporary judge. Under specified circumstances, a party may be deemed to have stipulated to a temporary judge despite the lack of a formal written stipulation. Cal. R. Ct. 1727.
- *Few formal evidentiary requirements*. The rules of privilege apply in a small claims case, but most formal evidentiary requirements do not. *Houghtaling v. Superior Court*, 17 Cal. App. 4th 1128, 21 Cal. Rptr. 2d 855 (1993). "If the small claims court is to be the 'People's Court,' it must not be encumbered with rules and restrictions which can only frustrate and hinder the litigant who resorts to that court in response to its promise of speedy and economical justice." *Id*. at 1136; *see also Sanderson v. Niemann*, 17 Cal. 2d 563, 574, 110 P.2d 1025 (1941).
- *Prompt, short hearings.* A small claims case is usually heard soon after it is filed. Section 116.330. The hearing is generally quite short. Section 116.510.
- *Equitable relief*. With limitations, a small claims court may grant equitable relief instead of, or in addition, to money damages. The court may also issue a conditional judgment. Section 116.220(b); see also Memorandum 2001-43, pp. 2-5.
- *No appeal by plaintiff*. Having chosen the small claims forum, the plaintiff has no right of appeal. Section 116.710(a); *Superior Wheeler Cake Corp. v. Superior Court*, 203 Cal. 384, 387, 264 P. 488 (1928).
- *Appeal is trial de novo*. The defendant may appeal but the appeal consists of a retrial in the superior court, before a judicial officer

other than the judicial officer who heard the original case. Sections 116.710(b), 116.770. There is no right to a jury trial even on retrial. Section 116.770(b); *Crouchman v. Superior Court*, 45 Cal. 3d 1167, 755 P.2d 1075, 248 Cal. Rptr. 626 (1988). The parties may, however, be represented by counsel at the trial de novo. Section 116.770(c).

- *No collateral estoppel*. Because small claims procedures are informal, a judgment in a small claims case is not collateral estoppel on the issues litigated. *Vandenberg v. Superior Court*, 21 Cal. 4th 815, 829, 982 P.2d 229, 88 Cal. Rptr. 2d 366 (1999); *Sanderson*, 17 Cal. 2d at 573-75.

"[T]he nature of small claims proceedings results in a paucity of published authority on any issues relating to such proceedings." *Houghtaling*, 17 Cal. App. 4th at 1132. "It must be candidly admitted that the administration of rules governing small claims procedure are almost wholly dependent upon the good faith and conscientiousness of the trial courts, because … there is no provision for routine plenary review." *Id*. at 1138. "[T]he current trend of the law is to defer to the intent of the Legislature, as grounded in historical perspective, to create an informal and flexible forum in which disputes over modest sums of money may be resolved without the necessity for incurring disproportionate expenses or consuming undue amounts of time." *Id*. at 1133. "[T]he system is designed to depend upon the common sense ability of the judges to sort out relatively minor disputes." *Id*. at 1138.

**History of Small Claims Procedures**

The small claims movement began in England in 1605, and "was intended to provide speedy, inexpensive, and informal disposition of small actions through simple proceedings conducted with an eye toward compromise and conciliation." Pagter, et al., *supra*, at 876-77. "In the United States, small claims courts originated in the early 1900's as a response to the inadequacies of the existing judicial structure." Best, et al., *Peace, Wealth, Happiness, and Small Claims Courts: A Case Study*, 21 Fordham Urb. L.J. 343, 347 (1994). "Cumbersome formal court procedures resulted in unreasonable delay and expense, and made it virtually impossible for litigants to use the court system to collect on small debts without the use of an attorney." *Id*. at 347. "Small claims courts were intended to solve these problems by providing greater access to the court system for the average citizen." *Id*. All but four states in the nation now have small claims courts.

In California, legislation creating the small claims court was enacted in 1921, effective in 1922. 1921 Cal. Stat. ch. 125, § 1. The original jurisdictional limit of $50 has increased over time:

| Year | Small Claims Limit | Value in 2001* |
|---|---|---|
| 1922 | $ 50 | $ 477 |
| 1952 | $ 100 | $ 656 |
| 1958 | $ 150 | $ 907 |
| 1962 | $ 200 | $ 1,139 |
| 1968 | $ 300 | $ 1,531 |
| 1972 | $ 500 | $ 2,103 |
| 1977 | $ 750 | $ 2,244 |
| 1982 | $ 1,500 | $ 2,805 |
| 1989 | $ 2,000 | $ 2,874 |
| 1991 | $ 5,000 | $ 6,506 |

* These values were determined using the Inflation Calculator at www.westegg.com/inflation, which is based on the Consumer Price Index.

This history reflects a continuing rise in the size of the disputes submitted to the small claims courts, even when inflation is taken into account. The increase was particularly sharp in 1991 (from $2,874 to $6,506 in 2001 dollars), the last time the jurisdictional limit was increased.

**Recent Attempts to Change the Jurisdiction of the Small Claims Court**

Several attempts have been made to change the jurisdiction of the small claims court since the $5,000 limit was established.

*AB 2506 (Andal)*

In 1994, Assemblyman Andal introduced a bill (AB 2506) that would have increased the small claims limit to $10,000, except where the claim was over $5,000 and there was an insurance policy that might provide coverage to the defendant. The bill passed the Assembly by a vote of 75-0, but was defeated in the Senate Judiciary Committee.

Support for the bill included, among others, the State Bar Litigation Section and the State Bar Committee on Administration of Justice ("CAJ"). The author contended that by increasing the monetary jurisdiction of the small claims court, a greater number of citizens would have access to the judicial system. He

recognized that the proposed increase was not justified by inflation. Senate Judiciary Committee analysis (Aug. 16, 1994).

Opponents included, among others, the California Judges Association, the Judicial Council, and the California Trial Lawyers Association ("CTLA"), which is now known as the Consumer Attorneys of California ("CAOC"). The Judicial Council would have supported an increase to $7,500, but not to $10,000:

> The Judicial Council would support an increase in the monetary jurisdiction of small claims court to $7,500. The Judicial Council supports a gradual increase because of the 1990 experience of courts when the jurisdiction of small claims court was doubled to the current $5,000. The Council asserts that since that time the cases "brought in small claims court are more complex and accordingly the length of time needed to hear a small claims case has increased significantly. If the jurisdictional limit is doubled, to $10,000, it is reasonable to assume that there will be a major increase in hearing time." Further, longer cases may make it more difficult to recruit attorneys to serve as temporary small claims judges and more defendants will exercise their right to appeal to superior court if the limit is raised.

*Id*.

The California Judges Association opposed the bill on the grounds that (1) the small claims court was intended to resolve minor disputes and claims, (2) the $5,000 limit was already straining the boundaries of the small claims forum, and (3) if the upwards pressure on small claims court jurisdiction was a symptom of dysfunction in the delivery of legal services in California, this should be remedied by further streamlining of the procedures used in regular municipal court civil actions, increased legal aid programs, or other positive efforts. *Id*.

CTLA opposed the bill because the effect on the courts of doubling the small claims limit was difficult to predict. CTLA also pointed out that it did not make sense to have different categories of court jurisdiction depend on the availability of insurance. "This could be very confusing to consumers." *Id*.

*AB 246 (Lempert)*

In 1997, the Legislature enacted AB 246 (Lempert), but the bill was vetoed by Governor Wilson. As enacted, the bill would have increased the jurisdictional limit of the small claims court to $7,500. As introduced, the bill would have increased the jurisdictional limit of the small claims court to $10,000.

Supporters of the enacted version included, among others, the State Bar, the California District Attorneys Association, Nolo Press, and the Judicial Council, which had expressed concern regarding the $10,000 proposal. CAOC opposed the bill on grounds that

> the small claims court was established to provide a forum to resolve minor civil disputes. Because of the prohibition of attorney representation in small claims court, … consumers may unfairly be pitted against experienced claims adjusters and other corporate negotiators while "denying consumers the right to counsel, formal discovery, and appeal in significant disputes."

Assembly Judiciary Committee analysis (March 20, 1997).

Governor Wilson's veto message expressed similar concerns:

> Although this bill is intended to provide consumers greater access to the court system, this increase may actually be detrimental to them. With larger claims, consumers are more likely to find themselves against corporate entities or claims adjusters who possess greater legal sophistication and more court experience. Increasing the jurisdictional amount will expose litigants to substantial liability in cases involving complex legal issues without benefit of counsel. Moreover, the jurisdictional amount was raised to $5,000 in 1990. There has not been a sufficient rise in inflation over the past several years to justify a fifty percent increase as proposed in this bill.
>
> The small claims court system is a fast and economical means of dispute resolution. Fairness requires that cases involving amounts larger than $5,000, continue to be resolved in civil court where greater procedural safeguards exist.

*SB 1342 (Lockyer)*

In 1997, the Legislature also considered a bill that would have allowed a small claims court to hear auto accident cases involving an amount in controversy between $5,000 and $10,000. SB 1342 (Lockyer). The bill would have allowed attorneys to represent clients in these small claims court cases, and would have required that the cases be heard by a commissioner or a judge. Any contingency fee could be capped at 20% unless the court awarded a higher fee. The bill passed the Senate but died without a hearing in the Assembly Judiciary Committee. The proposal had previously been incorporated into a comprehensive auto insurance and liability reform package (SB 10 (Lockyer) (1992)), which was vetoed by Governor Wilson.

*AB 1131 (Ackerman) and SB 110 (Ackerman)*

In 1999, then Assemblyman Dick Ackerman introduced a bill to allow assignees to sue in small claims court under specified conditions (AB 1131). After some amendments, the bill passed the Assembly on the consent calendar. There was considerable opposition, however, so the Senate Judiciary Committee referred the matter to interim study.

Among the opponents was the Judicial Council, which objected on the following grounds:

> The small claims court is an informal proceeding with the object of dispensing speedy justice between the parties. It was not envisioned as a forum for assignees who were not party to the original transaction or dispute. By authorizing certain assignees to file in small claims court, AB 1131 will complicate proceedings and adversely affect the court's ability to perform its duty because the court will no longer be able to question parties directly connected to the claim. Further, it will divert court time and resources from the disputes that the small claims court is primarily intended to resolve.

Senate Judiciary Committee analysis (Aug. 8, 2000).

In 2001, Senator Ackerman introduced a new bill (SB 110) to allow assignees to sue in small claims court. This bill was repeatedly amended to try to accommodate consumer interests and eliminate opposition. It included features such as a special filing fee for assignees, automatic calendar preference for a small claims action by an individual, and a requirement that an assignee reduce a claim by 10% before filing it in small claims court. Some opposition (including the Judicial Council's) was overcome, but not all. For instance, the Los Angeles Superior Court contended:

> SB 110 would fundamentally alter the nature of Small Claims Court in cases in which an assignee is the plaintiff. The bill creates a special procedure applicable only to the collections industry, which would deny defendant debtors due process. Under the procedure set forth in SB 110, an assignee without direct knowledge of the debt in dispute, lacking a copy of any contract, and with no documentation of payments made, need only present a signed declaration of the original creditor as proof of the debt owed. The defendant debtor's only option to avoid this procedure is to transfer the case to Superior Court, where he or she may become obligated to pay the attorney's fees of the assignee. Thus Small

> Claims Court becomes the court of the collection agency, rather than the people's court.

Assembly Judiciary Committee analysis (June 18, 2002).

The bill passed the Senate but was gutted and amended in the Assembly Judiciary Committee.

**PSI's Findings and Recommendation**

PSI's web-based attorney survey showed that about 74% of the attorney respondents supported some increase in the small claims limit, "with $10,000 the most favored limit by a substantial margin." PSI Report at 31. The level of support for increasing the limit was "fairly consistent across the state regardless of region or size of county." *Id*.

One reason given for raising the small claims limit was to keep up with inflation. *Id*. at 32-33. The primary reason given was "because of the inability of parties to find attorneys who will handle cases between $5,000 and $10,000 for a fee that does not eat up all the potential award." *Id*. at 33. "It is often even difficult to find attorneys who will take those cases at all." *Id*.

PSI further found, however, that small claims courts present issues relating to the quality of justice. Many parties "have difficulties in presenting their cases and proving their claims in small claims court, even at the present jurisdictional limits." *Id.* at 43. Persons who do not have English as their first language "can be particularly disadvantaged." *Id*. In addition, "some litigants are simply not articulate or confident enough to present their cases coherently." *Id*.

There was also dissatisfaction with the quality of temporary judges in both Fresno and San Diego Counties. *Id*. at 44. In those counties, the temporary judges are volunteers who serve irregularly. In San Francisco, the temporary judges are paid and serve frequently. *Id*. at 17-18, 44-45. PSI recommends the latter approach, which seemed to be better-received. *Id* at 45.

Another issue regarding the quality of justice in small claims court is "the difficulty of determining the truthfulness of claims on the basis of the minimal evidence that is sometimes presented in small claims court trial." *Id.* "With the need for speculation as to what really happened in some small claims cases, some attorneys were nervous about increasing the stakes and the potential damage that a wrong decision could cause to a litigant." *Id.* As one attorney informed PSI, "[m]any litigants are of limited economic means, such that $5,000 is a significant

liability. $10,000 (an oft recommended number) is far too much where there is no discovery, no right to counsel, and no subpoena power." *Id.*

PSI concluded that the small claims limit should not be raised, but that pilot projects should be conducted to test the effects of raising the limit to $7,500 and $10,000. According to PSI, these pilot projects should include an extensive training program for temporary judges, small claims advisors located at the court, and rigorous data collection. In small claims cases over $5,000, PSI also suggested the possibilities of permitting the parties to have attorneys and allowing the plaintiffs to appeal. *Id*., Executive Summary at II-III. PSI pointed out that "[a] wrong decision can go against a plaintiff as well as a defendant, and the notion that plaintiffs have exercised a choice in selecting to sue in small claims court is really a fiction, given the difficulty in finding a lawyer to take those cases in the regular civil docket." *Id*. at 56.

In PSI's view, small claims courts "clearly provide needed service to litigants with cases too small to justify an attorney or a full-blown trial." *Id*., Executive Summary at II. PSI gave three reasons for opting for the pilot project approach, instead of an immediate jurisdictional increase:

> (1) If the limit was raised, more complicated cases with more difficult issues of proof probably would be brought in small claims court. Litigants might have difficulty presenting those cases, increasing the likelihood of injustice.
> (2) If the limit was raised, the caseload of the small claims court might increase enough to strain the resources in some courts.
> (3) If the limit was raised, many jurisdictions might need to use volunteer temporary judges, which might adversely affect the quality of justice. "As the cases get larger, the impact of a wrong decision on the parties is greater, particularly on the plaintiffs, who have no right to appeal."

*Id*.

**Views of the Working Group and Other Participants in This Joint Study**

At its first meeting, the Three Track Study Working Group did not reach a consensus regarding the jurisdictional limit for small claims courts. As previously discussed, however, the small claims subgroup expressed tentative interest in establishing pilot projects extending the small claims limit to $10,000. The sense of the subgroup was that such pilot projects should be conducted in about four counties and should be a model for best practices. For example, all of

the small claims advisors would be well-trained, all of the hearings would be conducted by judges and commissioners, and post-hearing questionnaires would be used to assess the programs. The subgroup's inclination was to make participation in these pilot projects optional in cases over $5,000. The subgroup did not discuss how this option would work. From a plaintiff's perspective, participation in a small claims case (as opposed to a normal limited civil case) is always optional. Presumably, then, the concept would be to afford defendants a way to opt-out of small claims procedures in cases over $5,000.

Various ideas have been advanced in written comments submitted to the AOC by people who reviewed a draft of PSI's report. Some comments echoed sentiments expressed by PSI or by attorneys responding to PSI's web-based survey. Others made new points, such as the following:

Court Infrastructure

- Many courts cannot afford to pay temporary judges.
- In some counties, it might not be feasible to have small claims advisors located at the court. Each court should have discretion to determine the best location for such advisors in the community that it serves.
- It might be advisable to provide free interpreters for small claims litigants.
- Funding for mediation of small claims cases should be increased.
- Small claims cases could be prescreened. The easier cases could be directed to temporary judges; the harder cases should be directed to judges or commissioners.

Special Rules for Cases over $5,000

- If attorneys are permitted in small claims cases over $5,000, it might be appropriate to provide some kind of malpractice immunity in that context. Another possibility is "unbundling" — permitting the attorney to provide limited services instead of representing the client in the case as a whole.
- It might be appropriate to allow limited discovery in cases over $5,000 (e.g., exchange of certain documents and an abbreviated set of form interrogatories).
- Allowing the plaintiff to appeal in a small claims case over $5,000 might be a bad idea, because many plaintiffs will request a second chance to be heard and courts will be forced to devote more resources to frivolous claims.

Time Deadlines

- The short time deadlines for small claims cases should be reexamined. Longer deadlines would allow time for settlement negotiations, prescreening of cases, and service of evasive defendants.

Arguments Against Raising the Jurisdictional Limit

- If the small claims limit is raised, massively increased training of commissioners and temporary judges will be necessary to achieve even "rough" justice. It will also be important to increase the number of paid small claims advisors.
- Increasing the small claims limit might violate the constitutional right to trial by jury. The California Supreme Court has upheld the lack of a jury trial in a small claims case, even at the trial de novo. *Crouchman v. Superior Court*, 45 Cal. 3d 1167, 755 P.2d 1075, 248 Cal. Rptr. 626 (1988). In so doing, however, the Court relied on the lack of a right to a jury in a case for a modest sum under English common law in 1850. *Id*. at 1173-78. The Court cautioned that "the Legislature's power to raise the small claims court jurisdictional amount is limited by constitutional parameters, and any attempt to raise the small claims limit *to a level which could no longer be considered a very small monetary amount*, would probably necessitate re-evaluation of whether a jury trial is constitutionally required for the de novo appeal." *Id*. at 1177 (emphasis added). The small claims jurisdictional limit was $1,500 at the time of the *Crouchman* decision. There do not appear to be any later decisions on the constitutionality of the lack of a jury trial in a small claims case.

Arguments for Raising the Jurisdictional Limit

- The small claims limit should be increased to $10,000 now, instead of studying that possibility to death. Resolution of $5,000-$10,000 cases is usually governed by financial pressures unrelated to the merits of the case. Making small claims courts available for such cases will help alleviate that situation. It will also help address the increasing problem of juror shortages.
- The number of small claims cases might not change much if the small claims limit is raised.
- Raising the small claims limit might lessen the number of normal limited civil cases. That might free up judicial resources, because a limited civil case typically requires more judicial attention than a small claims case.

- An increase in the small claims limit could be limited to torts or motor vehicle claims, if problems are perceived with increasing the limit for other types of claims.

**Findings and Recommendations of HALT**

HALT is an organization dedicated to "helping all Americans handle their legal affairs simply, affordably, and equitably." (See HALT's website at www.halt.org.) In 1998, HALT launched its Small Claims Reform Project, which is "a multi-year, national campaign to publicize the existence and advantages of small claims courts, to educate legal consumers about their rights, and to advocate for systematic reforms in the civil justice system." *Id*. (Small Claims Fact Sheet). HALT has identified California as a target state for this project. *Id*.

According to HALT, every American should enjoy full access to the protections of the justice system, but "this basic right is often denied to millions by civil court procedures and practices that are costly, Byzantine and hostile to ordinary citizens who need legal help." *Id*., *quoting* Turner & McGee, *Small Claims Reform: A Means of Expanding Access to the American Civil Justice System*, 5 U. D.C. L. Rev. 177, 177 (2000). HALT views small claims reform as a key means of improving citizen access to the civil justice system.

HALT advocates five main reforms of small claims courts:

(1) Raising the jurisdictional limit to $20,000.
(2) Authorizing small claims judges to issue court orders, not just award money damages.
(3) Expanding small claims dispute resolution programs.
(4) Protecting non-lawyer litigants by banning attorneys in small claims courts.
(5) Creating user-friendly courts that operate during non-business hours, require use of plain language forms, and provide in-person assistance to litigants.

HALT website (Small Claims Fact Sheet).

Some of these reforms are unnecessary in California, because they have previously been adopted. In particular, small claims courts in California have some authority to issue conditional judgments and equitable relief instead of money damages. Attorneys generally are not allowed to participate in small claims cases, except on appeal. Small claims courts are authorized and in some places required to operate during non-business hours. Only a simple claim form is necessary to initiate a small claims case; there are no formal pleading

requirements. Small claims advisors are available to assist litigants. See "Existing Law," *supra*. In fact, California's small claims advisor program is considered a model for other jurisdictions:

> California's innovative Small Claims Legal Advisor Program requires each county to provide individual assistance and free advice to small claims litigants. This program employs advisors who help people through the small claims process by helping them prepare for trial, providing them with informational materials, referring them to other appropriate agencies and programs (particularly mediation programs, if available), and by acting as their guides and teachers. The California Small Claims Legal Advisor Program was established by law and is funded from small claims filing fees. While this program does work to increase accessibility, it has experienced some difficulty in meeting an increasing caseload for small claims courts. Similarly, this promising program, which has proved to be extremely helpful to people coming through the small claims process, has suffered from under-funding and under-staffing in many locations.

Turner & McGee, *supra*, at 183.

In HALT's view, however, raising the jurisdictional limit for small claims courts is a critical first step in opening up the system. According to HALT, California's small claims limit of $5,000 "is only slightly above the national median of $4,000." HALT website (California Report Card). HALT acknowledges that its ultimate goal of a $20,000 limit might require some incremental steps. HALT states, however, that achieving that kind of an increase "would be the most meaningful reform to increase consumer access to the small claims courts." *Id*. (Small Claims Fact Sheet).

In a national survey, HALT evaluated the small claims courts across the country. "Data for the survey was collected over four months in late 2001 by a telephone survey of a sampling of small claims courts in the four largest counties and six other randomly selected counties in each state." *Id*. (National Small Claims Report Card).

California received an overall grade of "B," which was the highest grade in the nation. *Id*. (California Report Card). The state received an "A" in the categories of "Injunctive Relief," "Small Claims Advisors," "Guides and Simplified Forms," and "Encourages Self-Representation." California received a "B" in the categories of "Dollar Limit," "Extended Courtroom Hours," and "Low Filing Fees." In two categories, the state received poor grades: An "F" in "Help

with Collecting a Judgment" and a "C" in "Uses Mediation." Despite these perceived shortcomings, HALT rated California's small claims courts as "among the most accessible nationwide." *Id*.

**Findings of a Recent Colorado Study**

"There is a long tradition of empirical study of small claims courts." Best, et al., *Peace, Wealth, Happiness, and Small Claims Courts: A Case Study*, 21 Fordham Urb. L.J. 343, 355 n.102 (1994). The staff has not yet reviewed much of this literature.

Some insight might be gained, however, from an empirical study of the small claims court in Denver, Colorado, which was conducted in the early 1990's by researchers at the University of Denver College of Law (hereafter, the "Denver study"). For purposes of reference, the small claims courts in Colorado received a grade of "C" in HALT's 2001 national survey. Consistent with that mediocre rating, the Denver study concluded:

> [S]mall claims courts may be paradigmatic of governmental responses to social problems. They do some good work and some bad work; people's impressions of the work they do may be significantly skewed; no one knows how helpful their existence is to the entire group of people whose welfare they are intended to improve; and it is hard to determine whether the individuals they actually do serve are better off for having been able to use their processes.

Best, et al., *supra*, at 344. The researchers further explained that in the relaxed evidentiary atmosphere of the small claims court, "the system is without some of the natural checks that rules of evidence provide in the advocacy process." *Id*. at 376. Thus, "potential for abuse is high, and a danger exists that a decision may be based on a magistrate's personal feelings instead of on rules of law." *Id*.

Interestingly, the Denver study further showed that 85% of plaintiffs prevail in small claims court, but 55% never collect any part of their judgments. *Id.* at 344. "A system where plaintiffs almost always win may be subject to a critique of pro-plaintiff bias, or its record may only reflect that due to the difficulty of pursuing legal relief, most of the plaintiffs who sue actually present legitimate claims." *Id*. at 345. With regard to judgment collection, the researchers opined that if "the chance of collecting money awards is very small, the operation of the court may not be a sensible allocation of societal resources." *Id*. They also surmised that "given the small prospect of judgment collection, it is likely that

plaintiffs are not adequately aware of the likelihood that in-court victory will not lead to satisfaction of a judgment." *Id*.

**Other Considerations**

A number of other considerations should be taken into account in determining whether to raise the jurisdictional limit for small claims cases.

*Inflation Adjustment*

Despite the comments of some attorneys in PSI's web-based survey, it is clear that increasing the small claims limit to $10,000 or even $7,500 could not be justified solely on the basis of overall inflation. See "History of Small Claims Procedures," *supra*. Two factors must be considered, however, in evaluating the financial need for small claims procedures: (1) the amount sought by the plaintiff and (2) the amount that the plaintiff would have to spend on legal services to successfully recover on the claim if the small claims forum was unavailable. Although overall inflation (measured by the Consumer Price Index) may provide a reasonable estimate of how the first figure has changed over time, it is less clear that overall inflation accurately reflects how the cost of legal services has changed. The staff does not have data on how the cost of legal services has changed since the small claims limit was last adjusted in California. We welcome information on this point.

*Complexity of the Issues in a Small Claims Case*

The extent to which the complexity of a dispute correlates with the amount at stake is unclear. As an article on California's small claims courts explains, "[n]o correlation between jurisdictional amount and case complexity has been established." Pagter, et al., *The California Small Claims Court*, 52 Cal. L. Rev. 876, 877 n.10 (1964). According to the article, it "would seem that the intention in creating small claims courts was to eliminate cases under a specified dollar amount from the dockets of the formal courts, irrespective of case complexity." *Id*. In the staff's experience, the amount in controversy in a case is at best a rough measure of the complexity of the legal issues involved.

*Fiscal Considerations*

The fiscal consequences of increasing the small claims limit are difficult to predict. Presumably, there might be a decrease in revenue from filing fees, because some cases that previously would have been filed as limited civil cases

would instead be filed as small claims cases, which are subject to lower filing fees than limited civil cases. The magnitude of this effect is not easy to estimate.

It is also unclear whether expenditures for judicial resources will increase or decrease if the small claims limit is raised. "[A] change in one court's jurisdiction has a ripple effect on other courts." Bintliff, *A Jurisdictional History of the Colorado Courts*, 65 U. Colo. L. Rev. 577 (1994). The impact of raising the small claims limit in California would depend at least in part on whether such a reform is accompanied by changes in court infrastructure, such as increased training for temporary judges handling small claims cases, provision of free interpreters for small claims litigants, increased funding for small claims advisors, and decreased use of volunteer temporary judges. The cost of such changes would to some extent offset any savings that might result from the reduction (if any) in the limited civil caseload.

The staff thus hesitates to speculate on the probable fiscal impact of a change in the jurisdictional limit for the small claims courts. The Judicial Council has greater expertise in this area and might be able to provide a better assessment of the likely fiscal consequences.

*Deterrence of Illegal Self-Help*

"[A]n obvious societal purpose behind providing ready access to the judicial system is to provide an alternative to the 'self-help' form of dispute resolution." *Houghtaling v. Superior Court*, 17 Cal. App. 4th 1128, 1144 n.6, 21 Cal. Rptr. 2d 855 (1993) (Timlin, J., concurring and dissenting). If litigants do not perceive the small claims court system as providing rational and fair dispute resolution, they may choose to resort to self-help measures beyond the pale of civilized society, rather than turn to the municipal court, with its concomitant higher cost and increased formality." *Id.*; *see also* Best, et al., *supra*, at 344. This is a strong impetus for making the small claims forum not only available, but also effective, for resolution of cases that cannot otherwise be economically pursued.

*Identification of Social Problems for Legislative or Administrative Action*

Ideally, another function of a court is identification of recurring social problems that might be proper subjects for legislative or administrative action. Best, et al., *supra*, at 344. Due to the lack of published decisions, it is unclear how well small claims courts in California serve this purpose. In some circumstances, however, a ruling of a small claims court may be reviewed by a court of appeal, which might publish its decision. Cal. R. Ct. 63; R. Brown & I. Weil, Jr., California

Practice Guide: Civil Procedure Before Trial, *Jurisdiction and Venue* § 3:51.6, at 3-14 (2002).

Publication of a decision in a limited civil case is similarly infrequent. Thus, increasing the small claims limit probably will not have much impact on how effectively the Legislature and state agencies learn of recurring social problems arising in small claims cases.

*Reclassification or Other Relief if Plaintiff's Damages Exceed Jurisdictional Limit*

"[T]he law does not authorize transfer of a case from small claims court to superior court, on the plaintiff's motion, after the running of the statute of limitations, for the purpose of allowing the plaintiff to increase her prayer for damages." *Jellinek v. Superior Court*, 228 Cal. App. 3d 652, 279 Cal. Rptr. 6 (1991). "[I]f a small claims lawsuit had the potential to become, at plaintiff's option, a larger superior court lawsuit after expiration of the statute of limitations, a prudent defendant would consult with an attorney before allowing a small claims action to go by default, and … the legislative intent to keep small claims proceedings inexpensive and attorney-free and to encourage prompt resolution of those claims would be frustrated." *Id.* at 9; *see also Acuna v. Gunderson Chevrolet, Inc.*, 19 Cal. App. 4th 1467, 1472-73, 24 Cal. Rptr. 2d 62 (1993).

This limitation might be a source of concern for plaintiffs' groups. As one attorney commented in PSI's web-based survey, "I haven't met too many plaintiffs who can accurately evaluate the value of a personal injury case." PSI Report at 44.

Due to court unification, the issue now is the availability (or lack thereof) of reclassification, not transfer to another court. Because small claims cases usually are decided quickly, however, the problem is deeper than whether to permit reclassification of a small claims case if the plaintiff learns that damages exceed the small claims limit. Suppose, for instance, that a small claims judgment has already been entered by the time the plaintiff realizes the extent of the loss. Unless the plaintiff has some mechanism for obtaining relief from the judgment, the plaintiff is stuck with it, even though the case was litigated without the assistance of counsel, without a jury, and without discovery.

That is a risk that the plaintiff runs in selecting the small claims forum. If the small claims limit is increased, however, the likelihood that a plaintiff might seriously underestimate the damages and mistakenly file a case as a small claims case might increase to an unacceptable level.

One means of addressing this problem would be to exclude tort cases from the reform, applying the new jurisdictional limit only to cases in which damages are more easily estimated. Another possibility would be to raise the limit for all types of cases, but permit attorney representation in tort cases for over $5,000, even if such representation is not permitted in other types of cases for over $5,000.

**Summary of the Pros and Cons of Increasing the Jurisdictional Limit for Small Claims Cases**

PSI's report includes a summary of the pros and cons of increasing the jurisdictional limit for small claims cases. PSI Report at 59. The Commission might find this helpful in determining how to proceed.

The staff views the critical policy considerations as follows:

Key Advantages of Raising the Jurisdictional Limit

- The main advantage of raising the jurisdictional limit would be to increase access to justice. The expense of hiring an attorney and pursuing a claim as a limited civil case is prohibitive in many instances. Increasing the small claims limit would allow parties to pursue claims that otherwise could not realistically be litigated. This would further the goals of affording justice and deterring violent self-help in disputes over relatively small sums.
- A modest increase in the jurisdictional limit (e.g., to $7,500) could also be justified as an inflation adjustment, particularly if the increase is not effective until January 2005 and inflation continues between now and then.

Key Disadvantages of Raising the Jurisdictional Limit

- Increasing the small claims limit might result in a decline in the quality of justice in cases that previously would have been litigated under more extensive procedures. The extent to which this is a problem will depend in part on the infrastructure of the small claims court (e.g., whether cases are tried to a commissioner, as opposed to a volunteer attorney acting as a temporary judge) and whether special procedural rules (e.g., allowing parties to be represented by an attorney) apply to small claims cases over $5,000.
- Raising the small claims limit might increase the likelihood that plaintiffs will mistakenly file in small claims court, obtain a small claims judgment, and then be unable to obtain full recovery upon belatedly learning the full extent of their damages.

- Increasing the small claims limit might violate the constitutional right to trial by jury. To comply with that right, it might be necessary to afford a jury trial on appeal of a small claims case for over a certain amount. The staff has not fully researched and analyzed this point.

  It is clear to us that few disputants regard $7,500 or $10,000 as "a very small monetary amount." Such amounts are "very small," however, in relation to the cost of trying a limited civil case or an unlimited civil case. In all likelihood, those amounts would also be "very small" in relation to the cost of trying a small claims appeal to a jury. A claim of that size might also seem "very small" to an individual required to serve on such a jury. We do not know whether $7,500-$10,000 is "very small" in relation to the small claims limit (5 pounds) that existed in England at the time that California adopted its Constitution, which essentially preserved the English common law right to a jury trial.

  Whether a small claims jurisdictional limit of $7,500 or $10,000 would be considered constitutional is hard to predict without further study. From the Supreme Court's 1988 decision in *Crouchman*, however, it is clear that a jury trial on appeal is not necessary in a case for $1,500 or less.

**Options**

The Commission's options regarding small claims jurisdiction include at least the following:

(1) Leave the small claims system as is.

(2) Retain the current jurisdictional limit for small claims cases, but make changes in the infrastructure of small claims courts.

(3) Retain the current jurisdictional limit for small claims cases, but revise small claims jurisdiction in other respects (e.g., allow assignees to sue in small claims court).

(4) Establish pilot projects extending the small claims limit to $7,500 or $10,000 (or some other amount), possibly with changes in the infrastructure of the courts or special procedures for cases over $5,000.

(5) Raise the small claims limit to $7,500 or $10,000 (or some other amount), subject to a sunset provision, and monitor the effects of the reform.

(6) Raise the small claims limit to $7,500 or $10,000 (or some other amount), without conditions.

**Staff Analysis and Recommendation**

In selecting among the options, the Commission is fortunate to have more information than it usually does when deciding how to proceed. In particular, PSI's report provides a wealth of data to consider. Although this is the first staff memorandum discussing the pros and cons of raising the jurisdictional limits for small claims cases, the Commission is better-situated to reach a tentative decision than it often is after the staff has presented several memoranda on a topic.

It is an unfortunate reality that it takes time and resources to resolve disputes fairly and justly, but time and resources are limited. Even with essentially unlimited time and resources, it is not always possible to achieve justice, because no sure-fire means of establishing the truth exists. The ultimate goal of a justice system is to maximize the amount of justice achieved, within constraints of time and resources available.

But the importance of achieving justice is not necessarily linked to the amount at stake in a case. As the Legislature recognized in creating California's small claims courts, disputes involving relatively small amounts can be of tremendous importance to the litigants. It is crucial to provide economically reasonable means of resolving these disputes, without relegating them to second-tier justice. "In order for our judicial system to serve, justice must be available for all litigants, whether their claims be large or small." Selzer, *California's Pilot Project in Economical Litigation*, 53 S. Cal. L. Rev. 1497, 1525 (1980).

"It may be easy to find faults with our justice system, but it is difficult to find solutions." *Id.* at 1518. There is no panacea for providing effective access to justice to all persons in the California courts. The best we can do is to chip away at the problem through many different approaches.

The Commission needs to assess whether changing the jurisdictional limit for small claims procedures will be a helpful step in this process, and whether other statutory changes in small claims procedures should be made to improve overall access to justice. PSI's web-based survey suggests that there is broad support, at least among attorneys, for increasing the small claims limit to as much as $10,000. The survey also shows, however, that some attorneys sharply disagree with that idea. The failure of recent attempts to increase the small claims limit and the lack of consensus among the Three Track Study Working Group are further indications that any proposal to raise the limit is likely to be controversial.

Further, any decision that the Commission makes necessarily will entail a certain amount of guesswork, because there is no precise way to predict the

effects of increasing a jurisdictional limit or instituting other reforms. Numerous variables affect courts (e.g., delay reduction programs, trial court unification, geographical factors, court personnel), making it difficult to predetermine or even assess the impact of any particular change.

As PSI points out, the desirability of increasing the small claims limit is linked to the infrastructure of the small claims court. The stronger the state is able to make the infrastructure (as by using only commissioners and judges, instead of temporary judges), the more appropriate it will be to raise the jurisdictional limit. Given the current budget situation, however, it seems unlikely that dramatic changes in the infrastructure will be possible in the near future.

Due to these considerations, **the go-slow pilot project approach recommended by PSI may be the best option.** It is clear that problems of access to justice still remain, so efforts need to be made to address those problems. Establishing pilot projects would provide a means of assessing the impact of increasing the jurisdictional limit before extending that reform statewide.

Determining how to structure the pilot projects would require some care, as well as extensive communication with the Judicial Council regarding selection of courts to participate. We would also want to make sure that using the pilot project approach in this context would not raise equal protection issues or similar concerns. The staff wholeheartedly agrees with PSI that **the pilot projects would need to be monitored and subjected to rigorous data collection,** so as to facilitate assessment of the programs.

**Our preliminary recommendations regarding design of the pilot projects are:**

- To establish small claims pilot projects in at least four counties.
- To test the effects of raising the jurisdictional limit to both $7,500 and $10,000 (e.g., by using a $7,500 limit in two counties and a $10,000 limit in two counties).
- To require that paid, well-trained small claims advisors be made available in each pilot county, preferably at or near the small claims court.
- To have the small claims advisors provide assistance with regard to collection on a small claims judgment, not just litigation of a small claims case. It might also be appropriate to distribute written materials regarding collection procedures, such as the information available from the Self Help Center on the Judicial Council's website.

- To require extensive training of temporary judges who handle cases over $5,000 in the pilot counties.
- To experiment (in one or two counties) with providing free interpreters in small claims cases over $5,000, at least to defendants who do not speak English well.
- To experiment (in one or two counties) with permitting attorney representation in small claims cases over $5,000, at least in tort cases and other cases in which damages are difficult to estimate.
- To experiment (in one or two counties) with permitting a jury trial on appeal at the defendant's request in cases over $5,000.
- To experiment (in one or two counties) with permitting plaintiffs to appeal in cases over $5,000.
- Not to permit defendants to opt out of small claims procedures in cases over $5,000, as apparently contemplated by the Three Track subgroup that discussed small claims procedures. If defendants were permitted to opt out, the likelihood of gamesmanship probably would be high: A defendant might well opt out simply as a maneuver to discourage the plaintiff from pursuing the case.
- Not to experiment with permitting assignees to sue in small claims court. Ideally, justice should be accessible at a reasonable cost to anyone with a legitimate claim, including an assignee. The traditional focus of small claims court, however, is to serve the unsophisticated individual with a small claim. *See, e.g., Houghtaling*, 17 Cal. App. 4th at 1136; Pagter, et al., *supra*, at 884, 890-91. Despite Senator Ackerman's multi-year efforts to extend small claims procedures to assignees, he did not succeed. It would be imprudent to rekindle that controversy while attempting to assess the advisability of raising the small claims jurisdictional limit.

"[I]mproving the effectiveness of small claims courts ought to be treated as a significant priority. The symbolic promise offered by an element of the justice system such as a small claims court should be matched by the reality of its performance." Best, et al., *Peace, Wealth, Happiness, and Small Claims Courts: A Case Study*, 21 Fordham Urb. L.J. 343, 379 (1994). The suggested pilot projects might be an effective means of working towards that goal.

## ECONOMIC LITIGATION PROCEDURES

Economic litigation procedures are simplified procedures applicable to limited civil cases (i.e., most civil cases, other than small claims cases, for $25,000 or less). The theory underlying the use of economic litigation procedures is

similar to that underlying the use of small claims procedures: Simplified procedures are necessary because the cost of litigating a small case using standard procedures is prohibitive. As Judge (now Justice) Norm Epstein explained shortly after the Legislature extended economic litigation procedures statewide:

> It is no secret that much of the time, the cost to prosecute or defend a suit may overwhelm the amount in controversy. Individuals and entities are economically forced to let substantial and justifiable wrongs against them go unremedied; or to surrender to meritless claims because the cost of court justice is just too high, and takes too long. …
>
> These costs are particularly felt in relatively small cases.

Epstein, *Development of the Economical Litigation Statutes*, *in* Practice in Municipal Court Under the New Pleadings and Procedures Rules, at 1 (Cal. Cont. Ed. Bar 1983).

**Existing Law**

The economic litigation rules (Sections 90-100) apply to any limited civil case, other than a small claims case or a summary proceeding to obtain possession of real property. Section 91(b). An action may, however, be withdrawn from economic litigation procedures "upon a showing that it is impractical to prosecute or defend the action within the limitations" of those procedures. Section 91(c).

Cases subject to economic litigation procedures are governed by the standard rules for civil cases, except as otherwise specified in the economic litigation rules. Section 90. The special economic litigation rules are:

- *Simplified pleadings*. The only pleadings allowed are complaints, answers, cross-complaints, answers to cross-complaints, and general demurrers. An answer need not be verified, even if the complaint or cross-complaint is verified. Special demurrers are not allowed. Section 92(a)-(c).
- *Motions*. All motions are permitted, but a motion to strike is allowed only on the ground that "the damages or relief sought are not supported by the allegations of the complaint." Section 92(d)-(e).
- *Case questionnaire*. The plaintiff has the option of serving a case questionnaire with the complaint, using a Judicial Council form. Section 93(a). These forms are intended to "elicit fundamental information about each party's case, including names and

addresses of all witnesses with knowledge of any relevant facts, a list of all documents relevant to the case, a statement of the nature and amount of damages, and information covering insurance coverages, injuries and treating physicians." Section 93(c). If the plaintiff exercises this option, the plaintiff must complete the questionnaire and serve the completed questionnaire with the complaint, along with a blank questionnaire for the defendant to complete and serve at the same time as the defendant's answer. Section 93(a)-(b).

- *Limited discovery*. As to each adverse party, a party may conduct only the following discovery: (1) one oral or written deposition, which may include service of a subpoena duces tecum on the deponent, (2) physical and mental examinations, (3) the identity of expert witnesses, and (4) any combination of interrogatories, inspection demands, and requests for admission that totals no more than 35 altogether. Section 94. On motion, the court may permit additional discovery, "but only upon a showing that the moving party will be unable to prosecute or defend the action effectively without the additional discovery." Section 95.
- *Statement of evidence and witnesses*. A party may serve on any other party a request for a statement of evidence and witnesses, in which the responding party must provide the names and addresses of any witnesses that the party intends to call at trial, as well as a description of any physical or documentary evidence to be offered at trial. If the responding party fails to disclose evidence or witnesses as required, the court may exclude the omitted evidence or testimony at trial. Sections 96-97.
- *Prepared testimony*. Under specified conditions, a party may present affidavits or declarations instead of live testimony at trial. Section 98.
- *No collateral estoppel*. A judgment or final order in a case subject to economic litigation procedures "is conclusive between the parties and their successors in interest but does not operate as collateral estoppel of a party or a successor in interest to a party in other litigation with a person who was not a party or a successor in interest to a party to the action in which the judgment or order is rendered." Section 99.

**History of Economic Litigation Procedures**

In 1976, the Legislature approved economic litigation pilot projects, which began in 1978 in two municipal courts and two superior courts located in Fresno and Los Angeles Counties. The pilot projects experimented with the use of simplified pleadings, practices, and procedures in cases for $25,000 or less.

The pilot projects were the subject of several studies, the results of which are summarized in a report prepared for the Judicial Council by an Economical Litigation Review Committee chaired by Judge Richard Schauer (hereafter, the "Schauer Report").

One of these studies was conducted by Prof. John McDermott of Loyola Law School in Los Angeles. Prof. McDermott "applauded the ELP project and urged more states to experiment with procedures designed to reduce the costs and delays in civil litigation." Schauer Report at 19. He found that the economic litigation pilot project "substantially reduced the cost of formal discovery (50%) and the overall cost of litigation (15-20%), without significant diminution in the quality of justice." *Id*.

A second study, conducted by Drs. Weller and Martin (now of PSI) and a colleague, focused on the pilot projects in Los Angeles County. They gave the program a mixed review. They found that the program reduced attorney preparation time and case processing time to some extent, but that the cost savings were not passed through to contingent fee litigants. *Id*. at 20. They also found that adherence to the project rules was poor, and some attorneys believed the lack of discovery led to a lower quality of justice. *Id*. The study concluded that the purpose of the pilot projects

> was valid, and a consensus seems to exist that reasonable limits on discovery are desirable. By eliminating all interrogatories and severely restricting depositions in all cases, the ELP approach, however, may have been too heavy-handed. Reasonable limits on discovery, coupled with effective court sanctions, may prove to be a palatable alternative.

*Id*. The study stressed that a strong educational effort should accompany significant rule changes such as those in the pilot projects. *Id*.

The pilot projects in Los Angeles County were also evaluated by a committee appointed by the Los Angeles County Bar Association, made up of business litigators, plaintiff and defense personal injury attorneys, public interest counsel, and judges. *Id*. at 21. The committee's report included a legislative proposal to make permanent the more effective aspects of the pilot projects. *Id*. The committee determined that the program should concentrate on reducing discovery and motions. "Most other features of the original ELP program (e.g., jury selection, rules of evidence) should be dropped." Epstein, *supra*, at 9.

"Principally because of differences in time intervals applicable to unlawful detainer cases, that category of litigation should be excluded." *Id*.

The pilot projects in Fresno County were studied less thoroughly than those in Los Angeles County. Schauer Report at 21. The presiding judge of the Fresno Superior Court considered the program "a waste of time from the court's standpoint." *Id*. That was typical of the reaction in Fresno County. *Id*.

Based on these assessments, the Economical Litigation Review Committee concluded that

> 1. significant benefits have been realized from the limitations on motions and discovery;
> 2. these benefits should be continued on a statewide basis; but only in municipal and justice courts where they would affect cases of lower dollar value; and
> 3. the effective date of any statute reflecting these views should be deferred to provide time for courts and attorneys to familiarize themselves with its provisions.

*Id*. at 23-24. The committee urged the Judicial Council to support the legislation proposed by the Los Angeles County Bar Association, which was consistent with the committee's conclusions.

Legislation along those lines was enacted in 1982, under which economic litigation procedures were extended to all civil cases pending in the municipal and justice courts on or after July 1, 1983, in which the amount in controversy was $15,000 or less. 1982 Cal. Stat. ch. 1581. These economic litigation procedures were essentially the same as the ones used today; some of the less popular features of the pilot projects (e.g., provisions pertaining to jury selection and rules of evidence) were not continued.

In extending economic litigation procedures statewide, the Legislature made the following findings:

> The Legislature finds and declares that the costs of civil litigation have risen sharply in recent years. This increase in litigation costs makes it more difficult to enforce smaller claims even though the claim is valid or makes it economically disadvantageous to defend against an invalid claim.
>
> The Legislature further finds and declares that there is a compelling state interest in the development of pleading, pretrial and trial procedures which will reduce the expense of litigation to the litigants in cases involving less than $15,000. Therefore, the

provisions of Article 2 (commencing with Section 90) are added to Chapter 5 of Title 1 of Part 1 of the Code of Civil Procedure.

1982 Cal. Stat. ch. 1581, § 5.

Effective January 1, 1986, the monetary limit for economic litigation procedures was increased from $15,000 to $25,000. 1985 Cal. Stat. ch. 1383, § 2. The monetary limit remains at $25,000 today, but the terminology was revised in 1998 to accommodate trial court unification. 1998 Cal. Stat. ch. 931, § 36. Thus, instead of stating that economic litigation procedures apply to every municipal and justice court civil action for $25,000 or less, the statute now states that economic litigation procedures apply to every limited civil case. Section 91(a).

**Attempts to Change the $25,000 Limit for Economic Litigation Procedures**

The staff is aware of only a few efforts to increase the $25,000 limit for economic litigation procedures.

*Colin Wied's Proposals*

In 1989, Colin Wied (then president of the State Bar and later a member of the Commission) proposed extending economic litigation procedures to superior court cases for $100,000 or less. This was an alternative to an earlier proposal he made to raise the municipal court limit to $100,000.

Mr. Wied's proposal was extensively debated within the State Bar and also discussed within the Judicial Council, which decided just to follow the progress of the proposal. See Memorandum from Monroe Baer to State Bar Board Committee on Legislation and Courts (Jan. 13, 1989) (hereafter, "Baer Memo"); Memorandum from John Toker to Judicial Council Superior Court Committee (Feb. 14, 1989). The staff does not know what happened to the proposal within the State Bar, but it did not become law. We will contact Mr. Wied for further information if the Commission is interested.

*Proposal of the Civil and Small Claims Advisory Committee*

In 1995, the Judicial Council's Civil and Small Claims Advisory Committee unanimously recommended (1) increasing the municipal court jurisdictional limit to $50,000, and (2) increasing the limit for economic litigation procedures to $50,000. Much of the committee's analysis in support of that proposal is now irrelevant, because of trial court unification (e.g., issues relating to the workloads of the municipal and superior courts). See Memorandum from Civil and Small Claims Advisory Committee to Members of Judicial Council (Oct. 24, 1995). The

Judicial Council decided not to sponsor legislation along the lines proposed by the committee.

*AB 3381 (Baugh)*

The next year, Governor Wilson's office sponsored a bill to raise the municipal court jurisdictional limit to $50,000 (AB 3381 (Baugh)). In support of the bill, the Governor's office argued that

> this bill is needed in order to maintain equilibrium between the workload of the superior and municipal courts. At present, the superior courts are burdened with "three-strikes" cases and the municipal courts have some excess capacity so that they are able to take more civil cases. The economical litigation procedures should also be applied to cases between $25,000 and $50,000, as a means of simplifying the disposition of matters which cannot support extended discovery. The cost of engaging in litigation has also increased substantially since 1985 when the jurisdiction was last changed.

Assembly Judiciary Committee analysis (April 17, 1996).

CAOC opposed the bill, expressing concern about application of economic litigation procedures to cases over $25,000. "The program may be workable for smaller cases, but its limitations can be inadequate for larger cases." *Id*. "The discovery limitation imposed by Section 94 of the Code of Civil Procedure, for example, is not appropriate in complicated matters." *Id*.

The bill passed the Assembly Judiciary Committee and then was amended to increase the monetary limit for mandatory judicial arbitration from $50,000 to $100,000 (as well as increasing the municipal court limit). The Assembly passed the bill in that form, and the bill went to the Senate Judiciary Committee, where it failed to pass. Most of that committee's bill analysis focused on the arbitration limit. With regard to the municipal court limit, the analysis pointed out that SCA 4 (the constitutional amendment to permit county-by-county unification) would appear on the ballot as early as November 1996. The analysis questioned whether it would be appropriate to change the municipal court limit before the voters acted on SCA 4. The Judicial Council and the State Bar Litigation Section were listed in support of the bill; CAOC was listed in opposition. Senate Judiciary Committee analysis (Aug. 7, 1996).

**PSI's Findings and Recommendation**

PSI obtained data and made recommendations regarding economic procedures generally, specific procedural devices, and cases for $5,000 to $15,000.

*Economic Litigation Procedures in General*

PSI found that "[b]oth plaintiff's attorneys and defendant's attorneys who handle smaller civil cases were supportive of raising the limited civil jurisdictional limit at least to $50,000." PSI Report at 35. According to PSI, both groups "believe that the limited civil process has value in reducing the potential for discovery abuse." *Id.* at 35-36. Defense attorneys "were willing to sacrifice full discovery in trade for the limit on the award." *Id*. at 36. Plaintiff's counsel expressed concern, however, that "raising the limit would make the $25,000-$50,000 cases harder to settle, as the award cap would reduce the incentive on the part of defendants and insurance companies to settle." *Id.*

PSI further found that about 64% of the attorneys who responded to the web-based survey "support some increase in the limited civil jurisdictional limit, with the majority favoring a limit of $50,000." *Id*. The level of support for increasing the limit to that level was "fairly consistent across the state, regardless of region or size of county." *Id*.

PSI's interviews yielded the same result. As PSI explains, there was "consistent support among judges and attorneys whom we interviewed for raising the limits at least to $50,000 in limited civil." *Id*. at 57. For a number of reasons, the judges and attorneys that PSI interviewed "generally did not support" raising the limit to more than $50,000. *Id*. at 58.

Based on these findings, PSI recommends that California test raising the limit for economic litigation procedures to $50,000. "This could be done statewide or as a pilot project in a few counties." *Id.* at 57. PSI supports the latter approach, because the effects of raising the limit are difficult to predict and the impact is likely to vary from county to county, requiring careful attention to the infrastructure in each county. *Id*. at 61-62.

PSI gives two reasons for its recommendation:

> First, the original reason for limiting discovery in cases under $25,000, that the cost of litigation in those cases would make attorney representation uneconomical, both in hourly fee cases and contingent fee cases, now applies equally to cases under $50,000. Without limits on discovery in hourly fee cases, it would be hard today to bring a case to trial for under $50,000, including attorney

> fees and costs. In contingent fee cases, the time spent by the attorney on the case could easily exceed the fee, making it uneconomical for the attorney to take and risk the possibility of no recovery (and thus no fee).
>
> Second, according to the U.S. Bureau of Labor Statistics CPI Inflation Calculator, a $25,000 case in 1979, when the economical litigation project began, would be a $61,914 case in 2002.

*Id*. at 58.

The inflation effect is actually less compelling than the PSI Report suggests, because the report relies on the use of a $25,000 limit in the economic litigation pilot projects in the late 1970's, not the use of a $15,000 limit when economic litigation procedures were extended statewide in 1983, or the use of a $25,000 limit in 1986, the last time the limit was raised. According to the Inflation Calculator (www.westegg.com/inflation), $15,000 in 1983 is equivalent to $26,420 in 2001; $25,000 in 1986 is equivalent to $39,488 in 2001.

*Limits on Discovery*

PSI's web-based survey asked attorneys to rate specific aspects of economic litigation procedures, such as the limits on discovery, the statement of evidence and witnesses, the special pleading rules, the case questionnaire, and the use of prepaid testimony. The opinions on the discovery limits showed the greatest divergence of opinion. PSI Report at 39. Although 54% of the attorneys said that the limit on depositions had a positive effect, 31% said that the limit was detrimental. *Id*. Similarly, 61% said that the other discovery limits had a positive effect, but 27% said that those limits were detrimental. *Id*. In a meeting at the outset of the study, a representative of California Defense Counsel commented that the discovery limits have little effect, because the expense of doing discovery prevents discovery abuse and there is no need for additional restraints.

The attorney interviews indicated that an important issue with regard to the quality of justice in limited civil cases is "the ability to obtain the information necessary to analyze a case for settlement and to prove a case at trial." *Id*. at 46. According to PSI, if the monetary limit for economic litigation procedures is raised, "there may be cases falling into the limited civil jurisdiction that require additional discovery above the present statutory limits." *Id*. at 46.

In the same meeting mentioned previously, a CAOC board member expressed particular concern about the need for discovery to assess the value of a case. He rarely files a case as a limited civil case, because it is difficult to tell what

the damages are without doing discovery. In his opinion, seeking the court's permission to conduct extra discovery in a limited civil case is more costly and risky than simply filing the case as an unlimited civil case and paying a larger filing fee. He also expressed concern regarding the need to persuade a court that a case should be removed from economic litigation procedures if it appears that the damages will exceed the $25,000 limit. The only advantage he sees to economic litigation procedures is that they protect parties against excessive discovery and the concomitant costs.

PSI suggests several possible ways of addressing concerns like these while raising the jurisdictional limit:

(1) **Retain the current discovery limits for limited civil cases, but provide "some reasonable safety valve" to allow for extra discovery in difficult cases.** *Id.* at 47.

CAJ made a similar suggestion in 1989, urging that the standard for obtaining extra discovery be liberalized, such that a party would have to show that there is "a specific need for the discovery requested," rather than that "the moving party will be unable to prosecute or defend the action effectively without the additional discovery." Baer Memo at 6-7. It seems unlikely that such a change would have much impact, because the primary concern appears to be the cost of seeking court approval for extra discovery, not the standard used in ruling on such a request.

An alternative approach would be to permit extra discovery without court approval if counsel executes a declaration that there is good cause for such discovery, similar to the declaration now required to promulgate more than 35 special interrogatories in an unlimited civil case. This approach could be limited to cases for over $25,000.

(2) **Allow a party to "move a case more easily to unlimited civil at any time during the period of ongoing discovery when it appears that the value of the case could exceed the limited civil limit."** PSI Report at 47.

This idea sounds appealing but in fact reclassifying a case from limited civil to unlimited civil is already a simple process: The party only needs to amend the complaint to seek increased damages and pay a $125 reclassification fee. Sections 403.020, 403.060. A motion for reclassification is not necessary; a motion for leave to amend the complaint is required only if the complaint has already been amended or a response has already been filed. Section 427. Motions to amend are routinely granted and amendments are frequently permitted by stipulation, so it is

unclear whether anything really needs to be done to ease the reclassification process.

(3) **Have higher discovery limits for larger limited civil cases.** PSI Report at 47. For example, a party in a case for more than $25,000 could be permitted to take two depositions as to each adverse party, instead of only one. *Id*. at 58.

Another approach, not mentioned by PSI, would be to eliminate the $25,000 cap on an award in a limited civil case (see Section 580(b)). CAJ suggested such an approach in connection with Mr. Wied's 1989 proposal to apply economic litigation procedures to cases for up to $100,000. Baer Memo at 5. Defense counsel are likely to object to the approach, however, because they consider it unfair for a defendant to be subjected to the risk of a big award without being able to conduct full discovery.

Still another approach would be to exclude certain types of cases (e.g., personal injury cases for $25,000 or more) from the discovery limits. That would deprive the parties in those cases from the cost savings associated with limited discovery.

*Statement of Evidence and Witnesses*

PSI's web-based survey found very strong support for the statement of evidence and witnesses. Fully 63% of the attorneys said that the statement of evidence and witnesses had a positive effect, 16% said it had no effect, and only 6% said that it had a negative effect. PSI Report at 40, 47-48. Many attorneys said that the statement of evidence and witnesses should be authorized in unlimited civil cases, as well as in limited civil cases. *Id*. at 48.

PSI summed up the situation by stating that the statement of evidence and witnesses is an "important tool for lawyers in controlling the trial in limited civil cases." *Id*. at 47. "In essence it is used as an elimination tool, similarly to the way interrogatories are typically used, in that failure to disclose a witness or item of evidence by a party precludes that party from presenting the evidence at trial." *Id*.

*Other Simplified Procedures*

PSI further found that 61% of the attorneys responding to the web-based survey gave a positive rating to the use of simplified pleadings in limited civil cases. *Id*. at 40. Almost a majority of the attorneys gave a positive rating to the use of testimony by affidavit and the lack of special demurrers. *Id*.

The case questionnaire was not as well-received. It was only rated positively by 45% of the attorneys. Another 30% said that it had no effect, while 8% rated it negatively. *Id.*

*Cases for $5,000 to $15,000*

According to PSI, "[p]articular attention needs to be given to cases between $5,000 and $15,000." *Id*. at 41. "It is difficult to find an attorney who will take a case with a claim amount under $15,000, as the attorney fees would eat up most of the award." *Id*. "At the same time those cases are still subject to the full panoply of civil procedure, and the amount at risk is great enough that most litigants would be ill advised to pursue them pro per." *Id*. at 59.

PSI suggests a "new process for cases other than unlawful detainer cases with an amount in controversy under $15,000, with an award cap of $15,000, to be tested first as a pilot project in one or more jurisdictions." *Id*. Because the process might raise issues relating to the constitutional right to a jury trial, PSI proposes that it "operate as a voluntary alternative to and in concurrent jurisdiction with the present small claims and limited civil processes." *Id*.

PSI suggests that this new process (essentially a fourth procedural track) have the following features:

- Simplified notice pleading as in small claims cases.
- An answer required of the defendant.
- A statement of evidence and witnesses on the request of either party, as under economic litigation procedures.
- No additional discovery permitted.
- Simplified trial procedure as in small claims courts.
- Attorneys permitted at trial.
- All trials before a judge or commissioner.
- No jury trials.
- Appeal on the record.
- Possibly also immunity from liability for malpractice based on failure to remove a case from the process.

*Id*. at 59-60.

**Views of the Working Group**

In its initial meeting, the Three Track Study Working Group reached a quick consensus that the jurisdictional limit for economic litigation procedures should be raised to $50,000.

A subgroup discussed PSI's proposed new process for $5,000-$15,000 cases. There was not much interest in this fourth track concept.

Rather, the subgroup expressed concern that difficulties in obtaining counsel exist not only for $5,000-$15,000 cases, but also for larger cases, even up to $50,000. The group recognized that to some extent the availability of counsel varies with the context (e.g., it may be easier to obtain counsel for a contingency fee than to hire counsel to defend a small case on an hourly basis).

Because difficulties in obtaining counsel apply throughout the proposed jurisdictional range for limited civil cases, the subgroup was inclined to address that problem in all limited civil cases, not just $5,000-$15,000 cases. The subgroup suggested experimenting with the following changes in economic litigation procedures:

- **Using simplified evidentiary rules.** This was tried in the original economic litigation pilot projects. The staff does not know the details of this experiment, but apparently it was viewed as a failure. See Epstein, *supra*, at 9.
- **Preparing better forms for use in limited civil cases.**
- **Making use of the case questionnaire mandatory.** This was proposed by CAJ in 1989. Baer Memo at 6. A serious problem with this proposal is that case questionnaires are completed early in the litigation process, but take considerable effort to complete. Because many cases settle, mandatory use of the case questionnaire may force parties to incur unnecessary litigation expenses, which would be contrary to the goal of economic litigation procedures.
- **Making use of the statement of evidence and witnesses mandatory.**
- **Making mediators available in limited civil cases and providing forms for the mediators to use.**

Another possibility mentioned in a written communication was allowing extra written discovery in cases over $25,000, not just an extra deposition as suggested by PSI.

**Other Considerations**

A few other points are worth noting in connection with the jurisdictional limit for economic litigation procedures.

*Complexity and Importance of the Issues in a Limited Civil Case*

Like small claims cases, the cases subject to economic litigation procedures "are not necessarily simple claims." Selzer, *supra*, at 1518. "In fact, most defended cases, regardless of size, tend to be factually complex." *Id*.

A problem with regard to limited civil cases is the perception that "judges do not take limited civil cases as seriously as unlimited civil cases." PSI Report at 48. According to PSI, some attorneys thought that "raising the limited civil jurisdiction would give limited civil cases more of an aura of importance." *Id*.

Of course, the opposite could also be true. Raising the jurisdictional limit might diminish how seriously cases in the $25,000-$50,000 range are taken by judges or others.

Such cases are generally extremely important to individuals involved in them; few individuals can readily afford a loss of up to $50,000. Such a case can also have a major impact on a small business, and collectively cases in this range may be quite significant to a large organization as well.

It is crucial that judges treat these cases with the same level of respect as other civil cases in the system, *and* that the process used for these cases afford an equally high quality of justice, *taking into account* that justice is not done when the cost of litigation is so high in relation to the amount at stake that a party cannot afford to pursue justice. Achieving these goals depends on the attitude of each individual judge, the tone set by the Chief Justice and by the presiding judge of each court, the level of attention accorded to each case by counsel, the resources allocated by the Legislature to the processing of these cases, the care with which procedures, rules, and forms for these cases are developed, and other factors.

*Fiscal Considerations*

As with small claims cases, it is difficult to predict the fiscal consequences of increasing the jurisdictional limit for limited civil cases. The most obvious likely effect is a reduction in revenue from filing fees, because the filing fee for a limited civil case is less than the filing fee for an unlimited civil case. That effect might be offset by other factors, however, such as reduced demands on judicial resources.

Again, the Judicial Council may be better-positioned than we are to analyze the fiscal consequences.

*Deterrence of Illegal Self-Help*

As with small claims cases, deterrence of illegal self-help is a function that the system for processing limited civil cases should serve. Failure to provide an effective system for these cases may have unfortunate societal consequences.

*Identification of Social Problems for Legislative or Administrative Action*

Ideally, the system for processing limited civil cases should also provide a means of identifying and drawing attention to social problems that require legislative or administrative action. Increasing the jurisdictional limit for limited civil cases may mean that fewer cases in the $25,000-$50,000 range result in published decisions, because an appeal of a limited civil case is heard in the appellate division of the superior court, not the court of appeal, and the appellate division publishes fewer decisions than the court of appeal. But published decisions are only one way in which courts can stimulate legislative or administrative action in needed areas. Perhaps just as important is good communication between members of the judiciary and members of the other branches of government.

**Summary of the Pros and Cons of Increasing the Jurisdictional Limit for Economic Litigation Procedures**

PSI's report includes a summary of the pros and cons of increasing the jurisdictional limit for limited civil cases. PSI Report at 59. The Commission might want to refer to that summary in assessing the competing interests.

The staff views the key policy considerations as follows:

Key Advantages of Raising the Jurisdictional Limit

- The data gathered twenty years ago regarding the economic litigation pilot projects and the new data gathered by PSI (particularly the survey and interview results showing broad support for raising the jurisdictional limit and the positive ratings of most of the simplified procedures) suggest that economic litigation procedures serve their intended purpose: Improving access to justice by holding down litigation costs so that cases for small amounts can be effectively litigated. Raising the jurisdictional limit for economic litigation procedures would extend that positive effect to a larger category of cases.

- To some extent, an increase in the jurisdictional limit could also be justified as an inflation adjustment, although the proper reference point for calculating the amount of the adjustment is debatable.

Key Disadvantages of Raising the Jurisdictional Limit

- Increasing the jurisdictional limit for economic litigation procedures from $25,000 to $50,000 might cause a decline in the quality of justice for cases in that range, due to the use of simplified procedures. In particular, the discovery limits might prevent parties from learning information necessary to effectively pursue their claims, fully defend themselves, or properly evaluate their cases. Raising the jurisdictional limit might also affect the quality of justice by changing people's perceptions of how seriously limited civil cases should be treated. It is difficult to predict precisely how this factor will cut.

**Options**

The Commission's options regarding the jurisdictional limit for economic litigation procedures include at least the following:

(1) Leave the limit as is.

(2) Retain the current jurisdictional limit for economic litigation procedures, but change some of those procedures (e.g., make the statement of evidence and witnesses mandatory).

(3) Establish pilot projects extending the jurisdictional limit for economic litigation procedures to $50,000 (or some other amount), possibly with changes in some of those procedures, at least in cases for over $25,000.

(4) Raise the jurisdictional limit for economic litigation procedures to $50,000 (or some other amount), subject to a sunset provision, and monitor the effects of the reform.

(5) Raise the jurisdictional limit for economic litigation procedures to $50,000 (or some other amount), without conditions.

**Staff Analysis and Recommendation**

As a commentator stated while the economic litigation pilot projects were in progress more than twenty years ago, "it is only through experimentation that the courts and legislature will be able to develop a program meeting the desired goals of the project." Selzer, *supra*, at 1525. "[S]uch experimentation should be encouraged so that the present civil justice system can be as efficient and refined as possible. *Id.*

Having developed economic litigation procedures and applied them statewide starting in 1983, the courts and the Legislature should continue their efforts to improve the system. It is a shame that PSI's empirical study appears to be the first serious effort to assess the effects of economic litigation procedures since those procedures were adopted statewide.

Based on PSI's study, the staff's own experiences, and many other sources of information, we are convinced that the problem of access to justice remains acute today. Because PSI found broad support for increasing the jurisdictional limit for economic litigation procedures to $50,000, **that approach is certainly worth exploring.**

In the staff's opinion, the real question is how to go about such experimentation: Should the jurisdictional limit simply be raised to $50,000? Should the limit be raised to $50,000 subject to intense monitoring and a sunset clause? Should pilot projects be established to test the effects of raising the limit before making any change statewide? The Commission needs to consider these options and develop a proposal based on the information in this memorandum, PSI's report, any additional information provided in the course of this study, and the Commission's own collective wisdom and experience.

The Commission also needs to assess whether any changes should be made in the economic litigation procedures, particularly for $5,000-$15,000 cases or for $25,000-$50,000 cases.

With regard to PSI's proposed fourth procedural track for $5,000-$15,000 cases, we share the Three Track Study Working Group's lack of enthusiasm for the idea, at least at this time. Adding a fourth procedural track would increase the complexity of the civil justice system, perhaps creating more problems than it solves (e.g., new types of reclassification issues, new computerization and filing issues, new legal and pro per training demands).

The same concerns would apply to some extent if special rules were applied to $25,000-$50,000 cases. Perhaps, however, there is a need to experiment with allowing extra discovery in such cases, either by establishing higher discovery limits (e.g., two depositions per adverse party, not just one) or by permitting a party to obtain extra discovery by a simple declaration process like the one currently used for promulgating more than 35 special interrogatories in an unlimited civil case.

We are not enthusiastic about experimenting with the statement of evidence and witnesses, which seems to be well-liked in its current form. Making it

mandatory might unnecessarily increase litigation costs in cases that will ultimately settle. That problem is likely to be more pronounced with regard to the case questionnaire, which is completed at the outset of a case, before the parties have had much opportunity to try to resolve their differences without spending a lot on legal fees.

The concept of using simplified evidentiary rules for economic litigation cases has previously been tried without success. We would not delve into this area without finding out more about the earlier efforts.

As for making mediators available in limited civil cases and improving the forms for such cases, those ideas might be worth pursuing, but they may not require legislation. The Commission should leave it to the Judicial Council to take the lead on these matters, and become involved only if legislative action appears necessary.

### TEMPORARY JUDGES

One subgroup of the Three Track Study Working Group discussed the use of temporary judges. The consensus of the group was that reforms are needed in this area.

Among the ideas discussed were:

- Improving training of temporary judges.
- Improving supervision of temporary judges (e.g., taping hearings conducted by temporary judges).
- Developing standards and qualifications for temporary judges, including conflict of interest requirements (perhaps similar to the new requirements for arbitrators).
- Developing a removal procedure for temporary judges.
- Using a smaller pool of highly trained temporary judges.
- Reducing usage of temporary judges.

**We would leave it to the Judicial Council to develop these ideas.** Some rules already govern training and qualifications of temporary judges. See, e.g., Cal. R. Ct. 244(c)-(d), (h) (conflict of interest requirements for temporary judges); Cal. R. Ct. 1726 (training and qualifications of temporary judges in small claims cases). The staff has not yet reviewed the law governing temporary judges, but it is clear that some if not all of the suggested improvements could be accomplished

without any legislative reform. The Commission should get involved only if it appears that legislation is warranted.

## NEXT STEP

The Commission needs to identify what information, if any, it still needs before it can give the staff sufficient direction to begin preparation of a tentative recommendation. Ideally, the Commission will be in a position to issue a tentative recommendation soon, so that legislation can be introduced in 2004. As this study progresses, the Commission will need to work to achieve consensus with the Judicial Council on the proper course of action.

Respectfully submitted,

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