

## Second Supplement to Memorandum 2002-57

**Statutes Made Obsolete by Trial Court Restructuring  
(Draft of Tentative Recommendation)**

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We have received email comments from Cara Vonk of the Administrative Office of the Courts regarding the revisions to Code of Civil Procedure Sections 116.250 and 575.1 proposed in the draft tentative recommendation.

## LOCAL RULES

Ms. Vonk has reviewed the amendment of Code of Civil Procedure Section 575.1 recommended by the staff at pages 4-5 of the First Supplement to Memorandum 2002-57. She writes that the proposed amendment “looks very good and does conform to the Judicial Council’s amended rule 981, effective January 1, 2003.” Email from C. Vonk to L. Urman (Dec. 11, 2002).

Ms. Vonk has a stylistic suggestion regarding the sentence that would read: “The Judicial Council shall prescribe rules, not inconsistent with statute, to ensure that a complete current set of local rules and amendments is made available for public examination in each county.” She requests that the phrase “not inconsistent with statute” be deleted as surplusage, because the California Constitution already states that Judicial Council rules cannot be inconsistent with statute.

Ms. Vonk is correct regarding the constitutional restriction. Article VI, Section 6 of the California Constitution provides:

To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute. *The rules adopted shall not be inconsistent with statute.*

(Emphasis added.) In light of that provision, it is not necessary to specify in Code of Civil Procedure Section 575.1 that the rules prescribed by the Judicial Council cannot be inconsistent with statute. It would be sufficient to refer to the constitutional provision in the Comment. That would be consistent with other

provisions granting the Judicial Council authority to promulgate rules; only a handful of these specify that the rules cannot be inconsistent with statute.

The staff would further revise the sentence in question to make clear that each county is to provide access to all local rules, not just the local rules of that particular county. That could be accomplished as follows: “The Judicial Council shall prescribe rules to ensure that a complete current set of local rules and amendments, for each county in the state, is made available for public examination in each county.”

**With these revisions, the proposed amendment of Section 575.1 would read:**

**Code Civ. Proc. § 575.1 (amended). Local court rules**

SEC. \_\_\_\_ . Section 575.1 of the Code of Civil Procedure is amended to read:

575.1. (a) The presiding judge of each superior ~~and municipal~~ court may prepare, with the assistance of appropriate committees of the court, proposed local rules designed to expedite and facilitate the business of the court. The rules need not be limited to those actions on the civil active list, but may provide for the supervision and judicial management of actions from the date they are filed. Rules prepared pursuant to this section shall be submitted for consideration to the judges of the court and, upon approval by a majority of the judges, the judges shall have the proposed rules published and submitted to the local bar and others, as specified by the Judicial Council, for consideration and recommendations.

(b) After a majority of the judges have officially adopted the rules, ~~61 copies or a greater number as specified by Judicial Council rule, they~~ shall be filed with the Judicial Council as required by Section 68071 of the Government Code and specified in rules adopted by the Judicial Council. The Judicial Council shall ~~deposit a copy of each rule and amendment with each county law library or county clerk where it shall be~~ prescribe rules to ensure that a complete current set of local rules and amendments, for each county in the state, is made available for public examination in each county. The local rules shall also be published for general distribution in accordance with rules adopted by the Judicial Council. Each court shall make its local rules available for inspection and copying in every location of the court that generally accepts filing of papers. The court may impose a reasonable charge for copying the rules and may impose a reasonable page limit on copying. The rules shall be accompanied by a notice indicating where a full set of the rules may be purchased.

(c) If a judge of a court adopts a rule that applies solely to cases in that judge’s courtroom, or a particular branch or district of a

court adopts a rule that applies solely to cases in that particular branch or district of a court, the court shall publish these rules as part of the general publication of rules required by the California Rules of Court. The court shall organize the rules so that rules on a common subject, whether individual, branch, district, or courtwide appear sequentially. Individual judges' rules and branch and district rules are local rules of court for purposes of this section and for purposes of the adoption, publication, comment, and filing requirements set forth in the Judicial Council rules applicable to local court rules.

**Comment.** Subdivision (a) of Section 575.1 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

Subdivision (b) is amended to be consistent with the approach used in California Rule of Court 981, as amended effective January 1, 2003, regarding preparation of and public access to local rules. Rules of Court adopted by the Judicial Council pursuant to this section cannot be inconsistent with statute. See Cal. Const. art. VI, § 6.

#### SMALL CLAIMS COURT SESSIONS

As revised in the draft tentative recommendation, Section 116.250 would read as follows:

**Code Civ. Proc. § 116.250 (amended). Small claims court sessions**

SEC. \_\_\_\_ . Section 116.250 of the Code of Civil Procedure is amended to read:

116.250. (a) Sessions of the small claims court may be scheduled at any time and on any day, including Saturdays, but excluding other judicial holidays. ~~They may also be scheduled at any public building within the county, including places outside the courthouse.~~

(b) Each small claims division of a superior court with seven or more judicial officers shall conduct at least one night session or Saturday session each month for the purpose of hearing small claims cases other than small claims appeals. The term "session" includes, but is not limited to, a proceeding conducted by a member of the State Bar acting as a mediator or referee.

**Comment.** Subdivision (a) of Section 116.250 is amended to reflect enactment of Government Code Section 69740(a) (number and location of trial court sessions).

Ms. Vonk is concerned that “by deleting the second sentence, courts might think that small claims sessions must be heard in the courthouse thereby eliminating flexibility to hold court elsewhere in the community for the convenience of the public.” Email from C. Vonk to B. Gaal (Dec. 10, 2002).

Ms. Vonk does not feel that new Government Code Section 69645 — authorizing courts to determine the *location* of sessions — supersedes the stricken provision in Section 116.250:

Although Government Code section 69645 (to be renumbered 69740) authorizes each superior court to determine the location of court sessions, it does not necessarily say that the sessions don't have to be held in a standard court facility. The sentence that is proposed to be deleted from the Small Claims Act, section 116.250, clarifies that the court may hold small claims sessions in any public building. In my view, the sentence should be retained because it encourages courts to hold small claims sessions during the day, evenings, and on Saturdays in public buildings other than the courthouse for the convenience of the public. For example, the small claims court sessions could be held in rotation at a local recreation hall, local city council chambers, public library, department of motor vehicles, or any other public building to reach different segments of the community served by small claims court.

Email from C. Vonk to L. Urman (Dec. 11, 2002). Note: The draft tentative recommendation would renumber Section 69645 as Section 69740. It is referred to as Section 69740 in the remainder of this memorandum.

Section 69740 does not contain a definition of “location.” It does require that certain factors be considered in determining the location of sessions, including “the availability and adequacy of *facilities*” — not “court facilities” — for holding the session at a specific location.

However, if Ms. Vonk’s interpretation of the statute is correct, it would cast doubt on other statutes which also appear to authorize sessions outside the courthouse, though less directly (see, e.g., Gov’t Code § 69792). In order to provide assurance that we are not affecting the general authority to hold sessions outside of the courthouse, the staff recommends that in addition to deleting provisions regarding the location of sessions, we add the following language to Section 69740:

69740. (a) Notwithstanding any other provision of law, each trial court shall determine the number and location of sessions of the court necessary for the prompt disposition of the business before

the court. In making this determination, the court shall consider, among other factors, the impact of this provision on court employees pursuant to Section 71634, the availability and adequacy of facilities for holding the court session at the specific location, the efficiency and cost of holding the session at the specific location, any applicable security issues, and the convenience to the parties and the public served by the court. Nothing in this section precludes a session from being held in a public building other than a courthouse.

The staff would revise the Comment accordingly and attach a “Note” requesting comment on the limitation that sessions be held only in public buildings.

Respectfully submitted,

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