

## Memorandum 2002-61

**Jurisdictional Limits of Small Claims Cases and Limited Civil Cases  
(Draft of Tentative Recommendation)**

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Attached is a draft of a tentative recommendation on *Jurisdictional Limits of Small Claims Cases and Limited Civil Cases*, which would implement decisions made at the November meeting. The Commission needs to review the draft and determine whether to approve it as a tentative recommendation to be circulated for comment, as is or with revisions. Our goal is to finalize a proposal in time to have it introduced in the Legislature in early 2004. It will be difficult to achieve this goal if the Commission does not approve a tentative recommendation until its March meeting, particularly because the objective is a joint recommendation with the Judicial Council and we must allow some time for reconciliation of differing positions if necessary.

Staff Notes in the draft draw attention to various points. We plan to discuss only matters discussed in this memorandum and the issues in the draft that are marked with checkmarks (✓). If you would like to cover another point, please raise it at the meeting.

The staff has not conducted as much research as it would like on the constitutionality of increasing the small claims limit and on the proposed new provision restricting the availability of attorney's fees in an action on a consumer contract. We will do further work on these points as time permits.

On November 20, 2002, the Judicial Council Three Track Study Working Group held an all day meeting, in which the group considered the progress of its three subgroups (small claims procedures, in-between cases (\$5,000-\$50,000), and temporary judges) and the decisions reached by the Commission at its November meeting. Commission staff participated in this meeting and tried to explain the Commission's process and its position on the issues.

The remainder of this memorandum (1) reports the decisions made by the Three Track Study Working Group and (2) discusses comments made by Professor William Slomanson (Thomas Jefferson School of Law).

## DECISIONS OF THE THREE TRACK STUDY WORKING GROUP

At its November 20 meeting, the Three Track Study Working Group made the following decisions:

- The jurisdictional limit for a limited civil case should be increased to \$50,000.
- The jurisdictional limit for small claims cases should be increased to \$7,500. Two existing restrictions should be eliminated: (1) the \$2,500 and \$4,000 limits on small claims actions against guarantors (Code Civ. Proc. § 116.220(c)) and (2) the two claims per year limit on small claims actions over \$2,500 (Code Civ. Proc. § 116.231).
- The subgroup on small claims should work with the Small Claims Subcommittee of the Civil and Small Claims Advisory Committee in exploring possible means of strengthening the small claims advisory service, such as implementing statewide standards, a certification program, and seeking greater resources through grant funding or legislation.
- The subgroup on small claims should discuss the following concepts, which the Commission rejected at its November meeting: providing a free interpreter in a small claims case, permitting attorney representation in specified small claims cases, permitting a jury trial on appeal in specified small claims cases, permitting the plaintiff to appeal in specified small claims cases, permitting the defendant in a small claims case to opt out, and permitting an assignee to sue in small claims court under certain circumstances.
- In cooperation with various other Judicial Council groups, the subgroup on in-between cases should continue to explore the ideas that it has been developing, which relate to use of prepared testimony in a limited civil case (Code Civ. Proc. § 98), differential treatment of different types of cases (tort, collection, and non-collection contract), new forms, mandatory exchange of information, simplified rules of evidence for a non-jury case, improving access to mediation (perhaps by giving MCLE credit for pro bono mediation), and limited scope representation by attorneys.
- The subgroup on temporary judges should continue efforts to establish a separate task force on the topic.
- The working group did not take a position on the Commission's proposed restriction on the availability of attorney's fees in actions on consumer contracts. The group would like to analyze that proposal further before deciding its position.
- Further analysis should be done on the Commission's proposal to increase funding for the small claims advisory service by charging

a higher filing fee for a small claims case over \$5,000 than for a small claims case for \$5,000 or less. The possibility of increasing funding for county law libraries should be explored.

In considering the attached draft, the Commission should keep these decisions in mind and remember that the ultimate goal of this study is a joint recommendation with the Judicial Council.

#### COMMENTS OF PROFESSOR SLOMANSON

By email, Professor Slomanson has submitted comments on the possibility of conducting a pilot project on increasing the jurisdictional limit for small claims cases. He contrasts the go-slow pilot approach advocated by Policy Studies, Inc., which would involve testing both a \$7,500 limit and a \$10,000 limit, with the “jump in no pilot” approach advocated by retired Judge Roderic Duncan. Prof. Slomanson advocates a third alternative: a comparatively brief pilot project using a \$10,000 limit in more than one county.

Prof. Slomanson explains:

First, Judge Duncan is quite right about the potential pilot programs not telling us anything we do not already know — *if* one focuses on the need for an upward adjustment. Second, as the PSI study articulates it: “statewide changes ... are likely to have very different effects in different counties around the state.” Third, we will not know what those effects [are] unless you decide to do a pilot which uses the same dollar amount to assess the different effects in different counties.

Email from W. Slomanson to B. Gaal (Nov. 11, 2002) (emphasis in original). If the state and the Commission had unlimited resources, Prof. Slomanson would opt for PSI’s intensive pilot project approach. Because that is not the case, however, he believes that a short pilot project testing only one amount is the best option.

Prof. Slomanson also suggests that the Commission give further attention to the question of whether increasing the small claims limit would violate the constitutional right to a jury trial. In addition, he points out a distinction between federal and state practices: In state court, the litigants have to pay jury fees, whereas in federal court the litigants do not have to pay such fees. Prof. Slomanson explains that this might lead to forum-shopping in cases arising under federal law, for which there is no minimum amount in controversy

requirement to sue in federal court. The staff is considering whether this has any implications for the reforms proposed by the Commission.

Respectfully submitted,

Barbara Gaal  
Staff Counsel

# CALIFORNIA LAW REVISION COMMISSION

*Staff Draft*

TENTATIVE RECOMMENDATION

## Jurisdictional Limits of Small Claims Cases and Limited Civil Cases

December 2002

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN [Date To Be Determined].**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739  
650-494-1335 FAX: 650-494-1827

## SUMMARY OF TENTATIVE RECOMMENDATION

The Law Revision Commission recommends that the jurisdictional limit for a small claims case be increased from \$5,000 to \$10,000, to adjust for inflation and improve access to justice. The Department of Consumer Affairs should be directed to study and report to the Legislature on the effects of this increase. The filing fee for a small claims case seeking over \$5,000 should be higher than the filing fee for a small claims case seeking \$5,000 or less. Revenue attributable to the fee differential should be used for the small claims advisor program, to improve the quality of justice in small claims cases.

To encourage use of small claims procedures, the Commission also recommends that under specified circumstances an attorney's fee clause in a consumer contract be void and unenforceable to the extent that it requires payment of attorney's fees to a party who obtains a judgment of \$10,000 or less. This would help to prevent inequity that may arise when a sophisticated entity pursues a consumer who cannot hire an attorney due to limited resources or the small amount at stake. Under existing law, such a consumer is often forced to proceed without counsel and struggle with complex court procedures while the other side is represented by counsel. As a pro per litigant, the consumer is unable to recover attorney's fees on winning, but is liable for the other side's attorney's fees on losing. By making attorney's fees unavailable in a small case based on a consumer contract, the proposed law would promote use of small claims procedures and thereby put the parties on more equal footing.

The Commission also recommends that the maximum amount in controversy for a limited civil case be increased from \$25,000 to \$50,000. Such an increase would account for inflation and improve access to justice in cases that are too small to be litigated effectively using standard court procedures, as opposed to the simplified procedures (economic litigation procedures) that apply to a limited civil case. Aside from the proposed jurisdictional increase, no changes in those procedures appear necessary at this time.

This recommendation was prepared pursuant to Resolution Chapter 166 of the Statutes of 2002.

## JURISDICTIONAL LIMITS OF SMALL CLAIMS CASES AND LIMITED CIVIL CASES

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<sup>1</sup> and \$25,000 for a limited civil case.<sup>2</sup> At the direction of the Legislature, the Law Revision Commission and the Judicial Council are jointly reexamining the three track system for civil cases, particularly the jurisdictional limits.<sup>3</sup>

This study has involved empirical research as well as other work. Based on the data gathered and other information available, the Commission recommends that the jurisdictional limits for small claims cases and limited civil cases be raised to \$10,000 and \$50,000, respectively, and that certain other changes be made to improve the functioning of the small claims system. These proposed reforms will account for inflation in the cost of goods and services generally and in the cost of litigation in particular, and improve access to justice in cases involving relatively small amounts of money.

### THE THREE TRACK SYSTEM

Understanding the current three track system and its evolution requires an explanation of trial court unification and its impact on civil procedure.

#### **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.<sup>4</sup>

In 1994, the voters approved a constitutional amendment eliminating the justice courts.<sup>5</sup> Four years later, the voters approved a constitutional amendment authorizing trial court unification on a county-by-county basis: The municipal and

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1. Code Civ. Proc. § 116.220. Unless otherwise specified, all further statutory references are to the Code of Civil Procedure.

2. Section 85.

3. See Gov't Code § 70219; *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 82-83 (1998).

4. See 1990 Cal. Stat. ch. 1305, § 3. 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.

5. 1994 Cal. Stat. res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994).

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.<sup>6</sup>

The codes were promptly revised to accommodate county-by-county unification,<sup>7</sup> and the trial courts in many counties soon unified. By February 2001, the trial courts in all counties had unified their operations in the superior court. In 2002, a major bill revising the codes to reflect that development was enacted;<sup>8</sup> the voters also approved a constitutional amendment eliminating obsolete references to the municipal courts.<sup>9</sup>

### **Impact of Trial Court Unification on Civil Procedure**

Before unification of the municipal and superior courts, the small claims court was a division of the municipal court.<sup>10</sup> 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.<sup>11</sup> Most other civil cases within the jurisdiction of the municipal court were subject to simplified procedures known as economic litigation procedures.<sup>12</sup> The jurisdictional limit of the municipal court was \$25,000.<sup>13</sup> Civil cases in which the amount in controversy exceeded that limit, and certain other civil cases, were within the jurisdiction of the superior court.<sup>14</sup> Those cases were subject to standard civil procedures, including extensive discovery.<sup>15</sup>

When the codes were revised to accommodate county-by-county unification, the legislation was narrowly limited to preserve the existing procedures but make them workable in the context of unification.<sup>16</sup> The term “limited civil case” was introduced to refer to civil cases traditionally within the jurisdiction of the

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6. 1996 Cal. Stat. res. ch. 36 (SCA 4) (Prop. 220, approved June 2, 1998). The constitutional revisions largely tracked recommendations made by the Commission in 1994, pursuant to a legislative directive to study constitutional revisions that would be necessary to implement trial court unification on a statewide basis. 1993 Cal. Stat. res. ch. 96; *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm’n Reports 1 (1994).

7. 1998 Cal. Stat. ch. 931; *Revision of Codes, supra* note 3. The codes were also revised to eliminate obsolete references to the justice courts. 1998 Cal. Stat. ch. 931; *Revision of Codes, supra* note 3, at 61.

8. 2002 Cal. Stat. ch. 784; *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm’n Reports 1 (2002).

9. 2002 Cal. Stat. res. ch. 88 (ACA 15) (Prop. 48, approved Nov. 5, 2002). The Commission is in the process of preparing further legislation along these lines.

10. 1990 Cal. Stat. ch. 1305, § 3.

11. Section 116.220.

12. 1985 Cal. Stat. ch. 1383, § 2.

13. 1997 Cal. Stat. ch. 527, § 2.

14. Former Cal. Const. art. VI, § 10 (“Superior courts have original jurisdiction in all causes except those given by statute to other trial courts.”).

15. Sections 2016-2036.

16. *Revision of Codes, supra* note 3, at 60-61, 64-65, 82.

municipal court,<sup>17</sup> and the term “unlimited civil case” was introduced to refer to civil cases traditionally within the jurisdiction of the superior court.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup>

(2) *Limited civil cases (former municipal court cases)*. The amount in controversy in a limited civil case may not exceed \$25,000.<sup>22</sup> Most limited civil cases are subject to economic litigation procedures.<sup>23</sup> 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.<sup>24</sup>

(3) *Unlimited civil cases (traditional superior court cases)*. All other civil cases are unlimited civil cases, which are subject to traditional superior court procedures.<sup>25</sup>

## HISTORY OF THIS STUDY

Although the Commission refrained from recommending revision of the three track system in the course of implementing trial court unification, it strongly recommended that the Legislature direct a study reexamining the system and its underlying policies in light of unification.<sup>26</sup> The Commission advised that such a study might “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

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17. Section 85 & Comment.

18. Section 88 & Comment; *see also Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases*, 30 Cal. L. Revision Comm’n Reports 443, 448 (2000).

19. Sections 85, 88 & Comments.

20. Section 87 & Comment.

21. Section 116.220.

22. Section 85.

23. Section 91.

24. See Section 85.

25. See note 18 *supra*.

26. *Revision of Codes*, *supra* note 3, at 82.

case.”<sup>27</sup> As recommended, the Legislature directed the Commission and the Judicial Council to jointly undertake this work.<sup>28</sup>

The Commission and the Judicial Council began working on the study of the three track system in 1999. A group of experts was assembled for a brainstorming session to identify key issues.<sup>29</sup> 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.<sup>30</sup> The proposal was enacted with only minor revisions.<sup>31</sup>

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.<sup>32</sup> In 2001, the Judicial Council hired Policy Studies Inc. (“PSI”), a Colorado consulting firm with extensive experience in evaluating civil justice systems, to conduct empirical research for this study.<sup>33</sup> PSI completed its report in July 2002.<sup>34</sup>

Since then, the Commission and the Judicial Council have followed their usual procedures, supplemented by communication between their staffs, in conducting this study. The views expressed in this proposal are those of the Commission. They do not necessarily reflect the views of the Judicial Council, its staff, or the working group that the Judicial Council has assembled for this joint study.<sup>35</sup>

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27. *Id.* at 82-83 (footnotes omitted).

28. Gov’t Code § 70219. This statute 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.

29. For a list of the experts, see *Unnecessary Procedural Differences*, *supra* note 18, at 449 n.14.

30. See *Unnecessary Procedural Differences*, *supra* note 18.

31. 2001 Cal. Stat. ch. 812.

32. See, e.g., D. Jung, G. Quan & M. Borcharding, *Trial Court Unification and Procedural Reform*, PLRI Working Papers Series (Spring 1999); C. Jacobs & A. Mori, *Where Do We Go from Here? California Procedure after Trial Court Unification*, PLRI Working Papers Series (Fall 1999, D. Jung, ed.).

33. 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.

34. Weller, et al., *Report on the California Three Track Civil Litigation Study* (July 31, 2002) (hereafter “PSI Report”). This report is available on the Commission’s website at <<http://www.clrc.ca.gov>>.

35. The Three Track Study Working Group is chaired by Judge Mary Thornton House of Los Angeles County Superior Court.

## EMPIRICAL 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.<sup>36</sup> A total of 160 attorneys representing all 58 California counties and a variety of types of practice responded to the survey.

PSI also selected three counties for more thorough 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.<sup>37</sup> 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.<sup>38</sup> In addition, PSI 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.<sup>39</sup>

The results of PSI's research are discussed in the analyses of small claims cases and limited civil cases below.

## SMALL CLAIMS CASES

The Legislature created the small claims division to provide an accessible forum for resolution of minor civil disputes.<sup>40</sup> The theory underlying the small claims division is that only by escaping the complexity and delay of normal litigation is it possible to obtain a reasonable recovery in a case for a small sum.<sup>41</sup> Consequently,

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36. PSI Report, *supra* note 34, Appendix A.

37. *Id.* at 7.

38. *Id.* at 11, Appendices B-D (interview protocols).

39. *Id.* at 11.

40. Section 116.120 sets forth the key reasons for having a small claims court:

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.

41. *Sanderson v. Niemann*, 17 Cal. 2d 563, 573, 110 P.2d 1025 (1941).

the small claims division functions informally and expeditiously.<sup>42</sup> The court decides cases in accordance with substantive law, but the awards are often based on common sense, and the proceedings are characterized by a spirit of compromise.<sup>43</sup>

A basic understanding of small claims procedures and their history is necessary before discussing PSI's data on small claims procedures, analyzing the results and other relevant information, and explaining the Commission's recommendation.

### **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.<sup>44</sup>
- (2) An action to enforce payment of unsecured personal property taxes not exceeding \$5,000, if the legality of the tax is not contested.<sup>45</sup>
- (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.<sup>46</sup>
- (4) An action involving a fee dispute between an attorney and client, if the amount at stake does not exceed \$5,000, and certain other conditions are satisfied.<sup>47</sup>
- (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).<sup>48</sup>

A plaintiff whose claim falls within the jurisdiction of the small claims division 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.<sup>49</sup>

If the claim exceeds the monetary limit of the small claims division but would otherwise be within its jurisdiction, the plaintiff may waive the excess and file the claim as a small claims case.<sup>50</sup> The waiver does not become operative until the small claims division enters judgment.<sup>51</sup>

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42. *Id.*

43. *Id.*

44. Section 116.220(a)(1).

45. Section 116.220(a)(2).

46. Section 116.220(a)(3).

47. Section 116.220(a)(4).

48. Section 116.220(c).

49. See Section 85.

50. Section 116.220(d).

51. *Id.*

A person may file only two actions for more than \$2,500 in the small claims division each year.<sup>52</sup> This limit does not apply to a local public entity.<sup>53</sup>

With limited exceptions, an assignee may not bring suit in the small claims division.<sup>54</sup> This rule is intended to prevent collection agencies from monopolizing the small claims division, preserving it as a “People’s Court” for resolution of disputes between individuals.<sup>55</sup>

The following procedural rules apply to a small claims case:

*No formal pleading requirements.* Only a simple claim form is necessary to initiate a small claims case.<sup>56</sup>

*No pretrial discovery.* No discovery is permitted in a small claims case.<sup>57</sup>

*No representation by counsel, except on appeal.* Subject to very limited exceptions, no attorney may participate in a small claims action.<sup>58</sup>

*Small claims advisors.* Each county is required to have small claims advisors who provide free advice to small claims litigants.<sup>59</sup>

*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.<sup>60</sup>

*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 division, 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.”<sup>61</sup> 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.<sup>62</sup>

*Sessions on evenings and weekends.* All courts are permitted, and some courts are required, to hold sessions of the small claims division during non-business hours.<sup>63</sup>

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52. Section 116.231.

53. *Id.*

54. Section 116.420.

55. Pagter, et al., *The California Small Claims Court*, 52 Cal. L. Rev. 876, 890 (1964).

56. Section 116.310.

57. Section 116.310(b).

58. Section 116.530; *Prudential Ins. Co. v. Small Claims Court*, 76 Cal. App. 2d 379, 383-84, 173 P.2d 38 (1946).

59. Sections 116.260, 116.940; see also Cal. R. Ct. 1725 (training and qualifications of small claims advisors).

60. Section 116.550.

61. Section 116.390.

62. *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).

63. 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.<sup>64</sup> Under specified circumstances, a party may be deemed to have stipulated to a temporary judge despite the lack of a formal written stipulation.<sup>65</sup>

*Few formal evidentiary requirements.* The rules of privilege apply in a small claims case, but most formal evidentiary requirements do not.<sup>66</sup>

*Prompt, short hearings.* A small claims case is usually heard soon after it is filed.<sup>67</sup> The hearing is generally quite short.<sup>68</sup>

*Equitable relief.* With limitations, a small claims division may grant equitable relief instead of, or in addition, to money damages. The court may also issue a conditional judgment.<sup>69</sup>

*No appeal by plaintiff.* Having chosen the small claims forum, the plaintiff has no right of appeal.<sup>70</sup>

*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.<sup>71</sup> There is no right to a jury trial even on retrial.<sup>72</sup> The parties may, however, be represented by counsel at the trial de novo.<sup>73</sup>

*No collateral estoppel.* Because small claims procedures are informal, a judgment in a small claims case is not collateral estoppel on the issues litigated.<sup>74</sup>

There are few published decisions relating to small claims cases.<sup>75</sup> In those cases that do receive appellate attention, the current trend is to defer to the Legislature's intent to create an informal and flexible forum in which disputes over modest sums of money can be resolved without incurring disproportionate expenses or consuming undue amounts of time.<sup>76</sup>

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64. Sections 116.510, 116.520.

65. Cal. R. Ct. 1727.

66. *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*, 17 Cal. 2d at 574.

67. Section 116.330.

68. Section 116.510.

69. Section 116.220(b); *see also* Commission Staff Memorandum 2001-43 (May 4, 2001), pp. 2-5.

70. Section 116.710(a); *Superior Wheeler Cake Corp. v. Superior Court*, 203 Cal. 384, 387, 264 P. 488 (1928).

71. Sections 116.710(b), 116.770.

72. Section 116.770(b); *Crouchman v. Superior Court*, 45 Cal. 3d 1167, 755 P.2d 1075, 248 Cal. Rptr. 626 (1988).

73. Section 116.770(c).

74. *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.

75. *Houghtaling*, 17 Cal. App. 4th at 1132, 1138.

76. *Id.* at 1133.

**History of Small Claims Procedures**

The small claims movement began in England in 1605, and was intended to provide for quick, inexpensive, and informal resolution of small disputes through simple proceedings conducted so as to promote compromise.<sup>77</sup> In the United States, small claims courts originated in the early 1900's.<sup>78</sup> At the time, formal and cumbersome court procedures resulted in unreasonable delay and expense and made it almost impossible for the average citizen to collect on a small debt without hiring an attorney.<sup>79</sup> Small claims courts were intended to make it easier for the average citizen to use the court system.<sup>80</sup> All but four states in the nation now have small claims courts.<sup>81</sup>

In California, legislation creating the small claims court was enacted in 1921, effective in 1922.<sup>82</sup> The original jurisdictional limit of \$50 has increased over time:

<b>Year</b>	<b>Small Claims Limit<sup>83</sup></b>	<b>Value in 2001<sup>84</sup></b>
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

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

77. Pagter, et al., *supra* note 55, at 876-77.

78. Best, et al., *Peace, Wealth, Happiness, and Small Claims Courts: A Case Study*, 21 Fordham Urb. L.J. 343, 347 (1994).

79. *Id.*

80. *Id.*

81. Delaware, Georgia, Mississippi, and South Carolina do not have small claims courts. HALT, *National Small Claims Report Card* (Nov. 26, 2002) <<http://www.halt.org/SmallClaims/screportcard.cfm>>.

82. 1921 Cal. Stat. ch. 125, § 1.

83. See 1921 Cal. Stat. ch. 125, § 1; 1951 Cal. Stat. ch. 1737, § 11; 1957 Cal. Stat. ch. 1201, § 1; 1961 Cal. Stat. ch. 2022, § 1; 1967 Cal. Stat. ch. 195, § 1; 1971 Cal. Stat. ch. 572, § 1; 1976 Cal. Stat. ch. 1289, § 2; 1981 Cal. Stat. ch. 958, § 2; 1988 Cal. Stat. ch. 481, § 1; 1990 Cal. Stat. ch. 1305, § 3.

84. These values were calculated using the Inflation Calculator at <<http://www.westegg.com/inflation>>, which is based on the Consumer Price Index.

particularly sharp in 1991 (from \$2,874 to \$6,506 in 2001 dollars), the last time the jurisdictional limit was increased.<sup>85</sup>

### **Empirical Results**

PSI's web-based attorney survey showed that about 74% of the attorney respondents supported some increase in the small claims limit.<sup>86</sup> By a substantial margin, the most favored limit was \$10,000.<sup>87</sup> A limit of \$7,500 was the second choice.<sup>88</sup> The level of support for increasing the limit was fairly consistent across the state, regardless of region or size of county.<sup>89</sup>

One reason given for raising the small claims limit was to keep up with inflation.<sup>90</sup> The primary reason given, however, was that it is difficult if not impossible for a party to find an attorney who will handle a case seeking \$5,000-\$10,000 for a fee that is significantly less than the potential recovery.<sup>91</sup> Often, it is even difficult to find an attorney to take the case at all.<sup>92</sup>

PSI further found that small claims proceedings present issues relating to the quality of justice. Responses to the web-based survey, as well as interviews of judges, commissioners, and temporary judges in all three of the counties selected for intensive study, indicated that many small claims litigants have difficulty presenting their cases, even at the present jurisdictional limits.<sup>93</sup> Persons who do not speak English well can be particularly disadvantaged.<sup>94</sup> Some small claims litigants are not articulate or confident enough to effectively present their case.<sup>95</sup>

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85. Several attempts have been made to change the jurisdiction of the small claims court since the \$5,000 limit was established. See AB 2506 (Andal) (1993-94 Reg. Sess.) (proposed increase of small claims limit to \$10,000, with exceptions); AB 246 (Lempert) (1997-98 Reg. Sess.) (proposed increase of small claims limit to \$7,500; passed by Legislature but vetoed by Governor); SB 1342 (Lockyer) (1997-98 Reg. Sess.) (proposed increase of small claims limit to \$10,000 in auto accident case); AB 1131 (Ackerman) (1999-00 Reg. Sess.) (proposed small claims jurisdiction of suit by assignee in specified circumstances); SB 110 (Ackerman) (2001-02 Reg. Sess) (same); see also 1998 Cal. Stat. ch. 240, § 2 (small claims action may be filed against defendant guarantor if demand does not exceed \$4,000 and defendant charged a fee for its guaranty); 1995 Cal. Stat. ch. 366, § 1 (incarcerated plaintiff must exhaust administrative remedies before filing small claims case); 1994 Cal. Stat. ch. 479, § 10 (small claims jurisdiction relating to arbitration of fee dispute between attorney and client); 1994 Cal. Stat. ch. 971, § 1 (local entities exempted from two-claim limit of Section 116.231); 1993 Cal. Stat. ch. 1264, § 95 (small claims limit for suit against defendant guarantor increased from \$1,500 to \$2,500); 1992 Cal. Stat. ch. 8, § 1 (small claims jurisdiction over certain unlawful detainer cases discontinued); 1992 Cal. Stat. ch. 142, § 2 (authority to issue conditional judgment in small claims case).

86. PSI Report, *supra* note 34, at 31.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.* at 32-33.

91. *Id.* at 33-34.

92. *Id.*

93. *Id.* at 34, 43-44.

94. *Id.* at 34, 43.

95. *Id.*

Although a small claims advisory service is supposed to be available in each county,<sup>96</sup> PSI found that the quality of the service varied widely in the counties that it studied.<sup>97</sup> Similarly, a recent law review article lauds California's small claims advisor program as a model for other jurisdictions, but cautions that "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."<sup>98</sup>

PSI also found some dissatisfaction with the quality of temporary judges who handle small claims cases, at least in Fresno and San Diego Counties.<sup>99</sup> In San Francisco, most small claims cases are heard by a commissioner.<sup>100</sup> The temporary judges used in San Francisco are paid employees who serve frequently.<sup>101</sup> In contrast, the temporary judges used in Fresno and San Diego are volunteers who serve irregularly.<sup>102</sup>

PSI further reported that some attorneys expressed concern about increasing the jurisdictional limit due to the lack of discovery in a small claims case.<sup>103</sup> Given the minimal evidence that is sometimes presented in a small claims case, determining the truthfulness of a claim can be challenging.<sup>104</sup> Raising the stakes would increase the risk of a wrong decision that causes severe harm.<sup>105</sup>

California's small claims system has, however, been favorably evaluated in a nationwide empirical study conducted in late 2001 by HALT, an organization dedicated to "helping all Americans handle their legal affairs simply, affordably, and equitably."<sup>106</sup> In the study, data was collected through a telephone survey of a sampling of small claims courts in the four largest counties and six other randomly selected counties in each state.<sup>107</sup> HALT graded each state in nine categories,<sup>108</sup> then determined an overall grade for the state. California received an overall grade

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96. Sections 116.269, 116.940.

97. PSI Report, *supra* note 34, at 34-35.

98. Turner & McGee, *Small Claims Reform: A Means of Expanding Access to the American Civil Justice System*, 5 U.D.C. L. Rev. 177, 183 (2000).

99. PSI Report, *supra* note 34, at 44-45.

100. *Id.* at 18.

101. *Id.* at 18, 45.

102. *Id.* at 17-18, 44-45.

103. *Id.* at 45.

104. *Id.*

105. *Id.*

106. See <<http://www.halt.org/INFO/infohome.cfm>>.

107. See *National Small Claims Report Card*, *supra* note 81.

108. The categories were: (1) dollar limit of the court, (2) availability of injunctive relief, (3) help with the collection process, (4) availability of advisors for litigants, (5) whether the court was open beyond the traditional 40-hour week, (6) existence of user-friendly complaint forms and guides to using the court, (7) amount of filing fees, (8) encouraging self-representation, and (9) availability of mediation. *Id.*

of “B,” which was the highest grade in the nation.<sup>109</sup> California received a grade of “C” or better in each category except providing help with collecting a judgment, in which it received an “F.”<sup>110</sup>

### **PSI’s Recommendation**

From its research, PSI concluded that the small claims limit should not be raised, but pilot projects should be conducted to test the effects of raising the limit to \$7,500 and \$10,000.<sup>111</sup> PSI recommended that these pilot projects include an extensive training program for temporary judges, small claims advisors located at the court, and rigorous data collection.<sup>112</sup> 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.<sup>113</sup>

The Commission appreciates PSI’s careful research and assessment of California’s civil justice system. Based on the information gathered in the course of this study, however, and on the Commissioners’ own extensive experiences with that system, the Commission has different views on how to proceed.

As explained below, the Commission recommends that (1) the jurisdictional limit for small claims cases be raised to \$10,000, but the impact of this change be monitored, (2) steps be taken to strengthen the small claims advisor program, and (3) restrictions be placed on recovery of attorney’s fees pursuant to a consumer contract in specified circumstances, so as to encourage use of the small claims forum and put the parties on more equal footing. The Commission is also following the progress of the Judicial Council in making improvements relating to the use of temporary judges.

### **Jurisdictional Limit**

Instead of authorizing pilot projects, the Legislature should simply raise the small claims limit to \$10,000,<sup>114</sup> effective January 1, 2005.<sup>115</sup> This would serve two important purposes.

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109. See *California Report Card* (Nov. 26, 2002) <<http://www.halt.org/PDF/SC-RC/RC-CA.pdf>>.

110. *Id.* Similarly, a recent empirical study of the small claims court in Denver, Colorado, found that many small claims litigants have difficulty collecting on their judgments. Best, et al., *supra* note 78, at 344-45.

111. PSI Report, *supra* note 34, Executive Summary at II.

112. *Id.*, Executive Summary at III.

113. *Id.*, Executive Summary at II-III.

114. HALT proposes that the small claims limit be increased to \$20,000 to improve access to justice. See <[www.halt.org/SmallClaims/SCfactsheet.cfm](http://www.halt.org/SmallClaims/SCfactsheet.cfm)>. The Commission’s recommendation is modest in comparison.

115. The Commission plans to finalize a proposal for introduction in the Legislature in early 2004. If the proposal was enacted that year, under normal legislative procedures it would not go into effect until January 1, 2005. Cal. Const. art. IV, § 8(c).

*Reasons for raising the limit*

In part, an increase in the jurisdictional limit is warranted due to overall inflation in the cost of goods and services since the limit was last adjusted on January 1, 1991, over a decade ago. Based on the Consumer Price Index, \$5,000 in 1991 was equivalent to \$6,506 in 2001.<sup>116</sup> By 2005, the corresponding figure is likely to be substantially higher. It may not be as high as \$10,000, but the jurisdictional limit for a small claims case should be set high enough so that it will not need to be adjusted again in the near future.

More importantly, it is no longer cost-effective to hire an attorney to pursue a claim for \$5,000-\$10,000. In fact, PSI reports that cases for up to \$15,000 “are too low in value to pursue economically with an attorney.”<sup>117</sup> That is consistent with the Commissioner members’ own experiences,<sup>118</sup> and with testimony presented to the Commission in its study of the double liability problem in home improvement contracts.<sup>119</sup> It is not uncommon for a party with a claim for \$5,000-\$10,000 to waive the excess and sue in the small claims division.<sup>120</sup>

Thus, the system fails to accord justice to persons who have legitimate claims that exceed \$5,000 but are too small to realistically litigate with counsel. Such a party is faced with the unacceptable choice of either forfeiting a part of the claim or pursuing the claim in a manner that will yield little or no net benefit. That situation needs to be remedied. Raising the jurisdictional limit of the small claims division to \$10,000 would help to address the problem.<sup>121</sup>

*Drawbacks of pilot projects*

The proposed reform should not be delayed for purposes of conducting pilot projects. The problem of access to justice in cases for \$5,000-\$10,000 is already

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116. See discussion of “History of Small Claims Procedures” *supra*.

117. PSI Report, *supra* note 34, at 59.

118. It can even be difficult to find counsel to take a case in the \$15,000-\$50,000 range.

119. See *The Double Liability Problem in Home Improvement Contracts*, 31 Cal. L. Revision Comm’n Reports 281 (2001), in which the Commission proposed a good faith payment rule with a \$15,000 cap. In setting the amount of the cap, the Commission “recognize[d] that subcontractors and suppliers will rarely pursue the mechanic’s lien remedy under existing law for smaller amounts because of the costs involved.” *Id.* at 292.

120. See, e.g., PSI Report, *supra* note 34, 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. Some people take cases of this size to small claims court, forfeiting any possible amount above \$5,000.”); see also *id.* at 16 (“The judges pro tem we interviewed noted that most cases for \$5,000 involve actual damages in excess of \$5,000 and a plaintiff who is willing to waive the excess to sue in small claims court.”); Lewis, *Not So Small Anymore*, Cal. Lawyer 22 (June 1999). The magnitude of this effect is difficult to quantify. A disproportionate number of small claims cases involve a demand of \$5,000, but in some of these cases the demand may be inflated rather than reduced to conform to the jurisdictional limit.

121. For similar reasons, the Commission further proposes that another monetary limit be raised. Since 1991, a party has not been permitted to file more than two small claims cases per year in which the demand exceeds \$2,500. 1990 Cal. Stat. ch. 1683, § 4 (effective January 1, 1991); Section 116.231. This rule does not apply to local entities. Section 116.231(c)-(d). The Commission recommends that the \$2,500 cap be increased to \$4,000 effective January 1, 2005.

well-documented. It would be impossible to conduct a properly controlled experiment to test the effects of raising the limit to \$10,000, due to the wide and uncontrollable variations among counties in such factors as demography, court personnel, court procedures, and caseload size and composition. To the extent that a pilot project focused on the quality of justice, that aspect of court procedures is hard to measure and quantify. Making accurate comparisons between counties would be difficult. In short, pilot projects are unlikely to provide much useful new information.

PSI advocates the use of pilot projects because if the limit was raised, “more complicated cases with more difficult issues of proof probably would be brought in small claims court.”<sup>122</sup> PSI states that litigants “might have difficulty presenting those cases, increasing the likelihood of injustice.”<sup>123</sup> But whether and to what extent the complexity of a dispute correlates with the amount at stake is unclear.<sup>124</sup> Further, PSI does not explain how pilot projects could help address the problem that it posits.

PSI also says that if the jurisdictional limit was raised without conducting pilot projects, the small claims caseload might increase so much as to strain the resources of some courts and require greater use of volunteer temporary judges, adversely affecting the quality of justice.<sup>125</sup> The potential impact on judicial resources is uncertain, however, because increasing the jurisdictional limit may mean that resources previously devoted to limited civil cases become available for small claims cases, which typically require less judicial attention than a limited civil case. Any problems relating to the quality of justice, such as concerns regarding temporary judges, should be tackled directly instead of used as an excuse to delay raising the jurisdictional limit.

*Keeping the system simple and inexpensive*

PSI further suggests the possibility of applying special procedural rules in small claims cases for over \$5,000, such as allowing plaintiffs to appeal and permitting the parties to have attorneys.<sup>126</sup> The Commission believes that it is better to keep the small claims system simple. Establishing special rules for cases over \$5,000 may invite manipulation.<sup>127</sup> Allowing plaintiffs to appeal and permitting

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122. PSI Report, *supra* note 34, at 20.

123. *Id.*

124. *See, e.g., Selzer, California’s Pilot Project in Economical Litigation*, 53 S. Cal. L. Rev. 1497, 1518 (1980) (“most defended cases, regardless of size, tend to be factually complex”); Pagter, et al., *supra* note 55, at 877 n.10 (“No correlation between jurisdictional amount and case complexity has been established.”).

125. PSI Report, *supra* note 34, at 56.

126. *Id.*, Executive Summary at II-III.

127. The Commission also considered the possibility of allowing defendants to opt out of small claims procedures. A key concern in rejecting this approach was the likelihood of gamesmanship, in which a defendant opts out simply to thwart the plaintiff’s choice of forum and force the plaintiff to litigate the claim under complex court procedures, in hopes that this will deter the plaintiff from pursuing recovery.

representation by counsel would also increase the costs of bringing a small claims case, defeating the purpose of raising the jurisdictional limit. Small claims procedures should be kept uniform and inexpensive.

*Constitutionality of increasing the jurisdictional limit*

Any increase in the small claims limit must comply with constitutional constraints, particularly the right to a jury trial. In 1988, the California Supreme Court upheld the lack of a jury trial in a small claims case, even at the trial de novo.<sup>128</sup> In so doing, the court relied on the lack of a jury trial in a case for a modest sum under English common law in 1850, the year when California adopted its Constitution.<sup>129</sup> The Court cautioned that “any attempt to raise the small claims limit to a level which could no longer be considered a very small amount, would necessitate re-evaluation of whether a jury trial is constitutionally required for the de novo appeal.”<sup>130</sup> At the time of the Court’s decision, the small claims limit was \$1,500.<sup>131</sup>

It is clear to the Commission that few disputants regard \$5,000-\$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. Those amounts would also be small in relation to the expense of trying a small claims appeal to a jury.<sup>132</sup>

Those points are critical, because the focus of the small claims system, both now and in 19th century England, is on affording an economical means of pursuing a claim that is too small to litigate through normal court procedures. In other words, what constitutes a “very small” claim must be assessed in relation to the cost of litigation. Thus, while it is impossible to predict with certainty, it seems likely that the California Supreme Court would uphold the proposed increase in the small claims limit to \$10,000.<sup>133</sup>

*Monitoring the effects of the jurisdictional increase*

The Department of Consumer Affairs or another state entity with appropriate expertise should be directed to study and collect data on the effects of increasing the jurisdictional limit to \$10,000, and to report to the Legislature on this matter. This requirement would ensure that the reform is carefully monitored and the results assessed for purposes of determining whether other legislative steps are

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128. *Crouchman v. Superior Court*, 45 Cal. 3d 1167, 755 P.2d 1075, 248 Cal. Rptr. 626 (1988).

129. *Id.* at 1173-78.

130. *Id.* at 1177.

131. 1981 Cal. Stat. ch. 958, § 2.

132. A claim of that size might also seem “very small” to an individual forced to interrupt normal activities to serve on such a jury.

133. If the Court concludes otherwise, the problem could be addressed by permitting a jury trial on appeal in a small claims case. That would be manageable for the litigants (albeit expensive), because they are already permitted to be represented by counsel on appeal. Section 116.770(c).

necessary. It would also serve as a valuable reference source the next time that the Legislature considers increasing the jurisdictional limit.

*Fiscal impact*

The fiscal consequences of increasing the jurisdictional limit for small claims cases are difficult to predict. There might be a loss of revenue from filing fees, because the fee for filing a small claims case is less than the fee for filing a limited civil case.<sup>134</sup> That effect might be offset, however, by savings attributable to reduced demands on judicial resources, because a small claims case typically requires less judicial attention than a limited civil case. In addition, many cases in the \$5,000-\$10,000 range are already brought in the small claims division. It is unclear how many cases now brought as limited civil cases would instead be pursued as small claims cases if the jurisdictional limit were raised. As discussed below, however, the filing fees can be adjusted to help ensure that there is adequate funding to achieve justice in the cases that would be affected by the jurisdictional increase.

**Small Claims Advisory Service**

Small claims advisors are critical to the functioning of the small claims divisions. They are the key to overcoming the difficulties that PSI reported regarding presentation of small claims cases.<sup>135</sup> If a litigant has poor English skills, a small claims advisor can help the litigant find an interpreter to assist in court, or simply assure the litigant that it is permissible to bring a friend to court to provide such assistance.<sup>136</sup> If a litigant is confused or disorganized, a small claims advisor can help the litigant prepare to make an effective presentation of the case. If a litigant is nervous, a small claims advisor can explain what to expect and bolster the litigant's confidence.

Because of the importance of the small claims advisory service, the Commission recommends that funding for the program be increased. This could be achieved by charging more for filing a small claims case in which the demand exceeds \$5,000<sup>137</sup> than for filing a small claims case in which the demand is \$5,000 or

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134. Compare Section 116.230 (filing fee for small claims case) with Gov't Code § 72055 (filing fee for first paper in limited civil case).

135. See discussion of "Empirical Results" *supra*.

136. The Commission considered the possibility of having the state provide free interpreters to small claims litigants who do not speak English well. The Commission decided against this because of the expense, because there is a shortage of certified interpreters, and because issues relating to use of such interpreters have been controversial.

137. For example, a fee of \$40 if the party has previously filed no more than 12 small claims cases within the state within the previous 12 months.

less.<sup>138</sup> Revenue attributable to the fee differential<sup>139</sup> would be allocated to the small claims advisor program, to help ensure that high quality justice is provided in small claims cases.<sup>140</sup> The remainder of the fee would be allocated as under existing law.

The Commission further recommends that a provision be added to the codes specifying the types of advice to be provided by small claims advisors. In particular, it should be made explicit that the duties of a small claims advisor include giving advice on how to enforce a judgment in a small claims action.<sup>141</sup>

#### **Award of Attorney's Fees Pursuant to a Consumer Contract**

The quality of justice in actions involving small amounts would also be improved by restricting the recovery of contractual attorney's fees in certain circumstances. Specifically, an imbalance exists with regard to consumer contracts, which typically include an attorney's fee provision.<sup>142</sup>

Because attorney's fees are recoverable, a seller with a claim pursuant to a consumer contract has little incentive to sue in the small claims division. Rather, the seller can hire an attorney to pursue the claim as a limited civil case. Due to the likelihood of volume business and potential recovery of attorney's fees, the seller can readily retain counsel.

In contrast, the consumer often may be unable to hire counsel to defend the action at an affordable price.<sup>143</sup> The consumer is forced to proceed *in propria persona*, is unable to understand the court procedures and effectively defend the action, and is required to pay both the amount demanded and the other side's attorney's fees upon losing. If the consumer happens to prevail, the consumer is

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138. Under Section 116.230, the fee is \$20 if the party has previously filed no more than 12 small claims cases within the state within the previous 12 months.

139. For example, \$40 (from note 137 *supra*) minus \$20 (from note 138 *supra*) equals a fee differential of \$20.

140. See the proposed amendments of Sections 116.230 (filing fee for small claims case) and 116.910 (allocation of fees) *infra*.

141. HALT identified the lack of such assistance as a serious deficiency in California's small claims system. See note 110 *supra* and accompanying text.

142. Civil Code Section 1799.201(b) defines "consumer contract" as follows:

(b) "Consumer contract" means a writing prepared by a seller and, except as provided in subdivision (c) of Section 1799.202, signed, or to be signed, by a consumer, which provides (1) for the sale or lease of goods or services that are purchased or leased primarily for personal, family, or household purposes, or (2) for extension of credit, the proceeds of which are used primarily for personal, family or household purposes. Without affecting the enforceability of any incidental provision contained therein, an application for credit shall not be considered to be a consumer contract for purposes of this section even if it contains incidental provisions, such as the consumer's consent to a credit review, a certification of the accuracy of the information furnished, or the consumer's agreement to the terms that will be furnished to the consumer pursuant to this title.

143. See discussions of "Empirical Results" and "Jurisdictional Limit" *supra*.

not entitled to a fee award, because a pro per litigant cannot recover attorney's fees.<sup>144</sup>

This situation is decidedly unfair to the consumer. It would be better if the seller proceeded in the small claims division, because then neither party would be represented by counsel, the court procedures would be understandable to both sides, and the stakes would not be inflated by a potential fee recovery that, as a practical matter, is available to only one side.

Accordingly, the Legislature should enact a new law providing that an attorney's fee clause in a consumer contract is void and unenforceable to the extent that it requires payment of attorney's fees in an action on the contract to a party who obtains a judgment of \$10,000 or less. By precluding recovery of attorney's fees, the proposed law would encourage the seller to bring suit in the small claims division, where the parties can litigate on a more equal basis.

The proposed law would apply only to consumer contracts executed on or after January 1, 2005. Because the law would not apply retroactively, it would not be subject to challenge as an impairment of contract.<sup>145</sup>

Further, the proposed law would only apply if the plaintiff, or a predecessor in interest of the plaintiff, could have brought suit in the small claims division. If the plaintiff was barred from suing in the small claims division due to the limit on claims against guarantors,<sup>146</sup> the limit on claims over a certain amount,<sup>147</sup> or the service requirements for a small claims case,<sup>148</sup> contractual attorney's fees would be available as before; in such a case the reason for restricting fee recovery would not apply.

The proposed restriction on contractual attorney's fees is not unprecedented. For instance, if a contract requires a fee award to one party on prevailing in an action on the contract, Civil Code Section 1717 mandates that the other side is likewise entitled to fees on prevailing, even if the contract does not so provide. Like the proposed new law, Civil Code Section 1717 reflects a legislative policy designed to enable consumers to protect their rights through the judicial process.<sup>149</sup> The focus is on mutuality of remedy; recovery of attorney's fees should not be one-sided.<sup>150</sup> Civil Code Section 1717 has been applied in numerous cases,<sup>151</sup> even where the contract in dispute was entered into before the statute was enacted.<sup>152</sup>

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144. *Trope v. Katz*, 11 Cal. 4th 274, 902 P.2d 259, 45 Cal. Rptr. 2d 241 (1995).

145. See U.S. Const. art. I, § 10 (no state shall pass any "law impairing the obligation of contracts"); Cal. Const. art. I, § 9 (A "law impairing the obligation of contracts may not be passed").

146. Section 116.220.

147. Section 116.231 limits a party to two small claims cases per year over \$2,500. The Commission recommends increasing that amount to \$4,000. See note 121 *supra*.

148. Section 116.340.

149. *Coast Bank v. Holmes*, 19 Cal. App. 3d 581, 597 n.3, 97 Cal. Rptr. 30 (1971).

150. "Section 1717 was enacted to establish mutuality of remedy where [a] contractual provision makes recovery of attorney's fees available for only one party ...." *Reynolds Metal Co. v. Alperson*, 25 Cal. 3d

While it is generally preferable to allow parties to negotiate their own contract terms, it is sometimes necessary for the Legislature to intercede to protect the weaker party from unfairness.<sup>153</sup> The proposed restriction on recovery of attorney's fees in an action on a consumer contract is appropriate in light of the circumstances described here.

#### **Use of Temporary Judges in Small Claims Cases**

To improve the quality of justice in cases involving small amounts, it may also be appropriate to make changes regarding the use of temporary judges, which PSI identified as a problem area.<sup>154</sup> This might involve administrative reforms, new training procedures, new rules of court regulating temporary judges, or perhaps legislation. The Judicial Council is studying this topic. The Commission makes no recommendation on the matter at present.

#### **Need for Reform**

It is an unfortunate reality that it takes time and resources to resolve disputes fairly and justly, but time and resources are limited. 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 the small claims divisions, disputes involving relatively small amounts can be of tremendous importance to the litigants.<sup>155</sup> It is crucial to provide economically reasonable means of resolving these disputes, without sacrificing the quality of justice. Ordinary citizens should be able to obtain fair results in court, so that they are

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124, 128, 599 P.2d 83, 158 Cal. Rptr. 1 (1979); *see also* Hsu v. Abbara, 9 Cal. 4th 863, 870, 891 P.2d 804, 39 Cal. Rptr. 2d 824 (1995).

151. *See, e.g., Hsu*, 9 Cal. 4th at 877; *Reynolds Metal Co.*, 25 Cal. 3d at 129.

152. *See Coast Bank*, 19 Cal. App. 3d at 593-97. In upholding the application of Civil Code Section 1717 to contracts entered into before its effective date, the court explained that it is "a settled rule that the matter of recoverable litigation costs is subject to change by the Legislature and is governed by the law in effect at the time of judgment." *Id.* at 594.

153. The constitutional doctrine of freedom of contract has long been discredited. For example, *see Nebbia v. New York*, 291 U.S. 502 (1934), in which the Court explained:

Under our form of government the use of property and the making of contracts are normally matters of private and not a public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest.

*Id.* at 510 (footnotes omitted).

154. *See* discussion of "Empirical Results" *supra*.

155. *See* note 40 *supra*.

satisfied with their justice system and are not tempted to resort to illegal self-help measures.<sup>156</sup>

It may be easy to identify problems with the justice system, but it is hard to find solutions.<sup>157</sup> There is no panacea for providing effective access to justice to all persons in the California courts. It is critical, however, to take steps towards that goal, even if they represent only partial or imperfect solutions. The Commission recognizes that its proposed reforms of the small claims system will not make the system work flawlessly. The proposed legislation would be a step towards a more effective system, however, which may lay the groundwork for future improvements.

## LIMITED CIVIL CASES

Most cases seeking \$25,000 or less are limited civil cases,<sup>158</sup> which are subject to simplified procedures known as economic litigation procedures.<sup>159</sup> 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 litigation a small case using standard procedures is prohibitive.<sup>160</sup>

### Existing Law

Economic litigation procedures apply to any limited civil case, other than a small claims case or a summary proceeding to obtain possession of real property.<sup>161</sup> 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.<sup>162</sup>

Cases subject to economic litigation procedures are governed by the standard rules for civil cases, except as otherwise specified in the economic litigation rules.<sup>163</sup> 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

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156. *Houghtaling*, 17 Cal. App. 4th at 1144 n.6 (Timlin, J., concurring and dissenting); *see also* Best, et al., *supra* note 78, at 344.

157. Selzer, *supra* note 124, at 1525.

158. See Section 85.

159. Sections 90-100; see discussion of “Impact of Trial Court Unification on Civil Procedure” *supra*. Limited civil cases are also subject to the other procedures traditionally applied to municipal court cases, such as appeal to the appellate division of the superior court. Cal. Const. art. VI, § 11; Section 904.2.

160. 1982 Cal. Stat. ch. 1581, § 5; 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).

161. Section 91(b).

162. Section 91(c).

163. Section 90.

need not be verified, even if the complaint or cross-complaint is verified. Special demurrers are not allowed.<sup>164</sup>

*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.”<sup>165</sup>

*Case questionnaire.* The plaintiff has the option of serving a case questionnaire with the complaint, using a Judicial Council form.<sup>166</sup> 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.”<sup>167</sup> 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.<sup>168</sup>

*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.<sup>169</sup> 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.”<sup>170</sup>

*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.<sup>171</sup>

*Prepared testimony.* Under specified conditions, a party may present affidavits or declarations instead of live testimony at trial.<sup>172</sup>

*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.”<sup>173</sup>

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164. Section 92(a)-(c).

165. Section 92(d)-(e).

166. Section 93(a).

167. Section 93(c).

168. Section 93(a)-(b).

169. Section 94.

170. Section 95.

171. Sections 96-97.

172. Section 98.

173. Section 99.

### **History of Economic Litigation Procedures**

In 1976, the Legislature approved economic litigation pilot projects, which began in 1978 in Fresno and Los Angeles Counties, in the superior court and one municipal court in each of these counties. The pilot projects experimented with the use of simplified pleadings, practices, and procedures in cases for \$25,000 or less.<sup>174</sup>

The pilot projects were the subject of several studies.<sup>175</sup> Following these studies, legislation was enacted extending economic litigation procedures 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.<sup>176</sup> These economic litigation procedures were essentially the same as the ones used today; some of the less popular features of the pilot projects were not continued.<sup>177</sup>

Effective January 1, 1986, the monetary limit for economic litigation procedures was increased from \$15,000 to \$25,000.<sup>178</sup> The monetary limit remains at \$25,000 today, but the terminology was revised in 1998 to accommodate trial court unification.<sup>179</sup> 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 (with specified exceptions).<sup>180</sup>

### **Empirical Results**

PSI obtained data regarding the application of economic litigation procedures generally, as well as data regarding specific procedural devices.

#### *Jurisdictional limit*

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.”<sup>181</sup> According to PSI, both groups “believe that the limited civil process has value in reducing the potential for discovery abuse.”<sup>182</sup> Defense attorneys “were willing to sacrifice full discovery in trade for the limit on the award.”<sup>183</sup> Plaintiff’s counsel expressed concern, however, that “raising the limit

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174. 1976 Cal. Stat. ch. 960, § 1.

175. The results of these studies are summarized in *A Report to the Judicial Council by the Economical Litigation Review Committee* (April 1, 1982).

176. 1982 Cal. Stat. ch. 1581.

177. For example, the special procedures pertaining to jury selection and modified rules of evidence were not adopted statewide. See Epstein, *supra* note 160, at 9.

178. 1985 Cal. Stat. ch. 1383, § 2.

179. 1998 Cal. Stat. ch. 931, § 36.

180. Section 91(a).

181. PSI Report, *supra* note 34, at 35.

182. *Id.* at 35-36.

183. *Id.* at 36.

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.”<sup>184</sup>

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.”<sup>185</sup> The level of support for increasing the limit to that level was “fairly consistent across the state, regardless of region or size of county.”<sup>186</sup>

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.”<sup>187</sup> For a number of reasons, the judges and attorneys that PSI interviewed “generally did not support” raising the limit to more than \$50,000.<sup>188</sup>

#### *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 prepared testimony. The opinions on the discovery limits showed the greatest divergence of opinion.<sup>189</sup> Although 54% of the attorneys said that the limit on depositions had a positive effect, 31% said that the limit was detrimental.<sup>190</sup> Similarly, 61% said that the other discovery limits had a positive effect, but 27% said that those limits were detrimental.<sup>191</sup>

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.”<sup>192</sup> 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.”<sup>193</sup>

#### *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

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184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.* at 57.

188. *Id.* at 58.

189. *Id.* at 39.

190. *Id.*

191. *Id.*

192. *Id.* at 46.

193. *Id.*

witnesses had a positive effect, 16% said it had no effect, and only 6% said that it had a negative effect.<sup>194</sup> Many attorneys said that the statement of evidence and witnesses should be authorized in unlimited civil cases, as well as in limited civil cases.<sup>195</sup>

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.”<sup>196</sup> “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.”<sup>197</sup>

#### *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.<sup>198</sup> Almost a majority of the attorneys gave a positive rating to the use of testimony by affidavit and the lack of special demurrers.<sup>199</sup>

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.<sup>200</sup>

#### **PSI’s Recommendation**

Based on its 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.”<sup>201</sup> PSI prefers the latter approach.<sup>202</sup>

To address the concerns regarding the discovery limits, PSI further proposes conducting a pilot project in which higher discovery limits are used for larger limited civil cases.<sup>203</sup> In the alternative, PSI proposes that a “reasonable safety valve” be provided to allow for extra discovery in cases that require it.<sup>204</sup>

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194. *Id.* at 40, 47-48.

195. *Id.* at 48.

196. *Id.* at 47.

197. *Id.*

198. *Id.* at 40.

199. *Id.*

200. *Id.*

201. *Id.* at 57.

202. *Id.* at 61-62.

203. *Id.* 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.

204. *Id.* at 47. PSI also suggests the possibility of allowing 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.” This idea may sound 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

Due to the difficulties in obtaining counsel for cases in the \$5,000-\$15,000 range, PSI also recommends that a pilot project test a new process (essentially a fourth procedural track) as a voluntary alternative to the present small claims and limited civil processes. This new process would apply to cases with an amount in controversy under \$15,000 (except unlawful detainer cases), and would be subject to an award cap of \$15,000.<sup>205</sup> PSI proposes that this new 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.<sup>206</sup>

#### **Commission Recommendation**

The Commission concurs in PSI's recommendation that the jurisdictional limit for a limited civil case be increased to \$50,000.<sup>207</sup> As PSI explains, such an increase is necessary because

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).<sup>208</sup>

The jurisdictional limit should also be raised to account for inflation.<sup>209</sup>

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

205. PSI Report, *supra* note 34, at 59.

206. *Id.* at 59-60.

207. The Commission is aware of only one previous bill to extend economic litigation procedures to cases seeking over \$25,000. See AB 3381 (Baugh) (1995-96 Reg. Sess.) (proposing to raise the municipal court jurisdictional limit to \$50,000).

208. *Id.* at 58.

209. The impact of inflation depends on whether one looks to the \$25,000 limit used in the economic litigation pilot projects that began in 1978 (equivalent to approximately \$70,000 in 2001, according to the Inflation Calculator at <<http://www.westegg.com/inflation>>), the \$15,000 limit that applied when economic

Given the strong and broad support for increasing the jurisdictional limit to \$50,000, the Commission does not consider it necessary to conduct a pilot project on this matter. Nor does the Commission see a need to modify the economic litigation procedures in any respect in conjunction with the jurisdictional increase.<sup>210</sup> Those procedures were carefully crafted at the time when they were extended statewide. A mechanism for obtaining extra discovery in a case subject to economic litigation procedures already exists.<sup>211</sup> If that mechanism proves inadequate once the jurisdictional limit is increased, adjustments can be made at that time, when the nature of the problem (if any) is more clear.

The Commission also recommends against experimenting with a fourth procedural track for cases seeking \$5,000-\$15,000. California's civil justice system is already complex. Adding a fourth procedural track might create more problems than it would solve, such as new reclassification issues, new computerization and filing complications, and new needs for training attorneys and pro per litigants. The Legislature should stick with the current three track system, modified as previously discussed to increase the jurisdictional limits for small claims cases and limited civil cases, improve funding for the small claims advisor program, and restrict the availability of attorney's fees in actions on a consumer contract.

These reforms would help to ensure that the justice system is accessible to persons with claims for relatively small amounts, and that the quality of justice in these situations is high. To effectively achieve these goals, however, it is critical that all concerned — counsel, judges, court administrators, and others — treat such cases with the same level of respect as other civil cases in the system. The parties and the public would be best served under these circumstances.

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litigation procedures were extended statewide in 1983 (equivalent to approximately \$26,500 in 2001), or the \$25,000 limit established in 1986, the last time that the limit was raised (equivalent to approximately \$39,500 in 2001).

210. The Commission recognizes the importance of continuing efforts to improve those procedures, but would not link the proposed jurisdictional increase to any reform along those lines.

211. Section 95; see text accompanying note 170 *supra*.

## PROPOSED LEGISLATION

1 ☞ **Staff Note.** The following draft would implement the Commission’s proposed reforms  
2 relating to the jurisdictional limits for small claims cases and limited civil cases. It also includes a  
3 few conforming revisions (Code Civ. Proc. §§ 86, 86.1, 1710.20; Food & Agric. Code §§ 7581,  
4 12647, 27601, 52514, 53564). We have not yet done a comprehensive search for provisions that  
5 need to be conformed. Further conforming revisions will be added later.

### 6 **Code Civ. Proc. § 85 (amended). Limited civil cases**

7 SEC. \_\_\_\_\_. Section 85 of the Code of Civil Procedure is amended to read:

8 85. An action or special proceeding shall be treated as a limited civil case if all  
9 of the following conditions are satisfied, and, notwithstanding any statute that  
10 classifies an action or special proceeding as a limited civil case, an action or  
11 special proceeding shall not be treated as a limited civil case unless all of the  
12 following conditions are satisfied:

13 (a) The amount in controversy does not exceed ~~twenty-five thousand dollars~~  
14 ~~(\$25,000)~~ fifty thousand dollars (\$50,000). As used in this section, “amount in  
15 controversy” means the amount of the demand, or the recovery sought, or the  
16 value of the property, or the amount of the lien, that is in controversy in the action,  
17 exclusive of attorneys’ fees, interest, and costs.

18 (b) The relief sought is a type that may be granted in a limited civil case.

19 (c) The relief sought, whether in the complaint, a cross-complaint, or otherwise,  
20 is exclusively of a type described in one or more statutes that classify an action or  
21 special proceeding as a limited civil case or that provide that an action or special  
22 proceeding is within the original jurisdiction of the municipal court, including, but  
23 not limited to, the following provisions:

24 (1) Section 798.61 of the Civil Code.

25 (2) Section 1719 of the Civil Code.

26 (3) Section 3342.5 of the Civil Code.

27 (4) Section 86.

28 (5) Section 86.1.

29 (6) Section 1710.20.

30 (7) Section 7581 of the Food and Agricultural Code.

31 (8) Section 12647 of the Food and Agricultural Code.

32 (9) Section 27601 of the Food and Agricultural Code.

33 (10) Section 31503 of the Food and Agricultural Code.

34 (11) Section 31621 of the Food and Agricultural Code.

35 (12) Section 52514 of the Food and Agricultural Code.

36 (13) Section 53564 of the Food and Agricultural Code.

37 (14) Section 53069.4 of the Government Code.

38 (15) Section 53075.6 of the Government Code.

39 (16) Section 53075.61 of the Government Code.

40 (17) Section 5411.5 of the Public Utilities Code.

- 1 (18) Section 9872.1 of the Vehicle Code.
- 2 (19) Section 10751 of the Vehicle Code.
- 3 (20) Section 14607.6 of the Vehicle Code.
- 4 (21) Section 40230 of the Vehicle Code.
- 5 (22) Section 40256 of the Vehicle Code.

6 **Comment.** Subdivision (a) of Section 85 is amended to increase the maximum amount in  
7 controversy for a limited civil case.

8 ☞ **Staff Note.** Section 85(c) refers to statutes that “provide that an action or special proceeding is  
9 within the original jurisdiction of the municipal court.” The Legislature has cleaned many such  
10 provisions out of the codes on Commission recommendation. See 2002 Cal. Stat. ch. 784. A few  
11 such provisions still remain, however, because they require further study or because stakeholders  
12 requested that the Commission refrain from technical clean-up pending resolution of other issues  
13 relating to the provisions. The Commission plans to amend Section 85(c) when all of these  
14 provisions have been revised to delete the reference to municipal court jurisdiction. See First  
15 Supplement to Memorandum 2001-88, at pp. 1-3; Minutes (Nov. 15-16, 2001), p. 13.

16 **Code Civ. Proc. § 86 (amended). Miscellaneous limited civil cases**

17 SEC. \_\_\_\_\_. Section 86 of the Code of Civil Procedure is amended to read:

18 86. (a) The following civil cases and proceedings are limited civil cases:

19 (1) Cases at law in which the demand, exclusive of interest, or the value of the  
20 property in controversy ~~amounts to twenty-five thousand dollars (\$25,000) or less~~  
21 does not exceed the maximum amount in controversy for a limited civil case as  
22 provided in Section 85. This paragraph does not apply to cases that involve the  
23 legality of any tax, impost, assessment, toll, or municipal fine, except actions to  
24 enforce payment of delinquent unsecured personal property taxes if the legality of  
25 the tax is not contested by the defendant.

26 (2) Actions for dissolution of partnership where the total assets of the partnership  
27 do not exceed ~~twenty-five thousand dollars (\$25,000)~~ the maximum amount in  
28 controversy for a limited civil case as provided in Section 85; actions of  
29 interpleader where the amount of money or the value of the property involved does  
30 not exceed ~~twenty-five thousand dollars (\$25,000)~~ the maximum amount in  
31 controversy for a limited civil case as provided in Section 85.

32 (3) Actions to cancel or rescind a contract when the relief is sought in connection  
33 with an action to recover money not exceeding ~~twenty-five thousand dollars~~  
34 ~~(\$25,000)~~ the maximum amount in controversy for a limited civil case as provided  
35 in Section 85 or property of a value not exceeding ~~twenty-five thousand dollars~~  
36 ~~(\$25,000)~~ the maximum amount in controversy for a limited civil case as provided  
37 in Section 85, paid or delivered under, or in consideration of, the contract; actions  
38 to revise a contract where the relief is sought in an action upon the contract if the  
39 action otherwise is a limited civil case.

40 (4) Proceedings in forcible entry or forcible or unlawful detainer where the  
41 whole amount of damages claimed is ~~twenty-five thousand dollars (\$25,000) or~~  
42 ~~less~~ does not exceed the maximum amount in controversy for a limited civil case  
43 as provided in Section 85.

1 (5) Actions to enforce and foreclose liens on personal property where the amount  
2 of the liens is ~~twenty-five thousand dollars (\$25,000) or less~~ does not exceed the  
3 maximum amount in controversy for a limited civil case as provided in Section 85.

4 (6) Actions to enforce and foreclose, or petitions to release, liens of mechanics,  
5 materialmen, artisans, laborers, and of all other persons to whom liens are given  
6 under the provisions of Chapter 2 (commencing with Section 3109) of Title 15 of  
7 Part 4 of Division 3 of the Civil Code, or to enforce and foreclose an assessment  
8 lien on a common interest development as defined in Section 1351 of the Civil  
9 Code, where the amount of the liens is ~~twenty-five thousand dollars (\$25,000) or~~  
10 ~~less~~ does not exceed the maximum amount in controversy for a limited civil case  
11 as provided in Section 85. However, where an action to enforce the lien affects  
12 property that is also affected by a similar pending action that is not a limited civil  
13 case, or where the total amount of the liens sought to be foreclosed against the  
14 same property aggregates an amount in excess of ~~twenty-five thousand dollars~~  
15 ~~(\$25,000)~~ the maximum amount in controversy for a limited civil case as provided  
16 in Section 85, the action is not a limited civil case.

17 (7) Actions for declaratory relief when brought pursuant to either of the  
18 following:

19 (A) By way of cross-complaint as to a right of indemnity with respect to the  
20 relief demanded in the complaint or a cross-complaint in an action or proceeding  
21 that is otherwise a limited civil case.

22 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and  
23 client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of  
24 Division 3 of the Business and Professions Code, where the amount in controversy  
25 is ~~twenty-five thousand dollars (\$25,000) or less~~ does not exceed the maximum  
26 amount in controversy for a limited civil case as provided in Section 85.

27 (8) Actions to issue temporary restraining orders and preliminary injunctions,  
28 and to take accounts, where necessary to preserve the property or rights of any  
29 party to a limited civil case; to make any order or perform any act, pursuant to  
30 Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments)  
31 in a limited civil case; to appoint a receiver pursuant to Section 564 in a limited  
32 civil case; to determine title to personal property seized in a limited civil case.

33 (9) Actions under Article 3 (commencing with Section 708.210) of Chapter 6 of  
34 Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property  
35 or to enforce the liability of the debtor of a judgment debtor where the interest  
36 claimed adversely is of a value not exceeding ~~twenty-five thousand dollars~~  
37 ~~(\$25,000)~~ the maximum amount in controversy for a limited civil case as provided  
38 in Section 85 or the debt denied does not exceed ~~twenty-five thousand dollars~~  
39 ~~(\$25,000)~~ the maximum amount in controversy for a limited civil case as provided  
40 in Section 85.

41 (10) Arbitration-related petitions filed pursuant to either of the following:

42 (A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3,  
43 except for uninsured motorist arbitration proceedings in accordance with Section

1 11580.2 of the Insurance Code, if the petition is filed before the arbitration award  
2 becomes final and the matter to be resolved by arbitration is a limited civil case  
3 under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed  
4 after the arbitration award becomes final and the amount of the award and all other  
5 rulings, pronouncements, and decisions made in the award are within paragraphs  
6 (1) to (9), inclusive, of subdivision (a).

7 (B) To confirm, correct, or vacate a fee arbitration award between an attorney  
8 and client that is binding or has become binding, pursuant to Article 13  
9 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and  
10 Professions Code, where the arbitration award is ~~twenty-five thousand dollars~~  
11 ~~(\$25,000) or less~~ does not exceed the maximum amount in controversy for a  
12 limited civil case as provided in Section 85.

13 (b) The following cases in equity are limited civil cases:

14 (1) Cases to try title to personal property when the amount involved is not more  
15 than ~~twenty-five thousand dollars (\$25,000)~~ the maximum amount in controversy  
16 for a limited civil case as provided in Section 85.

17 (2) Cases when equity is pleaded as a defensive matter in any case that is  
18 otherwise a limited civil case.

19 (3) Cases to vacate a judgment or order of the court obtained in a limited civil  
20 case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

21 **Comment.** Section 86 is amended to reflect the increase in the maximum amount in  
22 controversy for a limited civil case (from \$25,000 to \$50,000), and to accommodate future  
23 increases.

24 **Code Civ. Proc. § 86.1 (amended). Long-Term Care, Health, Safety, and Security Act**

25 SEC. \_\_\_\_\_. Section 86.1 of the Code of Civil Procedure is amended to read:

26 86.1. An action brought pursuant to the Long-Term Care, Health, Safety, and  
27 Security Act of 1973 (Chapter 2.4 (commencing with Section 1417) of Division 2  
28 of the Health and Safety Code) is a limited civil case if civil penalties are not  
29 sought or ~~amount to twenty-five thousand dollars (\$25,000) or less~~ do not exceed  
30 the maximum amount in controversy for a limited civil case as provided in Section  
31 85.

32 **Comment.** Section 86.1 is amended to reflect the increase in the maximum amount in  
33 controversy for a limited civil case (from \$25,000 to \$50,000), and to accommodate future  
34 increases.

35 **Code Civ. Proc. § 90 (amended). Effect of law applicable to civil actions generally in cases**  
36 **subject to economic litigation procedures**

37 SEC. \_\_\_\_\_. Section 90 of the Code of Civil Procedure is amended to read:

38 90. Except where changed by the provisions of this Article and ~~Part 3.5~~  
39 ~~(commencing with Section 1823)~~, all provisions of law applicable to civil actions  
40 generally apply to actions subject to this article.

1       **Comment.** Section 90 is amended to reflect the repeal of former Part 3.5 (commencing with  
2 Section 1823) of the Code of Civil Procedure. See 1994 Cal. Stat. ch. 146, § 26; 1996 Cal. Stat.  
3 ch. 124, § 15.

4       ☞ **Staff Note.** This is a technical clean-up amendment of a provision in the article on economic  
5 litigation for limited civil cases. It should be noncontroversial. We have included it here only  
6 because it relates to economic litigation procedures. It does not have any other connection to the  
7 Commission’s proposed reforms relating to the jurisdictional limits for small claims cases and  
8 limited civil cases.

9       **Code Civ. Proc. § 116.220 (amended). Jurisdiction of small claims division**

10       SEC. \_\_\_\_\_. Section 116.220 of the Code of Civil Procedure is amended to read:

11       116.220. (a) The small claims court shall have jurisdiction in the following  
12 actions:

13       (1) Except as provided in subdivisions (c), (e), and (f), for recovery of money, if  
14 the amount of the demand does not exceed ~~five thousand dollars (\$5,000)~~ ten  
15 thousand dollars (\$10,000).

16       (2) Except as provided in subdivisions (c), (e), and (f), to enforce payment of  
17 delinquent unsecured personal property taxes in an amount not to exceed ~~five~~  
18 ~~thousand dollars (\$5,000)~~ ten thousand dollars (\$10,000), if the legality of the tax  
19 is not contested by the defendant.

20       (3) To issue the writ of possession authorized by Sections 1861.5 and 1861.10 of  
21 the Civil Code if the amount of the demand does not exceed ~~five thousand dollars~~  
22 ~~(\$5,000)~~ ten thousand dollars (\$10,000).

23       (4) To confirm, correct, or vacate a fee arbitration award not exceeding ~~five~~  
24 ~~thousand dollars (\$5,000)~~ ten thousand dollars (\$10,000) between an attorney and  
25 client that is binding or has become binding, or to conduct a hearing de novo  
26 between an attorney and client after nonbinding arbitration of a fee dispute  
27 involving no more than ~~five thousand dollars (\$5,000)~~ ten thousand dollars  
28 (\$10,000) in controversy, pursuant to Article 13 (commencing with Section 6200)  
29 of Chapter 4 of Division 3 of the Business and Professions Code.

30       (b) In any action seeking relief authorized by subdivision (a), the court may  
31 grant equitable relief in the form of rescission, restitution, reformation, and  
32 specific performance, in lieu of, or in addition to, money damages. The court may  
33 issue a conditional judgment. The court shall retain jurisdiction until full payment  
34 and performance of any judgment or order.

35       (c) Notwithstanding subdivision (a), the small claims court shall have  
36 jurisdiction over a defendant guarantor who is required to respond based upon the  
37 default, actions, or omissions of another, only if the demand does not exceed (1)  
38 two thousand five hundred dollars (\$2,500), or (2) on and after January 1, 2000,  
39 four thousand dollars (\$4,000), if the defendant guarantor charges a fee for its  
40 guarantor or surety services or the defendant guarantor is the Registrar of the  
41 Contractors’ State License Board.

1 (d) In any case in which the lack of jurisdiction is due solely to an excess in the  
2 amount of the demand, the excess may be waived, but any waiver shall not  
3 become operative until judgment.

4 (e) Notwithstanding subdivision (a), in any action filed by a plaintiff  
5 incarcerated in a Department of Corrections facility or a Youth Authority facility,  
6 the small claims court shall have jurisdiction over a defendant only if the plaintiff  
7 has alleged in the complaint that ~~he or she~~ the plaintiff has exhausted ~~his or her~~ the  
8 plaintiff's administrative remedies against that department, including compliance  
9 with Sections 905.2 and 905.4 of the Government Code. The final administrative  
10 adjudication or determination of the plaintiff's administrative claim by the  
11 department may be attached to the complaint at the time of filing in lieu of that  
12 allegation.

13 (f) In any action governed by subdivision (e), if the plaintiff fails to provide  
14 proof of compliance with the requirements of subdivision (e) at the time of trial,  
15 the judicial officer shall, at ~~his or her~~ the officer's discretion, either dismiss the  
16 action or continue the action to give the plaintiff an opportunity to provide such  
17 proof.

18 (g) For purposes of this section, "department" includes an employee of a  
19 department against whom a claim has been filed under this chapter arising out of  
20 ~~his or her~~ that person's duties as an employee of that department.

21 (h) The Department of Consumer Affairs shall study and collect data on the  
22 effects of increasing the jurisdictional limits in subdivision (a) to \$10,000. The  
23 Department of Consumer Affairs shall report to the Legislature on this matter on  
24 or before July 31, 2007.

25 **Comment.** Subdivision (a) of Section 116.220 is amended to increase the jurisdictional limit  
26 for a small claims case.

27 Subdivisions (e)-(g) are amended to conform to preferred drafting style.

28 Subdivision (h) is added to provide a mechanism for assessing the effects of increasing the  
29 jurisdictional limit for a small claims case.

30 ☞ **Staff Note.**

31 √√ **Amount of increase.** The proposed amendment would increase the jurisdictional limit for a  
32 small claims case to \$10,000. As discussed at the November meeting, the tentative  
33 recommendation would include a Note soliciting comment on whether another amount would be  
34 more appropriate than \$10,000.

35 √√ **Choice of entity to conduct study.** Proposed Section 116.220(h) would make the  
36 Department of Consumer Affairs responsible for studying the effects of increasing the  
37 jurisdictional limit to \$10,000. Unless the Commission directs otherwise, we will include a Note  
38 in the tentative recommendation soliciting comment on whether the Department of Consumer  
39 Affairs is the appropriate entity to conduct such a study.

40 √√ **Scope of study.** The Commission should also consider the scope of the proposed study. As  
41 drafted, proposed Section 116.220(h) directs the Department of Consumer Affairs to study and  
42 collect data on the effects of increasing the small claims jurisdictional limit to \$10,000.

43 It might be more helpful, however, if the study also encompassed the effects of the  
44 Commission's other proposed changes to small claims procedures, such as the proposed increase  
45 in the two-claim limit of Section 116.231, or the proposed restriction on the availability of

1 attorney's fees with regard to consumer contracts (proposed Section 1035). That could be  
2 accomplished by revising proposed Section 116.220(h) to read:

3 (h) The Department of Consumer Affairs shall study and collect data on the effects of  
4 increasing the jurisdictional limits in subdivision (a) to \$10,000, and the effects of the other  
5 changes to small claims procedures made by [Senate or Assembly] Bill \_\_\_\_ of the 2005-06  
6 Regular Session. The Department of Consumer Affairs shall report to the Legislature on this  
7 matter on or before July 31, 2007.

8 ~~√~~ **Funding for study.** This draft does not include an appropriation for purposes of conducting  
9 the proposed study. We would not take that step unless and until it appears necessary.

10 **Code Civ. Proc. § 116.230 (amended). Filing fee for small claims case**

11 SEC. \_\_\_\_\_. Section 116.230 of the Code of Civil Procedure is amended to read:

12 116.230. (a) ~~A fee of twenty dollars (\$20) shall be charged and collected for the~~  
13 ~~filing of a claim if the number of claims previously filed by the party in each court~~  
14 ~~within the previous 12 months is 12 or less; and a fee of thirty-five dollars (\$35)~~  
15 ~~shall be collected for the filing of any additional claims~~ Except as provided in  
16 subdivision (b), the following fee shall be charged and collected for filing a small  
17 claims case:

18 (1) Twenty dollars (\$20) if the demand does not exceed five thousand dollars  
19 (\$5,000).

20 (2) Forty dollars (\$40) if the demand exceeds five thousand dollars.

21 (b) If a party has previously filed more than 12 small claims cases within the  
22 state within the previous 12 months, the following fee shall be charged and  
23 collected for filing a small claims case:

24 (1) Thirty-five dollars (\$35) if the demand does not exceed five thousand dollars  
25 (\$5,000).

26 (2) Seventy dollars (\$70) if the demand exceeds five thousand dollars (\$5,000).

27 (b) (c) A fee to cover the actual cost of court service by mail, adjusted upward to  
28 the nearest dollar, shall be charged and collected for each defendant to whom the  
29 court clerk mails a copy of the claim under Section 116.340.

30 (e) (d) The number of claims filed by a party during the previous 12 months  
31 shall be determined by a declaration by the party stating the number of claims so  
32 filed and submitted to the clerk with the current claim.

33 (d) (e) Five dollars (\$5) of the fees authorized in subdivision (a) subdivisions (a)  
34 and (b) shall be deposited upon collection in the special account in the county  
35 treasury established pursuant to subdivision (b) of Section 68085 of the  
36 Government Code, and transmitted therefrom monthly to the Controller for deposit  
37 in the Trial Court Trust Fund.

38 **Comment.** Section 116.230 is amended to specify the fee for filing a small claims case in  
39 which the demand exceeds \$5,000. For disposition of that fee, see Section 116.910. For pleading  
40 requirements to assist the clerk in determining the proper fee, see Section 116.320 (claim form  
41 shall set forth amount of claim).

1 ☞ **Staff Note.**

2 √√ **Determining whether the increased filing fee for over 12 claims applies.** Section  
 3 116.230(a) provides that “A fee of twenty dollars (\$20) shall be charged and collected for the  
 4 filing of a claim if the number of claims previously filed by the party *in each court* within the  
 5 previous 12 months is 12 or less; and a fee of thirty-five dollars (\$35) shall be collected for the  
 6 filing of any additional claims.” (Emphasis added.) It is not altogether clear to the staff whether  
 7 the increased filing fee is triggered by 12 small claims cases filed anywhere in the state, or by 12  
 8 small claims cases filed in the particular court in which the new case is to be filed. The fee  
 9 schedules for most courts are ambiguous on this point. A few fee schedules (Glenn County, San  
 10 Mateo County, and Siskiyou County) specify that the increased fee applies if the plaintiff has  
 11 previously filed more than 12 small claims cases in the same court that is to hear the new case. In  
 12 contrast, the Judicial Council form for filing a small claims case (SC-100) asks whether the  
 13 plaintiff has or has not “filed more than 12 small claims, including this claim, during the previous  
 14 12 months.” The form does not ask the plaintiff whether those claims have been filed in any  
 15 particular court. We understand from Albert Balingit of the Department of Consumer Affairs that  
 16 the general practice has been to focus on the number of cases filed anywhere in the state.

17 For present purposes, the most critical question is what the law *should* provide on this point,  
 18 not what the law presently *does* provide. In an era of scarce state funding, it seems somewhat  
 19 preferable to apply the increased fee when a plaintiff has previously filed 12 small claims cases  
 20 anywhere in the state, instead of restricting it to situations in which the plaintiff has previously  
 21 filed 12 small claims cases in the particular county in which the new case is to be filed. The  
 22 revenue difference probably would be relatively small, however, so the staff does not feel  
 23 strongly about which way to proceed.

24 √√ **Fee amounts for claims over \$5,000.** At the November meeting, the Commission did not  
 25 specify what filing fee should be charged for small claims cases in which the demand exceeds  
 26 \$5,000. The Commission only decided that the fee for small claims cases over \$5,000 should be  
 27 more than the fee for small claims cases seeking \$5,000 or less, and that the extra amount should  
 28 be applied to the small claims advisor program. The \$40 and \$70 amounts in the amendment  
 29 shown above are merely tentative suggestions of the staff, not grounded in careful fiscal analysis,  
 30 which we are not equipped to undertake. By way of comparison, the filing fee for the first paper  
 31 in a limited civil case is \$83 if the demand is \$10,000 or less, and \$90 if the demand exceeds  
 32 \$10,000. Gov’t Code § 72055. The staff recommends that the Commission solicit comment on the  
 33 appropriate amount of the filing fees for small claims cases over \$5,000.

34 **Code Civ. Proc. § 116.231 (amended). Limitation on number of small claims cases per year**

35 SEC. \_\_\_\_\_. Section 116.231 of the Code of Civil Procedure is amended to read:

36 116.231. (a) Except as provided in subdivision (d), no person may file more than  
 37 two small claims actions in which the amount demanded exceeds ~~two thousand~~  
 38 ~~five hundred dollars (\$2,500)~~ four thousand dollars (\$4,000), anywhere in the state  
 39 in any calendar year.

40 (b) Except as provided in subdivision (d), if the amount demanded in any small  
 41 claims action exceeds ~~two thousand five hundred dollars (\$2,500)~~ four thousand  
 42 dollars (\$4,000), the party making the demand shall file a declaration under  
 43 penalty of perjury attesting to the fact that not more than two small claims actions  
 44 in which the amount of the demand exceeded ~~two thousand five hundred dollars~~  
 45 ~~(\$2,500)~~ four thousand dollars (\$4,000) have been filed by that party in this state  
 46 within the calendar year.

1 (e) ~~The Legislature finds and declares that the pilot project conducted under the~~  
2 ~~authority of Chapter 1196 of the Statutes of 1991 demonstrated the efficacy of the~~  
3 ~~removal of the limitation on the number of actions public entities may file in the~~  
4 ~~small claims courts on claims exceeding two thousand five hundred dollars~~  
5 ~~(\$2,500).~~

6 (d) ~~(c)~~ The limitation on the number of filings exceeding two thousand five  
7 hundred dollars ~~(\$2,500)~~ four thousand dollars (\$4,000) does not apply to filings  
8 where the claim does not exceed five thousand dollars ~~(\$5,000)~~ ten thousand  
9 dollars (\$10,000) that are filed by a city, county, city and county, school district,  
10 county office of education, community college district, local district, or any other  
11 local public entity. If any small claims action is filed by a city, county, city and  
12 county, school district, county office of education, community college district,  
13 local district, or any other local public entity pursuant to this section, and the  
14 defendant informs the court either in advance of the hearing by written notice or at  
15 the time of the hearing, that ~~he or she~~ the defendant is represented in the action by  
16 legal counsel, the action shall be transferred out of the small claims division. A  
17 city, county, city and county, school district, county office of education,  
18 community college district, local district, or any other local public entity may not  
19 file a claim within the small claims division if the amount of the demand exceeds  
20 ~~five thousand dollars (\$5,000)~~ ten thousand dollars (\$10,000).

21 **Comment.** Subdivision (a) of Section 116.231 is amended to increase the amount to which the  
22 two-claim limit applies.

23 Subdivision (b) is amended to reflect the increase in the amount to which the two-claim limit  
24 applies.

25 Former subdivision (c) is deleted as unnecessary and obsolete.

26 Subdivision (c) (former subdivision (d)) is amended to reflect the increase in the amount to  
27 which the two-claim limit applies. The provision is also amended to reflect the increase in the  
28 jurisdictional limit of a small claims case. See Section 116.220 (jurisdiction of small claims  
29 division) & Comment.

30 **Code Civ. Proc. § 116.910 (amended). Allocation of fees**

31 SEC. \_\_\_\_\_. Section 116.910 of the Code of Civil Procedure is amended to read:

32 116.910. (a) Except as provided in this chapter (including, but not limited to,  
33 Section 116.230), no fee or charge shall be collected by any officer for any service  
34 provided under this chapter.

35 (b) All fees collected under this chapter shall be deposited with the treasurer of  
36 the ~~city and county or~~ county in whose jurisdiction the court is located.

37 (c) Six dollars (\$6) of each ~~fifteen-dollar (\$15) fee~~ charged and collected under  
38 subdivision (a) of Section 116.230, and fourteen dollars (\$14) of each ~~thirty-dollar~~  
39 ~~(\$30) fee~~ charged and collected under subdivision (a) (b) of Section 116.230, shall  
40 be deposited by each county in a special account. Of the money deposited in this  
41 account:

42 (1) In counties with a population of less than 4,000,000, a minimum of 50  
43 percent shall be used to fund the small claims adviser service described in Section

1 116.940. The remainder of these funds shall be used for court and court-related  
2 programs. Records of these moneys shall be available for inspection by the public  
3 on request.

4 (2) In counties with a population of at least 4,000,000, not less than five hundred  
5 thousand dollars (\$500,000) shall be used to fund the small claims adviser service  
6 described in Section 116.940. That amount shall be increased each fiscal year by  
7 an amount equal to the percentage increase in revenues derived from small claims  
8 court filing fees over the prior fiscal year. The remainder of these funds shall be  
9 used for court and court-related programs. Records of these moneys shall be  
10 available for inspection by the public on request.

11 (d) In addition to the amounts allocated to the small claims advisor service under  
12 subdivision (c), twenty dollars (\$20) of each fee charged and collected under  
13 paragraph (2) of subdivision (a) of Section 116.230, and thirty-five dollars (\$35)  
14 of each fee charged and collected under paragraph (2) of subdivision (b) of Section  
15 116.230, shall be used to fund the small claims advisor service described in  
16 Section 116.940.

17 (d) (e) This section and Section 116.940 shall not be applied in any manner that  
18 results in a reduction of the level of services, or the amount of funds allocated for  
19 providing the services described in Section 116.940, that are in existence in each  
20 county during the fiscal year 1989-90. Nothing in this section shall preclude the  
21 county from procuring other funding, including state court block grants, to comply  
22 with the requirements of Section 116.940.

23 **Comment.** Subdivision (b) of Section 116.910 is amended to delete surplusage. See Section 17  
24 (“county” includes “city and county”).

25 Subdivision (c) is amended to encompass the fees for filing a small claims case seeking over  
26 \$5,000 (\$40 if the plaintiff has previously filed no more than 12 small claims cases during the  
27 previous 12 months, and \$70 if the plaintiff has previously filed more than 12 small claims cases  
28 during the previous 12 months). See Section 116.230 (filing fee for small claims case).

29 Subdivision (c) is also amended to reflect that the fees for filing a small claims case seeking  
30 \$5,000 or less were increased in 1997, from \$15 to \$20 if the plaintiff has previously filed no  
31 more than 12 small claims cases in the previous 12 months, and from \$30 to \$35 if the plaintiff  
32 has previously filed more than 12 small claims cases in the previous 12 months. 1997 Cal. Stat.  
33 ch. 850, § 4. The amounts to be deposited in the special account established pursuant to this  
34 section (\$6 and \$14, respectively) are not changed, because the \$5 fee increases enacted in 1997  
35 were allocated to the account established pursuant to Government Code Section 68085(b), to be  
36 transmitted monthly to the Controller for deposit in the Trial Court Trust Fund. 1997 Cal. Stat. ch.  
37 850, § 4; see Section 116.230(e).

38 Subdivision (d) is added to provide additional funding for the small claims advisor service,  
39 derived from the filing fees for small claims cases seeking over \$5,000. The amount of this  
40 increased funding is based on the amount by which the filing fee for a case seeking over \$5,000  
41 exceeds the corresponding filing fee for a case seeking \$5,000 or less.

42 ☞ **Staff Note.**

43 **✓✓ Structure of fee provision.** At the November meeting, the Commission decided that the  
44 proposed filing fee for small claims cases over \$5,000 should be more than the filing fee for other  
45 small claims cases. The Commission further decided that revenue attributable to this increased fee  
46 should be allocated to the small claims advisor program. The above amendment attempts to  
47 implement that decision.

1 Thus, for instance, if the plaintiff has filed no more than 12 small claims cases in the previous  
2 12 months, \$20 of the fee for filing a small claims case seeking over \$5,000 would be allocated in  
3 the same way as the \$20 fee for filing a small claims case seeking \$5,000 or less. Under Section  
4 116.910(d), the remaining \$20 would be allocated to the small claims advisor program.

5 Similarly, if the plaintiff has filed more than 12 small claims cases in the previous 12 months,  
6 \$35 of the fee for filing a small claims case seeking over \$5,000 would be allocated in the same  
7 way as the \$35 fee for filing a small claims case seeking \$5,000 or less. Under Section  
8 116.910(d), the remaining \$35 would be allocated to the small claims advisor program.

9 The resulting scheme is rather complicated, particularly because Section 116.940(c)(2)  
10 provides:

11 In counties with a population of at least 4,000,000, not less than five hundred thousand  
12 dollars (\$500,000) shall be used to fund the small claims adviser service described in Section  
13 116.940. *That amount shall be increased each fiscal year by an amount equal to the*  
14 *percentage increase in revenues derived from small claims court filing fees over the prior*  
15 *fiscal year.* The remainder of these funds shall be used for court and court-related programs.  
16 Records of these moneys shall be available for inspection by the public on request.

17 (Emphasis added.)

18 It might be possible to develop a simpler approach that achieves approximately the same result  
19 with regard to allocation of funding between the small claims advisor program and the other  
20 budgets to which small claims filing fees are allocated. We encourage suggestions on this point. It  
21 may take some time to develop a such an approach, because the matter is likely to be subject to  
22 extensive negotiation among the affected parties.

23 *✓✓Allocation to county law libraries.* The Commission should also consider whether a portion  
24 of the revenue from the filing fees in small claims cases seeking over \$5,000 should be allocated  
25 to county law libraries. Judge Quentin Kopp of the San Mateo County Superior Court (formerly a  
26 state senator and member of the Commission) suggested as much at the November 20 meeting of  
27 the Three Track Study Working Group. He pointed out that a county law library can be a valuable  
28 resource for a party in a small claims case. The working group is exploring this idea further.

29 **Code Civ. Proc. § 116.941 (added). Types of advice to be provided by the small claims**  
30 **advisory service**

31 SEC. \_\_\_\_\_. Section 116.941 is added to the Code of Civil Procedure, to read:

32 116.941. The small claims advisory service described in Section 116.940 shall  
33 provide advice to small claims litigants and other interested persons on all of the  
34 following matters:

35 (a) How to complete the necessary forms for presenting or defending a small  
36 claims action.

37 (b) How to determine the proper court in which a small claims action may be  
38 filed.

39 (c) How to present and defend against a small claims action.

40 (d) How to appeal from a judgment in a small claims action.

41 (e) How to enforce a judgment in a small claims action.

42 (f) How to protect property that is exempt from enforcement of a small claims  
43 judgment.

44 (g) Any other aspect of a small claims action that the small claims advisory  
45 service deems necessary and appropriate.

1 **Comment.** Section 116.941 is added to provide guidance on the types of advice to be provided  
2 by the small claims advisory service. It is drawn from Section 116.930(b) (content of small claims  
3 manual).

4 ☞ **Staff Note.** Section 116.941 is intended to implement the Commission’s decision to make  
5 clear that the duties of a small claims advisor include providing assistance with regard to  
6 collection of a small claims judgment.

7 **Code Civ. Proc. § 1035 (added). Attorney’s fee clause in consumer contract**

8 SEC. \_\_\_\_\_. Section 1035 is added to the Code of Civil Procedure, to read:

9 1035. (a) This section applies to any consumer contract, as defined in Section  
10 1799.201 of the Civil Code, that the parties enter into on or after January 1, 2005.

11 (b) Notwithstanding any other provision of law, except as provided in  
12 subdivision (c), an attorney’s fee clause in a consumer contract under subdivision  
13 (a) is void and unenforceable to the extent that it requires payment of attorney’s  
14 fees [in an action on the contract] to a party who obtains a judgment for ten  
15 thousand dollars (\$10,000) or less.

16 (c) Subdivision (b) does not apply if the party seeking recovery of attorney’s  
17 fees was precluded [by subdivision (c) of Section 116.220, Section 116.231, or  
18 Section 116.340] from suing [on the contract] in the small claims division of the  
19 superior court.

20 **Comment.** Section 1035 is added to encourage a party seeking recovery of a small amount on a  
21 consumer contract to sue in the small claims division, which has a jurisdictional limit of \$10,000  
22 and a prohibition against attorney representation. See Sections 116.220 (jurisdiction of small  
23 claims division), 116.530 (appearance by attorney in small claims division).

24 Subdivision (a) makes clear that this provision applies only prospectively, not to consumer  
25 contracts entered into before January 1, 2005.

26 Subdivision (b) precludes a party from recovering attorney’s fees in an action on a consumer  
27 contract if the party obtains a judgment of \$10,000 or less. A party with such a claim may still  
28 elect to pursue the claim as a limited civil case instead of as a small claims case, but the party  
29 cannot force the other side to bear the expense of attorney representation. See Section 85 (limited  
30 civil cases). By encouraging parties to sue in the small claims division, subdivision (b) serves to  
31 prevent unfairness that may arise when one side is represented by counsel but the other side  
32 cannot obtain counsel due to the small amount at stake.

33 Subdivision (c) restricts the scope of subdivision (b), in recognition that the rationale for  
34 limiting the recovery of attorney’s fees does not apply unless the party seeking such recovery, or  
35 a predecessor in interest of that party, could have brought suit in the small claims court.

36 ☞ **Staff Note.** Proposed Section 1035 attempts to implement the Commission’s November  
37 decisions regarding consumer contracts. A number of points need to be mentioned:

38 √√ **Retroactivity.** To forestall possible concerns regarding unfairness or unconstitutionality of  
39 retroactive application of the new rule, we have drafted the provision to apply only prospectively.

40 √√ **\$10,000 limit.** At the November meeting, the Commission decided that the proposed  
41 restriction on attorney’s fees should apply to consumer contracts involving an amount of \$10,000  
42 or less. The Commission did not clearly resolve whether the amount in question was: (1) the  
43 value of the goods and services exchanged pursuant to the contract, (2) the amount demanded by  
44 a party to the contract, (3) the amount recovered by a party to the contract, or (4) some other  
45 amount.

46 In the above draft, we have focused on the amount of the recovery, because the other  
47 alternatives seemed inconsistent with the Commission’s objectives. For instance, it would not

1 make sense to apply the restriction where a party seeks \$10,000 pursuant to a contract for  
2 purchase of a \$10,000 item, but not where a party seeks \$100 pursuant to a contract for purchase  
3 of a \$20,000 item. Likewise, it would not be appropriate to allow a party to avoid the restriction  
4 by demanding over \$10,000 when such a demand could not be proved up in court.

5 The Commission should consider whether it agrees with the staff's decision to focus on the  
6 amount of the recovery. A downside of this approach is that it would preclude recovery of  
7 attorney's fees by a party who presented a reasonable argument for recovering more than \$10,000  
8 but only succeeded in recovering less than \$10,000.

9 **√√ Jurisdictional limit of a small claims case.** An alternative to using a \$10,000 limit would be  
10 to refer to the jurisdictional limit of a small claims case:

11 (b) Notwithstanding any other provision of law, except as provided in subdivision (c), an  
12 attorney's fee clause in a consumer contract under subdivision (a) is void and unenforceable  
13 to the extent that it requires payment of attorney's fees [in an action on the contract] to a party  
14 who obtains a judgment for an amount that is less than or equal to the jurisdictional limit of a  
15 small claims case, as provided in subdivision (a) of Section 116.220.

16 An advantage of this approach is that proposed Section 1035 would not need to be amended to  
17 account for any future increase in the jurisdictional limit of a small claims case.

18 **√√ Action on the contract.** Some attorney's fee clauses cover both contractual and  
19 noncontractual claims relating to the contract. *See, e.g., Santisas v. Goodin*, 17 Cal. 4th 599, 608,  
20 951 P.2d 399, 71 Cal. Rptr. 2d 830 (1998). At the November meeting, the Commission did not  
21 discuss whether its proposed provision barring recovery of attorney's fees should apply only if a  
22 party sues on the contract, or also if a party brings a noncontract claim that is covered by an  
23 attorney's fee clause.

24 The staff suggests that the provision be limited to contract claims. The Commission is trying to  
25 address the inequity that may occur when:

26 (1) A party with extensive resources retains counsel to sue an unsophisticated party with  
27 limited resources for a relatively small amount;

28 (2) The defendant is unable to hire counsel due to the small amount at stake;

29 (3) The defendant cannot properly defend the claim due to the lack of counsel and complexity  
30 of court procedures; and

31 (4) The defendant loses and is forced to pay not only the amount of the claim but also the other  
32 side's attorney's fees pursuant to an attorney's fee provision in the contract.

33 Such a situation would frequently arise in a suit on a consumer contract, which is typically  
34 brought by the seller. Due to the likelihood of repeat business, the seller may have little difficulty  
35 obtaining counsel, or may even have in-house counsel, while the consumer may be unable to  
36 obtain representation. The problem is not likely to occur in a noncontract action relating to a  
37 consumer contract, which is typically brought by the consumer.

38 If the Commission agrees that the provision should apply only to an action on a contract, a  
39 secondary issue is whether the provision should apply to all or only some such actions. The staff  
40 is trying to determine whether an exception should be made for contract actions in which the  
41 problem described above is unlikely to arise, such as an action for breach of warranty, which  
42 typically would be brought by the consumer. It would be helpful if the Commissioners and other  
43 interested persons gave some thought to this issue, and to the more general question of which  
44 types of actions should be covered by proposed Section 1035.

45 **√√ Inability to sue in the small claims division.** At the November meeting, the Commission  
46 decided that the limitation on recovery of attorney's fees should not apply if the party seeking  
47 such recovery was precluded from suing in the small claims division. The Commission reasoned  
48 that the rationale for the limitation — encouraging potential claimants to sue in the small claims  
49 division — would not apply if the option of suing in that division was unavailable.

50 In reaching that conclusion, the Commission focused on the rule that a party (other than a local  
51 entity) may bring no more than two small claims cases for over \$2,500 in a year. Section 116.231.

1 The Commission did not discuss the implications of the rule that an assignee cannot sue in the  
2 small claims division. If the restriction on availability of attorney's fees applied to the original  
3 parties to a transaction, but not to assignees, a likely effect of the restriction would be to  
4 encourage assignment of claims. The staff does not believe that this was the Commission's intent.

5 Thus, it seems advisable to make the attorney's fees restriction apply to a claim by an assignee,  
6 even though the assignee could not have brought suit in the small claims division. It is enough  
7 that the predecessor of the assignee had that option. Accordingly, proposed Section 1035(c)  
8 would make the attorney's fee restriction inapplicable only if the claimant was unable to sue in  
9 small claims court due to the limit on claims against guarantors in Section 116.220, the two-claim  
10 limit of Section 116.231, or the service requirements of Section 116.340. The Commission should  
11 consider whether this properly effectuates its intent.

12 **Code Civ. Proc. § 1710.20 (amended). Filing of application for entry of judgment based on**  
13 **sister state judgment**

14 SEC. \_\_\_\_\_. Section 1710.20 of the Code of Civil Procedure is amended to read:

15 1710.20. (a) An application for entry of a judgment based on a sister state  
16 judgment shall be filed in a superior court.

17 (b) Subject to the power of the court to transfer proceedings under this chapter  
18 pursuant to Title 4 (commencing with Section 392) of Part 2, the proper county for  
19 the filing of an application is any of the following:

20 (1) The county in which any judgment debtor resides.

21 (2) If no judgment debtor is a resident, any county in this state.

22 (c) A case ~~in which the~~ based on a sister state judgment amounts to twenty-five  
23 thousand dollars (\$25,000) or less is a limited civil case if the sister state judgment  
24 does not exceed the maximum amount in controversy for a limited civil case as  
25 provided in Section 85.

26 **Comment.** Section 1710.20 is amended to reflect the increase in the maximum amount in  
27 controversy for a limited civil case (from \$25,000 to \$50,000), and to accommodate future  
28 increases.

29 **Food & Agric. Code § 7581 (amended). Jurisdictional classification of proceeding relating to**  
30 **seed screening or cleaning**

31 SEC. \_\_\_\_\_. Section 7581 of the Food and Agricultural Code is amended to read:

32 7581. A proceeding pursuant to this article ~~where the value of the property~~  
33 ~~seized amounts to twenty-five thousand dollars (\$25,000) or less is a limited civil~~  
34 ~~case~~ if the value of the property seized does not exceed the maximum amount in  
35 controversy for a limited civil case as provided in Section 85 of the Code of Civil  
36 Procedure.

37 **Comment.** Section 7581 is amended to reflect the increase in the maximum amount in  
38 controversy for a limited civil case (from \$25,000 to \$50,000), and to accommodate future  
39 increases.

1 **Food & Agric. Code § 12647 (amended). Jurisdictional classification of proceeding relating**  
2 **to produce carrying impermissible pesticide residue**

3 SEC. \_\_\_\_\_. Section 12647 of the Food and Agricultural Code is amended to  
4 read:

5 12647. A proceeding pursuant to this article ~~where the value of the property~~  
6 ~~seized amounts to twenty-five thousand dollars (\$25,000) or less is a limited civil~~  
7 ~~case if the value of the property seized does not exceed the maximum amount in~~  
8 ~~controversy for a limited civil case as provided in Section 85 of the Code of Civil~~  
9 ~~Procedure.~~

10 **Comment.** Section 12647 is amended to reflect the increase in the maximum amount in  
11 controversy for a limited civil case (from \$25,000 to \$50,000), and to accommodate future  
12 increases.

13 **Food & Agric. Code § 27601 (amended). Abatement proceeding relating to eggs constituting**  
14 **public nuisance**

15 SEC. \_\_\_\_\_. Section 27601 of the Food and Agricultural Code is amended to  
16 read:

17 27601. Upon the request of the director or an authorized representative, the  
18 district attorney of the county in which the eggs and their containers which are a  
19 public nuisance are found, shall maintain, in the name of the people of the State of  
20 California, a civil action to abate and prevent the public nuisance.

21 Upon judgment and by order of the court, the eggs and their containers which  
22 are a public nuisance shall be condemned and destroyed in the manner which is  
23 directed by the court, or reconditioned, remarked, denatured, or otherwise  
24 processed, or released upon the conditions as the court in its discretion may  
25 impose to ensure that the nuisance is abated.

26 If the owner fails to comply with the order of the court within the time specified  
27 in the order, the court may order disposal of the eggs and their containers or their  
28 sale, under the terms and conditions as the court may prescribe, by the  
29 enforcement officer, or by the sheriff or marshal.

30 If the court orders the sale of any of the eggs and their containers which can be  
31 salvaged, the costs of disposal shall be deducted from the proceeds of sale and the  
32 balance paid into court for the owner.

33 A proceeding pursuant to this chapter or any regulation adopted pursuant to this  
34 chapter ~~where the value of the property seized amounts to twenty-five thousand~~  
35 ~~dollars (\$25,000) or less is a limited civil case~~ if the value of the property seized  
36 does not exceed the maximum amount in controversy for a limited civil case as  
37 provided in Section 85 of the Code of Civil Procedure.

38 A public nuisance described in this section may only be abated in any action or  
39 proceeding pursuant to the remedies provided by this chapter. This chapter  
40 provides the exclusive source of costs and civil penalties which may be assessed

1 by reason of the public nuisance against the owner of eggs and their containers  
2 which are found to be a public nuisance.

3 **Comment.** Section 27601 is amended to reflect the increase in the maximum amount in  
4 controversy for a limited civil case (from \$25,000 to \$50,000), and to accommodate future  
5 increases.

6 **Food & Agric. Code § 52514 (amended). Jurisdictional classification of proceeding relating  
7 to nonconforming lot of agricultural or vegetable seed**

8 SEC. \_\_\_\_\_. Section 52514 of the Food and Agricultural Code is amended to  
9 read:

10 52514. A proceeding pursuant to this article ~~where the value of the property~~  
11 ~~seized amounts to twenty-five thousand dollars (\$25,000) or less is a limited civil~~  
12 ~~case~~ if the value of the property seized does not exceed the maximum amount in  
13 controversy for a limited civil case as provided in Section 85 of the Code of Civil  
14 Procedure.

15 **Comment.** Section 52514 is amended to reflect the increase in the maximum amount in  
16 controversy for a limited civil case (from \$25,000 to \$50,000), and to accommodate future  
17 increases.

18 **Food & Agric. Code § 53564 (amended). Jurisdictional classification of proceeding relating  
19 to nonconforming lot of nursery stock**

20 SEC. \_\_\_\_\_. Section 53564 of the Food and Agricultural Code is amended to  
21 read:

22 53564. A proceeding pursuant to this article ~~where the value of the property is~~  
23 ~~twenty-five thousand dollars (\$25,000) or less is a limited civil case~~ if the value of  
24 the property does not exceed the maximum amount in controversy for a limited  
25 civil case as provided in Section 85 of the Code of Civil Procedure.

26 **Comment.** Section 53564 is amended to reflect the increase in the maximum amount in  
27 controversy for a limited civil case (from \$25,000 to \$50,000), and to accommodate future  
28 increases.