

First Supplement to Memorandum 2003-20

**Jurisdictional Limits for Small Claims and Limited Civil Cases
(Comments on Tentative Recommendation)**

Attached are the comments that were submitted in response to the Tentative Recommendation on *Jurisdictional Limits of Small Claims Cases and Limited Civil Cases* (Dec. 2002). The comments are analyzed in Memorandum 2003-20. To facilitate consideration of these comments, we have grouped them into three categories: (1) comments of organizations (other than law libraries), (2) comments of law libraries and related organizations, and (3) comments of individuals.

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Respectfully submitted,

Barbara Gaal
Staff Counsel



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*An affiliate of the
National Association
of Independent Insurers*

March 31, 2003

David Heubner, Chairman
California Law Revision Commission
4000 Middlefield Road, Suite D-1
Palo Alto, California 94303

RE: Jurisdictional Limits of Small Claims Cases and Limited Civil Cases

Dear Chairman Heubner and Commissioners:

This letter is submitted on behalf of the Association of California Insurance Companies [ACIC]. ACIC represents more than 200 property/casualty insurance companies who write more than a third of the total insurance market in California, including 55 percent of the personal auto insurance, 35 percent of the homeowners insurance and 20 percent of the business insurance written in the state. ACIC is an affiliate of the National Association of Independent Insurers which represents more that 700 insurers doing business nationwide.

At the outset ACIC would like to note a fiscal perspective on the proposal to increase the jurisdictional limits of small claims cases from \$5,000 to \$10,000. From an individual's perspective, \$5,000 is a significant sum of money and pursuing an insurance claim for that sum is a serious matter that resulted from a significant loss event. From an insurer's perspective, a single \$10,000 may not appear to be substantial, but the payment of large numbers of claims at that individual amount would create a significant fiscal impact on the entirety of a company's financial viability. This is so because the payment of claims for insured losses is the central cost feature of any insurance company's operations.

Insurers do not support an increase in the jurisdictional limits of small claims cases for several reasons:

[1] An insurer cannot provide adequate representation for its insureds in small claims cases, and those insureds are entitled to, and expect, representation by their insurers on third party claims. This is true in small claims cases because counsel cannot even appear, but this point also applies to the proposal to increase the amount in controversy for limited civil cases to \$50,000. The limitation on discovery in such cases would compromise the ability of an insurer's counsel to thoroughly investigate claims and prepare cases for trial. The limitation on discovery is particularly restrictive in claims involving personal injury and medical costs because far more than a single deposition is often necessary to fully investigate such claims.

[2] The potential for fraudulent claims will be increased because the factual scrutiny that claims undergo in small claims court is not sufficiently rigorous to expose claims that are either outright fraudulent or fraudulent in their enhancement of the claim's value. Insurers are obligated to thoroughly and fairly investigate claims filed by insureds. That is a twin duty. First, the duty is owed to the insured claimant who is entitled to bring an action against the insurer for breach of the implied covenant of good faith and fair dealing where the insurer's conduct fails to meet standards prescribed by statute and regulation. Second, the insurer has an obligation to all of its insureds to pay only those claims to which parties are entitled so as to mitigate costs that drive insurance rates.

[3] Appeals of small claims cases will become routine if insurers view the small claims process as resulting in large numbers of typically excessive judgments. Widespread use of the right to a *trial de novo* on appeal would create precisely the opposite of the commission's intended effect. Any perceived judicial economy will evaporate.

Thank you for the opportunity to comment on this far reaching proposal.

Very truly yours,

Original signed by Jeffrey J Fuller

Jeffrey J Fuller
Executive Vice President and General Counsel

JJF:jm

cc: Daniel Pone, Senior Attorney, Judicial Council of California
Barbara Gaal, CLRC



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February 4, 2003

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Dear Ms. Gaal:

Please be advised that the Board of Directors of the Association of Defense Counsel of Northern California and Nevada (ADC) have had an opportunity to review the proposed changes in the jurisdictional limits of small claims cases and limited civil cases as tentatively recommended by the Commission. Please be advised that the Board of Directors, on behalf of its approximately 1,100 members, unanimously supported a resolution in opposition to these recommendations. It is the position of our Board that these proposed changes will be detrimental to the interests of the citizens of the State of California and will deprive defendants of the ability to properly defend actions brought against them and will result in significant increases in the costs of insurance.

The Association's position is that depriving the citizens of the State of California to the assistance of legal counsel in actions where there may be personal responsibility up to \$10,000 is unwarranted. It should be remembered that in many counties in the California \$10,000 is equivalent to 35% of the median family income. The original premise of denying a defendant an attorney or the right to a jury trial in small claims court actions was that the amount in controversy was so "small" that the litigants could effectively handle the matters themselves. It is the ADC's position that \$10,000 is not a "small" amount of money and there is a significant issue whether the deprivation of the right to a jury trial and counsel is constitutional with this proposed increase in the limit.

A separate and significant concern is the potential consequences on defendants and on the insurance industry in California who will be adversely effected by increasing the limits from \$25,000 to \$50,000 in limited civil cases. Limiting the right of discovery to one deposition and 35 interrogatories deprives the defendant of an adequate defense and will lead to an increase in insurance costs. Our initial survey of members indicates that with regard to personal line carriers, upwards of 90% of their claims fall within this suggested increased jurisdictional limit. Limiting adjudication of the thousands of these types of claims may

PAST PRESIDENTS

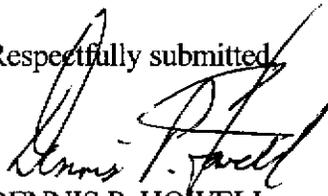
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2002 WAYNE H. MAIRE

Ltr. to Barbara Gaal
February 4, 2003
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have dramatic effects upon the defendant's ability to properly defend and expose unwarranted or exaggerated claims. The ability of the defendant to ferret out fraudulent claims would be substantially diminished. The ADC believes the suggested changes will lead to higher insurance costs and a significant increase in the filing of these types of lawsuits.

The ADC believes that these proposed changes will be bad for the citizens and consumers of this State. We therefore, respectfully request that the Commission reject the tentative recommendation to increase the jurisdictional limits of small claims cases and limited civil cases.

Respectfully submitted,



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February 20, 2003

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Re: Jurisdictional Limits of Small Claims Court/
Tentative Ruling

Dear Mr. Sterling:

The California Association of Collectors, Inc. submits comments with respect to the recommendation by Law Revision Commission Staff concerning changes to the Small Claims Jurisdictional limits. The Comments are limited to the proposal to increase the present \$2,500 maximum set for unlimited filings in the small claims court by a Plaintiff. These initial comments may be supplemented by further information prior to the April Commission hearing, and are being provided at this time to coincide with the deliberations of the California Judicial Council.

The California Association of Collectors, Inc. is an association consisting of third party debt collectors – commonly called collection agencies. Membership in the California Association of Collectors, Inc. also includes businesses commonly known as "account buyers." In California, collection agencies are assigned debts for collection by creditors. Pursuant to the assignment for collection, the collection agency communicates directly with the consumer or non-consumer debtor. In the event that it is necessary for a legal action to be commenced to enforce the obligation owing by the consumer or non-consumer debtor, the collection agency will file the action itself, as the assignee of the obligation. As payment on the assigned obligation is received, the Collection Agency remits a portion to the creditor.

Account buyers are also assignees of the debts and commence suit in their own name. However, account buyers purchase all legal and equitable interests in the assigned claim from the creditor. All consideration for the purchase is paid at the time of the assignment, and the account buyer retains all of the monies collected on the assigned account.

This Memorandum address policy issues concerning the small claims court and its utilization as a collection court (Part I) and the financial impact of moving cases in the \$2,501 to \$5,000 amounts at issue range from the Limited Civil Division to Small Claims Court (Part II, commencing on page 7, below).

PART I

Historically, the Small Claims Court has been referred to as the "People's Court." It has been envisioned as a court where two individuals may quickly and inexpensively bring a dispute before a judge. It was not established to be a collection court or a business court. The existence of the Small Claims Court as the "People's Court" is recognized in the CLRC Staff's December 2002 Tentative Recommendation, pg.7:2-4.

Also cited in the Staff Tentative Recommendation is Houghtaling v. The Superior Court of San Bernardino County (1993) 17 Cal.App.4th 1128. The court in Houghtaling stated that "It is repeatedly stated that small claims courts are designed for the unsophisticated petty litigant. (See, e.g., Brooks v. Small Claims Court (1973) 8 Cal.3d 661, 669 [105 Cal.Rptr. 785, 504 P.2d 1249]--"inexperienced individual.")

In Brooks, the California Supreme Court considered the Small Claims Court and how it was serving as the "People's Court." The California Supreme Court addressed concerns about the "People's Court," access to the "People's Court," and what parties were utilizing the "People's Court." The Court concluded that the "People" were increasing becoming just the Defendants in Small Claims Court actions, while the plaintiffs were businesses asserting claims against the "People." This trend was consistent in the 10-year period preceding the court's decision,

Empirical studies have shown a proportionately greater use of the small claims procedure by institutional creditors than by individual creditors.

For example, in an empirical study made of the Oakland-Piedmont-Emerlyville small claims court in 1963, it was found that only 34.7 percent of the plaintiffs were individuals . . . This study also found 89.5 percent of all judgments entered were in favor of the plaintiff. (Comment, The California Small Claims Court (1964) 52 Cal.L.Rev. 876, 893-894.) Similar figures, developed in a more recent survey of rural small claims courts, revealed that the burden on the individual was not confined to urban communities. (Note, The Persecution and Intimidation of the Low-Income Litigant as Performed by the Small Claims Court in California (1969) 21 Stan.L.Rev. 1657, 1659-1661.)

These studies indicate that the institutional creditor, rather than the ordinary individual claimant, is more likely to avail itself of the small claims court . . . All of these factors would seem to make the small claims court increasingly attractive to the institutional creditor-claimant. In addition, such type of creditor has frequently employed the rules of venue so as to bring an action at great distances from the residence of the defendant. This contributes significantly to the number of defaults entered . . .

Furthermore, in many instances, the institutional creditor has a large and constant volume of claims, repeatedly invokes the jurisdiction of the small claims courts, and inevitably becomes proficient in this type of litigation. It is only natural, then, that such a claimant will have a decisive advantage over the individual defendant participating in perhaps his first and only courtroom proceeding. This advantage may be compounded if the institutional creditor is a corporation. Since a corporation must appear by someone, it is possible for it to do so by a proper representative (Prudential Ins. Co. v. Small Claims Court, *supra*, 76 Cal.App.2d 379, 386) who may have legal training but at the same time will not fall within the statutory restriction on appearance by attorneys. n9 Thus section 117g, the very provision designed to aid the poor litigant (whether plaintiff or defendant) by maintaining [**1255] [***791] overall equality between the competing parties, seems to work to that party's disadvantage in these instances. Consequently, since small claims actions often involve the inexperienced individual defendant facing the experienced institutional creditor plaintiff, the small claims procedure should provide the defendant access to counsel without being required to first file an undertaking.

Brooks, (at p. 668) .

Current Jurisdictional Limits

Code of Civil Procedure section 116.231 currently provides that no person may file more than two small claims actions which exceed \$2,500 in any calendar year. This provision was created when the general jurisdictional limit for the small claims court was increased to \$5,000 in 1991. A limit on the number of filings above the \$2,500 amount was provided in the bill to allow consumers to access the small claims courts to assert a higher balanced amount in dispute, but not overburden the small claims courts, and consumers, with a multitude of the higher balance suits filed by "professional litigants."

In establishing the Small Claims Court, the Legislative Findings and Decelerations, C.C.P. section 116.120, state that individual minor civil disputes are to be the subject of small claims

proceedings. The Small Claims court is to provide an expeditious and inexpensive forum to fairly resolve these individual minor civil disputes.

Historically, the Small Claims Court has been recognized as the "People's Court" by the California Legislature. As noted in the Senate Judiciary Committee Bill Analysis relating to SB 110, April 17, 2001, hearing date,

When first enacted in 1933, the small claims court was created to provide a speedy, inexpensive, and informal method of settling small claims, without attorneys or conventional legal procedure. Designed as a "people's court," one of the important early characteristics of the small claims court is its prohibition against suit by any person other than the creditor. However, that characteristic has been eroded through time, with the result that there are now three exceptions to the rule. In addition, businesses may now sue in small claims court and be represented in the action by one of its employees. Thus, creditors such as Pacific Bell and Pacific Gas & Electric regularly use the small claims court to collect their utility bills.

The three exceptions to the "People's Court" concept are found in C.C.P. section 116.420 which provides that bankruptcy trustee, the purchaser of a portfolio of specified consumer installment contracts, or a local government asserting a self insured workers compensation subrogation claim may file suit in small claims court as assignees. An additional exemption allows local public entities to file an unlimited number of small claims actions up to the full \$5,000 jurisdictional limits of the court.

A preliminary review of data obtained from the Sacramento Small Claims Court of the 2001-2002 year, the trend of business plaintiffs has not abated. This is especially true with the multiple filers (more than two cases within a year). From readily identifiable names¹ in the records, the non-individual/business filing more than two cases per year breakdown as follows:

	<u>2001</u>	<u>2002</u>
Local Governmental Entities	839	701
Consumer Finance/Check Cashing	558	724
Auto Dealers/Repair	451	629
Jewelers	336	286
Medical Services	204	426
Home Repair/Consumer Goods	230	153

¹/ The records include the names of individuals filing 3-4 cases per year, but which do not indicate whether they are business or personal.

Financial Institutions	483	334
Insurance/Bail Bonds	51	44
Other Business Entities	754	255
More Than 5 Small Claims Actions ²	<u>207</u>	<u>231</u> ³
	4113	3783

The total cases filed by multiple filers (more than two just in the Sacramento court) was 4,573 for 2001 and 4,629 for 2002.

For the multiple filers, approximately 80 percent are readily identifiable as business entities as plaintiffs. There is no facade of the "People's Court" with respect to multiple filers (those in excess of two filings per year). The facts are consistent with general public common experience. The average consumer does not have a reason to file suit more than two times a year, and more likely two times in a lifetime. Rather, the only reason for filing multiple suits is for a commercial enterprise to assert claims against other businesses or consumers. Since business contracts generally contain attorneys' fees provisions, there is no problem with a business retaining an attorney to advance the claim. This is consistent with the justifications set forth in the Judicial Council Three Track Study Group suggestion to increase the overall jurisdictional limits – to allow consumers who would otherwise be unable to obtain counsel to have access to the courts for claims in the \$5,000 - \$10,000 range.

Consumer Related Issues

Collection Agencies, as assignees, are currently barred from filing actions in small claims courts. One of the often stated reasons is that the small claims court is the "People's Court" and not to be used as a collection court. Though the Small Claims Court was used as a collection court by businesses on small balance obligations, by limiting the filings to only two per year in excess of the \$2,500 balance, the integrity of the Small Claims Court for individuals was preserved for the larger balance disputes.

Being barred from Small Claims Court, collection agencies must file most of their actions to enforce debts in the Superior Court, Limited Civil Division. As show in the data set forth in Part II of this Memorandum, collection agencies have developed an efficient system to identify those

^{2/} These names were not recognizable, from the court's records, to a business. Other names of individuals were immediately recognizable to the author as attorneys, CPAs, or sole proprietorships in the area.

^{3/} The filings ranged from six to eighty-four in the name of one person.

claims for which there is not a bona fide dispute. This effective review of potential cases, which results in approximately 84 percent having default judgments entered and almost all of the remaining cases being resolved prior to trial, is compelled by several factors.

First, for accounts assigned to a collection agency, there is no personal animosity or "baggage" based on the consumers' failure to pay the underlying debt voluntarily. The debt collector does not fear any recriminations or punishment for the decision of the original creditor to extend credit to the consumer. Only debts for which the debtor owes the money and has an identified ability to pay will be the subject of a collection agency suit.

Second, collection agencies must carefully screen debts to identify those for which that cannot be any significant dispute. A collection agency is successful financially by collecting money. Incurring costs and expenses in litigating and resolving disputes, which were created by the creditor, is not in the financial interests of the collection agency. Since new monies have to be advanced for the legal fees and expenses (usually by the collection agency), commencing a lawsuit causes the collection agency to first recover its own monies for the expenses advanced, and only after all of the expenses are recovered, begin to collect the debt.

Since the collection agency is already attempting to obtain payment on an outstanding obligation, increase the financial burden on the consumer is not in the collection agency's interests. Incurring further costs and expenses of litigation, which will further increase the consumer's obligation, only makes the recovery of monies that much more difficult. There is no profit in recovering costs advanced in fighting a bona fide dispute, so the collection agency is financially compelled to identify only the suits for which there can be no dispute.

Third, as opposed to the original creditor, a collection agency is regulated by the Federal Fair Debt Collection Practices Act, 15 U.S.C. sections 1691 et. seq. This Act prohibits unfair collection practices, harassment, and improper debt collection activities. The Act further requires a collection agency to send a written notice to a consumer debtor requesting that it be given notice by the debtor of any dispute, and that the collection agency will provide the consumer with verification of the debt if a dispute is made. Through this process, collection agencies sift out debts which the creditor believes are owing, but for which a dispute or error exists.

As noted by the Supreme Court in the Best decision, creditors filing small claims actions often take advantage of the venue provisions to bring the action in a court far from the individual defendant's residence. Under the Federal Fair Debt Collection Practices Act, a collection agency may only commence the action in the county (1) in which such consumer signed the contract sued upon, or (2) in which such consumer resides at the commencement of the action. 15 U.S.C. 1692i.

The original creditor is not subject to the provisions of the FDCPA or the requirement that it validate the debt if disputed by the consumer. Rather, the Creditor (which generally is already presuming the debt to be valid) may just proceed with threatening the consumer with litigation, or just filing the suit in small claims court.

In such cases, the creditor has a local employee collect the small claims files for that hearing day and go to court. Though an employee, the person appearing generally has no personal knowledge of the facts underlying the claim. Rather, that employee is just relying upon the information in the file. These facts can be readily ascertained just by sitting in one day of hearings in a small claims courtroom. It is also intuitive that a national financial institution or consumer lender, which has a centralized credit office out of state, would not have local employees who were personally knowledgeable of the case.

To the extent that the California Law Revision Commission was to determine that the dollar limitations on the multiple filings of claims should be increased above the current \$2,500, any remaining reason for barring assignees from Small Claims Court evaporates. Clearly, the multiple filers are not "The People" asserting claims against other consumers. The multiple filers are businesses, not subject to the FDCPA, asserting claims against consumers. Further, the employees (usually litigation trained and experienced paralegal) of these multiple filers do not have personal knowledge of the underlying claim, but are merely presenting the business' hearsay records to the court.

If the California Law Revision Commission makes the determination that Small Claims Court is to be a business collection court, then collection agencies (as assignees) should be granted the same access to the court as any other business. Access to the courts, and the judicial process, is a basic right for which no practical distinction can be drawn between a collection agency (which will usually be located the same area as the court) and a national consumer lender which forwards files to an employee paralegal to appear in the small claims court.

PART II ECONOMIC ISSUES FOR THE COURTS

In December 1999 and January 2000, the California Association of Collectors, Inc. undertook a study of the filings by collection agencies of limited civil jurisdiction cases. Sixteen collection agencies were surveyed, and the sample included large (working accounts on a national basis) and small (family owned, five collectors) agencies. Responding members include those with offices in Northern Los Angeles, Central Los Angeles, Southern Los Angeles - San Diego, San Francisco Bay Area, North Coast, Sacramento Valley, the Central Valley, and the Central Coast.

For the 16 collection agencies, there were 810 suits a month filed within the limited civil case jurisdiction limits (less than \$25,000). These suits broke down as follows:

<u>Amount of Suit</u>	<u>Number of Suits</u>
Less than \$1,000	67
\$1,001 - \$1,500	97
\$1,501 - \$2,500	150
\$2,501 - \$5,000	248
\$5,001 - \$25,000	248

The California Association of Collectors, Inc. has 385 members. In addition, there are branch offices of some national collection agencies that operate in California which are not members of the California Association of Collectors. Based on the above study, there is an average of 15.5 suits filed per agency in the \$2,501 to \$5,000 range. Extended just over the membership of the California Association of Collectors, Inc., that represents 5,968 suits per month in the \$2,501 to \$5,000 amount in controversy range.

Assuming an average filing fee of \$90, these 5,968 suits represent \$537,120 of filing fee revenue each month for the courts. Annualize, the cases in the \$2,501 to \$5,000 range filed by collection agencies result in \$6,445,440 (for 71,616 suits filed by collection agency members of the California Association of Collectors, Inc.⁴) in initial filing fee revenue annually. This doesn't include the additional fees for motions, writs, and other incidental charges. This also doesn't include the fee enhancements and surcharges recently enacted.

One rationale for increasing the jurisdictional limit of the Small Claims Court is that it may be more cost effective to have a matter heard in Small Claims Court rather than in the Superior Court, Limited Civil Jurisdiction. For the suits filed by the California Association of Collectors, Inc. members, on average 84 percent proceed to judgment by default. Most others are resolved prior to trial, with only a very small number actually utilizing a courtroom and judge. The high percentage of success, and limited utilization of the courts and court resources, is the result of the several factors outlined above. The bottom line for a collection agency is that suit can be commenced only when there is clearly no bona fide dispute on the obligation and the consumer has the ability to pay, but is just refusing in an attempt to avoid his or her obligation.

⁴/ Based on the survey, the 385 members of the California Association of Collectors file an additional 15,523 suits per month within the \$25,000 limited civil court jurisdiction. This represents an additional \$14,604,840 in initial filing fees.

The Staff Tentative Recommendation, dated December 2002, states that the financial consequences of increasing the jurisdictional limits are unknown. However, it did recognize in the recommendation that there may be a loss of revenue due to the lower small claims filing fee, but suggested that the loss in revenue may be made up by the savings due to reduced demand on judicial resources. (16:13-19). For the collection agency filings in Superior Court in the \$2,501 - \$5,000 range, the financial impact on the court will be the reverse.

As show from the actual filing experience of collection agencies, just for the cases where the amount in controversy is between \$2,501 and \$5,000, the courts are receiving at least \$6,445,440 in initial filing fees. For 84 percent of these cases (\$5,414,169.60 in filing fees), the judicial resources utilized in generating those fees are: receiving the complaint, creating the file, and entering the clerk's judgment. For the remaining 16 percent, most are resolved prior to trial, with the remaining fraction taking less than two hours of the judge's time.

To resolve these actions in Small Claims Court, for every case filed, there will have to be at least one hearing. The Court will have to provide a physical courtroom, provide a judge and court staff. The files will have to be transferred to the court and each matter presented to the judge. The judge will then have to issue a ruling (rather than a clerk's judgement) in each case. The case will then have to be transferred back to the Limited Civil Division for the enforcement process.

Presumably, the intention of the Law Revision Commission is to move the multiple filing business plaintiff cases in the \$2,501 to \$5,000 range into the small claims court. This would have to include the cases being handled by collection agencies, which make up a significant number of the current filings.

In the event that the cases are moved to the Small Claims Court, the Superior Court would immediately lose \$6,500,000 in filing fees. Assuming that all of the 71,616 cases filed by members of the California Association of Collectors, Inc. are instead filed in Small Claims Court, the corresponding fees would be only \$2,506,560 (assuming \$35 per file, with 71,616 new small claims cases). This would result in an immediate net loss of \$3,938,880 in fees to the courts, plus the courts would have the additional expenses of creating new courtrooms, and the additional court staff, and judges to hear the additional 71,616 cases.

Historically, the California Association of Collectors, Inc. has projected that its members represent approximately 85 percent of the consumer debt collection and 65 percent of the commercial debt collection for the dollar ranges at issue. Allowing for these non-members and the creditors who are filing suit in Superior Court in the \$2,501 - \$5,000 range, the financial impact on the Superior Court will be even greater. The Superior Court will be facing a loss of \$8,056,800 (assuming that there are an additional 25 percent of filings by non-members and creditors in the

Superior Court). With a small claims filing fee of \$35, the courts are facing a revenue loss in excess of \$5,000,000.

CONCLUSION

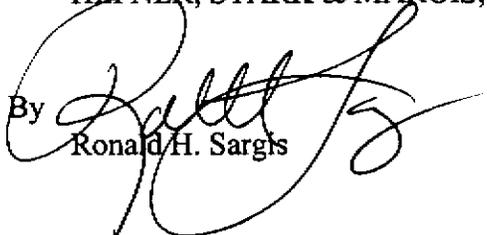
The staff recommendation to increase the multiple filing jurisdictional limit to \$4,500, from the current \$2,500, is not warranted under either the premise upon which the small claims court was established as the "People's Court" or the financial impact on the court of losing the Limited Civil Jurisdiction Filings. Further, to the extent that collection agencies would continue to be banned from small claims court, the interest of consumers are not served.

To increase the multiple filing jurisdictional limit is to make the small claims court into a dedicated debt collection court, and any rationale for excluding assignees no longer exists. By reaching a conclusion that the jurisdictional limits for multiple filers needs to be increased to provide access to the courts, the Law Revision Commission is also finding that collection agencies, as any other business, must be provided access to the small claims court or effectively be denied access to the judicial process.

It is respectfully submitted that the Law Revision Commission either must conclude that there is no need (reasonable access to the courts) to provide multiple filers increased dollar claim amount access to the "People's Court," or conversely conclude that it is necessary for all businesses to have access to the small claims courts for claims within the multiple filing jurisdictional limits because reasonable access does not exist for such claim amounts in the Superior Court. However, there is no basis for concluding that access is necessary for multiple filers in general, but one type of business should be denied that access.

Very truly yours,

HEFNER, STARK & MAROIS, LLP

By 
Ronald H. Sargis

:RHS

cc: Barbara Gaal, Judicial Council
Daniel Pone, Judicial Council
Jan Stieger, Executive Director

CALIFORNIA COMMISSION ON ACCESS TO JUSTICE

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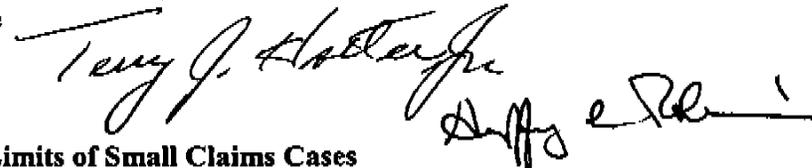
MEMORANDUM

TO: California Law Revision Commission

FROM: Hon. Terry J. Hatter, Jr., Chief Judge Emeritus, United States District Court,
 and Mr. Geoffrey L. Robinson, Co-Chairs, California Commission on
 Access to Justice

DATE: March 10, 2003

SUBJECT: Jurisdictional Limits of Small Claims Cases



The California Commission on Access to Justice Commission was established by the State Bar in 1996, in conjunction with the other appointing entities described below. The Commission is pursuing long-term strategies designed to make significant progress toward the goal of improving access to justice for low and moderate-income Californians.

In addition to appointments from the State Bar, the Commission includes appointments from the Governor, the Attorney General, the President Pro Tem of the Senate, the Speaker of the Assembly, the California Judicial Council, California Judges Association, Consumer Attorneys of California, California Chamber of Commerce, California Labor Federation, League of Women Voters and the California Council of Churches.

The Commission comments only on that part of the recommendation addressing Small Claims Court.

The Commission appreciates the opportunity to submit these comments. If you have any questions or wish to discuss any of the comments, please contact either of the 2003 Co-Chairs of the California Commission on Access to Justice – Hon. Terry J. Hatter, Jr., Chief Judge Emeritus, United States District Court [213-894-5746] or Mr. Geoffrey L. Robinson [925-975-5335; geoffrey.robinson@bingham.com] or Mary Viviano, Staff Director for the Commission [415-538-2251; mary.viviano@calbar.ca.gov].

A. Jurisdictional Limit. The Access to Justice Commission believes the jurisdictional limit for small claims cases should only be increased from \$5,000 to \$7,500. This increase would account for inflation and also make the system accessible for those with cases over the current jurisdictional limit. However, the Commission is concerned about an increase to \$10,000 until such time as the systemic problems in the Small Claims Court system are resolved, including the appropriate training of pro tem judges. The Commission is aware of the lack of time available for training and the crush of cases facing pro tems on the Small Claims Court calendar, and suggests that the distribution of model training materials to pro tem judges could help achieve the training goal in an effective and efficient manner. (The Commission might support some pilot projects at the \$10,000 level, but is aware that budget constraints make such studies prohibitively expensive.)

B. Limit on Cases. The Commission recommends the retention of the current limit of two small claims cases per year in which the demand exceeds \$2,500. The Commission agrees with the reasoning of the Committee on the Administration of Justice:

“If the two-claim cap were to be eliminated entirely, ‘small claims court’ is likely to turn into ‘collection court,’ deluged with claims by institutional creditors against individuals, impinging upon the ability of individuals to pursue small disputes. In addition, collection actions are often governed by specific remedies and subject to technical requirements that must be adhered to before relief can be granted to the creditor. Before a default or other judgment is entered, a high level of judicial scrutiny is necessary to ensure that all the requirements have been met and that the consumer/debtor receives the necessary protection. The required level of scrutiny exists in limited jurisdiction cases, but is often absent in small claims cases.”

For similar reasons, the Commission also agrees with CAJ’s statement that the two-claim cap should *not* be increased to \$5,000, as is recommended by the Law Revision Commission:

“If the cap were to be increased, collection cases between \$2,500 and \$5,000 are likely to flood into small claims court, without the protections

discussed above. CAJ does not believe that doubling the jurisdictional limits to \$10,000 supports doubling the two-claim cap to \$5,000, because different policy interests are implicated.”

C. Two-Tiered Fee. The Commission supports the two-tiered filing fee, with a slightly higher fee for small claims cases over \$5,000, as a good way to assist in funding an improved small claims advisory service.

D. Improved Court Forms. The Commission suggests that small claims court forms be improved so as to streamline work for clerks, and clarify procedures for litigants. The Center for Children, Families and the Courts have done extensive work on form simplification, and there may be models they have developed that could be used as a basis for similar changes in Small Claims Court forms.

E. Small Claims Advisors: With regard to the Small Claims Advisory Service, the Commission has the following recommendations:

- The Commission recommends that Small Claims Advisors be required to be attorneys, using supervised paralegals in certain situations.
- In addition, the Commission suggests consideration be given to establishing a closer working relationship between the Administrative Office of the Courts and the system of local Small Claims Advisors. This increased coordination would take advantage of the experience that the AOC has with regard to its support of other self-help programs, and significant experience analyzing the efficiency and effectiveness of self-help assistance projects, including preparing reports to the legislature on these issues. To the extent that this is an additional responsibility proposed for the AOC, funding would of course be necessary to support that role.
- Finally, the Commission agrees with the recommendation of the Law Revision Commission that Small Claims court advisors should be required to help litigants recover judgements, which is often the most difficult part of the process for litigants.

DISCLAIMER

These initial comments are made on behalf of the California Commission on Access to Justice; they have not been adopted by the State Bar's Board of Governors, nor by any other entity that makes appointments to the Access Commission.

CALIFORNIA

**DEFENSE
COUNSEL**

February 18, 2003

Mr. Daniel Pone, Senior Attorney
Judicial Council of California
Office of Governmental Affairs
770 L Street, Suite 700
Sacramento, CA 95814

Law Revision Commission
RECEIVED

FEB 19 2003

File: _____

Ms. Barbara Gaal
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94353

**Re: Public Comment to Judicial Council and California Law Revision Commission on
Proposed Increases to Jurisdictional Limits for Small Claims and Limited Civil
Cases**

Thank you for the opportunity to provide input on proposed increases to jurisdictional limits for small claims and limited civil cases, arising from draft recommendations of the joint working group examining California's three-track system for civil cases. On behalf of nearly 3500 members of the California Defense Counsel statewide, we recognize that the working group was motivated primarily by issues of access to justice for civil litigants, and we commend the working group for the thoughtful approach to the complex issues involved. Respectfully, however, we very strongly disagree with draft proposals to increase small claims jurisdictional limits from \$5000 to \$7500 or \$10,000, and to increase jurisdictional limits in limited civil cases from \$25,000 to \$50,000. We address each issue separately below.

SMALL CLAIMS JURISDICTIONAL INCREASES

For a whole host of reasons, we believe that increases to small claims jurisdictional limits are very unwise at this time. First, a claim for \$10,000 is simply not a "minor civil dispute" as envisioned by Code of Civil Procedure Section 116.120. In fact, \$10,000 represents a very substantial percentage of median California income, and would entirely eliminate the liquid savings of most retired Californians. Subjecting Californians to this level of personal liability without such basic due process protections as right to counsel, discovery, right to jury, evidentiary standards and others represents a very serious deprivation of Constitutional rights.

Frankly, we believe that the materiality of \$10,000 to the average Californian is the only proper measure of the appropriate jurisdictional limit. The CLRC's Discussion of Issues agrees that this amount is not "very small" for most litigants, but notes that the amount is

Daniel Pone, Judicial Council of California
Barbara Gaal, California Law Revision Commission
February 18, 2003
Page 2

very small compared to the cost of litigating a limited or unlimited civil case. Respectfully, we do not agree that this is the appropriate standard: the cost of a Ford Taurus is very small when compared with a Ferrari, but this does not make a new Taurus affordable for most Californians. It is the impact on litigants which should be considered, and we believe that people deserve lawyers, discovery, juries, and evidentiary standards when exposed to this level of detriment.

Small claims litigants also deserve a relatively uniform application of justice, regardless of the county hearing the claim. This means reasonably consistent small claims infrastructure, in terms of small claims assistance, interpreters, and especially, judges. Counties differ markedly on the degree to which small claims are assigned to volunteer temporary judges, and on the degree of training provided to these decision makers. Throughout the Discussion of Issues there is recognition that funding for small claims infrastructure must be increased to provide litigants with equal "access to justice", yet there is no meaningful chance given the state's budget situation to provide these increases, even if a two-tier filing fee is adopted. In fact, filing fees were increased last year, and may be increased this year, just to maintain current services. Until there can be substantial improvements in infrastructure, particularly as it relates to judging, we are opposed to exposing litigants to the vicissitudes of volunteer decision makers for increased jurisdictional amounts.

We believe that the increase in small claims jurisdiction is likely to have other deleterious effects, including increased risk of fraudulent claims by plaintiffs who understand that their adversaries will be unrepresented, increased temptation to utilize claims adjusters in a quasi-legal capacity, and increased costs to the court system from *de novo* appeals by defendants.

The Discussion of Issues indicates that the working group has considered a remarkable array of "tweaks" to the small claims system, including a limited right to counsel (perhaps with malpractice immunity!), free interpreters, new training of temporary judges, limited rights of appeal by plaintiffs, and pilot projects. Instead, we support a well-funded, simple system which gives Californians a venue to litigate claims at a jurisdictional limit appropriate to their means. This is inconsistent with the draft recommendation to increase the limit to \$7500 or \$10,000.

LIMITED CIVIL JURISDICTIONAL INCREASES

With respect to limited civil jurisdiction, the Discussion of Issues includes statistical information from PSI suggesting that defense counsel in general support the increase in jurisdictional limits from \$25,000 to \$50,000. Without examining PSI methodology, this is certainly not our experience with members of the California Defense Counsel, the vast majority of whom are strongly opposed to this change. This proposal would apply economic litigation limitations to the overwhelming majority of all civil cases filed, and would dramatically restrict the ability of our members to provide effective representation to their clients.

Daniel Pone, Judicial Council of California
Barbara Gaal, California Law Revision Commission
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Page 3

Because the \$50,000 threshold would encompass such a large percentage of cases, the limits on depositions and interrogatories would apply to very factually complex matters. Counsel simply cannot ignore the malpractice risk of not requesting additional discovery where warranted, so motions for additional discovery will increase markedly. While judges have noted that these requests should typically be granted, the proposal includes no change to the current standard for additional discovery, that "the party will be unable to prosecute or defend the action effectively without the additional discovery."

Not only will the proposal impair the ability to represent clients effectively, unless the court grants additional discovery, but the large increase in the numbers of these discovery motions will amount to a financial "double-whammy" on the courts in these times of budget challenges. Court time to hear and decide discovery motions will increase, while filing fee revenue will decrease, due to the reclassification of formerly unlimited cases to limited status.

In reading the Discussion of Issues and the Draft of Tentative Recommendations, one is left with the impression that the only factor really driving the increase in limited civil jurisdiction is the change in the consumer price index since the last change. This ignores all other changes to the civil system in recent years, including court unification, declines in civil filings, changes in juror psychology and the willingness of insurers to litigate relatively small cases, and others. We are simply not aware of any problem in the limited jurisdiction arena which compels a 100% increase in jurisdictional limits, other than changes in CPI. In this case, we believe the negative consequences far outweigh the need to make a CPI-based adjustment, and for this reason, the California Defense Counsel would strongly oppose the increase should it be proposed legislatively.

Thank you again for the opportunity to provide input on the proposed changes. We would be happy to answer any questions you might have.

Sincerely,

A handwritten signature in cursive script that reads "Raymond Coates".

Raymond Coates, President
California Defense Counsel

California Small Claims Court Advisors' Association**P.O. Box 1542, Benicia, California 94510-4542 • 707-747-0884 • 866-768-9013 fax**

March 28, 2003

Sent Via E-mail, US mail and Facsimile

Barbara Gaal, Esq.
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650-494-1827 fax

Janet Grove, Esq.
Administrative office of the Courts
455 Golden Gate Ave.
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415-865-7664

Re: Comments Relating to the Three-Track Study and Tentative Recommendation

Dear Interested Agencies:

The California Small Claims Advisor's Association ("CSCAA") is comprised of the County Small Claims advisors throughout the state of California and has a sustaining membership of approximately 25 to 30 members. A portion of the Three-Track study and tentative recommendations significantly impact the small claims court.

CSCAA's stated purpose is to educate small claims advisors and the public regarding the purposes, procedures, and practices of the small claims court in the following ways: (1) To establish and maintain channels of communication between agencies and persons concerned with California small claims courts. (2) To encourage those governmental agencies or persons charged with advising small claims court litigants to meet their respective mandates. (3) To formulate, support, or oppose legislation, policies, rules, and regulations directly or indirectly concerned with small claims courts. (4) To represent California small claims advisors on any issues or topics of concern to them. (5) To promote consistency of small claims court procedures and practices throughout the State of California. (6) To work for continuing improvement in the delivery of small claims court services to members of the public. (7) To prepare and distribute educational materials for the public and association members.

Barbara Gaal, Esq.
Janet Grove, Esq.
March 28, 2003

The CSCAA Legislative Review Committee has reviewed the tentative proposed changes to the current small claims procedure and desires that the following comments be evaluated before any additional legislative action is taken:

Jurisdictional Limit Change to \$10,000 is Conditionally Supported

CSCAA supports raising the jurisdictional limit to \$10,000¹ in order to better serve the interests of justice. Many plaintiffs elect to waive the amount of their claim that exceeds the \$5,000 jurisdictional limit rather than file in the court of limited jurisdiction. Small corporations are especially impacted because of the inability to file in the court of limited jurisdiction without retaining an attorney. However, the CSCAA believes that if the jurisdictional limit is raised to \$10,000 it should be done so with the implementation of additional procedural safeguards.

As the study reflects, many counties rely on Judges Pro Tem in order to meet the needs of the caseload that come before the small claims court. Because disputes that come before Pro Tems are often in an area other than that in which the Pro Tem may have significant experience, it is the Advisors' opinion that decisions are not always based on an accurate review of the law or the interests of justice. Although the quality of Judges Pro Tem was specifically not addressed in the Tentative Recommendations (20:12-18), the CSCAA appreciated that this is an issue of great concern and that the Judicial Council is studying this topic.

Because of these issues and based on the basic goal of fairness of the courts, the CSCAA strongly recommends that plaintiffs, in addition to defendants, be given the right to appeal an adverse decision of the small claims court. This is especially true where a significant amount of money (\$10,000) may be at risk.

Plaintiffs Should be Given an Appeal Right

Under present small claims statutes, plaintiffs are denied the right to appeal. The justification for this rule has been that since the plaintiff chose the forum, they forfeited their right to appeal. These rules were promulgated in a day when plaintiffs were litigating over hundreds, not thousands, of dollars. As to the logic underlying the purpose for denying the Plaintiff's right to appeal, it is unlikely in most cases that the small claims defendant would have opted to litigate in superior, rather than small claims court.

With the high cost of legal services in today's world, plaintiffs have little choice as to where to litigate cases with relatively low dollar amounts in controversy.

¹ CSCAA supports raising the limit to \$10,000 and not \$7,500 if a change is to be made, the suggested procedural safeguards are believed to be necessary if there is any change to present jurisdictional limit.

Barbara Gaal, Esq.
Janet Grove, Esq.
March 28, 2003

Another compelling reason to allow plaintiffs the right to appeal is that in many counties, especially the largest counties, small claims cases are heard and decided by pro tem judges. While no one disputes that judges pro tem provide a valuable public service, the fact remains that, by and large, their training to hear small claims cases is inadequate and frequently their areas of practice are wholly unrelated to the typical areas of litigation seen in small claims court. In addition, their knowledge of procedure is generally derived from practice in superior court and not small claims court, which has its own (very different) procedures.

As a result, of the unevenness in the abilities of judges pro tem, the small claims advisors see, first hand, a vast number of poorly reasoned or wholly unsupportable judgments. When these judgments go against a plaintiff, the plaintiff is left with no remedy. Couple this with the fact that small claims judges are not required to give, nor do they usually provide, a factual basis for their decisions and the result is that thousands of unsuccessful plaintiffs have no recourse and have no information as to why they have lost their case.

This leads to a disaffection towards, and disrespect for, our legal system, which, over time, could have serious societal effects. This is especially so in light of the fact that small claims court is generally the only interface most litigants will ever have with the California court system. If they come away bitter and with the feeling there is no justice, society is at risk in the long term. It is untenable to contemplate such a widespread erosion of respect for the legal system.

Most any small claims advisor will tell you that, in general, people can accept losing a lawsuit if they feel they were given a fair trial and they were given a reason why they lost. What people cannot endure is the combination of losing a case, having no recourse to correct a perceived wrong, and left ignorant of the reason why they lost.

This, we feel, leads to a festering wound which gnaws at the plaintiff and manifests as a loss of respect for the judicial system. With a contemplated upward change in the limit in small claims actions, the small claims advisors see as crucial a change in the law respecting plaintiff's right to appeal.

If there is a fear of opening a Pandora's Box of plaintiff's appeals, perhaps the right could be made conditional. For instance, only in cases where the amount sought exceeds \$2500, thereby limiting the cases in which an appeal could be filed by a plaintiff to two per year. Moreover, any fear that providing the plaintiff an appeal right might adversely affect the administration of justice or be contradictory to the purposes set forth in 116.220 can be addressed by discouraging frivolous appeals. This can be accomplished by: (1) charging a significant filing fee, perhaps the same fee charged for initiating an action in the court of limited jurisdiction; (2) increasing the amount under Code of Civil Procedure section 116.780 from \$150 to \$500; and (3) increasing the amount awarded under Code of Civil Procedure section 116.790 from \$1,000 to \$2,000.

Barbara Gaal, Esq.
Janet Grove, Esq.
March 28, 2003

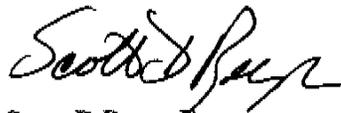
Additional Claim Information Should be Provided to the Defendant

Because demand letters are not required prior to asserting a party's rights in small claims court, in many cases defendants are not aware of the nature of the claim being asserted against them. If the jurisdictional limit is increased, this problem will become more severe. In order to promote settlement out of court and to provide the defendant with greater due process, the CSCAA suggests that the Judicial Council prepare a form to be filed and served by the plaintiff that fully calculates their damages. This form would be similar to a Bill of Particulars, but with broader application. This will prevent defendants from being unduly surprised and will cause the plaintiffs to more fully evaluate their damages prior to filing. For good cause (and where the defendant is not prejudiced) the plaintiff could amend the calculation at the hearing, if necessary, and if the interests of justice would be served.

Several procedural safeguards could be built into the requirement. The filing of a completed "calculation of damages" could be a jurisdictional requirement. If the plaintiff wholly fails to serve the "calculation of damages" on the defendant, the judge would have several options, including postponing the hearing at the election of the defendant, requiring that the defendant be provided a copy at the hearing, or dismissing the case without prejudice.

To summarize, the small claims advisor's believe the jurisdictional limit should be increased to \$10,000, but only if the procedural problems already recognized in the present system are addressed and corrected.

Very Truly Yours,



Scott D Reep, Esq.
CSCAA Legislative Review Committee

SDR:ms



Consumer Attorneys
Association
of Los Angeles

Law Revision Commission
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APR 3 2003

File: J-1321

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April 1, 2003

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Executive Director
Amanda Gazlay

California Law Review Commission
4000 Middlefield Road, Room D-1
Palo Alto, Ca 94203-4739

Attention: Barbara Gaal

Re: Jurisdictional Limits of Small Claims Cases and Limited Civil Cases

Dear Ms. Gaal:

This letter is the Consumer Attorneys Association of Los Angeles' response to your Request for Comment on the referenced subject as follows:

- Small Claims**
Our organization agrees with the increase of limits to \$10,000 for use by the general public. We disagree that corporations and business should be allowed the increase, in that our members believe there is considerable abuse by many businesses against unknowing consumers.
- Limited Civil Cases**
Our organization agrees with the increase in limits to \$50,000, but we request an additional deposition allowance.

Please contact me if you wish further input.

Sincerely,

MICHAEL S. FIELDS
President, Consumer Attorneys
Association of Los Angeles

MSF\arp

February 21, 2003

Mr. Daniel Pone, Senior Attorney
Judicial Council of California
Office of Governmental Affairs
770 L Street, Suite 700
Sacramento, CA 95814

Ms. Barbara Gaal
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94353

Re: Public Comment to Judicial Council and California Law Revision
Commission on Proposed Increases to Jurisdictional Limits for Small Claims and
Limited Civil Cases

Thank you for the invitation to comment on the proposed increases to the jurisdictional limits of small claims court and limited civil cases. Consumer Attorneys of California appreciates the efforts of both the Judicial Council and the Law Revision Commission to review the current jurisdictional limits in an effort to assure justice for Californians.

1. Increase in Small Claims limits from \$5000 to \$10,000.

As noted in the LRC study, it is increasingly difficult for an injured consumer to find an attorney who can handle a case valued under \$10,000. Insurance companies fight claims of this size with the same intensity as one valued at \$100,000. Costs associated with prosecuting these claims can exceed the value of the case. After deducting fair compensation for an attorney, a consumer is left with a fraction of the value of their claim. These injured consumers need a forum to resolve their disputes. We therefore support increasing the limits of the small claims jurisdiction, *provided* that safeguards are in place.

Historically, Consumer Attorneys of California opposed increasing the jurisdictional limits, primarily out of fear that individuals would be disadvantaged in cases filed by a business or corporate plaintiff. We continue to have these concerns but believe that we must strike a balance between providing access to justice for the consumer while providing safeguards to assure that individual defendants are not denied justice. To that end, we offer the following principles as necessary in considering an increase in the small claims limit.

We support strengthening the small claims advisory service and would support increasing the filing fees to support that goal.

We believe that the existing restrictions on the number of claims greater than \$2500 per year are important and should be retained.

The jurisdictional amount for claims involving the collection of medical debt should not be expanded.

Court provided translators should accompany any increase in jurisdictional limits.

Protections must be in place to assure that small claims court professionals do not appear to represent institutional parties.

Filing in small claims court must be at the plaintiff's option only.

Courts of limited jurisdiction and superior courts must not be permitted to remand a case to small claims court based upon their own evaluation of a claim.

We oppose any sanction against a plaintiff who files a claim in superior court believing that his or her claim is greater than \$10,000 but is ultimately awarded a smaller amount.

The Judicial Council and the Law Revision Commission should explore additional protections to individual plaintiffs and defendants in the small claims process. Institutional parties, whether plaintiff or defendant, should not be permitted to use the system to take advantage of a less sophisticated party.

2. Increase in limits of limited civil cases from \$25,000 to \$50,000.

We oppose increasing the jurisdictional limits of limited civil cases. Many judges abuse the current \$25,000 limited jurisdiction by designating personal injury cases as limited where special damages alone are in the \$20,000 plus range. Additionally, we are concerned that the limits on discovery will be a significant problem for consumers. Often defendants will designate multiple experts in a case. With the limits on discovery, a consumer will be unable to depose those experts. Plaintiffs will be hindered in their ability to adequately conduct discovery and prepare a case if the limits are increased.

Thank you for giving us the opportunity to comment on these proposals and we look forward to working with you.

Sincerely,

Lea-Ann Tratten
Legal Counsel



Publisher of Consumer Reports

Law Revision Commission
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FEB 10 2003

File: _____

February 6, 2002

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Re: Jurisdictional limits for small claims and limited civil cases, public comment to
Judicial Council Working Group and California Law Revision Commission

This letter will provide public comment on the issues facing the Judicial Council's Working Group which is addressing small claims court jurisdiction and on the December 2002 Tentative Recommendation of California Law Revision Commission (CLRC). Both of these entities are considering significant changes to California's small claims court jurisdiction.

Summary of Comments

Consumers Union, the nonprofit publisher of *Consumer Reports* magazine,¹ is concerned with both issues of access to justice for individual consumers and with preserving procedural safeguards, including discovery and the right to an attorney and a jury trial, in cases where the amount at stake is significant for an individual consumer. We are deeply concerned about the potential unfairness of exposing individual

¹ Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life of consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with approximately 4 million paid circulation, regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

consumers to an initial judgement of up to \$7,500 or \$10,000 without the ability to be represented by counsel in the proceeding. This concern is exacerbated by the absence in small claims court of court-provided translators, the unevenness of the quality of *pro tem* decision-makers, and the absence of effective, accessible small claims court advisor services in every county.

We respectfully suggest that the jurisdictional limit for small claims cases should not be increased unless and until these quality of justice issues are fully and effectively remedied. As one small part of these needed improvements, we support the proposals for a fee increment providing a dedicated funding stream for small claims court advisor services.

If the quality issues are fully resolved, we would still suggest that any increase in the jurisdictional amount be implemented using an initial pilot in one or two counties, with rigorous study and evaluation of the impacts of the pilot on the demand for advisor services, the quality of justice, the ability of unrepresented individuals to effectively present and defend cases, and similar issues. A pilot-first approach was recommended in the Report on the California Three Track Civil Litigation Study, made by Policy Studies, Inc., to the Judicial Council of California on July 31, 2002. (Hereafter, *Three Track Study*.)

Regardless of the general jurisdictional amount, there should be no expansion in jurisdiction for two claims per party per year over \$2,500. In addition, the dollar cap on claims against uncompensated guarantors in small claims courts should remain unchanged. Preserving these existing limitations is essential to prevent expanding the use of small claims court as a forum for debt collection.

Finally, we respectfully suggest that any discussion of small claims court jurisdiction should include other needed changes to enhance the small claims court for individuals, and to prevent small claims court from being used contrary to its original purposes as a people's court. Extensive input from the small claims court advisors should be solicited and used to shape those additional improvements.

Principles to Evaluate Proposed Jurisdictional Changes

Our comments on the specific issues under consideration by the Judicial Council's working group and by the California Law Revision Commission are guided by these overarching principles:

1. Small claims court should be a place where individuals can resolve their claims quickly and efficiently.
2. The quality of justice in the small claims court should be as high as in the Superior Court. Professional decision-makers and well-funded, in-person, courthouse-based small claims court advisors are essential.
3. An adequate, permanent, dedicated revenue stream is essential to increasing the availability of high quality small claims court advisor services.
4. Court-provided translators are essential to any increase in jurisdiction, because of the increase in the amount at stake for the consumer.

5. Jurisdictional changes should be rejected if they move the small claims court further toward a “collectors’ court” for companies collecting debts owed to them.
6. Existing restrictions on the number of claims greater than \$2,500 per year are important and should be retained.
7. Consumers should not be treated as “guinea pigs” in an untested, statewide expansion of small claims court jurisdiction.
8. The jurisdictional amount for claims involving the collection of medical debt should not be expanded.

Comments on Specific Issues

1. Any proposed increase in the jurisdictional limit should not occur unless and until the quality of justice issues are fully resolved. These issues include the need for professional decision-makers, adequate advice service, and court-provided translators.

We oppose proposals to raise the general small claims court jurisdictional limit from \$5,000 to either \$7,500 (working group) or \$10,000 (CLRC) until the significant quality of justice issues, described in more detail below, are resolved. While increased limits could make it easier for individual consumers to file cases, increased limits will not necessarily make it any easier for individuals to prevail when warranted by the facts. The Three Track Study shows that there are significant barriers to achieving good quality justice for individuals in small claims courts, including undertrained *pro tem* decision-makers, varying levels of advisor services, significant difficulties for non-professionals in presenting cases, and particularly high barriers for persons with limited English language skills. *Three Track Study*, pp. 34, 44-45, 56.

The amounts at stake in small claims court are significant to the individuals and families seeking to recover them or liable to pay them. The CLRC acknowledges that “few disputants regard \$5,000 to \$10,000 as ‘a very small monetary amount’”. *CLRC Tentative Recommendation*, p. 15. A recently published study of family finances underscores just how significant a claim or judgment for \$7,500 or \$10,000 can be. According to the triannual Federal Reserve Board Survey of Consumer Finances, the median reported net wealth for U.S. Hispanic families was \$11,300. African American families nationwide had a median net wealth of \$19,000. Net wealth for families in the bottom fifth of the economic strata was \$9,300. A judgement of \$7,500 or \$10,000 could wipe out all or a very significant portion of these families’ net wealth.

Increased jurisdictional amounts are so significant for California families that the issues of the quality of justice in the small claims court system should be effectively and permanently addressed before such increases are made.

2. Trained, professional decision-makers should replace volunteer *pro tem* judges.

The significant empirical record developed in the Three Track Study about the varying quality of justice in small claims court should not be ignored. That study shows that an individual consumer may receive a significantly different quality of justice based on the accident of residence. Consumers in San Francisco County, for example, are guaranteed a decision-maker who is either a court commissioner or one of a small number of regular-serving, compensated *pro tems*. By contrast, a consumer in Fresno must accept a *pro tem* who may serve only irregularly, or return for a new trial date which would necessitate taking another day away from work, which is often an uncompensated day for a nonprofessional employees. See *Three Track Study*, pp. 17-18.

The Three Track Study reports a higher appeal rate from *pro tems* than from professional court commissioners. *Three Track Study*, p. 17-18. The attorneys surveyed by PSI also reported "some dissatisfaction with the quality of the judges *pro tem*," in both of the sample counties which used *pro tem* judges. *Three Track Study*, p. 44. If the jurisdictional limit is increased, the issues presented can be expected to be more complex, with more need for legal research before a decision. Larger cases also heighten the need for consistency and high quality justice.

The Three Track Study also reports that infrequent service by volunteer *pro tems* makes it "difficult for them to develop familiarity with the legal problems that arise in small claims court." *Three Track Study*, p. 44. The study goes on to point out that "lack of familiarity with the law is exacerbated by the absence of attorneys to present or argue the relevant law." *Id.*

Use of paid court commissioners may be the most effective way to improve the quality of justice in the small claims court. The San Francisco model, combining court commissioners with a small number of regularly serving, compensated *pro tems* may provide a model for improvement.

3. Well-funded, in-person, courthouse-based small claims court advisors with a dedicated funding stream are essential.

Consumers Union has opposed a number of prior proposals to increase the jurisdiction of the small claims courts in California due to concerns about the adequacy of advice available to consumers. The Three Track Study confirms that the quality, quantity and accessibility of small claims court advisor service vary widely across counties. The study reports that San Francisco small claims court litigants are served by a full-time, in-person attorney. Consumers can sign up for that service directly at the Clerk's office, or access another full-time attorney by phone. By contrast, consumers in Fresno are offered advice on small claims court procedure only, and the advice is provided by law students who are not even located in the courthouse. *Three Track Study*, pp. 34-35.

Weaknesses in the advice service are particularly serious when an individual consumer is litigating in small claims court with a business. While businesses cannot use lawyers in small claims court, they are more likely to be repeat litigants, and they may have a professional who regularly presents matters in the court, gaining knowledge about how

to develop and present a case. Effective, available small claims court advisor services are essential to at least partially address this inherent imbalance.

4. Specify the types of advice the small claims advisors may provide, but also require that advice about collection of judgments be provided.

The 2001 HALT study cited by the CLRC graded California "F" in the category of help with collecting judgements. If the small claims court jurisdictional limit is increased without significantly and effectively addressing this problem, the actual effect of a jurisdictional increase could be to provide a greater ability for companies to get judgements against individuals, but not a greater ability for individuals to get judgements they can actually collect against businesses.

We support proposals to clarify that small claims court advisors can and should provide a broad array of advice, including substantive legal advice and advice about how to enforce a judgement. As discussed above, however, more fundamental changes in the advisor services are also needed to guarantee a far higher minimum level of service. A mere direction that more advice may be provided will not be helpful if consumers can't find the advisor service, it is not staffed by lawyers, or it is underfunded.

5. Fee increases for larger and frequent filers are appropriate. The fee increment should be dedicated to pay for small claims court advisor services.

Consumers Union agrees with recommendations for a higher filing fee for larger cases, and for a higher filing fee for frequent filers regardless of county. We recommend that these fee increments and any other increase in small claims court filing fees be fully dedicated to funding small claims court advisor services. If this dedicated fee stream would not be sufficient to pay for in-person, courthouse-based service by one or more licensed attorneys, at a level adequate to serve the probable increase in small claims court caseload and demand for advisor services, then other permanent funding sources should be arranged.

6. Interpreters must be provided without charge.

Court-provided interpreter services should accompany any expansion of small claims jurisdiction. The CLRC Tentative Recommendation recognizes that even under the present jurisdictional limit, "Persons who do not speak English well can be particularly disadvantaged." *CLRC Tentative Recommendation*, p. 10. The mere availability of a list of interpreters who will act *pro bono* or for a reasonable fee is not sufficient. There is no guarantee that any no-cost services will be available at the time that they are needed, and a reasonable fee may still be unaffordable to lower income small claims court litigants.

The suggestion in the CLRC's Tentative Recommendation at pages 16-17 that small claims court advisors can advise limited English speaking litigants of their right to bring a friend to small claims court to translate reveals a startling lack of understanding of the importance of professional translation services in court. Nonprofessional translators may be unfamiliar with the legal terms or the kinds of questions the decision-maker will ask. Nonprofessional translators often are family members who are minors. Some adult volunteer nonprofessional translators may have limited English skills themselves and

thus be unable to convey important nuances in testimony, or in questions from the bench.

7. No increased access for collection of debts owed to the plaintiff by uncompensated guarantors.

Consumers Union is strongly opposed to expanding access to small claims court as a debt collection device, including as a debt collection device against uncompensated guarantors. Uncompensated guarantors tend to be parents, friends or neighbors, who often will sign a loan agreement as a guarantor without realizing that this places them in the position of full responsibility for repayment of the debt. There may be highly technical defenses to the debt, such as inadequate notice of the sale of collateral in a personal property secured debt, which may bar the collection of the debt. See California Commercial Code § 9626.

The goal of simplification, while valuable, does not outweigh the important protective effect of the existing cap. We respectfully suggest that the only appropriate simplification with respect to uncompensated guarantors would be to eliminate their exposure to suit in small claims court. If this cannot be done, then the current restriction of \$2,500 should be retained for claims against uncompensated guarantors.

8. Retain the prohibition on filing more than two cases per year over \$2,500.

We oppose any increase in the two claims per year over \$2,500 restriction. The CLRC recommends doubling the cap to \$5,000. However, the CLRC's Tentative Recommendation provides an inflation adjustment table which would support an increase only to \$3,328. *CLRC Tentative Recommendation*, p. 9. This number can be calculated by extrapolating from the inflation adjusted numbers given for \$2,000 and \$5,000. We recommend against *any* increase, even for inflation, because the existing cap has the beneficial effect of restricting the use of small claims court as a debt collection court to companies or persons collecting their own debts of under \$2,500.

We are even more concerned about the Judicial Council's working group's tentative recommendation to repeal the cap on more than two claims per year over \$2,500. Eliminating the cap would vastly expand the availability of small claims court as a collection court for California's businesses. Debt collection actions can present issues that require more formality, legal representation, discovery, and/or counterclaims. For example, some debt collection cases involve disputes about the payment of medical bills, which can be very complex. Debt collection cases may involve counterclaims by the consumer for violations of California's Rosenthal Fair Debt Collection Practices Act, which governs the conduct of creditors collecting their own debts. Civil Code § 1788 *et. seq.* Allegations about collection practices may require discovery. California's Fair Debt Collection Practices Act seems to recognize the need for individuals to be represented by an attorney in these types of cases, by permitting an award of attorneys fees in favor of a prevailing consumer. Civil Code § 1788.30(c). Eliminating or raising the cap would simply permit more use of the small claims court as a collection court, which is inconsistent with its purpose as a people's court.

9. Any discretion to deny recovery of attorneys fees should not extend to attorneys fees made available by statute or contract to a prevailing consumer.

The CLRC's proposal on attorneys fees is intriguing, but would have to be implemented extremely carefully to avoid interfering with the statutory purposes of existing consumer statutes which permit recovery of attorneys fees. Consumers Union generally supports a restriction on collection of attorneys fees from a consumer when a business chooses to forgo the lower cost small claims court system and sue an individual in Superior Court. However, there are good policy reasons to apply such a rule in a one-way fashion. Individual consumers should continue to be able to win statutory and contractual attorneys fees where when they are unprepared to represent themselves in the small claims court and therefore choose Superior Court.

We could support a clarification that attorneys fees may be denied if the case could have been brought in small claims court only if the clarification also states that a court may not exercise this discretion to deny an award of attorneys fees to a prevailing consumer under statute or contract providing for attorneys fees to a prevailing consumer. Where the Legislature has determined that consumer access to an attorney is so important that it has provided for statutory attorneys fees, access to those fees should not be rendered uncertain due to a possible future exercise of judicial discretion.

We also suggest developing a stronger restriction on contractual and open book account attorneys fees awarded against consumers. There should be a prohibition against recovery of these fees against a consumer in a case which could have been brought in small claims court, but instead was brought in Superior Court, particularly if the case is decided by default. A default case is cheaper and simpler to bring. As a result, the standing court fee schedule for attorneys fee awards may overcompensate the plaintiff, unfairly inflating the amount of the judgement.

10. A well-crafted pilot should precede any significant change in small claims court jurisdiction.

The Three Track Study recommends a well-crafted, rigorously evaluated pilot of any changes in small claims court jurisdiction. *Three Track Study*, pp. 56-57. The Three Track Study advocated the use of pilot projects in order to determine whether litigants have additional difficulty in presenting more complicated cases reaching to the higher jurisdictional limits. The CLRC Tentative Recommendation acknowledges that the Three Track Study reported that an increase in the jurisdictional limit without a pilot could result in a large increase in volume, "adversely affecting the quality of justice." *CLRC Tentative Recommendation*, p. 14.

We endorse a pilot approach to any jurisdictional limit increase. We ask the CLRC and the Judicial Council not to endorse abrupt statewide change which would make California consumers "guinea pigs" for sweeping changes.

11. The collection of medical debt should not be permitted in small claims court, or at least, there should be no increase in the jurisdictional amount for cases to collect medical debt.

Consumers face special problems in connection with the collection of medical debt because bills arrive before it is clear whether and how much of the bill will be covered by

private or government-sponsored insurance. The unpassed SB 110, in its January 23, 2001 version, provided for special treatment of medical debt in small claims court. While SB 110 addressed issues related to third party collectors rather than entities collecting their own debts, it reflected a policy that it does not serve the public interest to expand the availability of small claims court for the purpose of collecting medical debt. We respectfully suggest that any increase in the general jurisdictional limit for small claims court should not apply to actions to collect medical debt.

12. Any proposed increase in the amount for limited civil case procedures should provide a way to opt into more complex procedures for good cause.

Consumers Union takes no position at this time on the proposal to increase the maximum amount in controversy for a limited civil case from \$25,000 to \$50,000. However, we are concerned about the possibility, mentioned on page 24 of the CLRC Tentative Recommendation, that such a change may reduce incentives to settle cases. We also believe that there should be a procedure to allow for more discovery for good cause shown. The PSI web survey described in the Three Track Study noted that some attorneys reported that some civil cases for \$50,000 will require more discovery that is ordinarily permitted in the limited civil case process. *CLRC Tentative Recommendation*, pp. 24-25. A consumer dispute over a home equity loan, home improvement contract, or completed real estate transaction could easily involve damages between \$25,000 and \$50,000. These cases can be complex factually, and the amount at stake is very significant to the individual. Any increase in the amount for limited civil case jurisdiction should provide a simple method for additional discovery for good cause.

Finally, the small claims court advisors should be consulted at length for their ideas on how to improve the system and needed changes should be made before the jurisdiction of small claims court is expanded.

Thank you for the opportunity to comment on these important issues.

Very truly yours,

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Law Revision Commission
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February 6, 2003

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File: _____

CALIFORNIA LAW REVISION COMMISSION
4000 MIDDLEFIELD RD RM D 1
PALO ALTO CA 94303-4739

SUBJECT: Jurisdiction Limits of Small Claims Cases & Limited Civil Cases

The Culver Marina Bar Association at its regularly scheduled Trustees' meeting on February 6, 2003 unanimously approved of the California Law revision Commission tentative Recommendations on the subject matter.

Sincerely,

GERALD M. SALLUS, ESQ.
CulverMarina Bar Trustee

GMS/bs
cc: David Fu

APR 7 2003

File: J-1321

The Executive Committee of the Beverly Hills Bar Association Litigation Section met and considered two proposed changes to the Code of Civil Procedure. The first proposal would be to raise the jurisdictional limit of a small claims case from the current amount of \$5,000.00 to \$10,000.00. The other proposal is to raise the jurisdictional limit of "limited civil" cases from \$25,000.00 to \$50,000.00. After having conducted a thorough discussion of each topic, the Executive Committee agrees with the California Law Revision Commission's proposal to raise the jurisdictional limits of small claims and limited civil cases.

With regard to raising the jurisdictional limits of small claims cases, the Executive Committee agrees that such a measure would lead to increased access to our states' courts. All members in attendance at the Executive Committee meeting agreed that they generally could not economically prosecute or defend a claim for \$10,000 or less, even if "economic litigation" procedures were utilized. The Executive Committee also agrees with the proposal to eliminate the special limits on small claims cases against guarantors. The Executive Committee sees no good purpose to the current special limit, and agrees with the Law Review Commission's conclusion that eliminating this special limit would simplify civil procedure.

The Law Review Commission also proposes to amend the provision that permits a court to deny recovery of costs to a party who could have brought suit in the small claims division but elected not to do so to state that attorney's fees are among the costs that the court has discretion to deny. The Executive Committee feels that, while a court should be empowered to deny attorneys' fees in the proper circumstance, that it should do so only on a showing of good cause. Instead, the Executive Committee feels that Code of Civil Procedure § 1033(b)(2) should be expanded to deny recovery of attorneys' fees in all limited civil cases, unless evidence is introduced to a court that the plaintiff informed the defendant that an action against the defendant

could result in a judgment that included reimbursement for the plaintiff's attorneys' fees.

Moreover, the Executive Committee feels that the Law Review Commission's proposals are somewhat unnecessary in light of other provisions in the Code of Civil Procedure such as Code of Civil Procedure § 998 and Civil Code § 1717(b)(2), and that, in light of these other procedures, the denial of costs proposed by the Law Review Commission should only be made for cause shown, since there may be many times that a plaintiff has a good faith belief at the beginning of a case that she is entitled to more than \$10,000.00 in damages. Although a similar provision allowing the court to deny costs exists in unlimited cases, where the ultimate recovery is within the jurisdictional limits of a limited civil case, by filing in small claims court, a plaintiff is giving up far more than one who files a limited, rather than unlimited, civil case. Without a showing of good cause by the aggrieved defendant, it would be unfair to deny costs to a plaintiff who had a good faith belief that he could recover more than \$10,000.00, and chose not to forego procedural protections central to our adjudicatory processes such as the right to discovery and the right to a jury trial.

The Executive Committee strongly endorses the proposal to raise the jurisdictional limits of a limited civil case from \$25,000 to \$50,000. The members of the Executive Committee all agreed that such a measure would improve access to justice by cutting the costs of litigating cases in the \$25,000-\$50,000 range. The Executive Committee suggests that the appropriate authority study the possibility of allowing a total of two depositions per side to be taken in a limited civil case, especially one that seeks over \$25,000 in damages. Fifty thousand dollars is a significant sum of money, and a party should be entitled to independent discovery from at least one third-party without leave of court, in proving her entitlement to, or in defending against a claim for, that sum.



An Organization Of

AMERICANS FOR LEGAL REFORM

**Comments of Thomas M. Gordon, Senior Counsel
on the
Tentative Recommendation of the California Law Revision Commission
regarding
Jurisdictional Limits of Small Claims Cases and Limited Civil Cases
(Study J-1321)**

HALT, the nation's oldest and largest legal reform organization, has been working for twenty-five years to improve accessibility and accountability in the civil justice system. As part of this effort, HALT's Small Claims Reform Project has worked to publicize the existence and advantages of small claims courts, to educate legal consumers about their rights, and to advocate for systematic reforms in the operation of small claims courts. HALT is pleased that the Commission has undertaken this study of California's small claims system¹, and supports most of the changes proposed in the Tentative Recommendation.

HALT has long supported any changes to small claims courts that make them more accessible to the people they are intended to help. As the true "people's court," small claims court is the only court where people can resolve their disputes without the often unaffordable and unnecessary intervention of an attorney. Among the reforms that HALT recommends for small claims courts are raising dollar limits, providing help with enforcing judgments, allowing injunctive relief, discouraging the use of attorneys, holding evening and weekend sessions and making courts more understandable to their customers through the use of small claims advisors and explanatory written materials. California already has many of these positive attributes in its small claims system. The Commission's recommended changes also correspond with much of HALT's reform agenda, and would increase access to justice for the people of California.

¹ HALT also approves of the proposed increase in limited civil case jurisdiction from \$25,000 to \$50,000, as this increase would also improve access to the legal system for the average person.

Jurisdictional Limit

HALT applauds the Commission's recommendation that the small claims jurisdictional limit be raised from \$5,000 to \$10,000. The Commission could help consumers even more, however, if it recommended that the limit be raised to \$20,000. This is approximately the average price of a new car or minivan. While purchasing a new vehicle is an important financial decision for most people, it is not one for which they consult an attorney or other outside expert. Similarly, Californians who are seeking resolution of disputes worth an equal value should be able to do so without outside expertise.

HALT has long publicized the problem of the "legal no-man's land" where users of the legal system find themselves when their claims are too large for small claims court, but too small to make representation by a lawyer cost-effective. The Policy Studies Institute study commissioned by the Administrative Office of the Courts, which made recommendations much more cautious than those in the Tentative Recommendation, reported that cases of up to \$15,000 "are too low in value to pursue economically with an attorney."² Even if this cautious estimate is correct, consumers should have the discretion to decide that a case worth slightly more than this amount would be better handled pro se. It therefore makes sense to allow consumers to pursue cases of up to \$20,000 in small claims court.

Most objections to raising the dollar limit have fallen into three categories: (1) concerns about increased caseloads, (2) a belief that small claims court should remain "small" and (3) apprehension over the perceived loss of due process in small claims court. These concerns, while well-intentioned, are misplaced.³

First, data from other increases in small claims jurisdictional limits show that such increases have a minimal effect on the caseload of the small claims courts. HALT's California Small Claims Study shows that small

² Weller, et al., *Report on the California Three Track Civil Litigation Study* (July 31, 2002), 59.

³ It is refreshing that none of the comments responding to the Tentative Recommendation have raised another common concern: loss of business to attorneys. In other states, organized bars have raised objections to increasing small claims jurisdictional limits because of this ill-founded fear. Such an objection is troubling on two counts. First, it is not true that higher dollar limits translate to fewer clients since, as noted above, it is not cost-effective to hire an attorney for cases worth such small amounts. Second, it is morally troubling when the bar – the guardians of the justice system – places its financial well-being ahead of its commitment to justice for everyone. Hopefully, the debate over this proposal will continue to avoid the taint of self-interest.

claims filings increased from 515,364 to 548,339 – an increase of only 6.4 percent – in the year after California’s last increase in the jurisdictional limit.⁴ Furthermore, the caseload fell to 498,660 the following year, and has continued to decline each year, both in number of cases and percentage of the total civil caseload.

Similar results have occurred in nearly every other jurisdiction that has increased its small claims jurisdictional limit in the last decade. Twenty-one states reported caseload data for their small claims courts for the year before and after a jurisdictional increase.⁵ Of the 26 increases for which data was available, only two resulted in a caseload increase of greater than 10 percent, and only three others resulted in an increase of over 5 percent. Of the remaining 21 jurisdictional increases, eight corresponded with a *decrease* in caseload.

Second, the belief that small claims court should remain “small” can perhaps be blamed on the assumption that the name of these courts indicates their most important feature. However, the feature that most defines a small claims court is not the size of claims it allows, but its simplicity of use. California law states, “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.”⁶ A court that hears only cases worth under \$100 but allows motions and discovery would hardly be recognizable as a small claims court. However, if California were to raise its small claims jurisdictional limit to \$20,000, it would not change the fundamental nature of these courts, which is to simply and quickly resolve everyday disputes between people in an affordable manner.

Finally, the idea that increasing the jurisdiction of small claims courts will result in a denial of due process is based on the false dichotomy that the alternative to small claims court is representation by a lawyer. This is simply not true. The decision the legislature must make for Californians with cases worth under \$20,000 is not whether they will use courts with

⁴ Coskie and Duong, *California Small Claims Study* (August 9, 2002), 13 (attached). Although the commission has seen this report in draft versions, the attached final version incorporates some technical corrections, and supersedes any previous versions.

⁵ See attached summary: “Effect of Increasing Small Claims Jurisdictional Limit on Caseload”. HALT surveyed every state that had raised its small claims jurisdictional limit between 1993 and 2002. Arizona, Arkansas, Hawaii, Illinois, Louisiana, Maine, Nevada, New Hampshire, New Mexico, North Dakota, Utah, Virginia and Wyoming were unable to provide caseload numbers for the relevant periods.

⁶ Cal. Code Civ. Proc. Section 116.120(b).

limited procedure or courts with full procedure. Rather, it is a choice between courts with limited procedure and no courts at all.

Opponents of an increased dollar limit have raised the argument that for many people \$10,000 is a substantial sum and deserves all the procedures of traditional superior court, or at least economic litigation procedures. These opponents miss the point. While \$10,000 or \$20,000 is certainly a substantial sum of money, litigants in cases worth such an amount are not well served by having to navigate a maze of procedures by themselves. Yet this is exactly what such litigants will have to do, since it is not cost-effective to hire an attorney for these cases. Perhaps in an ideal world, all litigants would have access to counsel. However, since there is no civil *Gideon* right in sight, we must deal with the facts that not everyone can afford to hire a lawyer, and for those who can afford to, it may not be cost-effective to do so. The court system is therefore obligated to meet the needs of pro se litigants. Expanding the availability of small claims court is a far better way of meeting those needs than allowing pro se litigants to become trapped in the labyrinth of higher court procedures.

Additional objections are raised in the case of small claims defendants who, opponents of an increase claim, are particularly hampered by the inability to retain counsel since they did not choose this forum to resolve their dispute. Of course, such defendants would arguably be no better off if they could be represented by an attorney at trial, since such representation might cost more than the amount at stake in the suit. Nonetheless, the unavailability of counsel at trial does not mean that small claims defendants are unable to receive any legal assistance. First, these users of the court system can take advantage of the services of the small claims advisory service, an option not available to litigants in the "full service" courts. Additionally, these litigants may seek out unbundled services from an attorney, which could include anything short of entering an appearance.

Small Claims Advisory Service

Critics of an increased jurisdictional limit have claimed that weaknesses in the small claims advisory service are a sufficient argument against increasing the dollar limit. It is encouraging, therefore, that the Commission has recommended complementing an increased jurisdictional limit with improvements in the advisory service. HALT supports the

Commission's proposal of funding additional services through higher filing fees for cases over \$5,000, provided such fees are reasonable (as the proposed \$40 filing fee is). HALT also supports the proposal that providing advice on collection procedures be made an explicit part of the duties of a small claims advisor. Except for raising the jurisdictional limit, this is the most important reform for small claims courts nationwide, and the area in which California's system is most in need of reform. In too many instances, a plaintiff finds that a verdict in her favor is not the end of her journey through the legal system, but the beginning. Any help that courts can provide with the collection process relieves consumers of a considerable burden.

Limit of Two Small Claims Per Year Exceeding \$5,000

HALT agrees with the basic premise embodied by this provision: that small claims court should be a "people's court" and not an adjunct to the collections industry. However, allowing only two larger claims per year is unduly restrictive. Many sole proprietors and other small businesses may face multiple disputes each year worth more than \$5,000. These individuals and small businesses should have reasonable access to the small claims system. Allowing small claims judges discretion to grant leave to file additional large claims would protect the rights of individuals who engage in a large amount of commerce without turning the small claims system into a collections factory.

Special Jurisdictional Limits for Claims Against Guarantors

HALT agrees with the Commission's recommendation that these special limits be eliminated in the interest of simplicity.

Award of Attorney's Fees in a Case That Could Have Been Filed as a Small Claims Case But Was Not

HALT agrees with this provision and encourages such efforts to promote the use of small claims courts.

Conclusion

HALT is pleased with the recommendations of the Commission. The proposed increase in the small claims jurisdictional limit, while not large enough to entirely eliminate the "legal no-man's land," is a large step in the right direction. Furthermore, the other proposed reforms will help California maintain its position as the national leader among small claims court systems. HALT would like to thank the Commission for taking these steps to assist users of the legal system, and urges it to take one additional step towards this goal by increasing its recommended small claims jurisdictional limit to \$20,000. We look forward to the Commission's final recommendation and the implementation of these reforms in 2005.

CALIFORNIA SMALL CLAIMS COURT STUDY

Completed: August 9, 2002

**TO: THOMAS M. GORDON, SENIOR
COUNSEL, HALT SMALL CLAIMS
COURT PROJECT SUPERVISOR**

FROM: STEVEN COSKIE AND LIZ DUONG

A. INTRODUCTION

CALIFORNIA SMALL CLAIMS COURT STUDY

This report and accompanying attachments summarize the study of the California Small Claims Court system completed on assignment from Thomas M. Gordon, Senior Counsel of HALT and Supervisor of the Small Claims Court Project. This California Small Claims Court Study attempts to further HALT's goal of increasing the small claims monetary jurisdictional limits throughout the country and specifically in California.

ISSUES INVESTIGATED

On May 28, 2002 the Judicial Council of California received a draft Report on the California Three Track Civil Litigation Study submitted by Policy Studies, Inc., (hereafter referred to as the Policy Studies Report). The Policy Studies Report identifies three main risks presented by a monetary jurisdictional increase and therefore recommends that a pilot study precede a statewide increase. The risks identified include:

- 1) An increase in the number and complexity of cases which will flood the small claims system;
- 2) A lack of a competent statewide advisor program to accommodate an increase of cases; and
- 3) A concern over the quality of pro tem adjudication.

To address these possible risks and to further the goal of increasing the jurisdictional limit the California Small Claims Court Study investigated the following inquiries:

- 1) What is the history of the small claims court monetary jurisdictional limit increases?
- 2) Is an increase in the small claims court monetary jurisdictional limit warranted?
- 3) To what amount should the limit be raised and why?
- 4) Will an increase in the limit bring about a flood of small claims cases and strain the small claims court system's resources?
- 5) What other reforms are needed to improve the small claims court system?

B. METHODOLOGY AND REASONS FOR DATA COLLECTION

Researchers collected data to address these questions through the following means:

- Analyzing court documents
- A survey of the California Small Claims Court Advisor Offices
- Interviewing small claims court plaintiffs
- Interviewing Commissioner Sue Kaplan of the San Francisco Small Claims Court
- Requesting information from the Judicial Council of California
- Performing legislative history research at UC Hastings College of the Law

ANALYSIS OF COURT DOCUMENTS

Claims filed for \$5,000 in small claims court and superior court suits with claims between \$5,000 and \$10,000 were collected from two cities in the Northern California County of Alameda: Oakland and Hayward.

Oakland is a densely populated urban center and Hayward is a suburb of Oakland. These cities were partly chosen because court documents filed in Alameda County can be conveniently viewed online through the County of Alameda's website at:

www.co.alameda.ca.us/index.shtml

Small Claims Court Documents

Two hundred small claims cases with claims of \$5,000 filed in the cities of Oakland and Hayward were analyzed. The claim amount, subject of the suit and final judgment were noted. This analysis of small claims court claims of \$5,000 was conducted to determine: 1) whether plaintiffs are taking advantage of the current jurisdictional limit, and 2) the current level of complexity and subject matter of small claims cases.

Small Claims Court Document Findings

1) Litigants seem to be taking advantage of the current jurisdictional limit. Of the 400 claims examined approximately 27.5% of the claims were filed for \$5,000. Our suspicion that many litigants waive excess damages was largely

unsupported. This is indicated by the average final judgment amount of claims filed for \$5,000 only being \$2,718.97. This may indicate that many claimants overvalue their cases or that they are not adequately prepared to prove their stated damages with supporting evidence at trial.

2) Most of the claims filed in small claims court are breach of contract claims, construction cases and auto torts. This is interesting when compared to the cases filed in superior court between \$5,000 and \$10,000, because they involve essentially the same causes of action, indicating that an increase in the jurisdictional limit would not increase the complexity of cases entering small claims court.

Superior Court Cases Valued Between \$5,000 and \$10,000

Finding a significant number of superior court cases in Oakland and Hayward claiming between \$5,000 and 10,000 proved difficult and time consuming. Since the docket is not searchable by amount of claim, it was impossible to search the entire docket for such cases. After searching an extensive (but not exhaustive) sample of cases from the years 2000 and 2001 seven cases were located; the claim amount, subject of the suit and final judgment were noted. Attorneys represented the claimants in all of these cases. These documents were viewed to determine: 1) whether there are a multitude of claims currently filed between \$5,000 and \$10,000 which potentially could flood the small claims system; 2) the complexity of the cases heard in superior court compared to small claims court cases and 3) whether the amount claimed in cases filed in superior court bore a closer relationship to the final judgment in superior court than in small claims court.

Superior Court Case Analysis Findings

1) Due to the extensive search of documents and relatively small return, it appears that there are not a multitude of claims now being filed which will burden the court system if the limit is raised. At least, there do not appear to be many cases in this range in which lawyers are willing to become involved. Whether there are additional claims in this range that might be pursued pro se, under the simplified small claims procedures, is a different question.

2) The cases were not significantly more complex in cause of action or evidentiary issues.

3) Pro se plaintiffs in small claims court receive final judgments more closely related to their stated claim amount than do plaintiffs filing in superior court.

SMALL CLAIMS COURT ADVISOR QUESTIONNAIRE

Advisor offices were contacted by phone, email and standard mail to complete a questionnaire. (see Attachment A). The questionnaire was

designed to determine: 1) the current status of the small claims advisor programs in California; 2) whether the advisor programs currently meet the demand for services; and 3) whether advisors believe the limit should be increased and to what amount.

Advisor Survey Findings

- 1) Small claims court legal advisor offices currently provide a variety of services to address small claims court consumers' needs.
- 2) Small claims court legal advisor offices currently meet the demand for services. The current system can likely support a larger caseload due to an increase in the monetary jurisdictional limit with few additional resources.
- 3) The majority of advisors surveyed believe that the monetary jurisdictional limit should be raised.

Attachment B provides objective data about the small claims court advisor offices that responded to our survey.

INTERVIEWS OF SMALL CLAIMS COURT PLAINTIFFS

Plaintiffs who filed for \$5,000 in small claims court were contacted and interviewed by phone. (See Attachment C). Plaintiffs were interviewed because they could provide the most insight into what current options they would choose if they had damages exceeding the jurisdictional limit. Also, as recent consumers of the small claims court system they are well equipped to identify areas needing improvement.

INTERVIEW OF COMMISSIONER SUE KAPLAN OF SAN FRANCISCO

In HALT's Membership Newsletter, Winter 2002 the San Francisco's Superior Court was identified as the Western Gem. Fulltime commissioner, Sue Kaplan presides over San Francisco small claims court trials. Her extensive exposure over a nine-year period to the small claims court system in San Francisco makes her a valuable source of information. The interview was conducted to determine her opinions regarding our main areas of inquiry.

INFORMATION PROVIDED BY THE JUDICIAL COUNCIL OF CALIFORNIA

The Judicial Council of California provided tables regarding the comparative value of \$5,000 for the decade 1991-2001 based on the Consumer Price Index in California and in the state's largest metropolitan areas. The Council also shared useful information about the history of California's small claims court monetary jurisdictional limit increases and the number of civil suits filed in California from 1989-90 to 1998-99.

C. HISTORY OF MONETARY JURISDICTIONAL LIMIT INCREASES

Legislation enacted in 1990 taking effect in 1991 set the current \$5,000 monetary jurisdictional limit of California's small claims court. Under this legislation no entity may file more than two actions exceeding \$2,500 in any calendar year (unlimited if kept under \$2,500). Public entities are exempt from this restriction.

The California Legislature first established small claims court in California in 1921, when a limit of \$50 on claims was imposed. Over the years, the jurisdictional maximum has been increased periodically, as illustrated in the chart below:

Year	Monetary Jurisdiction
1921	\$50
1949	\$100
1957	\$150
1961	\$200
1967	\$300
1971	\$500
1976	\$750
1981	\$1,500
1989	\$2,000
1990	\$5,000

The State Bar of California sponsored the 1990 bill that led to the current small claims court jurisdictional limit of \$5,000. According to the bill's proponents, the increase ensured access to the judicial system for those who wanted to resolve minor disputes when it was generally not economically feasible to obtain an attorney in such cases (Assembly Office of Research Report on AB 3916) ("Assembly"). It was usually more advantageous for a person with a valid claim of as much as several thousand dollars higher than the small claims limit to prosecute it in small claims court even though his or her recovery amount was limited to \$2,000 (Assembly). They pointed out that it was unfair to force a person to give up such a substantial portion of his or her claim as a precondition to seeking judicial review of the matter (Assembly).

The Association of California Insurance Companies ("ACIC") opposed the bill. The following statement was made by the ACIC (Assembly):

An insurance company's own assets are at stake when one of its insureds is sued. However, the procedure in small claims court is that we cannot represent our insured. . . . We cannot provide him with an attorney to represent him, nor can we appear for ourselves as we are not a party, only an indemnitor if our insured is found liable. . . . We must pay the judgment if our insured is found liable, no matter how inadequate a defense he has presented.

According to a 1980 California Department of Consumer Affairs (the "Department") book entitled, Monetary Jurisdiction Experiment 1980, two main reasons appear to account for historical increases in small claims monetary jurisdiction. "First, the typical kinds of claims thought suitable for adjudication -- minor personal injuries, minor property damage, small contract claims, and small unpaid debts -- have increased in amount as a result of inflation as time has passed" (Department 2). "Second, as business expenses have increased, it has become increasingly impractical for attorneys to handle on a fee basis cases, which involve small sums of money" (Department 2). Another reason may be that "the informal and inexpensive system used in small claims court makes judicial redress affordable and convenient to individuals while keeping costs to taxpayers to a minimum" (Department 2). These reasons present a rationale for expanding the subject matter jurisdiction of small claims court and pushing the monetary limit upwards.

The Monetary Jurisdiction Experiment 1980 was based on a jointly administered experiment by the Department and the California Judicial Council, conducted between mid-1977 and mid-1979 (3). In this report, the evidence showed that the increase in the small claims monetary jurisdiction from \$750 to \$1500 in six courts around the state operated principally to the benefit of individuals, particularly plaintiffs (Department ii). A significant increase in the percentage of individuals who brought cases over \$750 appeared while the percentage of business and government creditors declined (Department ii and iv). The report also showed that defendants fared reasonably well (Department iii). The percentage of individual defendants decreased in cases above \$750, defaults were reduced, and defendants prevailed more frequently in contested cases (Department letter). The report concluded that this shift in plaintiff composition demonstrated the success of the experiment in affording increased access to the courts and that as a result the small claims monetary jurisdiction should be increased (Department letter). Further, the evidence showed that raising the monetary

jurisdictional limit to \$1500 in the six courts had no significant adverse impact on the operations of those courts (Department 89-90).

D. IS AN INCREASE IN THE MONETARY JURISDICITONAL LIMIT WARRANTED?

The Monetary Jurisdictional Limit Must Be Raised Because of Inflation

The real value of \$5,000 has decreased substantially since 1991, when the current monetary jurisdictional limit took effect. In California, \$5,000 in 2001 would be worth only approximately \$3,900 in 1991, or put another way, it would take approximately \$6,400 in 2001 dollars to equal what \$5,000 was worth in 1991. In both the San Francisco and San Diego metropolitan areas, inflation rates have been even higher, further eroding the real value of the small claims court's \$5,000 jurisdictional limit. In San Francisco, for example, it would take approximately \$6,800 in 2001 dollars to equal what \$5,000 was worth in 1991. In practice, this means that some proportion of cases that would have been eligible to go to small claims court in 1991 now must be handled in the regular civil system because the amount at issue is over \$5,000. The Judicial Council of California provided the following inflation charts demonstrating these findings:

Comparative Value of \$5,000 (Based upon the California Consumer Price Index)

Table A				
Amount Needed in Target Year to Equal \$5,000 in 1991				
Target Year	California	Los Angeles	San Francisco	San Diego
1991	5,000	5,000	5,000	5,000
1992	5,178	5,180	5,167	5,344
1993	5,313	5,315	5,305	5,460
1994	5,388	5,385	5,392	5,602
1995	5,477	5,467	5,497	5,685
1996	5,587	5,569	5,624	5,834
1997	5,708	5,658	5,816	5,935
1998	5,821	5,739	6,001	6,051
1999	5,992	5,873	6,255	6,265
2000	6,213	6,068	6,534	n.a.
2001	6,405	6,223	6,802	n.a.

Table B				
What \$5,000 of 1991 Money is Worth in Target Year				
Target Year	California	Los Angeles	San Francisco	San Diego
1991	5,000	5,000	5,000	5,000
1992	4,828	4,826	4,839	4,864
1993	4,705	4,704	4,713	4,716
1994	4,640	4,642	4,637	4,641
1995	4,565	4,573	4,548	4,573
1996	4,475	4,489	4,446	4,456
1997	4,380	4,419	4,299	4,380
1998	4,294	4,356	4,166	4,296
1999	4,172	4,256	3,997	4,149
2000	4,024	4,120	3,826	n.a.
2001	3,903	4,017	3,675	n.a.

Source				
CPI Indexes				
All Urban Consumers	California	Los Angeles	San Francisco	San Diego
1991	140.6	141.4	137.9	143.4
1992	145.6	146.5	142.5	147.4
1993	149.4	150.3	146.3	150.6
1994	151.5	152.3	148.7	154.5
1995	154.0	154.6	151.6	156.8
1996	157.1	157.5	155.1	160.9
1997	160.5	160.0	160.4	163.7
1998	163.7	162.3	165.5	166.9
1999	168.5	166.1	172.5	172.8
2000	174.7	171.6	180.2	n.a.
2001	180.1	176.0	187.6	n.a.

Raising the Monetary Jurisdictional Limit Will Increase Access to Justice

The majority of small claims litigants interviewed in this study indicate that if a claim is approximately \$1,000 to \$2,000 above the current jurisdictional limit of \$5,000 a majority of litigants surveyed are willing to waive the excess damages in order to file in small claims court and avoid the expense and difficulty of filing in superior court. If it is assumed that justice is served when plaintiffs recover all of their provable damages, then increasing the small

claims court jurisdictional limit increases plaintiffs' access to justice. An increase in the monetary jurisdictional limit increases the likelihood that more litigants would recover actual damages because they would not waive damages to avoid superior court.

It appears that not a large number of the claims for \$5,000 filed by plaintiffs in small claims court involve the waiver of damages in excess of the jurisdictional limit. These small claims cases had an average final judgment of \$2,718, indicating that perhaps some of the claims for \$5,000 are inflated. Commissioner Sue Kaplan indicated that in her experience cases where litigants waive a portion of their damages to file in small claims court are, "few and far between." Yet, Commissioner Kaplan supports raising the jurisdictional limit due to inflation.

Small claims plaintiffs may be more proficient at recovering more of their stated damages than are plaintiffs represented by counsel in superior court cases with claims between \$5,000 and \$10,000. The superior court cases filed between \$5,000 and \$10,000 sampled indicates that the average claim amount is \$7,125 and the average final judgment amount is \$2,781.52. The small claims cases filed for \$5,000 received an average final judgment of \$2,718.97. These numbers indicate that small claims plaintiffs recover on average 54% of their stated damages, while plaintiffs who bring their suit in superior court receive 39% of their stated claim (and must still pay attorneys fees). The small claims cases and superior court cases between \$5,000 and \$10,000 can be compared because they involve essentially the same types of claims and only vary in the amount of damages requested.

These data are insufficient to lead to solid conclusions. But, given that many of the claims within these dollar amounts involve concrete, easily proven damages e.g. breach of contract cases final judgment amounts more closely related to stated claim amounts may represent a more just result. Interestingly, from this sample it appears that pro se plaintiffs in small claims court fair better than plaintiffs represented by counsel in superior court. Perhaps further inquiry into this topic will reveal an explanation for the difference between stated claims and final judgments in the two settings. Since our advisor survey indicates plaintiffs use advisor services more frequently than do defendants, perhaps the disparity can be accounted for by less prepared defendants.

E. TO WHAT AMOUNT SHOULD THE SMALL CLAIMS COURT MONETARY JURISDICTIONAL LIMIT BE RAISED?

The data collected from this study suggests increasing the monetary jurisdictional limit to \$10,000. This increase adjusts the monetary jurisdiction in accordance with inflation and the need to provide increased access to the

courts to resolve minor disputes. Data collected from the small claims advisor questionnaires, litigant interviews and the opinion of Commissioner Kaplan suggest increasing the monetary jurisdictional limit to approximately \$10,000.

Small Claims Legal Advisors

Many legal advisors agree that the monetary jurisdictional limit should be increased. Twenty-seven legal advisors, representing twenty-nine California counties responded to our small claims court legal advisor survey.

Fourteen advisors were in favor of raising the monetary jurisdictional limit. Of those fourteen, five wanted the limit to be raised to \$7,500; six wanted it to be raised to \$10,000; and two wanted it to be raised to \$15,000. Six were not in favor of the raising the limit. Seven did not provide a definite answer.

Advisor represents the county or counties named below:	Question Posed: Would you be in favor of raising the small claims court monetary jurisdictional limit? The number of advisors who said: Yes-14 No-6 Other-7
Alameda	Undecided.
Butte	Mixed emotions.
Contra Costa	No opinion.
Fresno	No.
Humboldt	Reluctant.
Imperial	No.
Lassen	Yes.
Marin	Yes.
Mendocino	Yes.
Monterey	Yes.
Napa	No opinion.
Orange	Yes.
Plumas	No.
Sacramento	No.
San Diego (North)	No.
San Diego (Claremont)	Yes.
San Francisco	Yes.
Santa Barbara	Yes.
Santa Clara	No opinion.
Sierra	Yes.
Shasta, Tehama, and	Yes.

Trinity	
Solano	Can't answer. I don't know if it would help.
Sonoma	Yes.
Stanislaus	Yes.
Sutter and Yuba	No.
Tulare	Yes.
Ventura	Yes.

Advisor represents the county or counties named below:	<p>The number of advisors who wanted the limit to be raised to the following amounts:</p> <p>\$7,500-5 \$10,000-7 \$15,000-2</p> <p>The reasons they provided for raising the monetary jurisdictional limit are below:</p>
Lassen	\$7,500, only if more time is allowed for presentation of each case and the judge spends more time inquiring as to the facts.
Marin	\$10,000. A lot of claims currently fall between \$5,000 and \$10,000.
Mendocino	\$7,500. Seems like there are more cases recently where disputes are just over \$5,000, but less than \$8,000 or so.
Monterey	\$7,500.
Orange	\$10,000.
San Diego (Claremont)	\$10,000, with some special rules for cases greater than \$5,000.
San Francisco	\$10,000. Too many people get stuck between \$5K-\$10K without anywhere to turn.
Santa Barbara	\$15,000. Because the civil arena is too difficult for pro pers.
Shasta, Tehama, and Trinity	\$10,000. Few attorneys will take a case below a certain amount. The amount of money doesn't complicate the nature of the

	small claims case. An increase in the limit won't affect the complexity of the case.
Sierra	\$15,000. The costs of goods and services have increased.
Solano	\$10,000, but only for some cases like personal injury and auto accidents. It's not necessary for other types of cases because they are usually less than \$5000.
Stanislaus	\$10,000. Small business people call between the \$7,500-\$10,000 range. Landscaping and construction contract claims are in this range. People who run dairies call in this range.
Tulare	\$7,500. Because of inflation.
Ventura	\$7,500. I have a lot over \$5K.

Advisor represents the county or counties named below:	Reasons Given By Advisors For Not Raising the Monetary Jurisdictional Limit Are Given Below:
Fresno	Too much money at stake where layperson is his/her own attorney.
Plumas	Because it is difficult enough to collect claims \$5,000 and under through the small claims jurisdiction without incurring higher costs.
Sacramento	The way it is set up for \$5,000, allows a lot of people who could never go to come here and don't have legal knowledge. If the amount is raised, it is more difficult...higher amount is more complicated. Present amount is good for the layperson.
San Diego	It would compel people to become more litigious. The small claims court system could adequately serve more cases.

	<p>People would claim that the amount in controversy is much higher than it actually is. Now some people who have a \$500 claim, claim \$5000. People can barely get through the system as is--so upping the ante is not a good thing.</p>
Sutter	<p>Many litigants lack sophistication of businesses that sue regularly in small claims court. Without extensive advice on organizing, presenting case, they are at a severe disadvantage already.</p>

Litigant Interviews

Small claims plaintiffs interviewed showed a willingness to waive damages to have their case heard in small claims court. Of the nine small claim court plaintiffs interviewed five indicated that they would be willing to forfeit damages to have their cases heard in small claims court. One litigant indicated that it depended on the situation and three claimed that they would file in superior court before forfeiting their damages. To eliminate the risk that defendants gain a windfall because of plaintiffs' preference to try their case in small claims court the jurisdictional limit should be raised. Those plaintiffs who displayed a willingness to waive damages said that they would not forfeit more than \$2,000 in damages. This suggests that it would take a claim exceeding \$7,000 before a plaintiff would choose to seek representation and file in superior court.

Commissioner Sue Kaplan's Interview

Commissioner Kaplan favors increasing the monetary jurisdictional limit. When asked to what amount she would raise the limit to she chose \$10,000. Her main reason for raising the limit was the reality of inflation. Commissioner Kaplan compared raising the limit to the rise in housing costs.

F. WILL AN INCREASE IN THE SMALL CLAIMS COURT MONETARY JURISDICTIONAL LIMIT HAVE AN ADVERSE IMPACT ON THE OPERATIONS OF THE COURT SYSTEM?

An Increase in the Monetary Jurisdictional Limit Will Not Bring About a Flood of Small Claims Cases

According to the Judicial Council of California, 352,748 small claims cases were filed in 1998-1999, which represents approximately 34 percent of all of

civil cases filed that year -- small claims filings have been going down steadily, both in absolute numbers and in terms of the proportion of total civil filings they represent, since fiscal year 1991-1992, the year after the last jurisdictional increase went into effect. In 1991-1992, there were 548,339 small claims filings that represented over 39 percent of the total civil filings that year.

Fiscal Year	Total Civil (A)	Total General Civil, Civil Unlimited (B)		General Civil Unlimited			Limited Civil (F)		Small Claims (G)	
				Motor Vehicle PI/PD/WD (C)	Other PI/PD/WD (D)	Civil Complaints (E)	No.	%	No.	%
		No.	%				No.	%	No.	%
1998-99	1,043,178	178,716	17.1	44,576	25,090	109,050	511,714	49.1	352,748	33.8
1997-98	1,124,475	177,511	15.8	42,252	26,150	109,109	559,220	49.7	387,744	34.5
1996-97	1,176,211	186,044	15.8	42,252	26,152	115,945	560,140	47.6	430,027	36.6
1995-96	1,174,732	196,771	16.8	47,841	29,639	119,291	546,970	46.6	430,991	36.7
1994-95	1,208,945	203,710	16.9	47,554	32,038	124,118	572,338	47.3	432,897	35.8
1993-94	1,220,628	212,974	17.4	49,513	34,048	129,413	560,724	45.9	446,930	36.6
1992-93	1,292,925	209,958	16.2	55,495	35,239	119,224	584,307	45.2	498,660	38.6
1991-92	1,401,988	220,344	15.7	70,687	38,582	111,075	633,305	45.2	548,339	39.1
1990-91	1,373,801	222,102	16.2	80,208	37,100	104,794	636,335	46.3	515,364	37.5
1989-90	1,361,403	225,468	16.6	82,866	39,167	103,435	631,885	46.4	504,050	37.0

- (A) Sum of (C) through (G)
 (B) (C) + (D) + (E). "General civil unlimited" refers to all general jurisdiction civil complaints, including all requests for damages in excess of \$25,000, except in probate and family law.
 (C) Actions for damages in excess of \$25,000 for physical injury to persons and property and actions for wrongful death related to motor vehicle accidents.
 (D) Actions for damages in excess of \$25,000 for physical injury to persons and property and actions for wrongful death not related to motor vehicle accidents.
 (F) All civil matters with a value of \$25,000 or less, except small claims.

Superior Court Case Filings Between \$5,000 and \$10,000

Difficulty in locating a large number of cases filed in superior court between \$5,000 and \$10,000 may indicate that there are not a significant number of claims which will enter the system when a jurisdictional increase occurs. However, since the complexity of procedures in superior court makes pro se representation difficult if not impossible, this may say more about the difficulty of securing representation than the absolute number of potential claims.

Monetary Jurisdiction Experiment 1980 cited two main concerns about raising the monetary jurisdictional limit (3):

- Some groups feared that raising the limit would operate to subject individuals to adverse judgments for significant sums of money without recourse to legal representation.
- Some judges and clerks worried that an increase would require considerably more time and staff to be devoted to small claims when resources were presently marginally adequate.

Addressing the second concern, the 1980 study found that courts could clearly expect an increase in small claims filings if the monetary jurisdiction was increased, but the precise level of the increase would likely be more dependent upon local variables such as economic conditions, publicity efforts and other such items (Department 65). Court personnel reported that the increased amount of time to dispose of larger cases arose more as a function of the type of case rather than the amount involved (personal injury/property damage takes more time to resolve than consumer credit cases) (Department 74). "If the increase in small claims caseload is derived principally from new cases, which, for some reasons, would not otherwise have been filed, then the absolute amount of judicial time devoted to hearing small claims cases will obviously increase as well" (Department 74). "If cases, which would have been filed in the civil division of the court are instead being brought in small claims court, it becomes more difficult to assess the effect on overall judicial time allocation" (Department 74). However, the informal nature of the proceedings of small claims court suggests that contested cases heard in such a setting may consume considerably less time than if the cases were heard under more legally formal conditions (Department 76). The data did not reveal any particular increase in clerical time attributable to the increase in monetary jurisdiction (Department 86).

As described above, an increase in the number of cases filed may be small. When Commissioner Sue Kaplan was asked about the strain of judicial resources she posited that a reallocation of resources, rather than an increase would likely address any increased use of small claims court. She also suggested that the calendar could be scheduled three months in advance and, as the calendar filled, then an assessment of the court's needs could be made.

Legal Advisor Offices Would Be Able to Support an Increase in Caseload Should an Increase in the Small Claims Court Monetary Jurisdictional Limit Result in More Filings

Currently the majority of existing small claims advisor programs meet the demand for their services. Offices with difficulty meeting the demand for services have used law student volunteers and incorporated an extensive telephone message center with common questions and their answers recorded and available twenty-four hours a day. So, even if the demand for services increases it appears that creative, cost effective means exist to

address the demand. Also, superior court cases filed between \$5,000 and \$10,000 do not involve significantly more complex issues so little if any additional training would be required to handle the new cases.

Twenty-five of the twenty-seven legal advisors who responded indicated that they currently meet the demand for their services. This data points to the likelihood that if more litigants were to use advisor services, advisors could support the increase in cases filed.

Advisor represents the county or counties named below:	Question posed: Are you currently able to meet the demand for your services? Yes -25 Just barely -1 Other -1 Advisors' responses are below:
Alameda	For the most part, yes.
Butte	Yes. People leave messages and I am able to return them.
Contra Costa	Yes. I also refer many people to other forms of gaining information.
Fresno	Yes.
Humboldt	Yes.
Imperial	Yes, most of the time.
Lassen	Yes.
Marin	Yes.
Mendocino	Yes.
Monterey	Yes.
Napa	Yes.
Orange	Yes, very well.
Plumas	Yes.
Sacramento	Yes.
San Diego (Claremont)	Yes.
San Diego (North)	Yes.
San Francisco	Yes.
Santa Barbara	Yes.
Santa Clara	Too soon to tell. (This office recently became the small claims legal advisor.)
Shasta, Tehama, and Trinity	Yes.
Sierra	Yes.

Solano	Yes.
Sonoma	Yes.
Stanislaus	Yes.
Sutter and Yuba	Just barely.
Tulare	Yes.
Ventura	Yes.

G. OTHER REFORMS NEEDED TO IMPROVE SMALL CLAIMS COURTS AND RECOMMENDATIONS DERIVED FROM DATA

1. Simplify the Process for Collecting Judgment

It is imperative that further attention be devoted to simplifying the process for collecting judgments. Numerous legal advisors pointed out that this is one of their clients' most pressing concerns. The integrity of the entire small claims process is compromised by the difficulty litigants experience in seeking to enforce their judgments.

Advisor represents the county or counties named below:	<p>Question posed: What are the biggest concerns that your clients have?</p> <p>Top Concern: Collecting Judgment</p> <p>21/27 Advisors cited collecting judgment</p> <p>The advisors answers are below:</p>
Alameda	Collecting judgment
Butte	Collecting judgment
Contra Costa	Collecting judgment
Fresno	Following proper procedure, merits of their cases
Humboldt	Collecting judgment
Imperial	Collecting judgment
Lassen	Following proper procedure
Marin	Collecting judgment
Mendocino	Is it worth the effort? Is it fair? Is it too difficult?
Monterey	Winning case or not, collecting judgment
Napa	Collecting judgment
Orange	Collecting judgment
Plumas	Winning case or not

Sacramento	Collecting judgment
San Diego (Claremont)	Serving defendants, collecting judgment
San Diego (North)	How to present case, collecting judgment
San Francisco	Losing and somehow getting into trouble for filing
Santa Barbara	Collecting judgment
Santa Clara	Collecting judgment
Shasta, Tehama, and Trinity	Winning case or not
Sierra	Being properly prepared for the proceeding
Solano	Collecting judgment, how to subpoena
Sonoma	Collecting judgment
Stanislaus	Collecting judgment, is going to court worthwhile, defendants wonder how an adverse judgment will affect their credit, what to expect in court
Sutter and Yuba	Collecting judgment, how to present case
Tulare	Collecting judgment
Ventura	Collecting judgment, winning case or not

2. Increase the Availability and Depth of Public Information About Small Claims Court

The California Courts Self-Help Center web site provides a comprehensive resource for legal information. California's diverse population suggests that the website be available in other languages such as Spanish and Chinese to increase access to this information. One advisor suggested expanding internet access to litigants could increase the advantage of this resource. This advisor also suggested providing online filing of court documents.

Advisors strongly believe that publications about small claims courts should be more readily available in libraries, community centers, grocery stores and/or other public buildings. They specifically suggested greater availability and the production of "how to" pamphlets to help litigants either resolve disputes themselves or prepare for small claims court.

Other advisors suggested that community groups and courts should become more involved in assisting litigants through participating in self-help centers, providing seminars and courses about small claims courts, offering mediation

to resolve disputes, holding mock small claims court sessions, and assisting low-income individuals with literacy issues in completing court forms. The following chart demonstrates advisors' recommendations.

<p>Advisor represents the county or counties named below:</p>	<p>Question posed: What can the community do to provide parties with adequate information about how to prepare for their small claims court proceedings?</p> <p>Only the responses of those who answered the question are detailed below:</p>
<p>Imperial</p>	<p>Participate in self-help centers</p>
<p>Marin</p>	<p>Provide publications about small claims courts such as the one that the Department of Consumer Affairs used to put out for the public</p>
<p>Mendocino</p>	<p>Provide stamped packets, provide "how to negotiate" information so people can better resolve disputes themselves</p>
<p>Orange</p>	<p>Provide more literature about collecting judgment</p>
<p>Sacramento</p>	<p>Provide more funding for small claims courts, Internet access, filing online</p>
<p>San Diego (Claremont)</p>	<p>The community can provide a course about "how to get through small claims court process." Handbooks should be more widely available—people should know where they can get a copy and they should be able to get information about it at grocery stores, libraries, etc.</p>
<p>San Francisco</p>	<p>Community-based organizations should sponsor legal seminars offsite.</p>
<p>Santa Barbara</p>	<p>Hold a mock small claims proceeding or tell litigants to watch a proceeding.</p>
<p>Shasta, Tehama, and</p>	<p>All counties should be seminars</p>

Trinity	on small claims courts.
Sierra	Have sufficient quantities of "The Do's and Dont's of Using the Small Claims Court" available at various community/public/non-profit agencies and offices.
Solano	Small claims courts should offer booklets and pamphlets on how to use the small claims court. This county doesn't give these out anymore. It's a valuable service.
Sonoma	Through the legal services foundation here, there is a 2-part series: Part I Do I have a Case and How do I File and Part II How to Collect Judgment. This has been a success.
Stanislaus	Offer more mediation. Get more resources available at the public library. More how to books. Help low-income individuals with literacy issues fill out forms.
Ventura	More publications should be available

3. Improve Pro Tem Adjudication

The data collected for this report indicates no major risks associated with pro tem adjudication. Of the nine small claims court plaintiffs interviewed, seven believed that a person could get a fair trial in small claims court and seven of the nine were basically satisfied with their small claims court experience.

One county's small claims advisor reported that one pro tem repeatedly awarded equitable relief not authorized by statute. A small claims court litigant brought this to the attention of the advisor. The advisor office responded by speaking with the presiding commissioner of the small claims court. The matter was addressed and resolved. This anecdote suggests that advisors may act as an informal quality control in some jurisdictions.

Investigation revealed two examples of means to improve pro tem adjudication. Albert Balingit of the California Department of Consumer Affairs conducts training seminars for pro tems throughout the state. He agreed to send a copy of his training materials. These training materials have not been received at the time of this report. Also, Judge Mary House of Pasadena who

manages the small claims program has an extensive monitoring and training program for pro tems. Judge House was on vacation and unavailable for an interview. Both of these sources should be contacted in the future to address concerns over the quality of pro tem adjudication.

4. Reformat and Rewrite the Writ of Execution Form; Plaintiff's Claim Form, and Small Claims

Eight out of the twenty-seven advisors cited that their clients had difficulties with the Plaintiff's Claim and Order to Defendant, Form SC-100. In particular, the question regarding venue seemed to trouble clients. Seven advisors said the Writ of Execution gave their clients problems. A solution to the form problem would be to have individuals who do not work in the legal industry to read the forms and ask them if they understand the forms. From this assessment, the courts could make the forms more comprehensible to litigants. A summary of advisors' responses concerning small claims forms follows.

<p>Advisor represents the county or counties named below:</p>	<p>Question posed: Do your clients have difficulties filling out small claims court forms? Which ones?</p> <p>8/27 advisors cited that Plaintiff's Claim and Order to Defendant, Form SC-100 was difficult for their clients.</p> <p>7/27 advisors cited the Writ of Execution.</p> <p>Their responses are detailed below:</p>
<p>Alameda</p>	<p>No response.</p>
<p>Butte</p>	<p>Yes, not a great deal, mostly the question of venue of the plaintiff's claim and order to defendant</p>
<p>Contra Costa</p>	<p>Varies, mainly naming defendants</p>
<p>Fresno</p>	<p>Some do, mainly the plaintiff's claim and order to defendant</p>
<p>Humboldt</p>	<p>Some but not really, venue table, multi-part form [plaintiff's claim and order to defendant form]</p>

Imperial	Yes, all of them
Lassen	Yes, plaintiff's claim and order to defendant
Marin	Writ of execution, costs after judgment
Mendocino	Writ of execution most difficult of common forms, then the plaintiff's claim and order to defendant itself, then subpoenas
Monterey	Plaintiff's claim and order to defendant -- question 4 regarding venue
Napa	Writ of execution
Orange	People who only speak Spanish have difficulty filling out the forms because they are in English
Plumas	Occasionally, plaintiff's claim and order to defendant
Sacramento	Motions
San Diego (Claremont)	Yes, all of them
San Diego (North)	Yes. Worksheet, proof of service, subpoena, memo of costs
San Francisco	Yes. Fee waiver, subpoena
Santa Barbara	Yes. Abstract of judgment, writ of execution, memo of costs
Santa Clara	Yes. Writ of execution
Shasta, Tehama, and Trinity	No.
Sierra	No.
Solano	No, but I get some questions. There isn't enough room to write on the forms.
Sonoma	Seems like folks don't have much difficulty.
Stanislaus	All of them. It depends. Plaintiff's claim and order to defendant form is confusing (venue). Plaintiffs also find the question "please describe your case" as difficult. Writ of execution.
Sutter and Yuba	Yes. Usually those needed for collection: writs of execution, wage garnishment, small claims subpoena, and declaration.

Tulare	Yes. Writ of execution.
Ventura	No. Not at all.

5. Provide Additional Resources to Legal Advisors

In our small claims court legal advisor questionnaire, we posed the following question: What types of support or resources would you like to have to help you deliver your services better? Legal advisors mentioned the following resources:

- More volunteers, staff, and advisors
- More small claims court publications in both Spanish and English for distribution
- Access to people who communicate in non-English languages or more interpreters
- Referrals of people who could help
- Resources to provide walk-in services
- Computers
- Internet access
- Forum to discuss issues with other advisors
- Orientation video or interactive computer program
- Current resources books
- County-specific website with the county's forms and procedures
- State pamphlet on buying a used car
- Experts on other areas of the law (labor, bankruptcy, collection, etc.) available to answer questions
- More training on consumer issues such as credit card transactions, Internet transactions, automobile repair services and transactions by telephone
- Westlaw and LEXIS access

- More financial support so that advisors can spend more time with litigants to help them fill out forms and prepare them for how to present their cases, how to organize their evidence, how to get evidence and how to find the defendant

Eight of the twenty-seven advisors either did not answer the question or stated that they were content with current resources.

Works Cited

- California. Assembly Office of Research. Assembly File Analysis of AB 3916.
Sacramento: State of California Assembly Office of Research, 1990.
- California. Department of Consumer Affairs. Monetary Jurisdiction Experiment 1980.
Sacramento: State of California Department of Consumer Affairs, Oct. 1980.
- California. Supreme Court. Crouchman v. Superior Court of Santa Cruz, 45 Cal. 3d.
1167, 1177 (1998).

ATTACHMENT A

Small Claims Court Advisor Questionnaire

Introduction: Please allow me to introduce myself. My name is _____. I am a law student at UC-Hastings College of the Law and am researching California Small Claims Courts this summer. To get an overall picture of the system and to find out if there are additional resources needed, I'd like to have you answer some questions about your experience as a small claims court legal advisor and your office's Advisor Services. Will you participate? Would you prefer to have a phone interview or would an e-mail or letter be a better way to get feedback from you?

Questions About You

1. What is your name (optional)?
2. How did you become a small claims court legal advisor?
3. Do you work as an attorney elsewhere?
4. How many hours per week do you work as a small claims court legal advisor?
5. What languages are your services offered in?

Questions About the Small Claims Court Advisory Services in Your Area

1. These are the phone and walk-in hours we have listed for your office _____. Is this correct?
2. Do plaintiffs or defendants use your services more or is it about even?
3. What training is required to become a small claims court advisor at your office?
4. How many small claims court legal advisors are in your office?

Questions About Your Observations and Experiences as a Small Claims Court Legal Advisor

1. How do your clients view the small claims process?
2. What types of cases do you most commonly see?
3. What languages do your clients speak?
4. What types of questions do you get asked?
5. What are the biggest concerns that your clients have?
6. What do you recommend when a plaintiff has a claim above \$5,000 but below \$10,000?
7. What types of support or resources would you like to have to help you deliver your services better?
8. Does your office have enough small claims court legal advisors?
9. Are you currently able to meet the demand for your services?
10. What is working well and what isn't at the small claims court advisory services office?
11. How often do you observe small claims court proceedings?
12. Do your clients have difficulties filling out small claims court forms? Which ones?

Questions About Small Claims Court in General

1. Would you be in favor of raising the jurisdictional limit for small claims cases?
 - a. If yes, to what amount would you favor increasing the jurisdictional limit for small claims cases? \$7500, \$10,000, \$15,000 or other?
 - i. Why are you in favor of increasing the jurisdictional limit in small claims cases?
 - b. If no, why are you not in favor of increasing the jurisdictional limit in small claims cases?
2. What recommendations do you have for changes in the small claims court process?
3. What can the community do to provide parties with adequate information about how to prepare for their small claims court proceeding(s)?

ATTACHMENT B

CALIFORNIA SMALL CLAIMS COURT LEGAL ADVISOR PROGRAMS

County Name	Contact Person or Organization	Address	Phone Number	E-mail	Walk-In Hours	Phone Hours	Language(s) Service is Offered in
Alameda	Small Claims Advice Program	Oakland Municipal Ct. 600 Washington St. 4th Floor, Dept. #9 Oakland, CA 94607	N/A	acba@acbanet.org	R 1-4 p.m.	M-F 8:30 a.m.- 4:30 p.m.	English and some Spanish
		County Administration Building 224 W. Winton, Room 160 Hayward, CA 94544	N/A	acba@acbanet.org	Sa. 9:30 a.m.- noon	M-F 8:30 a.m.- 4:30 p.m.	English and some Spanish
Alpine	NO SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM						
Amador	NO SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM						
Butte	Doug Day Director of Small Claims Advisor Program	N/A	(530) 873-0558	N/A	N/A	M, W, F 9 a.m.-noon	English When there are other language needs, a friend or a relative should serve as an interpreter.
Calaveras	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						
Colusa	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						
Contra Costa	Small Claims Court Legal Advisor	Contra Costa County Coordinated Courts 726 Court Street Martinez, CA 94553	(888) 676-7277	N/A	N/A	24 hours	English and can accommodate other languages
Del Norte	NO SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM						
El Dorado	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						
Fresno	Small Claims Advisor's Office	Del Webb Downtown Plaza Building 2220 Tulare Street 8th Floor Fresno, CA 93721	(559) 262-4291	N/A	M-R 8 a.m-5 p.m.	N/A	English and Spanish
Glenn	NO SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM						

County Name	Contact Person or Organization	Address	Phone Number	E-mail	Walk-In Hours	Phone Hours	Language(s) Service is Offered In
Humboldt	Christopher Metzger	930 3rd Street Suite 207 Eureka, CA 95501	(707) 441-1185	eumetzger@aol.com	M-W, F 2:30-4:30 p.m. R 2:30-4 p.m. By appt. only	N/A	English and client may bring in someone to interpret
Imperial	Nancy Kizziah	Imperial Superior Court 939 West Main Street El Centro, CA 92243	(760) 482-4359	Nancykizziah@imperialcounty.net	N/A	M-F 8 a.m.-5 p.m.	English and Spanish
Inyo	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						
Kern	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						
Kings	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						
Lake	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						
Lassen	Craig Settemier	221 South Roop Susanville, CA 96130	(530) 261-8334	N/A	M-F 8 a.m.-5 p.m.	M-F 8 a.m.-5 p.m.	English
Los Angeles	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						
Madera	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						
Marin	Stanley Pierce	3501 Civil Center Drive, Room 266 San Rafael, CA 94903	(415) 499-6246	spierce@mailh.org	M-F 8:30 a.m.-12:15 p.m.	M-F 8:30 a.m.-12:15 p.m.	English
Mariposa	NO SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM						
Mendocino	Doug O'Brien Redwood Legal Assistance	P.O. Box 747 Ukiah, CA 95482	(707) 462-2245 (800) 956-5575	Ukiah@linc.net	N/A	M-R Noon-2 p.m.	English
Merced	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						
Modoc	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						
Mono	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						

County Name	Contact Person or Organization	Address	Phone Number	E-mail	Walk-In Hours	Phone Hours	Language(s) Service is Offered In
Monterey	Candice Chin Consumer Protection Coordinator	District Attorney Consumer Protection Division P.O. Box 1131 Salinas, CA 93902	Monterey: (831) 755- 5073 Peninsula: (831) 647- 7773 South County: (831) 385- 8373	N/A	M-F 8 a.m.-4 p.m.	M-F 8 a.m.-4 p.m.	English with Spanish translation available
Napa	Napa County Small Claims Advisor	N/A	(703) 253- 4524	N/A	N/A	T, W 1-3:30 p.m.	English
Nevada	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						
Orange	Suzy Mancía Supervisor Legal Aid Society	902 North Main Street Santa Ana, CA 92701	(714) 571- 5277	N/A	M-R 9 a.m.-6 p.m. F 9 a.m.-4 p.m.	M-R 9 a.m.-6 p.m. F 9 a.m.-4 p.m.	English, Spanish and can accommodate other languages The phone system has most languages (e.g. English, Spanish, Vietnamese, Cantonese, Mandarin).
Placer	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						
Plumas	Liz Cortez Small Claims Advisor Program County Counsel	520 Main Street Room 302 Quincy, CA 95971- 6010	(530) 283- 6240	Liz@ countyoplumas.co m	M-F 8 a.m.-5 p.m.	M-F 8 a.m.-5 p.m.	English and some Spanish
Riverside	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						
Sacramento	Small Claims Advisory Clinic The Human Rights/Fair Housing Commission of the City and County of Sacramento	301 Bicentennial Circle Room 330 Sacramento, CA 95826	(916) 875- 7846	N/A	M-F 8 a.m.- 4:30 p.m.	M-F 8 a.m.- 4:30 p.m.	English, Spanish, and Korean
San Benito	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						

San
Bernardino

HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY

County Name	Contact Person or Organization	Address	Phone Number	E-mail	Walk-In Hours	Phone Hours	Language(s) Service is Offered In
San Diego (Claremont)	Jay Sacks	San Diego Superior Court 8950 Claremont Mesa Blvd. San Diego, CA 92123	(619) 236-2471 Record info: (619) 236-2700	N/A	M-F 8:30 a.m.- 4 p.m.	M-F 8:30 a.m.- noon; 1-4 p.m.	English, Spanish, Vietnamese, Chaldean, Arabic, Russian, German, and Italian
San Diego (North)	Small Claims Advisor Program	325 South Meirose Drive Vista, CA 92083	(619) 236-2471	N/A	M-F 8:30 a.m.- 12 p.m.; 1-4 p.m.	N/A	English, Spanish, Japanese, Arabic, and Vietnamese
San Francisco	Adrienne McMillan	400 McAllister St. San Francisco, CA 94102	(415) 292-2124	AMcMillan@sftc.org	M-F 8:30 a.m.- 11:30 a.m.; 1-4 p.m.	M-F 8:30 a.m.- 11:30 a.m.; 1-4 p.m.	English and Spanish
San Joaquin	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						
San Luis Obispo	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						
San Mateo	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						
Santa Barbara	Kristine McCardle	Office of the County Counsel 1105 East Anapamu Street, Room 201 Santa Barbara, CA 93101	(805) 568-2984	N/A	N/A	M-R 8 a.m.-5 p.m.	English and Spanish
Santa Clara	Lee Parsons Manager	N/A	(408) 379-9063	N/A	N/A	M-F 1-5 p.m. Subject to change	English and Spanish
Santa Cruz	HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY						
Shasta	Gerry L. Larrea	915 L Street Suite 241 Sacramento, CA 95814	(916) 961-3136 (800) 785-8136	larrea@tomatoweb.com	N/A	M-F 8:30 a.m.- 12 p.m.; 3-5 p.m.	English

County Name	Contact Person or Organization	Address	Phone Number	E-mail	Walk-In Hours	Phone Hours	Language(s) Service is Offered In
Sierra	Gretchen Serrata Small Claims Court Legal Advisor	N/A	(530) 470- 2567	N/A	By appointment only for meeting or video conferencing	M-F 8 a.m.-5 p.m.	English and can accommodate other languages
SISKIYOU COURT LEGAL ADVISOR PROGRAM							
Solano	Mary Anne Brayton Small Claims Legal Advisor	County Counsel's Office 580 Texas Street Fairfield, CA 94533	(707) 421- 7478	N/A	N/A	T, R 8:30 a.m.- 12 p.m.; 1:30-5 p.m. F 9 a.m.- 12 p.m.; 1:30- 3:30 p.m.	English
Sonoma	Susan Chien	Hall of Justice 600 Administration Dr., Rm. 107J Santa Rosa, CA 95403	(707) 565- 7349	N/A	M, F 9-11 a.m.	T, W, R 2-4 p.m.	English
Stanislaus	Natalie Wormeli	City Hall 2260 Floyd Avenue Modesto, CA 95355	(866) 404- 3288	N/A	N/A	M-R 9 a.m.-2 p.m. and voicemail	English Non-English speakers are referred to California Rural Legal Assistance English and Spanish
Sutter	Susan Townsend Yuba-Sutter Center for Seniors	725 D Street Marysville, CA 95901	(530) 742- 8289	N/A	No walk- ins, but holds clinics M, 12-1 p.m. and R, 2:30-4 p.m.	M, W, R, F 8:30 a.m.- 4:30 p.m.	English and Spanish
Tehama	Gerry L. Lamea	915 L Street Suite 241 Sacramento, CA 95814	(916) 961- 3136 (800) 795- 8136	lameag@ tomatoweb.com	N/A	M-F 8:30 a.m.- 12 p.m.; 3-5 p.m.	English

Trinity	Gary L. Larrea	915 L Street Suite 241 Sacramento, CA 95814	(916) 961- 3136 (800) 795- 8136	lanraag@ tomatoweb.com	N/A	M-F 8:30 a.m. - 12 p.m.; 3-5 p.m.	English
County Name	Contact Person or Organization	Address	Phone Number	E-mail	Walk-In Hours	Phone Hours	Language(s) Service is Offered In
Tulare	Walter McArthur (former advisor who completed the survey)	1809 West Main St. Suite F P.O. Box 2563728 Visalia, CA 93279	(559) 625- 4300	N/A	N/A M-F	9 a.m. - 5 p.m., but no calls over the noon hour	English and Spanish (through an interpreter)
Tuolumne	Gregory Levins (new advisor) HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY	N/A	(559) 688- 6000	N/A	N/A	N/A	N/A
Ventura	District Attorney's Office Consumer Protection Unit HAS A SMALL CLAIMS COURT LEGAL ADVISOR PROGRAM, BUT DID NOT RESPOND TO OUR SURVEY	800 South Victoria Ave. Ventura, CA 93009	(805) 654- 2610	N/A	M-F 8:15- 11:45 a.m.; 1-4:45 p.m.	M-F 8:15- 11:45 a.m.; 1-4:45 p.m.	English and Spanish
Yolo	Susan Townsend Yuba-Sutter Center for Seniors	725 D Street Marysville, CA 95901	(530) 742- 8289	N/A	No walk- ins, but holds clinics M, 12-1 p.m. and R, 2:30-4 p.m.	M, W, R, F 8:30 a.m.- 4:30 p.m.	English and Spanish

ATTACHMENT C

Small Claims Court Plaintiff Interview

Hello, I'm a law student from UC-Hastings. This summer I am doing research on California Small Claims Courts. I found your name while looking through the public court records. As someone who sued for \$5,000 within the past three years, your input would be helpful in completing my study. Would you be willing to answer a few questions?

1. How did you find out about small claims court?

2. Did you have any difficulties with any of the following:
 - a. Learning your legal rights?

 - b. Filling out court forms? Which ones?

 - c. Learning what evidence or which witnesses were necessary to prove your case?

3. During the time that you prepared your case, did you know that a small claims court legal advisor was available to assist you? If yes, did you talk to an advisor?

4. Did you seek any other assistance?

5. If you won a judgment, how much did you actually receive?

6. If you settled outside of court, how much did you settle for and why?

7. If you did not get the full amount of your claim, why do you think this happened?

8. If you lost your case, why do you think you lost?

9. Do you think a person can get a fair trial in small claims court?

10. Were you basically satisfied with your experience in small claims court?

11. How much do you think one should be able to sue for in small claims court?
Currently, one can only sue for up to \$5,000.

12. How much would you have to sue or be sued for before you would seek legal assistance?

13. If you believed that your damages were worth more than \$5,000 but the claim limit was \$5,000, what would you do?
 - a. File in small claims court and forfeit the remainder?

 - b. File in regular municipal court for the full amount?

 - c. Not file your claim?

 - d. Other?

Effect of Increasing Small Claims Jurisdictional Limit on Caseload

Alabama

Fiscal Year	Dollar Limit	Number of Cases Filed	Percentage Change
1996	\$1,500	107,916	
1997	\$3,000	112,794	+4.0%

Alaska

1997	\$5,000	11,469	
1998	\$7,500	10,757	-6.0%

Colorado

1995	\$3,500	16,899	
1996	\$5,000	17,349	+2.0%
2001	\$5,000	14,961	
2002	\$7,500	15,591	+4.0%

Connecticut

1994	\$2,000	66,839	
1995	\$2,500	64,413	-3.0%

Florida

1996	\$2,500	116,903	
1997	\$5,000	157,480	+34.7%

Idaho

1999	\$3,000	465	
2000	\$4,000	550	+1.0%

Indiana

1996	\$1,000	77,496	
1997	\$3,000	79,495	+4.0%

Iowa

1995	\$2,000	77,506	
1996	\$4,000	79,129	+2.0%

Kansas

1994	\$1,000	15,493	
1995	\$1,800	16,023	+3.0%

Massachusetts

1993	\$1,500	127,472	
1994	\$2,000	127,780	+0.2%

Michigan

1999	\$1,750	89,842	
2000	\$3,000	98,173	+9.0%

Minnesota

1994	\$6,000	83,752	
1995	\$7,500	83,660	-0.1%

Missouri

1994	\$1,500	20,154	
1995	\$3,000	20,226	+0.3%

Nebraska

1995	\$1,800	10,958	
1996	\$2,100	10,999	+<0.1%
2000	\$2,100	9,462	
2001	\$2,400	9,919	+4.0%

New York

1994	\$2,000	100,912	
1995	\$3,000	97,833	-3.0%

North Carolina

1993	\$2,000	237,729	
1994	\$3,000	239,540	+0.8%
1999	\$3,000	278,311	
2000	\$4,000	287,505	+9.0%

Ohio

1992	\$1,000	90,370	
1993	\$2,000	86,523	-4.0%
1995	\$2,000	78,669	
1996	\$3,000	79,914	+1.0%

Oregon

1997	\$2,500	65,177	
1998	\$3,000	59,171	-9.0%
1999	\$3,500	57,816	
2000	\$5,000	64,054	10.0%

South Dakota

1997	\$4,000	31,255	
1998	\$8,000	31,363	+0.3%

Vermont

1992	\$2,500	10,811	
1993	\$3,500	9,405	-0.1%

Washington

2000	\$2,500	16,273	
2001	\$4,000	16,596	+0.2%



JOHN A. CLARKE
EXECUTIVE OFFICER / CLERK

111 NORTH HILL STREET
LOS ANGELES, CA 90012-3014

*Superior Court of California
County of Los Angeles*

March 27, 2003

Nathaniel Sterling
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

RE: Jurisdictional Limits of Small Claims Cases and Limited Civil Cases

Dear Mr. Sterling:

Please find enclosed the responses to the California Law Revision Commission, Jurisdictional Limits of Small Claims Cases and Limited Civil Cases prepared by court staff of the Superior Court of California, County of Los Angeles.

Please note these comments were submitted to me directly and therefore, if you have any questions in reference to the attached responses, you might contact the respondents directly at the listed phone numbers, or you may contact me at (213) 974-5106. Please be advised these are individual comments and do **not** necessarily reflect the position of the Los Angeles Superior Court. Your attention pertaining to these responses is greatly appreciated.

Thank you,

A handwritten signature in black ink, appearing to read "Larry Jackson".

Larry Jackson, Administrator
Intergovernmental Relations Office

Attachments

c: Robert A. Dukes, Presiding Judge
William A. MacLaughlin, Assistant Presiding Judge

COMMENTS ON PROPOSED CHANGES**RESPONDING COURT:**

LOS ANGELES SUPERIOR COURT
111 North Hill Street, Room 105-E
Los Angeles, CA 90012
Attn: Larry Jackson

NAME: Lou McMurray, Malibu Courthouse

TEL No.: (310) 317-1370

- Agree** with proposed changes.
- Do not agree** with proposed changes.
- Agree** with proposed changes **only if modified.**

The best solution on the small claims issue would be to raise to limit on small claims cases to \$5000.00 and have the option to file no more than 2 cases at \$10000.00 in the last 12 months. There would be an increase in the number of filings, but I feel the courts could handle it. As for the limited civil cases being increased to \$50000.00 limit, I feel this would be an incredible burden on the limited jurisdiction courts. There would be a least a 25% increase in filings it not more. A lot of the limited jurisdiction courts handle civil, criminal, traffic and small claims combined. With the shortage of employees and the increased workload, the backlog would increase two fold. The increased limits would put a strain on an already overworked courtroom and office staff. It would call for more bench officers and more staff, and with budget constraints as they are, it would not be a feasible situation at this time. Moreover, would there be a three-tier fee schedule? The fee schedule would have to be restructured in order to accommodate the new filing limits in the limited jurisdiction courts. It appears as if someone is trying to fix a system that is not broke, it just needs to be streamlined and enforced with tighter case management.

COMMENTS ON PROPOSED CHANGES

RESPONDING COURT:

LOS ANGELES SUPERIOR COURT
111 North Hill Street, Room 105-E
Los Angeles, CA 90012
Attn: Larry Jackson

NAME: Art Acevedo

TEL No.: (213) 974-5201

- Agree with proposed changes.
- Do not agree** with proposed changes.
- Agree with proposed changes **only if modified.**

CALIFORNIA LAW REVISION COMMISSION

Jurisdictional Limits of Small Claims Cases and Limited Civil Cases

Significant additional workload and revenue losses are projected if this proposal is implemented. (See attached)

Superior Court of California
 County of Los Angeles
 Civil Operations
 DRAFT # 6, 3/14/03

Impact Analysis of California Law Revision Commission
 Proposal on Small Claims and Civil Jurisdictional Limits

March 2003

- Background

The California Law Revision Commission has issued a tentative recommendation to increase the jurisdictional limits for small claims cases and for limited civil cases. The limit for small claims cases would increase from \$5,000.00 to \$10,000.00. The jurisdictional limit for limited civil cases would increase from \$25,000.00 to \$50,000.00.

The purposes of these revisions are to increase access to justice for less complicated matters and to account for the effects of inflation. The cost of litigation is less for small claims cases. Litigation costs for limited civil cases are presumed to be less than for general jurisdiction civil cases.

- Caseload Information

Courtwide filings for the past five years are:

	Small Claims	Limited Civil	General Civil
1998	122,024	99,708	50,231
1999	111,691	91,158	48,472
2000	105,297	91,015	51,998
2001	108,730	102,584	59,289
2002	110,516	111,964	55,200
% of total filings	40%	40%	20%

Analysis of California Law Revision Commission Proposal
 March 2003
 Page 2

The total number of pending actions for each case type are:

	Small Claims	Limited Civil	General Civil
as of 12/02	16,227	57,647	57,107

Small claims appeal filings for the past five years are:

	Small Claims filings	Small Claims Appeals
1998	122,024	5,286
1999	111,691	4,111
2000	105,297	3,926
2001	108,730	5,147
2002	110,516	4,897

The number of small claims appeals represent 4% of the number of small claims filings.

- Information Analysis

This proposal is intended to shift cases from one case processing track to a lower track. The total number of civil filings should not be affected by this proposal. Without considering other factors and trends this proposal should:

1. Increase small claims filings
2. Decrease general civil filings
3. Increase small claims appeals
4. Decrease overall limited civil filings

Analysis of California Law Revision Commission Proposal
 March 2003
 Page 3

- Impact
 - Caseload Projection

A projection of our civil filings for the next several years shows increasing trends for each case type. Limited civil filings are increasing at a higher rate than either small claims or general civil cases.

Projected filings for 2004 without the jurisdictional change are:

	Small Claims	Limited Civil	General Civil
2004	112,000	116,000	56,000
% of total	39%	41%	20%

Limited civil filings are projected to decrease by 25% under this proposal. That is based on the incremental decrease representing one quarter of the total dollar amount. This will increase small claims filings by 29,000 cases. Limited civil filings would be reduced by 29,000 cases to be filed as small claims cases and would be increased by 13,400 cases that would be no longer filed as general civil cases. The net decrease in limited civil filings would be 15,600 cases. General civil filings are estimated to reduce by 24%, or 13,400 cases.

Under this proposal it is estimated that small claims would increase to 50% of the total civil filings. Limited civil would account for 35% of the filings and general civil filings would be 15% of the total civil filings.

Analysis of California Law Revision Commission Proposal
March 2003
Page 4

○ Judicial Workload

A reduction in the number of general civil filings will reduce judicial officer needs for these matters. Similarly, limited civil judicial officer workload will be reduced. Small claims workload and small claims appeals workload will increase. The workload associated with the current pending cases will take a considerable period of time to complete.

The overall impact on judicial workload is difficult to determine but should result in a relatively small net reduction in judicial workload.

○ Staff Workload

Staff workload will be impacted significantly by these proposals. Currently, clerical case related work is done in the courtroom for some limited civil cases and for most general civil cases. A small change in caseload for each individual courtroom will have minimal impact and will likely be offset by the increasing overall civil filing trends.

Small claims clerical processes are handled in the Clerk's Office and the staffing impact of this proposal will be considerable. We currently have 76 clerical positions handling small claims in our offices. Any increase in small claims caseload will directly impact staff requirements. The proposal recognizes the increased need for small claims advisors, but does not address clerical staffing needs.

An increase in the number of courtrooms handling small claims will impact courtroom staffing and also security staffing. Small claims courts have bailiffs that neither limited civil nor general civil courts have.

Analysis of California Law Revision Commission Proposal
March 2003
Page 5

o Filing Fees

Filing fees overall will decrease. The filing fees for limited civil cases are less than for general civil cases. The filing fee for a small claims case is much less than for a limited civil case.

- Small Claims Fees

Small claims filings are estimated to increase by 29,000 cases. It is estimated that the average small claims filing fee will be \$30.00 per case. This represents an overall increase in small claims filing fees of \$870,000.00.

- Limited Civil Filing Fees

The estimated number of limited civil filings would decrease by 15,600 cases. If there are two defendants per limited civil case the total plaintiffs' and defendants' filing fees would be \$354.30 per case. This represents a decrease of \$5.5 million dollars.

- General Civil Filing Fees

The estimated number of general civil filings would decrease by 13,400 cases under this proposal. If there are four defendants per general civil case the total filing fees would be \$553.00 per case. This represents a decrease in general civil filing fees of \$7.4 million dollars.

Analysis of California Law Revision Commission Proposal
March 2003
Page 6

- Small Claims Appeals Filing Fees

It is estimated that small claims appeals would increase by 1,200 under this proposal. The increase in small claims appeals filing fees would be approximately \$76,800.00

The distribution of filing fees is very complex, and different for each of the civil case types. The analysis of these differences is beyond the scope of this analysis. The overall loss of filing fee revenue collected in this jurisdiction under this proposal is approximately \$12 million dollars.

o Alternate Dispute Resolution

The Court's Alternate Dispute Resolution (ADR) program provides arbitration and mediation services. One funding source for these programs is from a portion of the limited civil filing fee and from a portion of the general jurisdiction filing fee.

No portion of the small claims filing fees goes towards ADR services.

A reduction in the filing fees collected would impact the Court's ADR services and also the other dispute resolution services funded through the filing fees. The impact on these other services is beyond the scope of this analysis.

Fewer matters would be eligible for ADR services under this proposal. The actual reduction and the impact on ADR operations are indeterminate.

Analysis of California Law Revision Commission Proposal
March 2003
Page 7

- Justice Issues

Handling civil matters in the less costly and less complex litigation tracks should improve access to justice and reduce litigation costs. While we can project caseload and workload, the qualitative issues, such as access to justice, fundamental fairness and justice outcomes are better addressed by the Law Review Commission and the workgroups of the Administrative Office of the Courts.

- Conclusion

The filing and workload projections in this analysis are speculative. The actual impact will only be determined upon implementation. There are many factors in the choice of civil case filing tracks. The last change in small claims jurisdiction in 1991 resulted in a 9% increase in small claims filings in this jurisdiction. Within two years the small claims filings were lower than before the 1991 jurisdictional change, however. Similarly, the last time general jurisdiction filing limits were raised in 1986 general jurisdiction civil filings actually increased slightly.

We can project that:

- small claims filings will increase;
- overall judicial workload will decrease;
- clerical workload will increase;
- net filing fee revenues will decrease substantially;
- the impact on pending cases is indeterminate; and
- security costs will increase.

COMMENTS ON PROPOSED CHANGES

RESPONDING COURT:

LOS ANGELES SUPERIOR COURT
111 North Hill Street, Room 105-E
Los Angeles, CA 90012
Attn: Larry Jackson

NAME: Cynthia Lathon

TEL No.: (213) 893-2392

- Agree with proposed changes.
- Do not agree with proposed changes.
- Agree with proposed changes **only if modified.**

CALIFORNIA LAW REVISION COMMISSION
Jurisdictional Limits of Small Claims Cases and Limited Civil Cases
<p>(See attached memo to Ed Brekke)</p>



JOHN A. CLARKE
EXECUTIVE OFFICER / CLERK

Small Claims Unit
111 NORTH HILL STREET
LOS ANGELES, CA 90012-3014
(213) 974-6135

Superior Court of California
County of Los Angeles

March 7, 2003

To: Ed Brekke, Administrator

From: Cynthia L. Lathon, Manager
Small Claims Unit

**SUBJECT: RESPONSE TO PROPOSAL TO INCREASE SMALL CLAIMS
JURISDICTIONAL LIMIT**

On February 11, 2003, Naida Castro and I met with the Small Claims Subcommittee to gather court-wide input on the potential impact of the proposed legislation. For your information, there is a representative from each district with the exception of East District. In addition, representatives from the Department of Consumer Affairs, Small Claims Advisors Unit, were present.

The Small Claims Subcommittee is opposed to the increase in jurisdictional limits for Small Claims for the following reasons:

Increase in Workload

1. We do not have the staff to handle the increase in workload (in light of the court's budget situation, it does not appear that additional staffing would be likely).
2. Businesses would be less likely to work with the consumers in reducing the balance owed. Consequently, claims filed by businesses would inundate the court's calendar, which would make it difficult for the average citizen to get his/her claim in court. For example, Doctors, lawyers, etc., would opt to use the Small Claims court to settle their claims. Currently, some courts set aside days to hear cases for businesses only. In other courts, different types of matter are handled (e.g. limited civil, traffic, criminal), which would definitely cause a problem.
3. Rigoberto Reyes (Consumer Affairs Supervising Investigator) explained that currently the Department of Consumer Affairs Self-Help Legal Maxis Center has an attorney that constantly monitors the advice given to litigants; possibility of hiring additional attorneys to facilitate the increase in the number of Small Claims litigants is not likely.

Loss of Revenue

1. The fee for filing a Limited Civil complaint where the amount demanded is less than \$10,000.00 is \$94.00, which would pose a loss in revenue by filing a Small Claims action.

Complexity

1. On occasions, Protoms hear Small Claims matters and may not be able to handle the complexity of the cases.
2. Business entities are usually more sophisticated than the consumers, so if the doors are opened for businesses to sue consumers up to \$10,000.00, the consumers on most cases are going to be at a disadvantage in terms of understanding the process.
3. The quick and simple process of resolving Small Claims would be undermined. The average proper litigant is not familiar with the legal process. The courts may not be able to serve the community effectively, efficiently, and expeditiously. Since the consumer may not have sufficient time to present their claim. The whole forum in which cases are heard would probably turn into a question and answer session conducted by the bench officer.
4. The committee felt the appeal process would need to be changed to allow the plaintiff an option to appeal the ruling. It was understood by the committee that if the plaintiff opts to file his/her claim in Small Claims court, he/she is giving up their right to appeal, but on the other hand, \$10,000.00 is a lot of money to most and is a great amount to not allow for an appeal process. In addition, the time allowed on each case (roughly 10 minutes) is not a lot of time when considering the potential amount of the judgment.

Summary

The committee opposed the jurisdictional limits for Small Claims cases being raised to \$10,000, and was receptive to the following:

1. A lesser amount of \$7500.00 would be acceptable.
2. Unlimited filings with a demand for \$5000.00 and charge a higher filing fee for the claims in which the amount demanded is \$5000.00

In addition, Naida Castro is trying to obtain statistical information from ISTB to determine the anticipated increase in workload and loss in revenue.

Mr. Brekke, feel free to contact me at (213) 893-2392 if you require further information.

c: Art Acevedo, Civil Administrator
Naida Castro, Division Chief, Civil Operations

COMMENTS ON PROPOSED CHANGES

RESPONDING COURT:

LOS ANGELES SUPERIOR COURT
111 North Hill Street, Room 105-E
Los Angeles, CA 90012
Attn: Larry Jackson

NAME: Ann MaddenTEL No.: (310) 317-1350

- Agree with proposed changes.
 Do not agree with proposed changes.
 Agree with proposed changes **only if modified.**

CALIFORNIA LAW REVISION**Jurisdictional Limits of Small Claims Cases and Limited Civil Cases**

I feel the recommendations are most appropriate to increase the jurisdictional limits for Small Claims. However, the changes may be ineffectual due to the provisions of CCP Section 116.710(a) which makes a judgment in the small claims court conclusive upon the plaintiff (*).

Suggestion: modify the revision to allow either party to file an appeal.

*Currently, the plaintiff may make a motion (CCP116.725) subsequent to entry of judgment to correct or vacate a judgment. This number could increase substantially if the plaintiff doesn't like the judgment, which ultimately, would put an additional burden on the court.

Superior Court of California
County of Marin

Lynn O'Malley Taylor
Presiding Judge



Hall of Justice
3501 Civic Center Drive
P. O. Box 4988
San Rafael, CA 94913-4988
(415) 499-6086

January 23, 2003

California Law Review Commission
Attn: Staff Counsel Barbara Gaal
4000 Middlefield Road
Room D-1
Palo Alto, California 94303-4739

Law Revision Commission
RECEIVED

JAN 24 2003

File: J-1321

Dear Attorney Gaal:

I am writing in my capacity as Presiding Judge and on behalf of the Marin County Superior Court to express support for the recommendations recently promulgated by the California Law Review Commission (CLRC) to increase the jurisdictional limits on small claims matters from \$5,000 to \$10,000 and on limited civil cases from \$25,000 to \$50,000 in order to adjust for inflation and improve access to the state's civil system of justice.

Having discussed the findings set forth in the original background study, as well as the Commission's tentative recommendations at our January meeting, the Marin Bench also endorses the other changes proposed to enhance small claims operations in the state's trial courts, including: increased funding for the small claims advisory service; elimination of the special jurisdictional limits for a small claims case filed against a guarantor; adjusting the cap (from \$2,500 to \$5,000) under which a party is permitted to file no more than two cases per year in excess of a statutorily defined amount; and codification of case law to permit a trial court to deny recovery of attorney's fees to a prevailing party who might have pursued a claim in the small claims arena, but declined to do so.

In supporting the proposed increase in the jurisdictional limit for limited civil cases from \$25,000 to \$50,000, the Marin Judges also concur with the conclusion of the Commission's consultant (Policy Studies, Inc.) that such an increase is necessary because the original reason for restricting discovery in cases under \$25,000 would make uneconomical the cost of litigation and attorney representation. Without limits on discovery in hourly fee cases, it would be extremely difficult today to bring a matter to trial for under \$50,000. In contingent fee cases, the time spent by an attorney would likely exceed the fee.

Thank you for allowing us to comment on the tentative recommendations of the CLRC regarding the jurisdictional limits governing small claims and limited civil cases. Should you have any questions or need additional information concerning the support expressed by the Judges of the Marin County Superior Court, please do not hesitate to contact me.

Sincerely yours,

Lynn O'Malley Taylor
Presiding Judge



nolo.com
LAW FOR ALL

Law Revision Commission
RECEIVED

JAN 27 2003

January 22, 2003

File: _____

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303

Dear People:

Nolo strongly supports raising the small claims limit to \$10,000, improving the small claims advisory service and the other proposals made by the California Law Revision Commission regarding small claims court. We also support raising the jurisdiction for limited civil cases from \$25,000 to \$50,000.

Here at Nolo we are daily besieged by people who face the loss of important democratic rights, because their claims are too big to fit into small claims court (and often are also larger than \$25,000), but too small to justify hiring a lawyer. The result is legitimate claims must either be scaled back, abandoned or prosecuted on a pro per basis in superior court (no fun there, especially if the other side is represented by a lawyer).

Common sense would dictate even bigger increases (to \$20,000 for small claims actions and \$100,000 for limited jurisdiction cases) to help provide a reasonable level of legal access for all Californians. But since the current proposals are a decent step in the right direction, we fully support them.

Sincerely,

Ralph Warner
Executive Publisher

RW:sc





**ORANGE COUNTY
BAR ASSOCIATION**

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PRESIDENT-ELECT

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February 13, 2003

Law Revision Commission
RECEIVED

FEB 18 2003

File: _____

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Re: Jurisdictional Limits of Small Claims Cases
and Limited Civil Cases

Gentlemen:

In response to the request for public comment, the Orange County Bar Association supports the Commissioner's proposal to increase the jurisdictional limit for a small claims case from \$5,000 to \$10,000 and to increase the jurisdictional limit for a limited civil case from \$25,000 to \$50,000.

Sincerely,

ORANGE COUNTY BAR ASSOCIATION

Robert Gerard
President

RG/lm

P.O. BOX 17777
IRVINE, CA 92623-7777
TELEPHONE 949/440-6700
FACSIMILE 949/440-6710
WWW.OCBAR.ORG



Personal Insurance Federation of California

California's Personal Lines Trade Association

REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS
State Farm • Farmers • 21st Century Insurance Group • SAFECO • Progressive

STAFF

Dan Dunmoyer
President

Diane Colborn
*Vice President of Legislative
& Regulatory Affairs*

Michael Gunning
Senior Legislative Advocate

Jerry Davies
Director of Communications

February 11, 2003

Daniel Pone
Judicial Council of California
455 Golden Gate Avenue
San Francisco, California
94102-3660

Re: Proposal to Increase Jurisdiction of Small Claims Court

Dear Mr. Pone:

Thank you for the opportunity to comment on the proposal(s) being considered by the California Judicial Council and the California Law Revision Commission concerning small claims court jurisdiction and related issues. The Personal Insurance Federation of California (PIFC) represents insurance companies writing approximately 30% of the personal lines insurance policies in California, including automobile, homeowners, and earthquake insurance. Our member companies represent policyholders who are potential defendants in literally thousands of cases that could be effected by the proposed changes. Consequently, PIFC has a significant interest in the specifics of these proposals, which could have a major impact on insurance costs and the premiums consumers pay for insurance.

These comments are intended to highlight our key concerns with the proposals, which we will be pleased to supplement with additional information as the proposals are further developed and refined.

Increase in Jurisdiction of Small Claims Court

The California Law Revision Commission proposes to increase the jurisdiction of the Small Claims Court from \$5,000 to \$10,000. We understand that other options being considered include an increase to \$7,500. PIFC does not favor any increase in the jurisdiction of the small claims court at this time, and would most certainly oppose an increase to \$10,000. Our key concerns with the proposed increase include the following:

- ◆ An increase to \$10,000 would include a clear majority of auto insurance third party liability claims. Even raising the amount to \$7,500 will result in a large increase in the number of low-impact auto insurance cases filed in small claims court. Low-impact cases are the types of cases where fraud most frequently occurs, and often involve questions of liability and coverage not easily addressed in a small claims court setting.

Referral of these cases to small claims court will deny defendants the right to legal counsel, to pre-trial discovery, and to a jury trial in cases where the potential for loss is significant. This is inconsistent with the purpose of small

claims court, which is to provide speedy resolution of cases involving minor losses, without the burden of the procedures and formalities of the court process. However, increasing the jurisdiction to \$10,000 denies defendants due process protections where the risk of financial loss is significant.

- ◆ The increase will deny the vast majority of defendants in automobile insurance cases the right to a defense by their insurance company from legal claims, a right which they have contracted and paid for as part of their policy coverage. The insurer has a duty to defend their insured under the policy that cannot be met in small claims court since the parties are not allowed legal representation. Although it might be argued that insurers could train claims adjusters to assist defendants in small claims court actions, this would not only be extremely difficult to accomplish, but could be construed as the unauthorized practice of law.
- ◆ Increasing the small claims jurisdiction will not relieve court congestion. Instead, insurers will be forced to appeal small claims judgments to the Superior Court. Court resources will be drained twice – at both the small claims court level and through an increased number of appeals. When the small claims court decides against a defendant who is represented by insurance, there will very often be a request for a trial de novo because the insurer responsible for indemnifying the claim has not had an opportunity to evaluate the merits or to present a defense.
- ◆ Increasing the small claims jurisdiction will increase the number of fraudulent claims filed and diminish the ability of insurers to combat these claims. Fraudulent claims are frequently filed for amounts under \$10,000 with the hopes that the insurer will simply settle the claim for nuisance value rather than investigating it. However, insurers have become much more aggressive, through Special Investigation Units, at ferreting out fraudulent claims, facilitated in part by the fact that discovery is allowed once a case is filed in Superior court. Since neither pretrial discovery nor legal representation is permitted in small claims court, the number of fraudulent and frivolous claims will increase.

Compounding this problem is the fact that small claims courts often attempt to “split the baby” and reach a compromise, with some award going to the plaintiff even in cases of fraud, or where there are significant questions of liability or coverage. While compromise is certainly beneficial in many cases, “splitting the baby” is not appropriate in cases where fraud is present. The proposal will encourage fraudulent claims up to the jurisdictional limit and will limit the ability of defendants to defend themselves against such merit-less claims. The cumulative impact will be an increase in claims costs and auto insurance premiums.

- ◆ If the goal is to reduce burdens on the courts, and remove more tort cases from the judicial system, then a better solution would be to enact a no-fault system with thresholds limiting the number of lawsuits.

Modification of Restriction on Number of Annual Small Claims Lawsuits

The Law Revision Commission also proposes to adjust the two-claim per year cap, under which a party is permitted to file only two small claims cases per year exceeding \$2,500. The Commission proposes to increase the cap to \$5,000. We understand that a proposal to eliminate the cap on the number of annual lawsuits is also being considered. PIFC would oppose elimination of the two case per year limit and an increase in the cap. The current provision helps prevent frivolous lawsuits. Without such a limitation, the possibility of abuse and fraudulent claims increases. A knowledgeable person with the intent of harassment would be in a position to substantially increase their financial assets through the filing of numerous, frivolous small claims actions.

We believe consumers still favor a limitation on how many small claims actions can be filed in order to discourage harassment by nuisance suits. The vast majority of the general public would never exceed the two cases over \$2,500 per year. Since such a rule change would not significantly improve access to justice for the vast majority of persons, such a modification would not seem warranted.

Increase in Jurisdiction of Limited Cases

PIFC is in the process of conducting research on the proposal to increase the jurisdictional limit in limited cases from \$25,000 to \$50,000, and the impacts such a change would have on insurers and their customers. Initial feedback is that the change will curtail discovery in cases where policyholders, especially those with lower liability limits, may have personal exposure above policy limits or where potential insurance fraud exists. In such cases the defendant can be left with significant exposure that is not covered by the policy, leading to financial hardship.

Defense costs may also increase if defense counsel needs to file more trial court motions to obtain permission to conduct additional discovery. The amount in controversy, \$50,000, and the potential for financial harm to defendants is so significant, that it could be argued that limiting the allowed discovery to only one deposition and 35 interrogatories is a fundamental denial of due process. Raising the jurisdictional limit to \$50,000 may also interfere with the insurer's ability to provide a vigorous defense, as required under the policy. The higher the jurisdictional limit, the more consumers will incur the risk that they may be required, where personal assets are exposed beyond the coverage limits, to pay a judgment out of pocket because the severely limited discovery rules hampered a zealous, effective defense. Future premiums could also be effected if the defendant loses their good driver status as a result of an at-fault determination by the court.

Volume Impact

While it is difficult to predict how many more cases will go to small claims court if the jurisdictional limits are increased, a conservative estimate, based on the number of bodily injury/property damage auto claims paid, is that an increase to \$7,500 may result in a 15% increase in the number of small claims actions, and an increase to \$10,000 may result in a 23% increase.

If you have any questions regarding these comments, or would like additional input regarding the proposed changes under consideration, please do not hesitate to contact me at (916) 442-6646. Again, thank you for the opportunity to comment and for the Council's consideration of our concerns.

Sincerely,

G. Diane Colborn

cc: Dan Dunmoyer



Law Revision Commission
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MAR 24 2003

File: J-1321

601 Civic Center Drive West · Santa Ana, California 92701-4002 · (714) 541-1010 · FAX (714) 541-5157

March 21, 2003

Nathaniel Sterling
California Law Revision Commission
4000 Middlefield Rd., Rm. D-1
Palo Alto, CA 94303-4739

Re: Jurisdictional Limits of Small Claims Court

Dear Mr. Sterling:

I am writing on behalf of the Public Law Center to comment on the California Law Revision Commission's proposal to increase the jurisdictional limit in Small Claims Court. I am a member of the Judicial Council's Three Track Study Working Group ("Working Group") and a member of the Council's Civil & Small Claims Advisory Committee ("Advisory Committee"). I write this comment in my capacity as the Executive Director and General Counsel of the Public Law Center and not on behalf of either the Working Group or the Advisory Committee.

By way of background, I note that the Public Law Center is Orange County's pro bono public interest law firm. For over 22 years, we have provided free legal assistance on civil matters to low-income persons in Orange County. Our services are provided by a mix of efforts of our 13 person paid staff and a pool of over 1,000 volunteer attorneys in the private bar. Among other things, we handle a significant number of consumer related matters, many of which involve actions in the small claims court. Prior to joining the Public Law Center in 2000, I spent 11 years on the staff at Public Counsel in Los Angeles, the oldest and largest pro bono law firm in the nation where I oversaw that organization's consumer work. During that time, I also volunteered over a nine year period as a pro tem judge for the small claims division of the then Los Angeles Municipal Court.

The Public Law Center is opposed to the Commission's recommendation to raise the jurisdictional limit in small claims court to \$10,000. We are also opposed to the recommendation to modify the current limits on "frequent filers" contained in the Small Claims Act. I know the Commission has received considerable comment on both of these issues and I do not want to simply repeat what others have already said. I have read the comments received by the Commission (forwarded by AOC staff to the Working Group) and I find it remarkable that Consumers Union and the California Association of Collectors—two groups that seldom agree on public policy matters—agree on the notion that raising the jurisdictional limits in small claims court and altering the "frequent filer" provisions are bad ideas. I know Commission staff has read the letters of Ms.

Letter to Nathaniel Sterling

March 21, 2003

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Hillebrand of Consumers Union and Mr. Sargis of the California Association of Collectors; I suggest that they both offer well articulated and well reasoned positions on these issues (although I do not agree with everything in Mr. Sargis' letter).

I know that many in favor of the change in jurisdictional limits have stated that the matter has been studied sufficiently already. I respectfully disagree. I'm not aware of what studies the Law Revision Commission has considered, but I know that the Working Group has only considered the PSI Study and the HALT Study—the former receiving only brief mention in the Working Group's first meeting and the latter, by it's authors' own admission, lacking sufficient data. Indeed, Mr. Sargis' letter—received by the Working Group only several days ago—provides some of the more detailed empirical data I have seen on this issue and it suggests that we are moving forward towards a decision in an area where we have little in the way of concrete information. As I have stated repeatedly before the Working Group and the Advisory Committee, I believe we simply do not know enough about the impact of raising the jurisdictional limit to justify putting so many low-income litigants at risk of a significant erroneous judgment. By many of our standards, \$10,000 may be a small amount. I assure you, it is not a small amount for the thousands of indigent individuals my office and other legal services providers around the State assist on a regular basis.

We do recognize the impact on access to justice of raising the jurisdictional limit. It is for that reason that I have consistently supported before the Working Group and the Advisory Committee a raise of the jurisdictional limit to \$7,500 (although I would prefer to see that done on a pilot basis). I believe that on matters pertaining to access to justice, the Commission should give strong consideration to the comments of Justice James R. Lambden made on behalf of the State Courts Committee of the California Access to Justice Commission—a group that is one of the most respected participants in the access to justice field in our state.

Mr. Sargis' letter makes clear and my experience as a legal services lawyer for 14 years and as a former small claims pro tem judge suggests that most small claims plaintiffs are not individuals seeking to access the "People's Court." Rather, most plaintiffs in small claims court are businesses seeking to collect money owed to them by individuals. Increasing the jurisdictional limit and modifying or eliminating the "frequent filer" limitation will, to be sure, give some individuals more access. But what it will do more than anything else is turn the Small Claims Court into even more of a debt collection court than it already is. Instead of having just one day a week being "phone company day" small claims courts will find Monday becoming "consumer electronics day," Tuesday "auto dealer day," Wednesday "phone and cable company day," etc. It is difficult to see how small claims court will retain its character as the "People's Court" under such circumstances.

An increase on a pilot basis to \$7,500 would allow the courts to consider the impact of a jurisdictional increase and at the same time bear a relationship to the Consumer Price Index, which when compared to figures when the current jurisdictional limit was put in place, only supports an increase to approximately \$6,600. An increase to \$7,500 would allow for inflation to catch up with the limit for several years to come, during which time the impact of the increase could be considered. Given the current critical funding crisis faced by the courts, it seems particularly appropriate to

Letter to Nathaniel Sterling

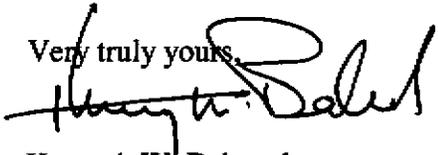
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proceed cautiously in this area since trial courts are unlikely to have sufficient resources to deal with the influx of small claims court cases and the concomitant increased usage of and training requirements for pro tem judges and increased need for small claims court advisor assistance that an across the board large jurisdictional increase would require.

While these are not the only issues I have raised before the Working Group or could raise in this letter, as I stated above, I do not wish to repeat what others have already stated in their prior letters to the Commission. Thank you for considering my comments. If you have any questions or comments do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kenneth W. Babcock". The signature is written in a cursive style with a large, prominent initial "K".

Kenneth W. Babcock
Executive Director & General Counsel

cc: Hon. Mary Thornton House
Janet Grove
Daniel Pone

MEMORANDUM

TO: The California Law Revision Commission

FROM: The State Bar of California's Committee on Administration of Justice

DATE: April 14, 2003

SUBJECT: Jurisdictional Limits of Small Claims Cases and Limited Civil Cases

The State Bar of California's Committee on Administration of Justice ("CAJ") has reviewed and analyzed the December 2002 Tentative Recommendation of the California Law Revision Commission ("CLRC"), *Jurisdictional Limits of Small Claims Cases and Limited Civil Cases*, as well as CLRC Memorandum 2002-53 and its First Supplement, CLRC Memorandum 2002-61 and its First Supplement, and the *Report on the California Three Track Civil Litigation Study* prepared by Policy Studies Inc. ("PSI"). CAJ appreciates the opportunity to submit these comments.¹

I. SMALL CLAIMS CASES

A. Jurisdictional Limit

The vast majority of CAJ believes the jurisdictional limit for small claims cases should be increased from \$5,000 to \$10,000, primarily because it is no longer cost-effective to hire an attorney to pursue a claim for \$5,000 to \$10,000. The majority also believes that the increase to \$10,000 will avoid the need to adjust that limit again in the near future. A small minority of CAJ believes the jurisdictional limit should be increased to \$7,500, simply to account for inflation.

B. Pilot Projects

CAJ believes the jurisdictional limit should be increased without pilot projects. CAJ believes the matter has been studied adequately, and questions whether meaningful empirical data on the impact of an increase in the jurisdictional limit could be obtained from pilot projects. In addition, there is no unity in how small claims are handled across the State, an issue that should be addressed in any event. Pilot projects would become particularly problematic if they were established in certain designated counties only, given the significant variations among the counties.

¹ By way of background, CAJ is a committee of attorneys from diverse practice areas, with expertise in civil procedure, court rules and administration, rules of evidence, and other matters having an impact on the administration of justice in civil cases.

If, however, pilot projects were to be established, CAJ recommends that, in addition to collecting data on the general effects of increasing the jurisdictional limit, the pilot projects consider the following specific issues:²

1. Under Code of Civil Procedure Section 116.710(c), the insurer of the defendant in a small claims action may appeal a judgment that exceeds \$2,500, if the insurer stipulates that its policy with the defendant covers the matter to which the judgment applies. On appeal, the insurer can utilize counsel, often house counsel, for a trial de novo. CAJ believes the impact of an increase in the jurisdictional limit should be studied to determine whether and to what extent there is an impact on the quantity of appeals by insurers, pursuant to Section 116.710(c), and whether the \$2,500 limit in that section should be changed.

2. A study should be conducted to determine whether there is a significant and meaningful difference between the percentage of appeals and the ultimate results when comparing cases initially heard by temporary judges to cases that are not initially heard by temporary judges.

3. A study should be conducted to determine the percentage of plaintiffs and defendants that utilize counsel on appeal, the court time consumed by those appeals, and the extent to which the outcome changes from the original result when counsel is involved in the appeal.

C. Small Claims Advisory Service

CAJ supports the two-tiered filing fee, for small claims cases up to \$5,000 and over \$5,000, as a good way to assist in funding an improved small claims advisory service. CAJ agrees with the CLRC that small claims advisors are critical to the functioning of a small claims division. CAJ supports the recommendation to specify the types of advice to be provided by small claims advisors, and believes advice on how to enforce a judgment obtained in a small claims action is particularly important.

D. Limit of Two Claims Per Year Exceeding \$2,500

CAJ believes that the limit of two small claims cases per year in which the demand exceeds \$2,500 should be retained. If the two-claim cap were to be eliminated entirely, “small claims court” is likely to turn into “collection court,” deluged with claims by institutional creditors against individuals, impinging upon the ability of individuals to pursue small disputes. In addition, collection actions are often governed by specific remedies and subject to technical requirements that must be adhered to before relief can be granted to the creditor. Before a default or other judgment is entered, a high level of judicial scrutiny is necessary to ensure that all the requirements have been met and that the consumer/debtor receives the necessary protection. The required level of scrutiny exists in limited jurisdiction cases, but is often absent in small claims

² CAJ believes that even in the absence of pilot projects, these issues should be studied by the Department of Consumer Affairs – or other appropriate entity – if the jurisdictional limit is increased.

cases. This is particularly so when defaults are at issue, given the built-in protection provided by the prove up requirements in limited jurisdiction cases that are absent in small claims cases.

For similar reasons, CAJ believes the two-claim cap should *not* be increased to \$5,000. If the cap were to be increased, collection cases between \$2,500 and \$5,000 are likely to flood into small claims court, without the protections discussed above. CAJ does not believe that doubling the jurisdictional limit to \$10,000 supports doubling the two-claim cap to \$5,000, because different policy interests are implicated.

E. Award of Attorney's Fees

CAJ supports the proposed amendment to Code of Civil Procedure Section 1033(b)(1), as a nonsubstantive revision.³

F. Permitting Parties to Have Attorneys

PSI has suggested the possibility of applying special procedural rules in small claims cases for over \$5,000. One such suggestion is to permit the parties to have attorneys. In its Tentative Recommendation, the CLRC recommends against this proposal, and CAJ agrees with that recommendation. Allowing an attorney in a case in excess of \$5,000 (or in any small claims case) would defeat the fundamental purpose of small claims.⁴ In small claims cases, the proceedings are informal, there are few formal rules of evidence, and hearsay is allowed. Cases are usually heard in less than an hour with limited witnesses and documents. CAJ believes that bringing an attorney into this process would bring the process to a virtual standstill. CAJ also believes that judges who preside over small claims cases are often actively involved, and are able to elicit the necessary information from litigants in a \$10,000 case just as well as they can in a \$5,000 case, without the presence of an attorney. Finally, at least from the plaintiff's perspective, a small claims case presents a choice of forum, with the option of filing as a limited case if plaintiff wishes to pursue the case with an attorney.

G. Allowing Plaintiffs to Appeal

PSI also suggests allowing plaintiffs to appeal small claims cases over \$5,000. The CLRC recommends against this idea, and CAJ agrees with that recommendation. The plaintiff in a small claims case has a choice of forum, with the option of filing as a limited case. When a plaintiff files a small claims case, the plaintiff has chosen a forum with no right of appeal. For that choice, the plaintiff receives a quick, easy, informal trial. The plaintiff should not then be allowed to

³ CAJ understands that the CLRC is no longer pursuing the proposal contained in Memorandum 2002-61 relating to the enforceability of an attorney's fee clause in a "consumer contract." CAJ has, therefore, not fully analyzed the proposal. In its preliminary examination of the proposal, CAJ did discuss several concerns that it believes should be fully explored, in the event the proposal resurfaces, including the potential impact of the proposal on noncontractual and statutory claims, whether pursued separately or joined with contract claims.

⁴ In general, CAJ believes the system should be kept simple and inexpensive. For that reason, CAJ does not support certain ideas that have been considered previously, such as allowing defendants to opt out of small claims procedures, or establishing a "fourth track" for cases between \$5,000 and \$15,000.

appeal from that award. CAJ anticipates that allowing plaintiffs to appeal would lead to potential gamesmanship with plaintiff's forum selection, and also anticipates that there would be an extremely high rate of appeals.

H. Permitting a Jury Trial on Appeal

When discussing constitutional issues that might arise as a result of raising the jurisdictional limit to \$10,000, the CLRC suggests the possibility of permitting a jury trial on appeal. CAJ does not address in this memorandum the purely legal questions raised by the constitutional issue. Leaving that issue aside (and addressing solely the general concept of jury trials) CAJ believes jury trials in small claims appeals would dramatically undercut the small claims process. In small claims, the process is informal – judges ask questions, there are few formal rules of evidence, and hearsay is allowed. A jury trial could not function with that type of informality. Entirely new rules of procedure would need to be designed. Moreover, the ability to have a jury trial would exist when a *defendant* asks for an appeal, which is likely to create a situation where a pro per plaintiff is engaged in a jury trial against a defendant represented by counsel. This is particularly likely where, for example, defendants with insurers are able to afford counsel in the jury trial on appeal, and pro per plaintiffs are not. This imbalance raises issues with jury trials that are not raised with court trials. If jury trials were to be permitted on appeal, plaintiffs would essentially lose the protections that are currently afforded to them when they chose the small claims forum.

I. Use of Temporary Judges in Small Claims Cases

The Judicial Council is studying this topic, and the CLRC has made no recommendation at this time. This is an important area that deserves further study. CAJ supports changes regarding the use of temporary judges, such as new training procedures and other rules that would regulate temporary judges.

J. Increased Use of Mediation in Small Claims Cases

The PSI study shows that mediation can be an effective way of resolving small claims cases prior to the hearing. The broader use of mediation is something that should be considered as a means of decreasing the flow of cases to court (and, consequently, the number of appeals), ensuring that the court system is not over-burdened as the jurisdictional limit is increased.⁵ The use of mediation in small claims cases should also be tracked to determine the success rate of the various mediation programs in the different counties.

⁵ CAJ recognizes that the idea of free or low-cost mediation necessarily raises funding issues, which would need to be addressed before this proposal could be implemented.

II. LIMITED CIVIL CASES

A. Jurisdictional Limit

CAJ believes the jurisdictional limit for limited civil cases should be increased from \$25,000 to \$50,000, for the reasons discussed in CLRC's Tentative Recommendation.

B. Limits on Discovery

CAJ believes the jurisdictional limit should be increased to \$50,000, without necessarily linking that increase to any modifications to the economic litigation procedures.

The majority of CAJ believes, however, that discovery rights should be expanded – especially the “Rule of 35” and the limitation on one deposition – given the increase in jurisdictional amounts, which will bring in different types of cases with higher stakes. A minority of CAJ believes the economic litigation procedures should not be changed, even if the jurisdictional limit is increased.

C. Pilot Projects

For the reasons discussed above in connection with small claims, CAJ believes the jurisdictional limit for limited civil cases should be increased without pilot projects. CAJ believes, however, that certain issues should be studied, in the event the jurisdictional limit is increased to \$50,000, including the following:

1. Consideration of changes to the economic litigation procedures, such as mandatory use of case questionnaires (*see* Code Civ. Proc § 93), mandatory disclosure of witnesses and evidence (*see* Code Civ. Proc § 96), and expanded use of affidavit testimony (*see* Code Civ. Proc § 98).
2. Continued study of potential development of improved forms for use in limited jurisdiction cases.
3. Study of the number of motions made and granted for additional discovery beyond that prescribed by statute (Code Civ. Proc § 95(a)).
4. Study of the disposition of limited cases prior to trial, through alternative dispute resolution, to determine what percentage of the courts' calendars at trial are limited jurisdiction cases and what percentage are unlimited jurisdiction cases. This might provide information to assist in evaluating, for example, whether sufficient information is gleaned through the restricted discovery in limited jurisdiction cases to allow parties to resolve their cases prior to trial.
5. Continued tracking of the quantity of limited jurisdiction cases that are filed, by type (collection, breach of contract, tort, etc.), to determine the extent of

the impact of an increase in the jurisdictional limit on filings as limited jurisdiction cases.

6. Provision of free or low cost mediation in limited cases.⁶ In a case where the value is low, the cost of mediation often causes mediation not to be selected as the means of alternative dispute resolution, given that judicial arbitration can have little or no cost. The use of less expensive or free court mediation should be considered in limited jurisdiction cases to attempt to decrease the percentage of cases that ultimately go to trial.

DISCLAIMER

This position is only that of the State Bar of California’s Committee on Administration of Justice. This position has not been adopted by the State Bar’s Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.

⁶ CAJ recognizes that this idea necessarily raises funding issues, which would need to be addressed before this proposal could be implemented.



SURETY COMPANY of the PACIFIC
8345 BALBOA BOULEVARD, BUILDING 2, SUITE 325, ENCINO, CALIFORNIA 91316-1517
REPLY TO: POST OFFICE BOX 10289, VAN NUYS, 91410-0289
PHONE: (818) 609-9232

March 31, 2003

VIA FACSIMILE AND US MAIL

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

RE: Jurisdictional Limits of Small Claims Cases

Dear Law Revision Commission:

We have received the tentative recommendation of December 2002 regarding the jurisdictional limits of Small Claims cases. Of particular concern to us is the recommendation to eliminate the special jurisdictional limit for claims against guarantors from the present amount of \$4,000.00 to the proposed amount of \$10,000.00.

While we recognize that the jurisdictional limit for non-guarantors has not changed since 1991, the jurisdictional limit against defendant guarantors was raised to \$4,000.00 in 1998. Not only was the ceiling raised only recently, but in limiting the ceiling to \$4,000.00, the legislature recognized the inherent unfairness that a defendant guarantor assumes in Small Claims Court.

We ask that you note that most Small Claims Court actions involve parties seeking compensation from a tortfeasor or parties seeking damages for breach of contract. Both the plaintiff and defendant are familiar with the underlying facts. Small Claims Court hearings are held within forty days after the Small Claims Court action is filed. Also, the Small Claims Court procedure does not allow "pre-trial discovery". The quick hearing date and opportunity to gather facts through discovery do not jeopardize the typical parties in a Small Claims Court action inasmuch as the parties are already familiar with the facts and are able to prepare for the hearing in short order.

However, a Small Claims Court defendant who is required to respond based upon the default, actions or omissions of another is typically not familiar with the facts surrounding the underlying dispute. It is not uncommon for such a defendant to be served with a Small Claims Court action and given as little as five days' notice of a hearing. Such a defendant often arrives at a Small Claims Court hearing without any knowledge whatsoever of the nature of the dispute.

We acknowledge that California Code of Civil Procedure Section 116.570 (a)(3)(B) allows a defendant guarantor to postpone a hearing for thirty days upon written request. However, without the use of discovery, the ability to postpone the hearing for thirty days is of no benefit in many instances.

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March 31, 2003
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Additionally, a surety (guarantor) issuing a bond on behalf of a principal is a defendant who is required to respond based upon the default, actions or omissions of another. License and permit bonds are issued pursuant to statute and the conditions for recovery from such bonds are often very complex. Further, a payment from such a bond often results in loss of licensure or loss of a permit – culminating in the licensee's or permittee's loss of livelihood.

The advent of a higher Small Claims Court monetary jurisdiction in respect to guarantors will result in many more such cases being litigated in Small Claims Court. The inevitable result will be a massive increase in the number of appeals to the Superior Court, particularly given the increase in complexity of many cases that the increased jurisdictional limit will bring. Additionally, the penal sum of Contractors' License Bonds will increase from \$7,500.00 to \$10,000.00 in January 2004, which when coupled with the increase in the defendant guarantor jurisdictional limit, will further cause an increase in cases being litigated in Small Claims Court and, inevitably, further increase in the number of appeals to Superior Court.

A surety, especially a surety issuing a license or permit bond, should not be forced to appear in Small Claims Court to argue the complex conditions for recovery from such a bond without any knowledge whatsoever of the underlying dispute between the plaintiff and the bond principal. Furthermore, the bond principal and the surety should be allowed to appear with counsel due to the drastic consequences of a payment from a license or permit bond (attorneys cannot appear in Small Claims Court).

From our perspective, the present jurisdictional limit for defendant guarantors is sufficient to balance the unfairness of the process to a defendant guarantor versus the need to allow plaintiffs a cost and time saving forum to address their complaints, particularly since the average loss payment of approximately \$4,000.00 for the license bonds that we issue is equal to the present jurisdictional limit.

Thank you for your consideration of these issues. We will be happy to provide you with any further information you may need.

Very truly yours,



Earl Wainwright
Claims Counsel
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LOS ANGELES COUNTY LAW LIBRARY

301 WEST FIRST STREET
LOS ANGELES, CALIFORNIA 90012-3100
(213) 629-3531 • FAX (213) 613-1329
E-MAIL: LACLL@LALAW.LIB.CA.US

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RICHARD T. IAMELE, SECRETARY



RICHARD T. IAMELE, LIBRARY DIRECTOR

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File: _____

February 25, 2003

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303-4739

Re: Tentative Recommendation #J-1321

Dear Commission Members:

We have received your Tentative Recommendation #J-1321 relating to Jurisdictional Limits of Small Claims Cases and Limited Civil Cases. After giving it careful consideration and for the reasons as set forth below, we adopted the following resolution at our January 22, 2003 Board meeting:

RESOLVED, that the Board of Law Library Trustees of Los Angeles County supports the Tentative Recommendation of the California Law Revision Commission regarding limited civil and small claims jurisdictional limits, provided that no revenues currently received by the Los Angeles County Law Library are lost; and be it

RESOLVED, FURTHER, that the Board of Law Library Trustees of Los Angeles County requests that the California Law Revision Commission amends its Tentative Recommendation to provide that Business and Professions Code Section 6323 be amended to eliminate the law library filing fee exemption in Small Claims Court and to make conforming amendments as necessary.

We appreciate the Commission's interest in moving certain limited civil jurisdiction cases to small claims court, as set forth in the Tentative Recommendation. However, we believe that the recommendation has the unintended result of cutting revenues to county law libraries. More specifically, Business and Professions Code Section 6323 exempts parties to small claims cases from the law library filing fee. The Tentative Recommendation expands the scope of cases filed under small claims jurisdiction and will further deprive the Los Angeles County Law Library, indeed all county law libraries, of desperately needed funds.

California Law Revision Commission
February 25, 2003
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There is a misconception that county law libraries function mainly for the benefit of attorneys. What is not well known is that statewide 40% and more of the patrons of county law libraries are non-attorneys. In several of the Branch Libraries of the Los Angeles County Law Library this figure exceeds 50%. County law libraries today often facilitate access to the courts by individuals who do not retain counsel, especially in small claims cases where litigants use the county law libraries to prepare their cases.

We appreciate the need to facilitate access to the courts that we believe the Tentative Recommendation is designed to accomplish. However, we also believe that there are unintended, adverse consequences and that these can be remedied by having small claims litigants pay the modest law library filing fee as do other litigants. This payment is fair and necessary if county law libraries are to continue to provide effective access to justice for the self-represented individual.

If you have any questions or comments regarding our resolution please contact Richard Iamele, our Library Director, at 213.629.3531.

Sincerely,



Susan Steinhauser, Esq.
President of the Board of Law Library Trustees
of Los Angeles County

cc: Barbara Gaal, California Law Revision Commission
Janet Grove, Administrative Office of the Courts
Hon. Mary Thornton, Chair, Three Track Study Group

Calaveras County Law Library

**Government Center
891 Mountain Ranch Rd.
San Andreas, CA 95249**

February 20, 2003

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File: _____

California Law Revision Commission
4000 Middlefield Rd., Rm. D-1
Palo Alto, CA 94303-4739

Gentlemen:

The trustees of the Calaveras County Law Library at its February meeting discussed your tentative recommendation on increasing the jurisdictional limit for Small Claims Court cases from \$5,000 to \$10,000 and increasing limited civil cases from \$25,000 to \$50,000. They appreciate your attempt to adjust for inflation and to improve access to justice. But they are deeply concerned that such a proposal will again have an adverse economic impact on free access to the law for everyone, which is what the county law libraries are all about.

While Small Claims Court litigants use their county law libraries and are "labor intensive," the Small Claims Courts have never contributed any of their filing fees to their county law libraries, as do the other civil filings. Every time the jurisdictional limit for Small Claims Courts are increased, the county law libraries lose revenue. And the county law libraries have been economically devastated over the last decade due to the sharp rising costs of law books and the complete failure of civil court filing fees to keep pace. At the very least, the Small Claims Courts may have to finally start "paying their fare."

Increasing the jurisdictional amount of limited civil cases from \$25,000 to \$50,000 would also decrease civil filing fee revenue for those counties such as Calaveras that collect lessor amounts for the limited jurisdictions.

We hope that you can accomplish your goals here in such a manner as to offset any further economic loss to the county law libraries. They have been too long financially embarrassed.

Sincerely,



MIKE IBOLD
Calaveras County Law Library

COUNCIL OF CALIFORNIA COUNTY LAW LIBRARIANS

◇◇◇

ANNE R. BERNARDO, TULARE COUNTY PUBLIC LAW LIBRARY - PRESIDENT
JANE MEYER, VENTURA COUNTY LAW LIBRARY - VICE PRESIDENT
RAY MACGREGOR, SANTA BARBARA COUNTY LAW LIBRARY - SECRETARY
KAREN LUTKE, SAN MATEO COUNTY LAW LIBRARY - TREASURER

January 17, 2003

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California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

JAN 20 2003

File: J-1321

Dear Commission Members:

Thank you for the opportunity for public comment on the Tentative Recommendation on Jurisdictional Limits for Small Claims and Limited Civil Cases (# J-1321, December 2002).

The Commission and Judicial Council's joint effort to improve public access to justice is highly commendable and California county law librarians are supportive of such steps. We have reviewed the material provided and believe several important issues require your serious consideration as you move this Recommendation forward.

California's county law libraries serve the public and provide legal materials and legal reference assistance to all. Informal surveys and anecdotal usage within each library show that a large percentage of law library patrons use a library's small claims materials and reference services to study their issues, obtain information, and to prepare their forms. The small claims and other self-represented litigants place a higher overall demand on law library resources. The law libraries may provide books, pamphlets, website direction, legal research and computer instruction, general legal reference material, and in some libraries, shared space with the court's self-help center. Often, these self-represented litigants become return users of the law library as they pursue their issue further, e.g., appeal, collecting a judgment. Since the small claims advisor is a part-time position in many counties, the small claims user often relies on their county law library to provide them with the assistance and resources to prepare and to follow-up on their small claims actions.

Additionally, in a project to expand library reference service to the public, the California State Library has funded a 24/7 online reference project that includes ten county law libraries participating as their legal specialists. In live interactive sessions via the Internet, these law librarians provide direct reference service to a user on resources and information available on the Internet. Reference service dealing with small claims and other limited civil jurisdiction questions have been handled here as well. "Ask a Law Librarian" links are found on the Judicial Council's Self-Help website www.courtinfo.ca.gov/selfhelp, individual library websites, and through public reference librarians in Northern and Southern California. Usage has grown so high that more county law libraries are being added to respond to the demand. County law library service is no longer limited to a library's four walls.

Since 1891, county law libraries have been primarily funded by a portion of the court's filing fee in civil actions only. No portion of a small claims filing fee goes to the county law libraries. Over

the last ten years, law libraries have seen a dramatic decrease in revenue due to the increasing number of fee waivers and use of alternative dispute resolution. At the same time, inflation and the cost of legal publications and online subscriptions combined have escalated annually. With the county law libraries' revenue steadily decreasing and its buying power weakened, many libraries are in a precarious balancing act of limiting its resources and essential services.

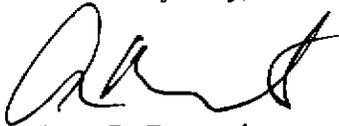
As found in the PSI study, predicting the fiscal consequences of raising jurisdictional limits would be difficult. We also understand the difficulty in obtaining accurate county-by-county statistics to quantify the effect of increased jurisdictional limits on the county law libraries. However, even without uniform statistics, CCCLL would point out that if the small claims limit were increased to \$10,000, then those filings that formerly would have fallen within limited jurisdiction and yielded fee revenues would now contribute zero support to the law libraries. For example, here in small, rural Tulare County, a preliminary estimate for 2002-03 shows that the law library would suffer a 10 percent decrease in filing fee revenue if the small claims limit were increased.

Furthermore, by increasing the limited jurisdiction limit to \$50,000, a county law library that receives a lower filing fee portion in limited than unlimited jurisdiction filings would suffer an additional decrease in revenues due to the shift.

Noted in the Recommendation's Staff Memoranda attachments - First Supplement to Memorandum 2002-61, First Supplement to Memorandum 2002-53 - we find mention of exploring increased funding for county law libraries. CCCLL would wholeheartedly endorse and welcome a discussion of this issue with the CLRC and the Judicial Council to strengthen the Tentative Recommendation and to improve the public's access to justice.

We respectfully encourage the Commission to consider the above listed points and to recognize the impact and level of assistance that California county law libraries currently provide to the small claims and limited jurisdiction litigants. Thank you for your consideration and the opportunity for input.

Yours very truly,



Anne R. Bernardo
CCCLL President

Director, Tulare County Public Law Library
221 S. Mooney Blvd., Rm. 1
County Courthouse
Visalia, CA 93291-4543
559.733.6395 voice
559.730.2613 fax
abernard@co.tulare.ca.us

c: Hon. Mary Thornton House
Hon. Paul A. Vortmann
William C. Vickrey
Janet Grove
Cara Vonk
Michael Y. Corbett

COUNCIL OF CALIFORNIA COUNTY LAW LIBRARIANS

◇◇◇

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August 1, 2003

Law Revision Commission
RECEIVED

AUG - 6 2003

File: J-1321

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Dear Commission Members:

The members of the Council of California County Law Librarians discussed the CLRC Tentative Recommendation on Jurisdictional Limits for Small Claims and Limited Civil Cases (# J-1321, December 2002) at its recent business meeting. As stated in our January 17, 2003 comments, the county law librarians are supportive of such steps by the Commission and Judicial Council to improve public access to justice; however as pointed out, we also have several serious concerns on how this Recommendation would impact the law libraries. To alleviate the negative burden the Recommendation would have on the county law libraries and to sustain the public's access to justice provided by the county law libraries, CCCLL recommends that

“Any court filing fee assigned to small claims cases exceeding \$5,000 will include in each county that county's law library fee established for limited jurisdiction cases, and such increases to that county's law library fee as authorized by statute.”

California's county law libraries are funded primarily by a portion of the court's filing fee in civil actions only. No portion of a small claims filing fee goes to the county law libraries. With the libraries' decade long decrease in revenue due to an increasing number of fee waivers and use of alternative dispute resolution, county law libraries have also had to contend with a soaring escalation in the cost of legal publications and online subscriptions, as well as the costs of retaining qualified staff. Many libraries are already in a precipitous balancing act of cutting back resources and essential services.

As noted in our earlier comments, we understand the difficulty in projecting accurate statistics to quantify the effect of increased jurisdictional limits on the county law libraries. However, even without uniform statistics, CCCLL would point out that if the small claims limit were increased up to \$10,000, then those filings that formerly would have fallen within limited jurisdiction and yielded fee revenues would now contribute zero support to the law libraries. Several county law libraries have estimated that they would suffer revenue losses in the range from ten to twenty-five percent if the small claims limit were increased.

Furthermore, by increasing the limited jurisdiction limit to \$50,000, a county law library that receives a lower filing fee portion in limited than unlimited jurisdiction filings would suffer an additional decrease in revenue due to the shift. The Recommendation as currently drafted would only worsen an already bad situation in the county law libraries, and would affect not just the small claims and limited jurisdiction litigants, but all users.

As a frontline for the public's access to justice, California's county law libraries have served the public for over a century. A library can provide legal material in print and electronic formats, and its reference staff may handle face-to-face, telephone, email, as well as 24/7 online reference questions. County law library service is not limited to a library's four walls.

CCCLL respectfully encourages the Commission to consider the impact and level of assistance that California county law libraries currently provide to the small claims and limited jurisdiction litigants. Our recommendation to include the law library fee in cases over \$5,000 would strengthen your proposal and would continue to support the public's fundamental right to access to justice. Thank you.

Yours very truly,



Anne R. Bernardo
CCCLL President

Director, Tulare County Public Law Library
221 S. Mooney Blvd., Rm. 1
County Courthouse
Visalia, CA 93291-4543
559.733.6395 voice
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abernard@co.tulare.ca.us

c: Hon. Mary Thornton House
Hon. Paul A. Vortmann
William C. Vickrey
Janet Grove

FRESNO COUNTY PUBLIC LAW LIBRARY

Board of Trustees:
Hon. Debra Kazanjian, President
Hon. Stephen Kane
Hon. Ralph Nunez

1100 Van Ness, Room 600
Fresno, California 93721
(559) 237-2227
Fax (559) 442-4960

Hon. Edward Sarkisian, Jr.
Hon. Denise Whitehead
Susan Anderson, Supervisor
Katherine Hart, Esquire

February 6, 2003

Law Revision Commission
RECEIVED

FEB 14 2003

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

File: _____

RE: Study J-1321

Dear Commission Members:

The Fresno County Law Library Board of Trustees is pleased the Commission has engaged a study to improve access to justice for all litigants. In 1891 the Fresno County Law Library was established for that very purpose and spurs us to comment on Study J-1321 and the potential threat it poses to county law libraries.

Civil filing fees support county law libraries in California (California Business & Professions Code Sections 6321 and 6322). There is currently no provision for a law library fee in small claims even though small claims litigants are frequent users of the county law library. An increase in the small claims limit will reduce revenue for county law libraries due to the movement of limited civil filings to small claims.

In Fresno County the civil filing fee paid to the law library is less in cases of limited jurisdiction than unlimited. Again, we are concerned the changes suggested in your study will impact our local revenue if cases that would have been filed in unlimited are filed in limited with the lower associated fee.

It is our experience that small claims litigants, without the benefit of counsel, rely on the law library for their research needs. Due to their lack of training in legal research they require assistance that greatly exceeds time and service provided to other patrons. Our current level of staffing and our existing resources are not sufficient to serve the needs of additional patrons. Loss of revenue would jeopardize not only service to small claims litigants but to the community overall. The self-represented litigant may find their access hampered without a library or librarian to assist with their research and preparation.

Information taken from the Judicial Council's Report on the California Three Track Civil Litigation Study reveals the potential loss of revenue to the law library could exceed \$79,000 annually if all limited cases under \$10,000 were filed in small claims. This projection assumes all cases pay a filing fee and is based on the law library's current portion of that fee (\$23.00). Potential loss of revenue for unlimited cases becoming limited is unknown.

We appreciate this opportunity to voice our concerns and request our views be given consideration as the study proceeds. We strongly advocate that any change to the jurisdictional limits also include sufficient financial support for county law libraries. An adequate county law library not only ensures access to justice but also addresses the quality of justice by providing resources and training for litigants and court employees.

Thank you for considering our position. If you require additional information regarding the operations of the Fresno County Public Law Library please contact our librarian, Sharon Borbon, at 559-237-2227 or sborbon@fresno.ca.gov.

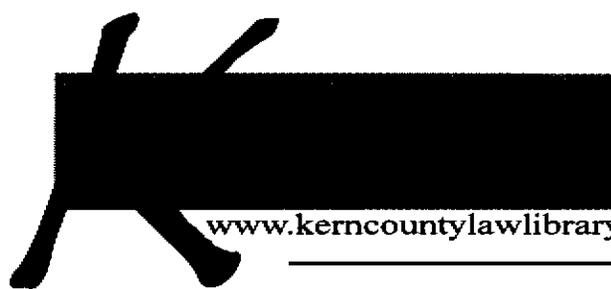
Sincerely,



Hon. Debra Kazarjian
President, Fresno County Law Library Board of Trustees

c. Hon. Mary Thornton House
Janet Grove
Anne Bernardo
Michael Y. Corbett

1415 Truxtun Ave., Rm. 301 Bakersfield, CA 93301
Phone: 661.868.5320 Fax: 661.868.5368 Email: lawlibrary@co.kern.ca.us



www.kerncountylawlibrary.org

Board of Trustees

Hon. Patrick M. Alderete, Joel Andreesen, Esq.,
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January 25, 2003

Law Revision Commission
RECEIVED

FEB - 6 2003

California Law Revisions Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

File: _____

Dear Commission Members:

While the Kern County Law Library understands and fully supports the need for improved public access to justice, we have the same concerns as those expressed to you in the Council of California County Law Librarians' (CCCLL) letter of January 17, 2003. The Kern County Law Library would also like to express its own concerns regarding the Tentative Recommendation on Jurisdictional Limits for Small Claims and Limited Civil Cases (#J-1321, December 2002) and the effect it would have on our library.

Over the past decade, the law library has experienced an increase in self-represented litigants using the law library. Recent statistics show that 51% of those that use the library are not attorneys and many of these are filing small claims actions. Besides providing guidance to small claims litigants through books the library also provides a typewriter and computers so that litigants may conveniently complete their forms. Many times small claims patrons become repeat users as they traverse through the appellate process or in conjunction with collecting their judgment.

It is important to point out that the sole funding mechanism for county law libraries consists of a portion of the civil filing fee amount. Law libraries already are facing budget restraints, due to lost revenue from the large increase in fee waivers and the ever increasing cost of legal publications, forcing them to reduce services.

Increasing the small claims amount to \$10,00 would take away even more revenue, having a detrimental effect on county law libraries. Small claims litigants, not having the option of hiring attorneys, must represent themselves in court. In order to adequately represent themselves research is necessary; however with decreasing budgets county law libraries will not be able to provide adequate assistance or services.

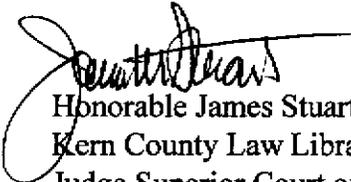
Not only will there be an increase in those accessing the law library for small claims actions, but the reductions will affect all those that use the law library for various other reasons. For example, Kern County has the highest number of family law cases filed in the State of California and many are brought in pro per. Without the access to the law library and its resources, these litigants pose an added burden on the courts, as they will enter court unprepared. A reduction in fees means a reduction in services for these patrons as well. Therefore it is important to remember that the loss of

revenue, due to the increase in small claims jurisdiction, extends beyond the effect on small claims litigants but means a reduction in services for all self-represented litigants.

As noted in the CCCLL letter and in the Recommendations' Staff Memorandum attachments – First Supplement to Memorandum 2002-61, First Supplement to Memorandum 2002-53 – the Kern County Law Library endorses and encourages a discussion on exploring increased funding for county law libraries in conjunction with the small claims increase.

We thank you for the opportunity for public comment on this issue and respectfully ask that you to consider the level of assistance county law libraries provide not only to small claims litigants, but to all self-represented litigants who have a need to access the courts.

Very truly yours,



Honorable James Stuart
Kern County Law Library Trustee
Judge Superior Court of the County of Kern



Annette Heath
Law Librarian
Kern County Law Library
CCCLL Legislative Chair

Cc: Honorable Mary Thornton House, Chair Three Tiered Task Force Working Group
Janet Grove, Administrative Office of the Courts

ORANGE COUNTY PUBLIC LAW LIBRARY

515 NORTH FLOWER STREET
SANTA ANA, CALIFORNIA 92703-2354
(714) 834-3397 • FAX (714) 834-4375

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January 29, 2003

Law Revision Commission
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FEB - 3 2003

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

File: _____

Re: Tentative Recommendation #J-1321
Jurisdictional Limits of Small Claims Cases and Limited Civil Cases

Dear Commission Members:

The Board of Trustees of the Orange County Public Law Library wishes to submit comment on the Commission's Tentative Recommendation on Jurisdictional Limits for Small Claims and Limited Civil Cases (#J-1321, December 2002).

The Trustees are concerned that if this recommendation is enacted as currently proposed, a consequence would be that county law libraries would shoulder an additional work load in providing information to more small claims litigants while suffering a reduction in our income at the same time. A civil case with the amount in controversy between \$5,000 and \$10,000 now filed as a limited jurisdiction case results in the county law library receiving a portion of the filing fee from both the plaintiff and defendant. If that case could be filed as a small claims court case, the law library would not receive any portion of the filing fees. The Superior Court for Orange County cannot provide us any information about the annual number of cases in this range, so we cannot estimate the extent of our possible revenue loss. However, in the current legal publishing market, any reduction in our revenue will restrict our ability to provide legal information to all residents of the county.

The Trustees propose that the Commission consider a law library portion of the filing fee for all small claims cases in recognition of the support provided by county law libraries to small claims litigants.

Thank you for your consideration of our concerns.

Very truly yours,

Maryruth Storer

Maryruth Storer
Law Library Director



PLACER COUNTY LAW LIBRARY

1523 LINCOLN WAY • AUBURN, CA 95603-5009 • TEL. (530) 823-2573 • FAX (530) 823-9470

March 25, 2003

Law Revision Commission
RECEIVED

MAR 26 2003

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

File: _____

Re: Jurisdictional Limits for Small Claims and Limited Civil Cases

Dear Commission Members:

The Placer County Law Library would like to register comments on the proposed Tentative Recommendation on Jurisdictional Limits for Small Claims and Limited Civil Cases (#J-1321, December 2002). The library is supportive of any efforts to improve public access to justice, but raising the jurisdictional limit to \$10,000 on small claim cases would have an impact on public law library funding.

Over 95% of the income for Placer County Law Library is from a portion of the civil filing fees, and currently, state law does allow the library to collect any fees for small claims cases. Raising the jurisdictional limit to \$10,000 would deprive the law library of the filing fee that would have been collected on a limited civil filing. It is estimated that this could be 5-10% of the law library's income for the year.

Small claims litigants currently make up a significant portion of law library customers. They use the law library for self-help legal materials, reference assistance, and public access computers. We would like you to consider adding language which would allow the law library fee to be added to the filing fee for small claims cases over \$5,000. Currently, our library receives \$26 of the \$98 filing fee for limited civil cases under \$10,000 and we would request that the library receive the same proportionate share of the new filing fee in small claims cases over \$5,000.

Thank you for your consideration and the opportunity for comment.

Sincerely,

Christopher J. Christman
Placer County Law Librarian



SACRAMENTO
C O U N T Y
P U B L I C · L A W
L I B R A R Y

March 26, 2003

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Re: #J-1321, Tentative Recommendation on Jurisdictional Limits for Small Claims and Limited Civil Cases

Dear Commission Members:

The Board of Trustees of the Sacramento County Public Law Library concurs with the recommendations submitted by Anne R. Bernardo, President of the Council of California County Law Librarians on January 17, 2003. The impact on county law libraries must be seriously considered. In particular there will be a substantial loss of filing fee income to the law libraries if the jurisdiction limit is raised. At the same time the libraries will be answering more small claims questions and purchasing additional legal resources on small claims related topics.

Sacramento County Public Law Library currently receives \$38 for each civil filing. In 2002-2003 the law library is estimating it will receive filing fee income on approximately 51,000 cases. If even 10% of those cases had been under the small claims jurisdiction under the proposed new limits, the library would have not realized \$193,800 of income. That is more than entire branch library budget. The branch library serves staff and constituents of the family law courthouse and the courthouse where small claims, traffic, and unlawful detainer cases are heard. Despite the excellent small claims advisory in Sacramento County, library staff field small claims questions and provide pathfinders and resources for self represented litigants. In addition our public services librarians spend an average of 16 hours per week answering questions for the county law libraries collaborative public focused 24/7-reference service. Our library director coordinates the program. Twenty-five percent of those questions are related to small claims actions.

We strongly encourage that the recommendations made in two staff memorandums attachments the idea of exploring increased funding for county law libraries. Public law libraries are integral to the administration of justice. Any decrease in filing fee income substantially hinders our ability to serve those who needs are being addressed by lowering the jurisdictional limits.

Sincerely,

Shirley H. David, Director
Sacramento County Public Law Library

Law Revision Commission
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MAR 27 2003

File: J-1321

BOARD OF TRUSTEES:

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BRANCH LIBRARY: 3341 POWER INN ROAD, ROOM 112, SACRAMENTO, CA 95826 916.875.3490 FAX 916.875.3493

[HTTP://WWW.SACLAW.LIB.CA.US](http://www.saclaw.lib.ca.us)

COMMENTS OF SANTA CRUZ COUNTY LAW LIBRARY

Date: Jan. 23, 2003
To: janet.grove@jud.ca.gov
From: Santa Cruz County Law Library <librarian@lawlibrary.org>
Subject: Small Claims Court Jurisdictional Limit
Cc: bgaal@clrc.ca.gov

The Santa Cruz County Board of Law Library Trustees voted to **STRONGLY OPPOSE** increasing the small claims limit unless county law libraries are guaranteed a portion of the filing fee to offset the loss of revenue.

Small claims litigants are frequent (and grateful) library users - this is where citizens come for self-help resources. The Small Claims Advisor in our area has extremely limited hours and actually operates out of Monterey County.

Law libraries have lobbied for a “small claims fee” in the past without success, the reason always being that courts want to keep the cost of filing to a minimum. This doesn’t make sense when the issue is self-represented litigants. If the intent of the legislature is to improve access to justice then we need to have informed litigants. There is no better place to acquire information than the public law library.

Pat Pfremmer
Law Librarian

COMMENTS OF SISKIYOU COUNTY LAW LIBRARY

From: Gina DeRose <GDeRose@siskiyou.courts.ca.gov>
Sent: Jan. 22, 2003
To: Grove, Janet
Subject: RE: Fwd: Small Claims limit

Dear Janet,

As a law librarian from a small county, I think there are two issues. One is that those people who would have previously filed a limited jurisdiction case would also have paid a fee for the law library. Something similar should be built into any new legislation, only because law libraries really have no other legislated funding. Second, people with small claims cases are not represented by attorneys. If they do not have access to a law library or the Internet, they really have very few other choices for information. Siskiyou County Public Library, for example, has no legal books, as there are limited funds, so that library does not duplicate what my library has. The person could maybe buy a self-help book; this might require a trip somewhere else or waiting for an order to arrive, as small book stores often would not have such books at hand. Altogether, we want to offer timely and accurate information for those using the court.

Gina
Siskiyou County Public Law Library

**Superior Court
State of California**



ELAINE WATTERS
JUDGE
(707) 565-2461
FAX (707) 565-6146

COUNTY OF SONOMA
HALL OF JUSTICE
600 ADMINISTRATION DRIVE
SANTA ROSA, CALIFORNIA 95403

March 25, 2003

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Dear Commission Members:

Thank you for the opportunity for public comment on the Tentative Recommendation on Jurisdictional Limits for Small Claims and Limited Civil Cases (#J-1321, December 2002). As the President of the Sonoma County Public Law Library Board of Trustees, I would like to ask you to consider the impact of this recommendation on county law libraries.

A small share of civil filing fees funds county law libraries. No portion of Small Claims filing fees is allocated to law libraries. Over the past ten years filing fee revenue has declined due to the increasing number of fee waivers and alternative dispute resolution. At the same time the price of legal publications has increased dramatically. Law libraries are caught between escalating costs and declining revenue. In Sonoma County we expect to experience a ten-percent reduction in filing fee revenue if the Small Claims jurisdictional limit is increased from \$5,000 to \$10,000.

County law libraries provide public access to legal materials. Nearly half of library users are not attorneys. The Sonoma County Small Claims Advisor meets with litigants in the Law Library conference room, and litigants rely on library resources and assistance to prepare and follow up on their actions. Although the Board of Trustees is not opposed to increasing the Small Claims limit we respectfully request that county law libraries be guaranteed a portion of the filing fee to offset the loss of revenue they will experience.

We hope that you will recognize the high level of assistance county law libraries provide Small Claims litigants and provide funding to support their efforts. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Elaine Watters".

Judge Elaine Watters
President, Law Library Board of Trustees

Law Revision Commission
RECEIVED

MAR 27 2003

File: J-1321



A Chapter of the American Association of Law Libraries
PMB 334, 8391 Beverly Boulevard, Los Angeles, CA 90048
www.aallnet.org/chapter/scall/

Law Revision Commission
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APR 2 2003
File: J-1321

2002-2003 OFFICERS

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PATRICK MEYER
Loyola Law School
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FAX (213) 487-2204
patrick.meyer@lls.edu

March 27, 2003

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

**RE: Tentative Recommendation on Jurisdictional
Limits for Small Claims and Limited Civil Cases
(# J-1321)**

Dear Commission Members:

I serve as President of the Southern California Association of Law Libraries (SCALL). This is an association representing over 400 law librarians from law firms, law schools, county law libraries and other institutions in the Southern California region.

We are concerned with some of the unintended consequences of raising the jurisdictional limit for small claims cases from \$5,000 to \$10,000 and for limited jurisdiction cases to \$50,000 as proposed in Study J-1321. Although we are not, of course, opposed to expanding access to the courts, a change in jurisdiction would reduce filing fee revenues which is the major source of income for county law libraries. County law libraries currently receive no money from small claims cases. They receive income from limited and unlimited jurisdiction civil cases. Although it is not possible to predict the number of cases that would be added to small claims courts and limited jurisdiction courts by a shift in jurisdictional limits, it will almost certainly mean reduced income for county law libraries.

Across the state, even with the fee increases that could be obtained, due to a decline in the number of *paid* filing fees, income has been flat since 1992. Meanwhile, the cost of law books have increased 60 percent, and the CPI has increased about 24 percent, so the county law libraries have lost some 40 percent of purchasing power. Also, other positive developments such as alternative dispute resolution have lowered income from filing fees.

It is also impossible to predict the increased demand in county law library services from this jurisdictional change. Since small claims



SOUTHERN CALIFORNIA ASSOCIATION OF LAW LIBRARIES

A Chapter of the American Association of Law Libraries
PMB 334, 8391 Beverly Boulevard, Los Angeles, CA 90048
www.aallnet.org/chapter/scall/

litigants cannot be represented in court by attorneys, however, there would likely be an increase in services.

We echo Ms. Vonk's concerns, if not her solutions, for law libraries as summarized in the First Supplement to Memorandum 2002-61. Ms. Vonk mentions the self-help centers in the Ventura County Law Library. Other county law libraries, including those in Nevada and Kings share space and/or staff, with small claims help services. In addition to just sharing space and staff, as mentioned above, county law libraries directly assist small claims litigants. In a sense, they were the Small Claims Advisory Services before these services were created. These services are favorably mentioned in the tentative recommendation and even get a portion of the filing fee revenue. The county law libraries do not receive any revenue from small claims filings.

SCALL urges you to take into consideration the needs and impact on county law libraries of any change in jurisdictional limits in small claims and limited jurisdiction cases.

Very truly yours,

Cornell H. Winston
SCALL President

cc: Hon. Mary Thornton House
Janet Grove

STANISLAUS COUNTY LAW LIBRARY

1101 13th Street Modesto, CA 95354-0907
209.558.7759 FAX 209.558.8284

James J. Milam, President Michael H. Krausnick, Secretary Janice K. Milliken, Law Librarian

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

March 27, 2003

To Whom It May Concern:

On behalf of the Stanislaus County Law Library Board of Trustees, I would like to thank you for the opportunity to comment on the Tentative Recommendation on Jurisdictional Limits for Small Claims and Limited Civil Cases (#J-1321, December 2002).

The important work that the Commission does is widely recognized. In this particular instance, the Commission proposes, among other things, to increase the jurisdictional limits for small claims and limited civil cases. The intent is indeed commendable: to adjust for inflation and improve the access to justice as well as the quality of justice in small claims cases. We, too, recognize the need for these admirable goals.

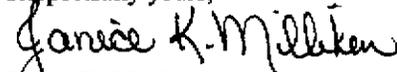
The Stanislaus County Law Library has historically played an important role in improving access to justice by assisting attorneys and self-represented litigants. We strive to improve the quality of pleadings, which help alleviate some of the court's burdens. When Stanislaus County had an attorney serving as Small Claims Advisor, a close relationship existed. Significant portions of our resources (labor and library materials) are directed towards those citizens who are involved in the court system without professional representation. The Commission has identified the reasons this condition exists in its recommendation.

The main source of revenue for California county law libraries is derived from a portion of certain civil filing fees. However, currently there is no provision in the law to collect a portion of the fee from the Small Claims filings. Your proposal, if adopted as recommended, threatens county law library budgets statewide unless a filing fee is imposed which should be used for local law library operations. If jurisdictional limits are increased those filings for which we presently receive revenue will generate no support to us.

In addition to the rising cost of maintaining library collections available to everyone, public law libraries face uncertain revenue shortfalls this year due to a recently enacted law, which extends the statute of limitations for personal injury claims to two years. Possibly, the parties will settle and there will be no revenue generated from these cases to support the many services which filing fees fund.

The Stanislaus County Law Library Board of Trustees strongly encourages the Commission to consider the negative effect on county law library budgets by increasing the jurisdictional limits without also imposing a filing fee directly inuring to the benefit of California county law libraries. We urge you to amend the Tentative Recommendation to provide for a filing fee in cases over \$5,000.00 or some other amount which you deem appropriate.

Respectfully yours,



Janice K. Milliken
Law Librarian

Law Revision Commission
RECEIVED

APR 2 2003

File: J-1321

Cc: Board of Trustees
Janet Grove, Attorney, Administrative Office of the Courts

Member of American Association of Law Libraries, Northern California Association of Law Libraries,
and Council of California County Law Librarians

T U L A R E ♦ C O U N T Y ♦ P U B L I C
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Judge Martin Staven
Sally Reynoso, Esq., Education Liaison

LAW LIBRARY DIRECTOR
Anne R. Bernardo

Law Revision Commission
PROCESSED

February 13, 2003

FEB 24 2003

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

File: _____

Dear Commission Members:

The Tulare County Board of Law Library Trustees is pleased the Commission is studying the issue of improving access to justice in California. We are grateful for the opportunity to comment on the Tentative Recommendation on Jurisdictional Limits for Small Claims and Limited Civil Cases (J-1321) and will address the adverse effect this Recommendation will have on the Tulare County Public Law Library's operations if it is adopted.

A portion of civil filing fees is the primary source of revenue to the county law library (California Business & Professions Code Sections 6321 and 6322). There are no provisions for any amount of a small claims filing fee to be distributed to the law library. In Tulare, if the small claims limit is increased as proposed, it will reduce the number of filings in limited civil court where a fee is now collected for the law library. In estimating the number of applicable limited civil cases shifting into small claims, the TCPLL would suffer a loss of filing fee revenue ranging between \$13,000 to \$26,000, a five to ten percent decrease in revenue. This would have a significant negative impact on our library requiring cuts in both materials and staffing.

In Tulare, many small claims litigants rely on the public law library for their research and preparation needs. A dramatic increase of all self-represented litigants using the county law libraries has been seen statewide in the last ten years. At the same time, the escalating cost of essential legal materials and staffing has placed a difficult demand on the libraries' budgets. Of TCPLL's 20,000 annual users, recent surveys show that 70 percent of our patrons are non-attorneys and 82 percent of our reference service is provided to non-attorneys. A loss in revenue due to increased jurisdictional limits would mean a further reduced law library for all users.

As noted several times in Staff Memorandum attachments to the Recommendation, we support and respectfully encourage the Commission to consider that any increase to the jurisdictional limits in small claims and limited civil actions also includes sufficient financial support to the county law library. An adequate county law library not only ensures access to justice, but also addresses the quality of justice by providing the resources for all parties.

Because of the adverse impact this Recommendation would have on the county law libraries, we urge the Commission to also consider exploring funding support for the county law libraries. Thank you for the opportunity for input and for considering the service the Tulare County Public Law Library now provides to the small claims, limited civil, and all self-represented litigants.

Yours truly,



Hon. Paul A. Vortmann
President
Tulare County Board of Law Library Trustees
Judge, Superior Court of the County of Tulare

c: Hon. Mary Thornton House
Janet Grove
Anne Bernardo

COMMENTS OF DARIAN BOJEUX

Date: Apr. 2, 2003
To: bgaal@clrc.ca.gov
From: Darian Bojeux <bojeux@earthlink.net>
Subject: Increasing Jurisdictional Limits of Small Claims Cases and Limited Civil Cases

I understand that all comments on this proposal are due today.

I am in favor of the proposal, but some attorneys are concerned about the limited discovery which is allowed in limited civil cases. I therefore believe that for those who have cases worth between \$25K and \$50K, they should have the option of filing in either civil limited or superior, without any reprisals concerning the recovery of costs. That is, I am suggesting that the plaintiff not be prevented from recovering all costs in any Superior Court case in which the verdict is \$25K or more. Also, the plaintiff should not be prevented from recovering all costs in any limited jurisdiction case in which the verdict is more than \$5K. It is difficult to impossible to foresee what the ultimate verdict will be in cases, so CCP §1033 concerning the recovery of costs, should be revised so that cost recovery deterrents are based upon the old jurisdictional limits and not the new ones. Capiche?

Thank you for your attention.

Yours truly,

Darian Bojeux
Law Offices of Darian Bojeux
9107 Wilshire Boulevard, Suite 500
Beverly Hills, CA 90210-5526

(310) 278-3213
(310) 273-1284 (fax)
(310) 278-3221 (direct line)

HERB AND CAROL CLOUGH

LINDENWOOD, 40 DEODORA DRIVE, ATHERTON, CALIFORNIA 94027

650-325-7931

FAX 650-473-0970

email: hcclough@hotmail.com

Law Revision Commission
RECEIVED

**CALIFORNIA LAW REVISION COMMISSION
ROOM D-1, 4000 MIDDLEFIELD RD
PALO ALTO, CA., 94353**

MAR 25 2003

File: _____

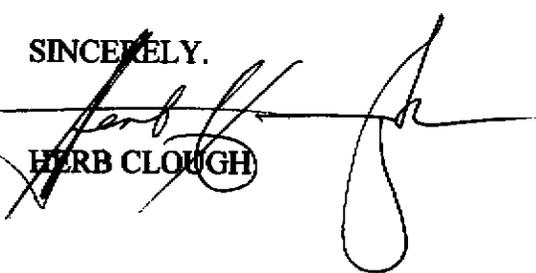
AS A CITIZEN CONCERNED WITH IMPROVING THE PUBLIC'S ABILITY TO SOLVE DISPUTES WITHOUT LENGTHY AND COSTLY COURT PROCEDURES, I URGE YOU TO INCREASE THE LIMITS OF SMALL CLAIMS TO \$10,000 AND TO PROVIDE THE PUBLIC WITH EXPANDED ADVISORY SERVICES SO THAT THE "LITTLE FELLOW" WON'T BE AFRAID TO MAKE USE OF SMALL CLAIMS COURTS.

PERHAPS PROVIDING FOR THE INCREASE IN SMALL CLAIMS FROM \$10,000 TO, SAY, \$15,000 IN X YEARS SHOULD BE CONSIDERED.

ALSO, THERE IS A RANGE OF CIVIL CASES WHERE COURT PROCEDURES IN CASES WHERE THE AMOUNT AT STAKE IS, SAY, 25,000 OR 50,000 COULD BE SIMPLIFIED AND HANDLED WITHOUT A LAWYER.

PLEASE DO SOMETHING TO HELP THE COMMON PERSON SETTLE DISPUTES WITHOUT DRAINING HIS POCKET BOOK

SINCERELY.


HERB CLOUGH

LOW, BALL & LYNCH ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION
702 MARSHALL STREET, SUITE 614, REDWOOD CITY, CALIFORNIA 94063
TELEPHONE (650) 366-4000 • FACSIMILE (650) 839-0165

January 28, 2003

Law Revision Commission
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JAN 29 2003

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

File: _____

Re: Jurisdictional Limits of Small Claims
and Limited Civil Cases

Dear Members of the Commission:

I am writing to you to oppose the increase in the limit for small claims cases and for limited civil cases. I have practiced civil litigation for 35 years with the law firm of Low, Ball & Lynch, a firm that specializes in defending civil litigation. I have also served as President of the Association of Defense Counsel of Northern California and am currently President of the California Defense Counsel.

A great majority of the cases our law firm handles present an exposure of less than \$50,000. To impose the jurisdictional limits of limited civil cases on cases worth between \$25,000 and \$50,000 would work an injustice to those defendants. As the Commission is aware, there is limited discovery available to those defendants in limited civil cases. That limited discovery is often inadequate to accurately evaluate and defend such cases. An inadequately prepared case directly results in harm to defendants beyond the mere increased cost of settling such cases or paying off a judgment. Oftentimes, there is insurance available to cover such risk. A higher settlement or verdict may result in increase in insurance premiums or outright cancellation at time of renewal. This directly affects all consumers in California.

I do not know where the impetus comes from to limit the discovery available to defendants in such cases by increasing the jurisdictional amount of limited civil cases, but I think if Californians were aware how their rights were being impaired by such a proposal, they would overwhelmingly oppose it.

Similarly, the increase in the jurisdictional limit for small claims cases will have a similar negative effect upon defendants. They will be required to defend themselves without counsel and have virtually no information prior to the hearing to prepare for

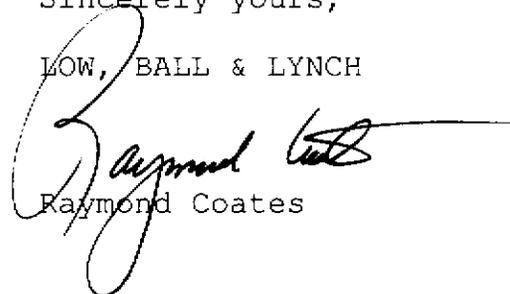
January 28, 2003
Page 2

rebuttal. This simply is unfair. It will end up costing consumers more money through increased insurance premiums and similar costs.

We would be happy to talk to the Commission if further information is desired.

Sincerely yours,

LOW, BALL & LYNCH

A handwritten signature in black ink, appearing to read "Raymond Coates", with a long horizontal flourish extending to the right.

Raymond Coates

RC/mdg

MATHENY SEARS LINKERT & LONG LLP

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P.O. Box 13711
Sacramento, CA 95853-4711

January 27, 2003

Barbara Gaal
Staff Counsel
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, Ca. 94909-4739

Law Revision Commission
RECEIVED

JAN 28 2003

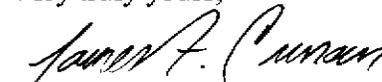
File: _____

Re: Proposed Change: Jurisdictional Ceiling on "Limited Civil Actions"

Dear Ms. Gaal:

I am an attorney in Sacramento. I have been informed the Law Revision Commission is considering increasing the amount in controversy limit in "Limited Civil Actions" to \$50,000. As you know, the parties are allowed only one deposition each in such actions (Code Civ. Proc. § 94, subd. (b)). It would not be in the interests of justice to limit the parties to one deposition each when there is between \$25,001 and \$50,000 at stake. The change in the rules will make it very difficult to evaluate, and therefore settle, cases falling within that range because the parties' attorneys will not know how well key witnesses will hold up under cross-examination, and might not know anything at all about what these witnesses know or saw.

Very truly yours,


JAMES F. CURRAN

RODERIC DUNCAN
JUDGE OF THE SUPERIOR COURT, RETIRED

PRIVATE DISPUTE RESOLUTION
IN FAMILY LAW

1678 SHATTUCK AVENUE, #246
BERKELEY, CALIFORNIA 94709
TELEPHONE (510) 845-1412
FAX (510) 528-1352

February 11, 2003

Barbara Gaal, Esq.
California Law Revision Commission
4000 Middlefield Road
Palo Alto, CA 04303-9739

Law Revision Commission
RECEIVED
FEB 13 2003

File: J-1321

re: CLRC Tentative Recommendation re Small Claims Court

Dear Ms. Gaal:

I am a member of the AOC's Three-Track Study Working Group and a retired Alameda County Superior Court Judge. While a judge of the Oakland Municipal Court, I sat in Small Claims Court frequently and was a consultant on CJER's first edition of the Small Claims Court Benchbook. I am the author of a Nolo Press self-help book on Limited Jurisdiction lawsuits to be released this month.

I endorse all of the December 2002 recommendations of the Commission regarding changes in the law regarding Small Claims Court. When similar issues were before the Three-Track Study Working Group there was a strong feeling from some of those present that \$10,000 was too much too quickly and that \$7,500 was a more appropriate level. My position is influenced by the fact that I have recently handled the small claims appeals calendar in Alameda County on four days. This experience made it clear to me that many Californians with claims in the area of \$10,000 are denied full access to our courts for the reasons addressed on page 13 of the Commission's Tentative Recommendation. This problem is occurring in our courts on a daily basis and there is no good reason to make a gradual approach.

As far as I can tell all of those opposed to the raise to \$10,000 agree that plaintiffs with claims in this area are very frequently forced to write off a part of their claim. Some of those opposed are more concerned about the defendants who are sued for \$10,000 in Small Claims Court and face having a large judgment entered against them without being able to obtain adequate legal advice. But I think we must ask what happens to these cases if they cannot be brought in Small Claims Court. If the plaintiff is a business, the claim will be brought in Limited Jurisdiction with a lawyer and the defendant will have a more difficult task than if the claim had remained in Small Claims Court. It is not unusual for lawyers in such a position to file a motion for summary judgment in order to achieve a quick victory over a defendant who cannot master Code of Civil Procedure section 437c.

Claims of \$10,000 do not go away because of the present limit in Small Claims Court. The plaintiff either reduces his claim to \$5,000 or, if he has a sufficient education to understand the more complicated procedures, files it in Limited Jurisdiction.

Sincerely,



MATHENY SEARS LINKERT & LONG LLP

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January 27, 2003

Law Revision Commission
RECEIVED

JAN 29 2003

Ms. Barbara Gaal
Staff Counsel
California Law Revisions Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94909-4739

File: _____

Dear Ms. Gaal:

I understand the California Law Revision Commission is considering increasing the jurisdictional limits for limited civil actions from \$25,000 to \$50,000. Currently, discovery rules for "limited civil actions" limit the defense to 1 deposition.

A large portion of the cases are automobile liability cases. As you know, California Vehicle Code specifies minimum insurance limits for automobile liability. Those limits are \$30,000 per any single occurrence. That means that there is a potential for a \$20,000 uninsured, personal judgment against the defendant driver in a case within the limited civil action category. When someone is subjected to a potential uninsured loss which may well equal their income for an entire year, it is necessary to consider whether restricting discovery to one deposition under such circumstance constitutes substantial justice.

Thank you for your time.

Very truly yours,

MATHENY SEARS LINKERT & LONG



DENISE J. FISCHER

DJF:cc

COMMENTS OF RICHARD HAEUSSLER (JAN. 11, 2003)

Date: Jan. 11, 2003
To: feedback@clrc.ca.gov
From: Richard L. Haeussler <haeu@ix.netcom.com>
Subject: Jurisdictional Limits of Small Claims Cases and Limited Civil Cases

Message: I am in favor of the increasing the Jurisdiction of the courts as outlined.

I would further suggest that in Small Claims cases, the parties have the ability to consult with "attorney advisor" on the day of trial, which could be law students. or that the Law Revision Commission authorize the appearance of 2nd and 3rd year law students [certified by the court and school] on the part of parties

COMMENTS OF RICHARD HAEUSSLER (JAN. 17, 2003)

Date: Jan. 17, 2003
To: bgaal@clrc.ca.gov
From: Richard L. Haeussler <haeu@ix.netcom.com>
Subject: Jurisdictional Limits of Limited Civil Cases

Message: I am in favor of the increase both of the Small Claims and Limited Civil case jurisdiction limits as outlined in proposal J1321 [Limited Courts to \$50,000 & Small Claims to \$10,000.

This comment is limited to the Limited Civil Jurisdiction cases. I would like to suggest that the commission add a provision that would allow the plaintiff or cross complainant to reclassify a limited to an unlimited case by an ex parte procedure [maybe on a showing of good cause] without having to go thru a motion procedure to file an amended complaint and have a hearing.

I have recently had two cases, filed in limited jurisdiction [both with uncooperative workers compensation carriers] in which the carrier has filed WC liens in excess of the \$25,000.00 jurisdiction of the Limited Case.

In one case the WC lien was \$48,000.00 and climbing and in the other the claimed lien was \$64,000.00 and climbing. In both cases these numbers came out of left field. Both arise out of auto collisions in which there was WC jurisdiction.

Now in both cases, a motion to amend the complaint to reclassify the case from limited to unlimited will have to be made, a hearing date will be set, and a judge's time used to

look at a motion, and to follow current law, which allows such an amendment and transfer.

I would suggest a simplified procedure, such as having the party who is seeking the transfer to give notice of intent to amend the complaint or cross complaint to reclassify the jurisdiction, and if the opposing party objects, the opposing party would be responsible to make the motion to oppose the reclassification and would have to show good cause for the opposition.

If no motion were filed within a reasonable time, [20 or 30 days] Then the person seeking the reclassification would file a simple form, with an amended facing page or amended complaint, and pay a reduced transfer fee which would accompany the form.

I would also suggest that no new responsive pleading would be necessary. Discovery under the unlimited jurisdiction rules would be re-opened for a short period of time [120 to 160 days] and the case could be retained in the limited jurisdiction venue if authorized by local rule

COMMENTS OF ROBERT KORNSWIET

Date: Feb. 21, 2003
To: bgaal@clrc.ca.gov
From: Robert Kornswiet <rlkornswiet@earthlink.net>

I have been a lawyer since December 1977. It is my understanding that there is a proposal to raise the jurisdictional limits on limited jurisdiction cases to \$50,000 & small claims cases to \$10,000. I'm for both.

However, given the restrictions on discovery in limited jurisdiction cases, I suggest the number of discovery items (interrogatories, requests for admissions etc) which are currently limited to 35 for the entire case should also be raised to 75, and the number of depositions from 1 to 3.

As to small claims cases, most are heard by volunteer attorneys. I think more resources should be devoted there & consideration for informal discovery so that both sides must exchange all documents together with a narrative of what their witnesses will say within 10 days prior to the hearing.

Robert L. Kornswiet #77058



Superior Court of California
County of San Joaquin

Barbara Kronlund
Commissioner

Tracy Branch
475 E. 10 St.
Tracy, CA 95376

Law Revision Commission
Proposals

(209) 831-5909
Fax (209) 831-5919

JAN 20 2003

File: J-1321

MEMO- 1/16/03

TO: California Law Revision Commission

ATTN: Barbara Gaal, Staff Counsel

BAW **FROM:** Barbara Kronlund, San Joaquin County Superior Court Commissioner

RE: Request for public comment concerning small claims and civil cases

I fully support increasing the small claims jurisdictional limits from \$5000 to \$10,000. I believe inflation requires this, but I also think that it will increase access to justice since many lawyers simply cannot afford to handle such small cases. This will serve judicial economy as well by reserving juries' time for more serious cases and eliminating discovery expenses which will then allow for more money to go to the successful litigant instead of to their attorneys fees and costs. It just makes a lot of sense.

I also support increasing limited case jurisdiction from \$25,000 to \$50,000. In today's market, a \$50,000 case is a "small" case. I think the courts that handle limited cases are fully capable of handling the additional cases that fall within the \$50,000 cap. This might help to curb out of control discovery to some degree since attorneys won't be so afraid of possible run-away verdicts on their smaller cases. I think this can relieve the stress on some courts by taking the \$25,001-\$50,000 cases out of the unlimited jurisdiction courtrooms, thereby giving them more time to settle the bigger cases.

The additional proposals to improve funding for small claims advisory services, to eliminate special jurisdictional limits for a guarantor in small claims, and increasing the two-claim cap to \$5,000 are all needed improvements to small claims.

However, I don't think that it's probably necessary to codify case law which states that a court may deny recovery of attorney's fees to a prevailing party who could have sued in small claims but elected not to. It's already the law; not codified, but statutory, and that is controlling without any codification. (This might be a costly endeavor that doesn't net any benefit; something to consider given the tight budget this year).

Thank you for considering my comments.

JONES, MAHONEY, BRAYTON & SOLL LLP

A LIMITED LIABILITY PARTNERSHIP

ATTORNEYS AT LAW

150 WEST FIRST STREET, SUITE 280

P. O. BOX 940

CLAREMONT, CALIFORNIA 91711

(909) 399-9977

FAX (909) 399-5959
www.jmbs-law.com

THOMAS C. BRAYTON*
PAUL M. MAHONEY*
STEPHEN C. JONES*
RICHARD A. SOLL

*A PROFESSIONAL CORPORATION

Law Revision Commission
RECEIVED

February 20, 2003

FEB 24 2003

File: _____

California Law Revision Commission
4000 Middlefield Road, Rm. D-1
Palo Alto, CA 94303-4739

Re: Law Revision Commission Recommendations Relating to Jurisdictional Limits of
Small Claims Cases and Limited Civil Cases

Gentlemen:

I am writing to comment on the proposal to increase the jurisdictional limit for a small claims case from \$5,000 to \$10,000. That is a terrible idea. \$10,000 is a lot of money and to allow unsophisticated people to present claims in court, particularly against public entities will have the effect of denying justice to the very people the Commission wants to help.

I have been practicing law for 34 years and my experience has been that in small claims, you normally don't get a judge, might be lucky to get a commissioner, but most often get a lawyer volunteering his or her time. Often the number of cases on calendar is so large that not much time is given to each case with the result that small claims is not justice for the poor or the middle class, but rather a clearing house for judges who don't have to fool around with legal issues which sometimes are very complex, in small cases. That is not good.

Also, I saw on two cases this year involving well-educated, well to do clients that the legal system can be manipulated by public entities. In one case, my client went to court and the City and its claims adjustor would not stipulate to the pro tem and instead wanted the commissioner (who I'm sure they'd appeared in front of many times before). Therefore, the City was sophisticated enough to basically "affidavit" the pro tem and get in front of a judge that they liked. When my client went to court, he was given very little chance to speak and it was pretty obvious to him that the commissioner had previously had many other cases involving the City and wasn't going to "rock the boat" and even consider my client's claim. In short, the case was predetermined. My client was a

WWII veteran and fought in the Battle of Okinawa and he felt he got better treatment in that battle than he did in front of the court.

On another case, the court, which was quite a distance from my client, set the hearing date against the City for December 27 which I viewed as a not too subtle way to cause inconvenience and to stifle access to the court. My client, being a decorated war hero and a very successful business man, nevertheless was not going to be shaken around and presented his case on December 27. He had an airtight legal case, but I told him going in that he would probably lose as I had formed the impression that the pro tems or the commissioners that have to sit in these cases day in and day out are not interested in antagonizing the cities. Lo and behold, that is what happened. The legal issue was so clear that had an attorney been representing Plaintiff, the case would have gone a different way.

If this can happen to these people, the poor have no chance. The bottom line is that particularly with regard to suits against public entities, that increasing the limits to \$10,000 particularly with the added proviso of denying recovery of attorney's fees to the prevailing party is a bad idea. I wish I could have filed the cases for both of my clients mentioned herein because the result would have been different. A judge has no qualms at all about acting stupid or doing the wrong thing in front of a pro per, but when there is an attorney and a record, that process has a tendency to keep the court honest and if the word gets around that a particular pro tem or commissioner or judge is "favoring" a particular entity or party, that judge doesn't last long. Pardon my cynicism, but that is what is going down.

If you raise the limit to \$10,000, you are actually going to encourage more lawyers becoming involved because people will get very serious and hire lawyers who will find a way to plead around the \$10,000 limit and get into Superior Court. That's what lawyers are paid to do, i.e. protect their clients from getting taken advantage of. To put it very bluntly and without sugar coating it, your proposal will not increase justice and has nothing to do with inflation. What it will do is further hurt the poor and middle class and only benefit the cities and the other parties who use small claims on a regular basis, i.e. collection types.

As far as increasing the jurisdictional limit for a limited civil case from \$25,000 to \$50,000, it really won't make any difference as long as attorneys are involved. Some judges sit in limited courts and others sit in unlimited and it more has to do with which judges want to hear which cases, rather than denying access to the parties.

California Law Revision Commission
February 20, 2003
Page 3

Hopefully you will pay attention to this letter and not increase the jurisdictional limit. It is a very, very bad idea that hurts people and won't help them in any way.

Very truly yours,

A handwritten signature in black ink that reads "Paul M. Mahoney". The signature is written in a cursive, flowing style with a large initial "P" and "M".

Paul M. Mahoney
of JONES, MAHONEY, BRAYTON & SOLL LLP
PMM/cfs

MAIRE, MANSELL & BEASLEY

A LAW CORPORATION

2851 PARK MARINA DRIVE
SUITE 300
REDDING, CALIFORNIA 96001

TEL: 530-246-6050
FAX: 530-246-6060

WAYNE H. MAIRE

MAILING ADDRESS
P.O. DRAWER 994607
REDDING, CALIFORNIA
96099-4607

Law Revision Commission
RECEIVED

FEB - 5 2003

File: _____

February 3, 2003

Barbara Gaal
California Law Revision Commission
40000 Middlefield Road, room D-1
Palo Alto, California 94303-4739

Re: Jurisdictional Limits of Small Claims Cases and Limited Civil Cases

Dear Ms. Gaal:

Please consider this letter in response to your request for public comment on the tentative recommendation relating to the jurisdictional limit for small claims cases and limited civil cases. In short, I would strongly recommend that the Commission reject any changes to the jurisdictional limits for these types of cases.

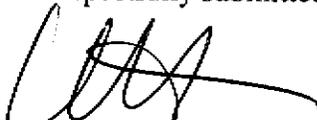
The work of our law firm is exclusively devoted to handling civil litigation in the thirteen northernmost counties of the State of California. I along with many of the attorneys in our firm have had an opportunity to sit as a Pro Tem Judge in Small Claims Court. I would strongly oppose changing the jurisdictional limits from \$5,000 to \$10,000. While \$10,000 may not be a significant sum of money in some portions of the State of California, I can assure you that it is a very significant sum in this portion of the State. To deprive people of their right to retain counsel and to be represented in claims of this type is in my opinion unwarranted and unjust.

My second concern with regard to these proposed changes relates to changing the jurisdictional limits to \$50,000 in limited civil case. It remains unclear to me what goal will be accomplished by this change. As I am sure the Commission is aware, civil filings throughout the State of California have been declining over the past decade. It is my opinion that one of the significant reasons we have seen a decline in civil filings has been the ability to properly discover and defend cases of questionable liability or exaggerated damages. In reviewing this proposal with many of our corporate clients and insurance carriers that we represent, they advise that claims under \$50,000 overwhelmingly make up the largest percentage of cases that they deal with. It is my opinion that limiting even further our ability to defend cases within this bracket will result in a significant increase in the number of questionable lawsuits that will ultimately impact all of the consumers of this State.

Ltr. to Barbara Gale
February 3, 2003
Page 2

On behalf of our law firm, I would strongly urge that the Commission reject the tentative recommendation to increase both the small claims court jurisdictional limit and the limited civil case jurisdictional limit.

Respectfully submitted,



WAYNE H. MAIRE

WHM:jmh

COMMENTS OF BARBARA HOLIAN MEJIA

From: Barbara Holian Mejia <bhmejia@redshift.com>
To: <bgaal@clrc.ca.gov>
Subject: Jurisdictional Limits for Small Claims and Limited Civil Cases
Date: Jan. 20, 2003

I received the news release about the tentative recommendation regarding jurisdictional limits for small claims cases and limited civil cases. I support the commission's recommendations wholely. Thank you

LIGGETT, DAVIS & PAGNINI
ATTORNEYS AT LAW
3914 MURPHY CANYON ROAD, SUITE A223
SAN DIEGO, CALIFORNIA 92123

WILLIAM J. PAGNINI
email: WJP@ldplaw.com

(858) 279-7920
FAX (858) 279-6117

CHRISTINA MELHOUSE
email: CM@ldplaw.com

March 10, 2003

Law Revision Commission
PROCESSED

California Law Revision Commission
4000 Middlefield Rd., Room D-1
Palo Alto, CA 94303-4739

MAR 12 2003

File: _____

Attn: Barbara Gaal, Staff Counsel

RE: Jurisdiction of Small Claims Cases and Limited Civil Cases

Dear Attorney Gaal:

My practice is in the collection of commercial claims. Commonly I represent out of state corporations which provided goods or services to local merchants who fail to pay. It would be a hardship for them to travel and appear in small claims court.

For that reason, this is to oppose the recommendation that attorneys fees be denied to a prevailing party in small claims court. This is a valuable right to out of state clients who need attorney assistance in filing collection claims in a court other than small claims court. Thank you for your consideration.

Yours very truly,

LIGGETT, DAVIS & PAGNINI

By 
William J. Pagnini

WJP/rlg

wjp@ldplaw.com

COMMENTS OF HON. STEPHEN PETERSEN

To: Barbara Gaal
From: JUDGE STEPHEN PETERSEN, LASC
Date: 1/22/2003
Re: COMMENTS ON THE TENTATIVE RECOMMENDATION OF THE CALIFORNIA THREE TRACK CIVIL LITIGATION STUDY:
Jurisdictional Limits for Small Claims and Limited Civil Cases

I STRONGLY SUPPORT THE RECOMMENDATION TO INCREASE THE JURISDICTION OF THE SMALL CLAIMS COURT TO \$10,000.

THE REASONS WHY AN IMMEDIATE INCREASE IN SMALL CLAIMS COURT JURISDICTION IS WARRANTED:

1. TO PROVIDE A FAIR AND ECONOMICAL FORUM FOR THE RESOLUTION OF SMALL CLAIMS, AND THUS GREATER ACCESS TO THE COURTS AND JUSTICE

First, it will help provide an economical forum for the resolution of smaller civil cases. At the present time, the resolution of \$5,000-\$10,000 civil cases is usually governed by financial pressures unrelated to the merits of the case. The increase in jurisdiction will alleviate this inappropriate pressure. It appears that a considerable number of plaintiff's lawyers favor such an increase on the grounds that the client would receive more compensation, and the lawyer could collect a reasonable fee for filing and serving the case, negotiating for a settlement, and working up an evidence package for the client. Such lawyers have told me that it is not economically feasible to try an under \$10,000 case to a jury with any hope of the plaintiff, plaintiff's attorney, and health care providers receiving anything close to full compensation. It is not by accident that juries in these cases are demanded mostly by insurers.

2. TO ALLEVIATE THE CHRONIC AND INCREASING PROBLEM OF JUROR SHORTAGES.

With the advent of the "one-trial" jury system, many courts are currently experiencing severe difficulties in fielding enough jurors to operate the judicial system. The problem is particularly acute in metropolitan counties where hardship requests once routinely granted are now denied resulting in unprecedented hostility of many jurors toward the courts and the prospect of jury service. Some estimates predict that jurors will need to be called every two years or even less in order to operate the system. Even now, valuable trial days are lost while juror administrators attempt to conservatively shepherd their delicate allocation of jurors, exacerbated by large percentages of "no shows," and by

exasperated jurors whose good faith financial hardship requests have been denied because their household income is above the “poverty line.”

Some judges fear that a new culture of evasion is developing, whereby reluctant jurors concoct biases and other pretexts calculated to gain excusal from service. As this culture spreads the word that courts are powerless to retain jurors with stated biases, or to investigate claims of penury, the result is likely to be a cheapening of respect for the courts, an acceleration of juror shortages, and a further oppressive load on scrupulous and honest citizens and employers whose reward for patriotic integrity is an ever-increasing share of the burdens of service.

3. TO PROVIDE GREATER SPEED AND EFFICIENCY IN THE HANDLING OF SMALL CIVIL CASES.

There will obviously be savings of bench officer days from not trying these cases to juries. (I can try the typical case in an hour or two, when a jury trial would last 3-5 days, assuming there are no problems obtaining the necessary jurors.)

No doubt some shifting of judicial resources from limited civil jurisdiction to small claims jurisdiction would be required. But the overall efficiency of the judicial system would benefit from shorter trials unhampered by the delays attendant to juror acquisition, selection, argument, evidence, and deliberation.

It is an interesting question as to whether fewer cases would settle if they did not suffer from the financial pressure of a week-long jury trial. But then, that’s the point, to help insure that cases settle on the merits rather than from economic pressures. Also, as we get into the \$5-10,000 range, we get more cases where the defense is funded by insurance and both sides have legal representation, two things that distinguish the current typical small case and promote more settlements and better presentation.

4. TO SAVE ON THE STRAINED JUDICIAL BUDGET

With the cost of operating a courtroom as high as it is today, the judicial budget would benefit from this reform which would allow more cases per courtroom per week to be tried.

January 27, 2003

Law Revision Commission
RECEIVED

FEB - 3 2003

California Law Revision Commission
Attn: Barbara Gaal
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

File: _____

Re: Jurisdictional Limits of Small Claims Cases and Limited Civil Cases

Commissioners:

I received the notice of proposed changed jurisdictional limits for Small Claims cases. I strongly object to the increased limits for the Small Claims court. During my civil practice, I have had many clients come to my office with judgments rendered in Small Claims court that were completely unjustified and incorrect. As a defendant they have a right to appeal, but the Plaintiff does not. Therefore the Small Claims Commissioner or judge pro tem, who may have no understanding of the particular area of law, can become the final decision maker without the benefit of an appropriate review. While an individual might be able to survive a judgment up to \$5,000.00, a judgment of \$10,000.00 no longer is a "small claim." For many people of this State, a judgment of this amount without the protection the higher courts give through the rules of evidence and the right to counsel, improper judgments in the higher amounts could devastate the people of this State who can least afford it.

To the plaintiffs who cannot appeal, the loss of a justifiably brought case, is no different then having a judgment against them in that the funds which should have been theirs are no longer available. Many injury cases would be subject to the jurisdiction of the Small Claim's court and would subject injured victims to the manipulation of information and facts by unscrupulous insurance adjusters without the protection of counsel.

As a further objection to the increased limits, is that the Small Claims courts are already extremely crowded and understaffed. Therefore the judges handling these matters are seldom giving the individual cases sufficient time and attention to make decisions that could ruin a family, small business or individual. Increasing the pressure on these courts while decreasing the time available to evaluate and judge these cases will only result in greater injustice to and frustration with an already skeptical public.

California Law Revision Commission

Attn: Barbara Gaal

January 30, 2003

Page Two

The truncated procedures of the Small Claims court allow prompt resolutions of small matters that can be tried without the protection of lawyers and rules of evidence. Frankly, Small Claims matters should remain small.

Very truly yours,

LAW OFFICES OF DAVID H. RICKS


By: _____
DAVID H. RICKS

DHR:cfm

COMMENTS OF MICHAEL SALIBA

From: Michael G. Saliba <hisbagofgold@juno.com>
Subject: Law Rev. Commission proposes to increase Jurisdiction of Small Claims and Limited [Jurisdiction] Court
Date: Jan. 12, 2003

I think both increases are great ideas.

COMMENTS OF ELENA SIMONIAN

From: Elena Simonian <esimonian@sftc.org>
To: <bgaal@clrc.ca.gov>
Subject: Study J-1321
Date: April 4, 2003

Sorry for the late comment. I would like to see the recommendation for expanding Small Claims Advisory Services and such fee allocations to also include any Self Help Centers that may be operating in a court. Some of these centers are operating under grant funding and if this recommendation is implemented I can see those centers also assisting any overflow from the SC Advisory attys. These centers will most likely also be impacted with the increase in jurisdiction of limited cases. Any increase funding would most likely be used more efficiently in Self Help Centers since they serve a broader range of litigants and assist in a broader range of case types.

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Law Revision Commission
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JAN 23 2003

File: J-1321

January 23, 2003

California Law Revision Commission
4000 Middlefield Rd, Room D-1
Palo Alto, CA 94303-4739

Ph 650-494-1355

Re: Small Claims Court Jurisdiction Increase

Dear Commission:

I have downloaded and read the recommendations in the document "Jurisdictional Limits for Small Claims and Limited Civil Cases." I write to make my comments.

Please add me to your mailing list for proposed recommendations in the future.

First, I have been in private practice in Santa Clara County for 26 years. I have been a frequent "pro tem" judge in Small Claims Court for nearly 20 years. I have heard thousands of small claims court cases. I have handled all kinds of litigants, from ignorant, shy, terrified people, some of whom can barely speak simple conversational (that is, "TV") English, to sophisticated, savvy, business people with extensive training and experience in prosecuting and defending lawsuits.

Second, it is imperative that you "keep it simple!" Stop trying to "fix" perceived little problems by complicating the applicable rules. Make simple, clear statements, with simple, one-syllable words when possible, without convoluted exceptions.

1. I agree and strongly recommend that jurisdiction in Small Claims Court should be increased to \$10,000. Most "fender-bender" auto accidents include damages in excess of \$5,000, which can be handled quite well in small claims court.

2. I agree that guarantors can be sued in small claims court. If the plaintiff puts on the prima facie case, there is no reason why the guarantor should not be included. There should be no confusing rule concerning guarantors and the \$4,000/\$2,500 limit. Small claims court procedure should be as simple as possible.

3. I have always been unclear as to why there is a two-case limit for plaintiffs per year for cases over \$2,500 (which, if kept, should be increased to \$5,000). If a small business service provider, such as an accountant or software programmer, for example, is owed by three or four customers in one year who don't pay, why on earth can't that person be a plaintiff for the amount owed, even if over the arbitrary amount? I strongly suggest that the "two-case" limitation be eliminated completely. The fact that the court is used for legitimate claims is a positive, not a negative. Small claims court procedure should be as simple as possible.

4. I agree that the top limit for "limited civil cases" should be increased from \$25,000 to \$50,000. Inflation alone in the last decade justifies the increase. Also, the costs of private practice for a lawsuit increase, but never decrease. The ability to provide any justice for the plaintiff owed in the range between \$25,000 and \$50,000 now is virtually impossible. It costs too much to win, given the discovery and pretrial time-wasting available to any competent defendant's attorney.

5. However, I do not agree that the statute should state that attorney fees could/should be denied to a successful plaintiff who gets a judgment which could have been obtained in Small Claims Court.

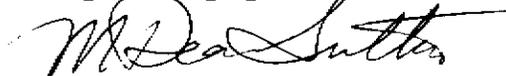
Not all people are able to prosecute an action in Small Claims Court. Some people simply have lots of money to afford counsel, and they have no time to spend a half day standing around in small claims court. Some are too old, weak, shy, or confused to be a faux Perry Mason in court. Some people by culture, language, or immigration status feel that they are in no position to be aggressive and "loud" in court. For various reasons, people still should be able to sue for smaller amounts in civil court, and get reasonable attorney fees in appropriate cases (such as with an attorney

fee clause per Civil Code § 1717). They should not be punished for retaining counsel for civil litigation.

In short, those who want to use small claims court should be welcomed and encouraged to do so. Those who do not want to use Small Claims Court should not be punished for not doing so.

6. You should prepare, and keep updated annually, a handbook for Small Claims Judges, especially pro tems, as to current special consumer protection statutes (such as auto repair, dry cleaners, gym and dance contracts, etc.), and the effect of administrative systems (such as worker's compensation and disability payments), to help the judge properly apply the special public policies.

Very truly yours,

A handwritten signature in cursive script, appearing to read "M. Dean Sutton".

M. Dean Sutton

smclct.001

M. DEAN SUTTON, Esq.

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Law Revision Commission
RECEIVED

AUG 15 2003

File: J-1321

August 11, 2003

California Law Revision Commission
Attn: Lynne Urman, Staff Counsel
4000 Middlefield Road Rm D-1
Palo Alto, CA 94303-4739

Re: Comment on Memorandum 2003-22
Issue: Increase Small Clams Court Limit to \$10,000

Dear Law Revision Commission:

I read with great interest your Memorandum 2003-22 re constitutional issues as to jurisdictional limits for small claims court.

I write to strongly recommend that the statutes be changed to raise the limit to \$10,000.

MY BACKGROUND

I have been private practice in San Jose since graduating from Santa Clara University School of Law in 1977. I emphasize real property law and business transactions and litigation. I have taught for many years classes in paralegal programs, at Cal State Hayward, and at Santa Clara University.

I have frequently and regularly served as a Small Claims Court Judge Pro Tem in Municipal Court (now Superior Court) in Santa Clara County for about 20 years. I have been a mentor and advised several other lawyers who serve as judges pro tem in small claims court. I support strongly the small claims court system, providing a quick and inexpensive forum for people to have a "day in court" on their legal problems.

More importantly, I have been a lawyer in private practice for over 25 years, trying to advise "real people" concerning their "real world" problems. All too often, I must inform people that they have a "good case," because they are owed damages for breach of contract or tort. However, I must also inform them that it costs too much to win.

This seems crazy to most people, who have a simple faith in the American judicial system. Unfortunately, they do not know about the costs of litigation, which now include: ever-increasing filing fees; law and motion hearing fees [which are charged for anything and everything, with or without a hearing, including orders by written stipulation!]; "per diem" court reporter fees [which reporters do not get, of course, but which instead go directly to the general fund; the client must pay again for a transcript if needed, but that is an issue for another day]; the costs, including inexplicable delay and lost work time, for "ADR"; and other, ever-increasing and multiplying "user fees" required to use the trial court system. It is clear that efforts are being made to balance the state budget using civil court fees and charges. [I would joke that "they" are going to put in coin-operated elevators, but I do not want to give "them" any ideas.]

The sad truth is that under the current system, a tenant seeking return of his wrongly-held security deposit, or a merchant unpaid on an account stated, or an unpaid lender who lent money to a friend, a person who receives shoddy work from a "home improvement contractor," or a person whose car was damaged in a car accident, and all of the other people who are owed damages between \$5,000 and \$10,000 simply cannot get "justice," or even afford to win using our current judicial system.

The limit of \$5,000 in small claims court is too low, and the cost to litigate in Superior Court (even a "limited jurisdiction" case) is too high.

I respectfully submit my observations on the questions addressed in your memorandum on constitutional issues:

1. RIGHT TO JURY TRIAL

Obviously, the plaintiff waives a jury by choosing to sue in small claims court. Unlike what some Superior Court judges want to believe, there is no "minimum" jurisdiction in Superior Court, where an action for damages can be filed for as little as one cent, per CCP §86(a) and §87.

The defendant who is sued in small claims court suffers no forced loss of right to jury, because the defendant can file a separate suit on the same issues (by declaratory relief) in the civil division, demand a jury, and the small claims court (when notified of the action) will simply order the matter "off calendar without prejudice" and abate the proceeding. This is clearly "another action pending," which is ground to abate the small claims action per CCP § 430.10(c).

The real risk to a defendant who sues in the civil division

to assert his right to a trial by jury risks the punitive use by the trial judge of CCP § 1003 to deny or limit "costs of suit," including attorney fees otherwise appropriate.

CCPS 1033 provides in relevant part:

(a) Costs or any portion of claimed costs shall be as determined by the court in its discretion in a case other than a limited civil case in accordance with Section 1034 where the prevailing party recovers a judgment that could have been rendered in a limited civil case.

(b) When a prevailing plaintiff in a limited civil case recovers less than the amount prescribed by law as the maximum limitation upon the jurisdiction of the small claims court, the following shall apply:

(1) When the party could have brought the action in the small claims division but did not do so, the court may, in its discretion, allow or deny costs to the prevailing party, or may allow costs in part in any amount as it deems proper.

(2) When the party could not have brought the action in the small claims court, costs and necessary disbursements shall be limited to the actual cost of the filing fee, the actual cost of service of process, and, when otherwise specifically allowed by law, reasonable attorneys' fees. However, those costs shall only be awarded to the plaintiff if the court is satisfied that prior to the commencement of the action, the plaintiff informed the defendant in writing of the intended legal action against the defendant and that legal action could result in a judgment against the defendant that would include the costs and necessary disbursements allowed by this paragraph.

Since a person sued in small claims court cannot there demand a jury, and if he therefore sues in a civil action on the same issues to get a jury, is he therefore to be punished for doing so?

These issues exist now, and will not arise solely because the limits are increased from \$5,000 to \$10,000.

2. RIGHT TO COUNSEL

There is no denial to a "right of counsel" in Small Claims court for several reasons. First, there is no constitutional right to "effective assistance of counsel" in non-criminal actions.

Parties who are "entities" such as corporations (and now

"limited liability companies") are not denied a constitutional right to counsel.

A corporate plaintiff waives the presence of a licensed lawyer at trial by using the quick, cheap procedure of small claims court.

A corporate defendant, like any other defendant, can simply file its own civil division lawsuit if it wants a licensed lawyer at trial.

Corporations are usually well represented at trial by experienced and eager employees who simply file a declaration of authorization under CCP § 116.540. They usually take the proceeding very seriously, preparing well for their "Perry Mason" moment.

As you note, the procedure is informal. Often, I allow a "friend" to help a litigant who is shy or who suffers from limitation of language, using an expansive interpretation of CCP § 116.54(k).

Sometimes, people bring their "case" all written out, because they feel they cannot articulate verbally. I often will read aloud their statement, so that they feel that they were heard.

As a corollary, there is no right to an interpreter in small claims court, nor should there ever be one at public expense. However, every litigant should be allowed to use a friend to make sure that they understand what is said and that the judge understands what they want to say.

3. USE OF TEMPORARY JUDGES

Small claims court pro tem judges are underrated and unappreciated. I am not unbiased, but I am constantly impressed by the time and skill given without pay or even notice by the Santa Clara County bar.

Most cases are recurring, repetitive cases. The pro tem should be aware of current (read "this week's") law concerning: landlord-tenant law (especially security deposits and default in payment of rent); the licensing and deposit requirements for licensed contractors, especially "HIC" (home improvement contractors); auto repairs; auto repossession and deficiency judgments; damage limitations by treaty and the Warsaw Convention; as well as general contract and tort law.

From my experience, most of the pro tems here try very hard

to become informed on the relevant consumer and other laws, and the court clerks and bailiffs constantly provide information and guidance from their collective years of experience.

If there is a concern that bigger disputes will be decided by pro tems and not "real judges," I can only say that most pro tems do a very good job most of the time.

A litigant need not ever stipulate to a pro tem, but may insist on a commissioner or a "real judge" if desired.

As long as the pro tems go through a periodic "cram course" session on new, often-used laws, or are encouraged to ask for advice and assistance from a "real judge" or experienced pro tem, the system should work well.

Occasionally, a small claims court pro tem is presented with a novel issue of law, and he or she may respond appropriately. For example, please see the enclosed copy of judgment filed May 29, 2002 in Robert M. Fenerty v Cedar Mortgage Company, Inc., Superior Court of California, County of Santa Clara, Los Gatos Facility, Small Claims, Case No. AS 02274098. While not a published decision, I know that the judgment was considered as part of the legislative process resulting in a statute signed by the governor in September 2002 banning "junk faxes" in California.

4. WHAT IS A SMALL (OR LARGE) MONETARY AMOUNT TODAY?

Finally, I would like to opine on the issue of whether \$10,000 is a small enough sum to be dealt with in small claims court.

The answer is "yes."

Do you have any idea how much is costs to live today? With median house prices at approximately \$500,000 in many California counties; with residential rents in many counties over \$1,000/month and houses renting here for \$2,500/month not uncommon; with common auto repair (body work and painting) bills easily \$8,000; with the bottom-of-the-line, basic Chevrolet or Ford car selling for about \$15,000 or more; and considering the cost of other, basic, day-to-day costs of living, the sum of \$10,000 is clearly appropriate for small claims court. The car I bought in 1972 for about \$1,800 now sells for about \$18,000. If you want a quick "rule of thumb" for costs of living in the last thirty years, just move the decimal point over one place to the right. A residential security deposit, often equal to two months' rent, can easily exceed \$4,000 alone.

As to the analysis as to "small vs large" amounts of money, you note that Crouchman v Superior Court (1988) 45 Cal.3d 1167 approved the sum of \$1,500 as the limit in small claims court in 1988. I can assure you from personal experience as a lawyer and small claims court pro tem, that \$1,500 was too small a limit in 1988.

We charge a basic hourly rate of \$250/hour for civil litigation. I am experienced, and I try to work quickly and efficiently. There is no way I can honestly tell any client who is owed \$9,000, even for breach of contract with an attorney fee clause, that he or she can sue and win a judgment in court and not be very disappointed. Only the very wealthy can afford to sue and win, or defend themselves from spurious actions, for sums up to \$10,000. It just plain costs more to win than it is worth. All they can do is waive sums over \$5,000 (even if a valid claim) and sue in small claims court.

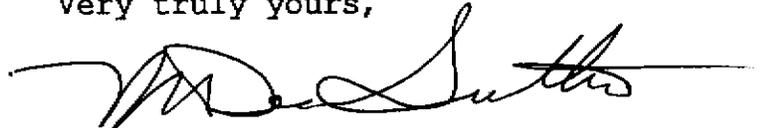
The only identifiable pressure group I can see which would want to keep the limit so artificially low would be the insurance companies, which know that the costs of litigation to a legitimate plaintiff on a small claim become too great, when delayed and "discovered" to death by insurance defense counsel. Many plaintiffs just give up the claim when informed of the cost, or they sue in small claims court for a fraction of what the claim should be.

Likewise, insured defendants would insist that the insurance companies pay legitimate claims up to \$10,000 to prevent the trial in small claims court. Or, insured defendants will properly insist that their insurance counsel (who have a conflict of interest and also represent the financial interest of the insurance company), sue for them to get them a jury trial to "clear their name," which the insurer does not want to do.

CONCLUSION

My opinion is that the limit in small claims court should immediately be raised to \$10,000 from the current \$5,000.

Very truly yours,



M. Dean Sutton

1
2
3 **SUPERIOR COURT OF CALIFORNIA**
4 **COUNTY OF SANTA CLARA**
5 **LOS GATOS FACILITY**
6 **SMALL CLAIMS**

Endorsed
FILED
MAY 29 2002

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of California Santa Clara
By Sutton Deputy

8 ROBERT M. FENERTY,

No. AS 02274098

9 Plaintiff,

10 vs.

JUDGMENT

11 CEDAR MORTGAGE COMPANY, INC.

12 Defendant.

13
14 The matter came on regularly for court trial on Monday, May 20, 2002, as line item
15 number 5 on the 8:30 a.m. calendar, in Department 97 of the court, before the Honorable M. Dean
16 Sutton, Judge Pro Tem. Plaintiff Robert M. Fenerty appeared for himself, and Ms. Marge
17 Nagosek appeared as authorized officer on behalf of Defendant Cedar Mortgage Company, Inc.
18 with one witness, Mr. Brian Nall. The parties agreed to trial by Judge Pro Tem. The parties and
19 witness, after being duly sworn, testified.

20 **ISSUE SUBMITTED**

21 In summary, Plaintiff sues for damages for alleged violation of a federal statute which
22 prohibits unsolicited advertisements transmitted by telephone facsimile machine ("fax"). Such
23 unsolicited faxes are commonly referred to as "junk faxes."

24 Defendant defends by asserting that the fax advertisements sent out are not unlawful under
25 the federal statute, because they are in compliance with the provisions of a similar, but different,
26 California statute. The Defendant argues that the California statute, rather than the federal statute,
27 is the applicable rule of law to fax advertisements sent intrastate, and therefore the present
28 advertisements are not actionable and no damages are due.

1 The issue presented to the Court is whether Congress intended to completely preempt the
2 field in the area of regulation of unsolicited fax advertisements, and if not, should a court apply
3 the provisions of the federal or state statute, or both, to determine legality?

4 The issue appears to be a matter of first impression in California courts.

5 **FINDINGS OF FACT**

6 The relevant and material facts are not contested. Defendant corporation is in the business
7 of arranging real estate mortgage loans. Defendant hired a third party business to send a one-page
8 advertisement to telephone numbers in the area which have fax machines which print out the
9 advertisement. The advertisement contains the name, address, 800 toll-free telephone number,
10 and email address of Cedar Mortgage, and of one of the real estate salesman, Brian Nall. The
11 advertisement contains at the bottom a line in smaller font which provides: "If you received this
12 fax in error and would like to have your fax number removed from our list, call toll-free: ..." a
13 different 800 toll-free number than that for the mortgage broker. A copy of the one-page fax
14 advertisement is attached hereto as Exhibit A.

15 There was no pre-existing relationship between Plaintiff and Defendant. They did not
16 know each other. Neither had ever had any business transaction with the other. The
17 advertisements here were unsolicited.

18 Plaintiff testified that he received the first advertisement on his home fax machine on
19 March 7, 2002 at 5:30 p.m. He did not call the 800 number to ask to have his fax number
20 removed from the list. Instead, on March 11, 2002 he mailed a letter to Cedar Mortgage, citing
21 the Telephone Consumer Protection Act of 1991, 47 USC § 227, and demanding the payment of
22 \$1,500 no later than March 31, 2002 to avoid further litigation.

23 On April 4, 2002, Defendant by Marge Nogosek, President of the corporation, sent a letter
24 to Plaintiff saying it was not their intent to send unsolicited facsimile messages. The letter in part
25 says that ..." [P]lease note that we have deleted your number from our database and you will no
26 longer be receiving communications to that number."

27 Plaintiff filed action in Small Claims Court on April 2, 2002 for \$1,500.

1 At trial on May 20, 2002, Plaintiff testified that he had received a second unsolicited fax
2 from Defendant on April 5, 2002 at 1:00 p.m..

3 Plaintiff moved to amend his "Plaintiff's Claim" to ask for \$3,000, being \$1,500 for each
4 of the two unsolicited faxes under the federal statute.

5 **PLAINTIFF'S POSITION**

6 Plaintiff sues for damages under the provisions of 42 U.S.C. § 227, the Telephone
7 Consumer Protection Act of 1991 ("TCPA"), Pub.L. No. 102-243, 105 Stat. 2394-2402 (1991),
8 which took effect on December 20, 1991.

9 Specifically, section 227(b)(C) provides in relevant part that: "It shall be unlawful for any
10 person within the United States ... to use any telephone facsimile machine, computer, or other
11 device to send an unsolicited advertisement to a telephone facsimile machine;"

12 In § 227(a)(4), Congress defines "unsolicited advertisement" as "... any material
13 advertising the commercial availability or quality of any property, goods, or services which is
14 transmitted to any person without the person's prior express invitation or permission."

15 The TCPA authorizes and directs the Federal Communications Commission ("FCC") to
16 prescribe regulations to implement the requirements of the statute. Plaintiff provided to the court
17 a copy of what appears to be the current regulations, being 47 C.F.R. § 64.1200, which at (a)(3)
18 again provides that no person may use a telephone facsimile machine, computer, or other device
19 to send an unsolicited advertisement to a telephone facsimile machine.

20 In § 227(3), Congress provides for a private right of action:

21 **A person or entity may, if otherwise permitted by the laws or rules of court of
22 a State, bring in an appropriate court of that State –**

23 (A) an action based on a violation of this subsection or the regulations prescribed
24 under this subsection to enjoin such violation,

25 (B) an action to recover for actual monetary loss from such a violation, or to
26 receive \$500 in damages for each such violation, whichever is greater, or

27 (C) both such actions.

28 **If the court finds the defendant willfully or knowingly violated this subsection
or the regulations prescribed under this subsection, the court may, in its
discretion, increase the amount of the award to an amount equal to not more
than 3 times the amount available under subparagraph (B) of this paragraph.**

1 (Emphasis added.)
2 Plaintiff sues for statutory damages \$500 for the advertisement of March 7, trebled to
3 \$1,500, plus \$500 for the advertisement of April 4, trebled to \$1,500, for a total of \$3,000.
4 Other than use of his phone line and fax machine, time, paper and ink/toner, Plaintiff alleged no
5 actual damages. Plaintiff asks for court costs, and for litigation costs such as mileage and
6 photocopies, which are not allowed by law.

7 **DEFENDANT'S POSITION**

8 Defendant argues that the advertisements here are legal as authorized by California
9 Business & Professions Code § 17538.4 (enacted 1992) which provides in relevant part:

10 (a) **No person or entity conducting business in this state shall facsimile (fax) or**
11 **cause to be faxed, or electronically mail (e-mail) or cause to be e-mailed,**
12 **documents consisting of unsolicited advertising material for the lease, sale,**
13 **rental, gift offer, or other disposition of any realty, goods, services, or extension of**
14 **credit unless:**

15 (1) **In the case of a fax, that person or entity establishes a toll-free telephone**
16 **number that a recipient of the unsolicited faxed documents may call to notify**
17 **the sender not to fax the recipient any further unsolicited documents.**

18 (2) ...

19 (b) **All unsolicited faxed or e-mailed documents subject to this section shall**
20 **include a statement informing the recipient of the toll-free telephone number that**
21 **the recipient may call, or a valid return address to which the recipient may write or**
22 **e-mail, as the case may be, notifying the sender not to fax or e-mail the recipient**
23 **any further unsolicited documents to the fax number, or numbers, or e-mail**
24 **address, or addresses, specified by the recipient.**

25 In the case of faxed material, the statement shall be in at least nine-point type. In
26 the case of e-mail, the statement shall be the first text in the body of the message
27 and shall be of the same size as the majority of the text of the message.

28 (c) **Upon notification by a recipient of his or her request not to receive any further**
unsolicited faxed or e-mailed documents, no person or entity conducting business
in this state shall fax or cause to be faxed or e-mail or cause to be e-mailed any
unsolicited documents to that recipient.

(d) ...

(e) ...

(f) **As used in this section, "fax" or "cause to be faxed" or "e-mail" or "cause to be**
e-mailed" does not include or refer to the transmission of any documents by a
telecommunications utility or Internet service provider to the extent that the
telecommunications utility or Internet service provider merely carries that
transmission over its network.

(g) ...

(h) ...

(i) ...

(Emphasis added.)

1 Defendant argues that:

- 2 1. the California statute expressly allows unsolicited advertisement by fax if the fax
3 contains an 800 "opt out" phone number which the recipient can call to remove his fax telephone
4 number from the sender's database;
- 5 2. the California statute is not completely preempted by the federal statute and therefore is
6 the controlling rule of law for faxes sent intrastate; and,
- 7 3. the 800 "opt out" telephone number provision of the California statute prevails over the
8 federal statute, causing the unsolicited advertising by fax to be lawful.

9 **CONCLUSIONS OF LAW**

10 A. There is no question that the Plaintiff may bring a suit in state court, including Small
11 Claims Court, for damages for violation of this federal statute. Under § 227(3), Congress
12 expressly provides for a private right of action in an appropriate state court if otherwise permitted
13 by the laws or rules of court of a State. The jurisdictional limit for recovery of money damages in
14 Small Claims Court is \$5,000. (California Code of Civil Procedure § 116.220(a).) This action is
15 proper in this court.

16 B. There is no issue of interference with free speech under First Amendment for protected
17 commercial speech. Commercial speech for which the recipient must pay to receive advertising is
18 not protected by the Constitution. A governmental body seeking to sustain a restriction on
19 commercial speech must demonstrate that the harms it recites are real and that is restriction will in
20 fact alleviate them to material degree. The TCPA's ban on unsolicited faxes is a reasonable means
21 of preventing the shifting of advertising costs to consumers and is valid. (Destination Ventures,
22 Ltd. v FCC, 844 F. Supp. 632, affirmed 46 F.3d 54 (9th Cir. 1995).)

23 C. It is no defense to the Defendant that the Plaintiff did not call the 800 "opt-out"
24 number to remove his fax number. A residential consumer and a business person is entitled to
25 uninterrupted use of their fax machine, and have no duty to spend time calling telephone numbers,
26 begging unknown, unidentified people or automated machines not to trespass in their home or
27 business any further. Just because a business is open to the public does not mean that a business
28

1 fax can be tied up for endless, unsolicited advertisements. Faxes cost the recipient money, paper,
2 ink/toner, distraction, and time. Junk faxes cause actual damages to a business. In businesses,
3 employees have to be instructed as to what to throw away and when to call to try to stop the faxes.
4 None of this is a burden accepted by a residential consumer or a business when a fax machine is
5 purchased. Businesses need to be free from the intrusive burden of junk faxes even more than a
6 residential consumer who is only occasionally inconvenienced by them. The cumulative burden
7 on the economy and society was clearly a consideration of Congress in passing the federal statute.

8 D. The issue here is: Did Congress intend to completely preempt the field of junk faxes?
9 Put differently, is this similar, but different, state statute also effective? Even if an advertiser
10 complies with the state statute, must he also comply with the federal statute?

11 In general, the U. S. Constitution establishes a federal system, in which some areas of law
12 are exclusively federal, such as bankruptcy; some areas of law are exclusively state, such as real
13 estate law; and many areas of law are in the middle and may be regulated by both. In today's
14 world, many areas of law could be governed and regulated solely by Congress by federal law
15 under the "Interstate Commerce" Clause (U.S. Constitution, Article I, Sect. 8). If Congress has
16 the power to regulate, it could decide to "preempt," that is, totally take over the field no matter
17 what state law says, under the "Supremacy Clause" (U.S. Constitution, Article VI). (See: United
18 States v Lopez 514 U.S. 549 (1995); Wickard v Filburn 317 U.S. 111 (1942).) However, in many
19 areas of modern life, Congress decides often not to completely preempt the field, but only to
20 establish a "default" provision of law which is the applicable rule of law, unless a state passes a
21 more protective statute otherwise.

22 In health and safety and "consumer protection" statutes, Congress will often pass a statute
23 which provides a level of minimum protection for individuals, which is the applicable rule of law,
24 unless a state passes a higher minimum of consumer protection. If a state provides a higher
25 minimum of consumer protection, the state law will be the applicable rule of law in that state. A
26 state law may not, however, provide a lower minimum of consumer protection, even under a
27 theory of "state's rights" or state sovereignty.

1 So it appears in the present case. Here, Congress has declared that any, even the first,
2 unsolicited fax advertisement is prohibited, wrongful, and gives a cause of action to the victim for
3 actual damages or \$500, whichever is greater.

4 The California statute says an advertiser can send an unlimited number of unsolicited fax
5 advertisements if the 800 "opt-out" number appears, unless the recipient calls the 800 number and
6 asks to be removed from the list.

7 Clearly the federal statute provides a higher minimum level of protection to the innocent
8 recipients of the unsolicited advertisements. This Court has found nothing in the statutory
9 language, FCC regulations, or in the public policy of Congress which leads to the conclusion that
10 Congress intended any state statute to allow a lower level of consumer protection in this area.

11 Therefore, this Court holds and declares that to the extent California Business &
12 Professions Code § 17538.4 authorizes unsolicited solicitation by fax which is prohibited by 42
13 U.S.C. § 227, the California statute is preempted by federal law under the Supremacy Clause of
14 the U.S. Constitution. An advertiser who sends an unsolicited fax must comply with both
15 statutes. Violation of either statute gives a right to damages under the violated statute.
16 Compliance with the state statute is no defense to violation of the federal statute.

17 There remains the issue of the proper measure of damages. Defendant stresses that it
18 simply hired a separate advertising business, and did not do anything with a malicious heart. This
19 Court believes that Ms. Nagosek did not intend to violate any law. However, the law requires a
20 minimum damage of \$500 per fax, or actual damages, whichever is greater.

21 The last issue is whether treble damages for the first or second fax should be awarded.
22 The law does not require a finding by the court that the defendant maliciously caused the
23 unsolicited advertisement, but only that the act was willful or knowing. The defendant only has
24 to intend to send (or cause to be sent) via fax the unsolicited advertisement.

25 Plaintiff submitted to the court a letter of July 27, 1999 from the FCC to Robert
26 Biggerstaff, copy attached hereto as Exhibit B. In the letter, the FCC states it has not expressly
27 defined "willfully or knowingly" for this statute, but in other contexts has decided the word
28 "willful" means "the conscious and deliberate commission or omission of [an] act, irrespective of

1 any intent to violate any provision of this Act or any rule or regulation of the Commission
2 authorized by this Act." "Willful" has been interpreted to mean simply that "the acts or omissions
3 are committed knowingly. It is not pertinent whether or not the [...] acts or omissions are intended
4 to violate the law." The letter also states that "knowingly" in similar contexts has been interpreted
5 as "knew or should have known." "Knowingly" is equivalent to "willful." This Court agrees
6 with this interpretation.

7 It is no defense to the Defendant that it hired an outside advertising business. The
8 violation of law is imputed to the person causing and benefitting from the unsolicited advertising.

9 The Court finds that Defendant willfully and knowingly sent the first and second fax in
10 this case. The situation was made worse because of the letter from Defendant saying Plaintiff had
11 been removed from the database, only to have the Plaintiff receive the second fax. This clearly
12 demonstrates the lesser protection to the recipient under the state statute. Therefore, treble
13 damages are appropriate here.

14

15 **JUDGMENT**

16 The issues having being argued and submitted, and good cause appearing:

17 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

18 Plaintiff Robert M. Fenerty is hereby awarded damages against Cedar Mortgage Company,
19 Inc. in the total sum of \$3,000.00, plus allowable court costs in sum of \$28.00, for a **total**
20 **judgment of \$3,028.00.**

21

22 Date: May 23, 2002

23

24

25

26

27

28


M. DEAN SUTTON
Judge Pro Tem of the Superior Court

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3-7-02 5:30 PM

EXHIBIT "A" 11



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

July 27, 1999

Robert Biggerstaff
P.O. Box 614
Mt. Pleasant, SC 29465

Dear Mr. Biggerstaff:

I am writing in response to your June 22, 1999, letter requesting that the Commission clarify a provision of the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 (TCPA). Specifically, in your letter you note that the TCPA provides for trebled damages if a defendant has "willfully or knowingly" violated the statute or the Commission's rules.¹ Your letter requests that the Commission clarify the phrase "willfully or knowingly" as utilized in section 227(c)(5).

The Commission has not defined the phrase "willfully or knowingly" in the context of the TCPA. Congress and the Commission, however, have defined the terms "willfully" and "knowingly" in other contexts. For example, section 312(f)(1) of the Communications Act of 1934, as amended, (Act), 47 U.S.C. § 312(f)(1), defines the word "willful" as: "the conscious and deliberate commission or omission of [an] act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act."² In examining the definition of "willful" outside its use in section 312, the Commission has explained that an intent to do wrong is not required to find willfulness.³ Applying that standard, the Commission has stated that the term "willful" has been interpreted to mean simply that "the acts or omissions are committed knowingly. It is not pertinent whether or not the [] acts or omissions are intended to violate the law."

¹ 47 U.S.C. § 227(c)(5).

² 47 U.S.C. § 312(f)(1).

³ See *Liability of Midwest Radio-Television Inc., Memorandum Opinion and Order*, 45 F.C.C. 1137, 1140-41, at paras. 8-11 (1963) (explaining that the word "willfully" as used in section 503(b) of the Act does not require that the actor knew he was acting wrongfully; it requires only that the actor knew he was doing the acts in question).

⁴ *Media General Cable of Fairfax County, Notice of Apparent Liability for Forfeiture*, 13 FCC Rcd 11868, 11870, para. 7 (1998).

EXHIBIT "B" (OVER)
1/2

Robert Biggerstaff
July 27, 1999
Page 2

The term "knowingly" has not been defined by the Commission in the TCPA context. The Commission, however, has discussed the word "knowingly" in other contexts. For example, the Commission defined "knowingly" as used in section 223(b)(1) of the Act, 47 U.S.C. § 223(b)(1), as "knew or should have known."⁵ In other cases, the Commission has defined "knowingly" as equivalent to "willful."⁶

We hope that this information is helpful. This is an informal staff opinion issued pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules.⁷

Sincerely,



Glenn T. Reynolds
Acting Chief, Enforcement Division
Common Carrier Bureau
Federal Communications Commission

⁵ *Audio Enterprises, Inc., Notice of Apparent Liability for Forfeiture*, 3 FCC Rcd 7233, 7237, para. 29 (1988) (stating that the definition of "knowingly" used by the Commission is consistent with Congressional intent).

⁶ *See Liability of Outlet Communications, Inc. and Allin Communications, Inc., Memorandum Opinion and Order*, 7 FCC Rcd 632, 633, para. 13 (1992); *see also Midwest*, 45 FCC Rcd at 1139, para. 8; *see also George E. Cameron Jr., Communications, Memorandum Opinion and Order*, 93 F.C.C. 2d 789, 792 n.7 (1983).

⁷ 47 C.F.R. §§ 0.91, 0.291.

EXHIBIT "B" 2/2

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March 31, 2003

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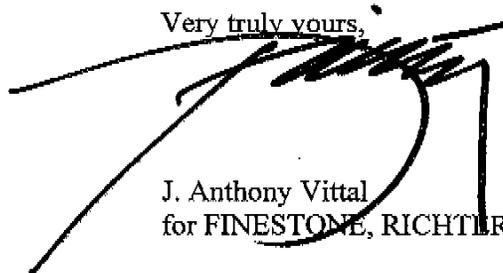
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303-4739

Re: Tentative Recommendation – Study # J-1321 (December, 2002)
Jurisdictional Limits of Small Claims Cases and Limited Civil Cases

Ladies and Gentlemen:

Thank you for the opportunity to review and comment on this Tentative Recommendation. I am pleased to advise you that I approve the Tentative Recommendation as drafted.

Very truly yours,



J. Anthony Vittal
for FINESTONE, RICHTER & VITTAL

JAV:sat
C:\JAV FILES\BAR\CLRC\CLRC_001.wpd