Study J-1321 January 21, 2004

Memorandum 2004-3

Jurisdictional Limits of Small Claims Cases and Limited Civil Cases (Progress Report)

At the September meeting, the Commission considered the extensive comments on its tentative recommendation proposing to increase the jurisdictional limit of a small claims case from $5,000 to $10,000, and to increase the jurisdictional limit of a limited civil case from $25,000 to $50,000. The Commission directed the staff to contact key stakeholders and explore means of addressing their concerns and achieving greater consensus. The Commission also requested further analysis of the fiscal impact of the proposed reforms.

This memorandum reports on the progress that staff from the Commission and the Administrative Office of the Courts ("AOC") have made with regard to those matters. In light of what can only be described as discouraging developments, the Commission needs to decide whether to continue to devote resources to this legislatively mandated joint study at this time, or to delay further work until prospects for successful reform improve. The AOC and the Judicial Council face the same issue.

Attached for the Commission's consideration is a letter from Annette Heath, Legislative Chair of the Council of California County Law Librarians ("CCCLL"). Ms. Heath thanks the Commission for listening to the concerns of the county law libraries at the September meeting. She reiterates that the members of CCCLL "are not opposed to raising small claims limits, but are concerned with the fiscal impact this will have on already financially strapped county law libraries." Exhibit p. 1.

STEPS TAKEN

Since the September meeting, Commission staff and AOC staff have met with the following groups by teleconference or in person:

(1) The staffs of the Senate Judiciary Committee and the Assembly Judiciary Committee, which are the policy committees that would consider any bill proposing an increase in the jurisdictional limit for a small claims case or a limited civil case.

(2) Consumers Union.
(3) Consumer Attorneys of California ("CAOC").
(4) California Defense Counsel ("CDC") and the Association of Defense Counsel of Northern California and Nevada ("ADC").

We are fortunate to have gotten good cooperation from these groups and a solid understanding of their positions.

We also expect to meet with representatives of the insurance industry before the upcoming Commission meeting. We will report on the results of that discussion at the Commission meeting, or in a supplement distributed beforehand if time permits.

In addition to holding these meetings, Commission staff and AOC staff have worked with one of the AOC's fiscal experts to update and improve the AOC's fiscal analysis of the proposed reforms. That effort is not complete. We still need to find better means of addressing the remaining uncertainties and data gaps. The state's precarious financial situation makes it critical to have a thorough and well-grounded analysis of any proposal that will have a fiscal impact.

GUIDANCE FROM LEGISLATIVE STAFF

The Commission and the Judicial Council are conducting this study pursuant to Government Code Section 70219, which directs those entities to jointly review the three-track system of civil procedure in light of trial court unification. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 82-83 (1998). Because this study is legislatively mandated and concerns the courts, a natural first step after the September meeting was to seek guidance from the staffs of the Senate Judiciary Committee and Assembly Judiciary Committee.

In a teleconference attended by the Chief Counsel and one other member of each of those committees, we obtained input on the breakdown of support and opposition with respect to each proposal, as well as on the underlying issues. The committee staffs were familiar with the status of this study, having received the memorandum analyzing the comments on the tentative recommendation (Memorandum 2003-20) before the teleconference.

The staffs of both committees were decidedly pessimistic about the prospects for enactment or even committee approval of either of the proposed jurisdictional increases, given the positions of the interested parties as summarized at pages 5-6 and 22-23 of Memorandum 2003-20. A bill that is

opposed by both (1) the defense bar/insurers and (2) the plaintiffs' bar/consumer groups is not worth pursuing, particularly if the stakeholders feel strongly about the matter. The committee staffs made clear that their committees would not look favorably on an effort to press forward in the Legislature with a proposal facing such opposition.

The committee staffs also made clear that any proposed jurisdictional increase needs to have solid empirical support. In particular, the problem of access to justice in the cases that would be affected by the jurisdictional increase must be well-documented. The staffs expressed interest in points such as how many cases in each jurisdictional category would be affected, what types of cases would be affected (e.g., suits by individuals as opposed to suits by collectors or other businesses), and what the impact would be on court workloads. The fiscal effect of any proposed jurisdictional increase must be especially well shown.

Another point of concern was whether and how the proposed jurisdictional increases would affect settlement rates. According to the empirical report prepared by Policy Studies, Inc., "personal injury plaintiff attorneys expressed concern that raising the limit [for a limited civil case] would make the $25,000-$50,000 cases harder to settle, as the award cap would reduce the incentive on the part of defendants and insurance companies to settle." Weller, et al., *Report on the California Three Track Civil Litigation Study* (July 31, 2002), at 36. According to the committee staffs, a bill is unlikely to pass if it would make cases harder to settle.

Notably, Government Code Section 70219 does not include any deadline for completion of the joint study on the three-track system of civil procedure. The clear message of the committee staffs was that it would be pointless for the Commission and the Judicial Council to present either of the proposed reforms to the Legislature before achieving greater consensus and concretely demonstrating that the positive effects of the reform would outweigh any negatives.

With this guidance in mind, Commission staff and AOC staff arranged to meet with the key stakeholders to discuss their positions and possible compromises. The results of those meetings are described below. For purposes of clarity, we first discuss the jurisdictional limit of a limited civil case, then the jurisdictional limit of a small claims case.

JURISDICTIONAL LIMIT OF A LIMITED CIVIL CASE

Although some comments on the tentative recommendation supported the proposed increase in the jurisdictional limit of a limited civil case, the defense bar

strongly opposed the proposal. CAOC also opposed the proposed increase, and both Consumers Union and the insurance industry made negative comments about it, albeit without taking an official position. Memorandum 2003-20, pp. 8-12.

Many of the comments on the proposed increase maintained that the discovery limits under economic litigation procedures are inappropriate for cases in the $25,001-$50,000 range. *Id*. at 12-14. Thus, in analyzing the comments for the September meeting, the staff suggested exploring possibilities such as:

- Whether to increase the number of depositions permitted under economic litigation procedures.
- Whether to revise the "Rule of 35" to permit a greater number of written discovery requests under economic litigation procedures.
- Whether to change the standard for exceeding the discovery limits under economic litigation procedures, or the process of determining whether that standard is satisfied.
- Whether any changes in the discovery limits or the rules regarding deviation from those limits should apply to all limited civil cases, only to cases for $25,001-$50,000, or to some other subgroup of limited civil cases.

Id. at 14-15. Our hope was to find a "sweet spot" — an adjustment of economic litigation procedures that would provide an acceptable amount of discovery without subverting the goal of promoting affordable access to justice.

In our meetings with CAOC and the defense bar, however, neither group showed the slightest interest in any of the above possibilities. Rather, each group stuck firmly to its position that the jurisdictional limit of a limited civil case should be left alone. Top-level leaders from each group participated in these meetings, making clear that the sentiments expressed were widely and deeply held within the groups.

While a variety of reasons underlie these positions, at a fundamental level both groups appear sincerely concerned that justice may not be done and counsel may commit malpractice if not enough discovery is conducted in a case. The groups see no need for, and potential harm from, state-imposed limits on discovery in cases for $25,001-$50,000. According to leaders in both groups, generally the cost of conducting discovery in and of itself prevents unnecessary discovery in such cases.

In cases involving automobile insurance, the proposed jurisdictional increase may also have ramifications relating to the amount of insurance coverage. For

many years, each driver or owner of a motor vehicle has been required, with limited exceptions, to carry insurance coverage in a minimum amount of $15,000 for one person killed or injured, $30,000 for more than one person killed or injured, and $5,000 for property damage. Veh. Code §§ 16020, 16056, 16430, 16451, 16452. As we understand it, those coverage limits are unlikely to change in the foreseeable future. Thus, if the jurisdictional limit of a limited civil case was increased from $25,000 to $50,000, economic litigation procedures would apply to more cases in which an individual is exposed to personal liability than at present. We are not clear on all of the implications of this, but it may account for some of the reluctance to change the jurisdictional limit.

In any case, it is clear that the proposed jurisdictional increase is unacceptable to both the plaintiffs' bar and the defense bar, and there is little prospect of modifying the proposal in a manner that would change either of their positions. Neither Consumers Union nor the insurance industry have taken a position on the proposed increase thus far, but chances are slim that those organizations would support the proposal given the opposition of their frequent allies. We will, of course, notify the Commission if there are any positive developments in our scheduled meeting with the insurers. Based on current information, it appears that attempting to go forward with the proposal in the Legislature would consume Commission and AOC resources to no avail.

Because it would be contrary to clear direction given by the staffs of both committees that would hear the bill, such an effort might also damage the credibility of the Commission and the Judicial Council in the Legislature. Pursuing a proposal that looks "dead on arrival" could not only impede efforts to increase the jurisdictional limit in the future, but might also adversely affect the Commission and the Judicial Council in other interactions with the Legislature.

The only bright spot is that the proposal appears to be fiscally sound, although even that is not as clear as we would like. Because the filing fee for a limited civil case seeking over $10,000 is now essentially the same as the filing fee for an unlimited civil case, increasing the jurisdictional limit should not have much impact on filing fee revenue. Further, the proposed jurisdictional increase might save the courts money, if it proves true that resolving a case for $25,001-$50,000 under economic litigation procedures consumes fewer court resources than resolving such a case under standard litigation procedures. That remains to be seen, however, and we need better data to show that it is even probable. While there is data indicating that a limited civil case requires fewer courtroom

resources than an unlimited civil case, such data apparently is not yet available with respect to other court resources, such as the clerk's office.

Postponing further work on this matter for a few years would give the AOC time to improve its empirical data on this and other points. If inflation continues, a delay would also strengthen the argument that increasing the jurisdictional limit is necessary to account for inflation. See Tentative Recommendation on *Jurisdictional Limits of Small Claims Cases and Limited Civil Cases* (Dec. 2002), at 26, n. 201. Whether the positions of the stakeholders will change over time is hard to predict. The staff is confident, however, that unless there is a breakthrough when we meet with the insurers, **it would be better to put the study of the jurisdictional limit of a limited civil case on hold and revisit it in a few years, than to proceed with it under present circumstances.**

JURISDICTIONAL LIMIT OF A SMALL CLAIMS CASE

In the comments on the tentative recommendation, the breakdown of support and opposition with respect to the proposed increase in the jurisdictional limit of a small claims case was similar but not identical to the breakdown with respect to the proposed increase in the jurisdictional limit of a limited civil case. There were a significant number of supporters (mostly bar groups and individuals), but the proposal was emphatically opposed by the defense bar, the insurance industry, and Consumers Union, as well as by some individuals. Several groups took a middle ground, such as offering conditional support or opposing the proposed increase to $10,000 while stating that $7,500 would be acceptable. CAOC was one of these — it expressed support for increasing the limit to $10,000 to improve access to justice, but only if numerous changes were made to improve the small claims system. A strong coalition of public law libraries made clear that they would oppose any proposal that has a negative impact on law library funding. Memorandum 2003-20, pp. 22-23.

Many of the comments opposing the proposed jurisdictional increase focused on the quality of justice in the small claims system, contending that litigants deserve better justice than the small claims courts deliver, particularly when the amount at stake is as high as $10,000. Consumers Union expressed these sentiments in the greatest detail, maintaining that the small claims limit should not be increased unless and until the quality of justice issues are satisfactorily addressed. *Id*. at Exhibit pp. 28-35. Consumers Union suggested reforms such as staffing the small claims advisory service with paid attorneys, improving the

accessibility of the service (e.g., by increasing hours of operation), providing court-certified interpreters for small claims litigants who do not speak English well, and having court commissioners hear small claims cases rather than temporary judges.

Although reforms such as these may be desirable, they would also be costly. In the state's current fiscal crisis, in which the courts are struggling to maintain existing services, such reforms are out of the question. Before meeting with Consumers Union, we therefore encouraged the group to try to think of means of improving the small claims system without significant expenditures.

Consumers Union made a serious effort along these lines, developing a list of conditions for increasing the jurisdictional limit to $7,500 in a case brought by an individual. The list includes creative ideas to minimize the cost of implementation. Nonetheless, key aspects of the proposal would still require an expenditure or advance commitment of public funds (e.g., providing a Spanish translator for small claim hearings in certain locations twice a month). Other conditions are consumer-friendly and likely to be unacceptable to groups such as the insurance industry and the defense bar.

An additional hurdle relates to filing fee revenue. The filing fee for a limited civil case seeking $10,000 or less is well over $100 (there have been some recent adjustments by 2003 Cal. Stat. ch. 757), while the regular filing fee for a small claims case is only $22. See Memorandum 2003-20, p. 4. Increasing the small claims limit to $7,500 is thus likely to cause a reduction in filing fee revenue. The magnitude of this effect would depend on factors such as the number of cases that would switch from a limited civil case to a small claims case, the number of cases filed in small claims court that would not have been litigated absent the jurisdictional increase, and the amount of the filing fee for cases affected by the jurisdictional increase.

The anticipated reduction in filing fee revenue could be averted by charging the same filing fee for a small claims case seeking $5,001-$7,500 as for a limited civil case seeking $10,000 or less. We suspect, however, that it would not be politically acceptable to charge so much for access to the small claims court, which is supposed to be "the People's Court."

The anticipated reduction in filing fee revenue might be offset to some extent by reduced costs for processing a case in the range affected by the jurisdictional increase. It is difficult to tell in advance whether the reform will actually have such an effect on the cost of processing the cases in question, and, if so, what the

amount of that effect will be. The AOC has data indicating that a small claims case requires fewer courtroom resources than a limited civil case, but it does not have comparable data regarding use of other court resources, such as the clerk's office. Using a variety of sets of assumptions, however, the AOC's financial projections consistently show that increasing the small claims limit would result in a net financial loss for the courts. The amount of that loss might be small in relation to the entire judicial budget, but any loss would be hard to absorb under current fiscal circumstances.

Neither the proposal in the tentative recommendation nor Consumers Union's suggestions for modifying that proposal would effectively deal with this problem. Further, although both proposals would involve a higher filing fee for a small claims case seeking over $5,000 than for a small claims case seeking $5,000 or less, they would direct the revenue from that fee differential to the small claims advisory service. That would be a good use of the funds, but it would in effect reduce funding for other important purposes, such as the public law libraries.

Thus, pursuing the compromise ideas suggested by Consumers Union would be an uphill battle at best, even if all of the other key stakeholders were interested in negotiating. From our other meetings, it is clear that such interest is lacking.

Although CAOC's position appears to be similar to that of Consumers Union, the defense bar showed no interest whatever in removing its opposition under any circumstances. The group is convinced that potential liability of $10,000 or even $7,500 is simply too much to resolve using small claims procedures. From their comments on the tentative recommendation (Memorandum 2003-20, pp. 30-31 & Exhibit pp. 1-2, 102-04), it seems likely that the insurance groups will be similarly unwilling to negotiate. We should have more information on this by the time the Commission meets.

The only matter on which the stakeholders seem to agree is that the small claims system needs improvements such as:

- Paid, well-trained, and experienced decisionmakers.
- In-person, readily accessible small claims advisory services staffed by paid attorneys.
- Competent interpreters for litigants who do not speak English well.

There is no way to obtain funding for such reforms in the readily foreseeable future, nor is there any realistic chance of success in pursuing a proposal that

would entail even modest expenditures, if it is opposed by key stakeholders and would reduce filing fee revenues without offsetting savings. Pushing forward now would not be a wise use of the resources and credibility of the Commission or the Judicial Council.

Rather, unless there is significant progress in the scheduled meeting with the insurers, the Commission should **delay further action on the small claims limit until the state's financial situation improves.** Perhaps in a few years, it will be possible to realistically consider improvements of the small claims infrastructure. Inflation might also have reached the point where the key stakeholders are ready to recognize the need for at least an inflation adjustment.

In the interim, it is tempting to try to move forward on modest reforms that would improve the small claims system without cost or significant controversy, such as the Commission's proposed provision prescribing the duties of a small claims advisor (see pp. 17 & 37-38 of the tentative recommendation). That might help to lay the groundwork for a jurisdictional increase in the future.

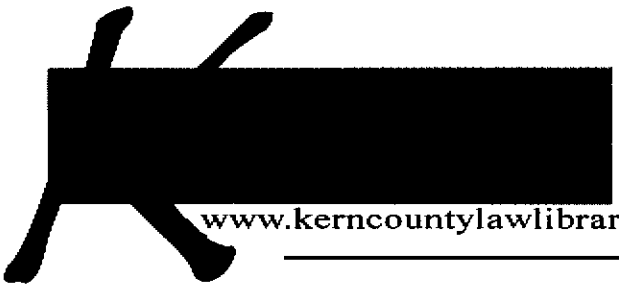
The Commission has identified only a few such reforms, however, and it is overloaded with major projects that need attention. Absent encouraging developments, it thus seems best to stop work on this study altogether and turn to those projects, rather than putting any resources into this study in the near future.

COOPERATION WITH THE JUDICIAL COUNCIL

Because this is a joint study, any step that the Commission takes should be taken in cooperation with the Judicial Council and the AOC, if at all possible. AOC staff will attend the upcoming Commission meeting, and will provide an update on the Judicial Council's position at that time.

Respectfully submitted,

Barbara Gaal
Staff Counsel



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September 24, 2003

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Dear Commission Members:

I would like to thank you for graciously listening to county law libraries concerns regarding Jurisdictional limits for Small Claims and Limited Civil Cases. Barbara Gaal's memo 2003-20 eloquently reiterated our concerns. Reading through the memo it was apparent that she performed additional research to better understand law libraries and our funding. As I hope was clear from our letters and our comments, we are not opposed to raising small claims limits, but are concerned with the fiscal impact this will have on already financially strapped county law libraries. Any loss in revenue means a loss in services to the community, which is especially devastating to those of whom we are the only resource available.

I was heartened by Commission Member Regalia's suggestion to include the county law library fee for limited jurisdiction on those small claims actions of 5,000 or more. As you continue to review this issue further, I would welcome the chance to answer any other questions or concerns you may have regarding county law libraries.

Once again, thank you for your time.

Very truly yours,

Annette Heath

Annette Heath
Kern County Law Library
CCCLL Legislative Chair