

Memorandum 2005-35

**Equitable Relief in Limited Civil Case  
(Comments on Tentative Recommendation)**

The Commission circulated its tentative recommendation on *Equitable Relief in a Limited Civil Case* (April 2005) for public comment in April 2005. The comments received are attached as an Exhibit to this memorandum.

*Exhibit p.*

- 1. David M. Marcus, Los Angeles ..... 1
- 2. Thomas M. Gordon, HALT ..... 3

This memorandum analyzes the comments received and suggests a number of revisions to address them. The memorandum also raises the question whether the Commission should take a step back and look at the big picture before proceeding with this recommendation.

TENTATIVE RECOMMENDATION

The authority of the superior court to grant equitable relief in a limited civil case is restricted. The restriction on the court’s authority dates from the era when a cause of that type was within the jurisdiction of the municipal court. Now that the municipal court has been abolished and the superior court’s jurisdiction has been expanded to encompass a limited civil case, some of the equitable relief restrictions may no longer be necessary.

The Commission tentatively recommended that the superior court should be authorized, in a cause that otherwise is treated as a limited civil case, to award the following types of equitable relief currently prohibited to it:

- Determination of title to real property.
- Declaratory relief.
- Good faith improver relief.

The Commission particularly solicited comment on the advisability of allowing declaratory relief in a limited civil case.

## COMMENTS ON TENTATIVE RECOMMENDATION

We received two letters commenting on the tentative recommendation.

### **Support**

HALT (“An Organization of Americans for Legal Reform”) supports the proposal. See Exhibit pp. 3-4. Their interest is to expand access of low and moderate income households to the civil justice system. Improvement of judicial process in limited jurisdiction cases will help achieve this.

HALT observes that, while limited civil cases provide some relief to litigants hoping to avoid the expense of full blown superior court litigation, users of the legal system cannot take full advantage of limited civil cases because the courts cannot grant injunctive relief in those cases. “There is no reason that limited civil case jurisdiction should not be extended to all cases with under \$25,000 in dispute, whether in law or in equity. ... [T]here is no need to let archaic distinctions between law and equity courts stand in the way of access to justice.”

HALT concludes that the expansion of equitable relief as tentatively recommended by the Commission is an important step in the march toward full access to the law for all Californians.

### **Opposition**

David M. Marcus of Los Angeles opposes the proposed changes. He is concerned about possible problems that will be caused by them and states, “I do believe in the laws of unintended consequences and oppose making changes unless its clear the advantages of making them outweigh the consequences of not changing them.” Specifically, he sees the following types of problems with authorizing equitable relief in a limited civil case.

#### *Determination of Title to Real Property*

Mr. Marcus has two concerns about determination of title to real property in a limited civil case — one theoretical and the other practical.

The theoretical concern is that in a quiet title action, the court is given broad jurisdiction to resolve the dispute. Code Civil Proc. § 760.040. This he sees as an inherent contradiction with the concept of a limited jurisdiction case.

The practical concern is that it may be “very difficult, if not impossible” to determine whether the value of property in a dispute falls within the \$25,000 limited jurisdiction threshold. He postulates the case of a piece of property worth

\$100,000 that is subject to a \$75,000 lien. The owner is defrauded of title and the defrauder refinances for \$100,000, taking out \$25,000 in cash. Is the owner's action to set aside the new deed of trust a limited civil case (\$25,000 equity) or an unlimited civil case (\$100,000 deed of trust)? If a limited civil case, what about the lender's claim of a \$75,000 equitable lien?

#### *Good Faith Improver Relief*

Mr. Marcus raises the issue of an owner's home that encroaches slightly on a neighbor's property, taking up perhaps 10 square feet. The value of the neighbor's loss is less than \$5,000. But if the court awards equitable relief that requires the owner to relocate the home, it may cost the owner over \$100,000 to remove the encroaching portion and reconstruct. "It isn't appropriate for the limited jurisdiction courts to be the ones making these valuation judgments."

#### *Insurance Considerations*

Mr. Marcus indicates that many boundary disputes involve title or homeowner's insurance. If a plaintiff brings a boundary dispute action as a limited civil case, the insurer may simply tender the defendant \$25,000. Doesn't the limited civil jurisdiction of \$25,000 in effect constitute a limitation on the insurer's liability, even though the judgment in the case may require the defendant to remove a wall, a garage, or a portion of a swimming pool, at a cost greater than \$25,000?

### STAFF CRITIQUE

The fact that we received only two letters commenting on the tentative recommendation suggests perhaps that this issue is not of great moment in practice, one way or the other.

As a theoretical matter, the staff agrees with HALT. If the available remedies in a limited civil case are limited, access to justice in smaller cases is denied. The cost of litigating a small matter as an unlimited civil case solely in order to obtain a remedy other than money damages may be prohibitive.

The staff does not see the logical contradiction that troubles Mr. Marcus — the idea that the court's authority to award equitable relief is inconsistent with the concept of limited jurisdiction. The staff believes that the authority and jurisdiction of the court in a particular proceeding are what the statutes define it to be. If the statutes grant authority to a court to determine title to real property

of small value in a limited civil proceeding, that simply redefines the nature of the limited grant of authority in those proceedings.

An argument can be made that unless we make clear the court's authority to determine title in a limited civil case, we risk inadvertently overturning case law that historically allowed a municipal court to determine title in an ancillary proceeding on an action for damages to real property or for unlawful detainer.

More serious are the practical matters Mr. Marcus raises — (1) while the value of the plaintiff's interest may be within limited civil case jurisdiction, the value of the defendant's interest may exceed it; (2) while the damage to the plaintiff's interest may be within limited civil case jurisdiction, non-monetary relief may be more costly to the defendant; and (3) limited civil case jurisdiction might be held to limit an insurer's obligation to \$25,000.

### **Value of Defendant's Interest Exceeds Limited Civil Case Jurisdiction**

It is true that a plaintiff may bring an action as a limited civil case based on an under-\$25,000 interest in property; that could cause difficulty for a defendant whose interest in the property is over \$25,000, depending on the type of relief granted. This problem may occur under the law right now. See Civ. Code § 85(a) ("amount in controversy" means amount of demand, recovery sought, value of property, or amount of lien, that is in controversy).

The way the problem is handled under existing law is that the plaintiff makes the initial classification of the case, but the defendant may move to reclassify the case. See Code Civ. Proc. § 403.040 (reclassification motion). Of course it may not be in the defendant's economic interest to change the jurisdictional classification from limited to unlimited. But if the defendant wants the procedural protections of an unlimited civil case, that option is available to it. **The staff would make this clear either in the statute or in the Comment.** For example:

#### **Code Civ. Proc. § 85 (amended). Miscellaneous limited civil cases**

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

(a) The amount in controversy does not exceed twenty-five thousand dollars (\$25,000). As used in this section, "amount in controversy" means the amount of the demand, or the recovery sought, or the value of the property, or the amount of the lien, that

is in controversy in the action, exclusive of attorneys' fees, interest, and costs. If the amount in controversy in an action or proceeding commenced as a limited civil case exceeds the amount provided in this subdivision, the action or proceeding is subject to reclassification as an unlimited civil case pursuant to Section 403.040.

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

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

...

Comment. Subdivision (a) is amended to cross-refer to the reclassification procedure. The reclassification procedure may be appropriate, for example, in a case where the value of the plaintiff's interest in property that is the subject of the action or special proceeding does not exceed \$25,000 but the value of the defendant's interest that would be affected exceeds that amount.

### **Non-Monetary Relief More Costly to Defendant than \$25,000**

The "amount in controversy" as measured by the value of the property interest affected may be under \$25,000, but as measured by the cost of the equitable relief granted against the defendant may exceed that amount. Whereas it is clear that a monetary award that exceeds \$25,000 is beyond the court's jurisdiction in a limited civil case, shouldn't the same principle apply to a nonmonetary award?

The staff thinks **the statutes should be adjusted to protect against relief in a limited civil case exceeding \$25,000 in cost to the defendant.**

### **Code Civ. Proc. § 85 (amended). Miscellaneous limited civil cases**

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

(a) The amount in controversy does not exceed twenty-five thousand dollars (\$25,000). As used in this section, "amount in controversy" means the amount of the demand, or the cost of the recovery or other relief sought, or the value of the property, or the amount of the lien, that is in controversy in the action, exclusive of attorneys' fees, interest, and costs.

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

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

...

**Comment.** Subdivision (a) is amended to make clear that the amount in controversy may include the cost to the defendant of relief awarded in the action or special proceeding. For example, if the relief awarded in a boundary line dispute requires the defendant to relocate a structure, the amount in controversy may include the relocation cost.

As a practical matter, how is the defendant to know what type of equitable relief may be awarded, and what the cost of that relief may be? Will the defendant realistically be in a position to make a timely reclassification motion in an appropriate case?

Reclassification is not the only remedy available to the defendant. The law makes clear that the court may not award relief in a limited civil case that exceeds the \$25,000 jurisdictional limit. **The staff suggests we add Comment language to Code of Civil Procedure Section 580** reinforcing this point, set out in boldface below:

**Code Civ. Proc. § 580 (amended). Relief granted**

580. (a) The relief granted to the plaintiff, if there is no answer, cannot exceed that ~~which he or she shall have demanded in his or her~~ the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115; but in any other case, the court may grant the plaintiff any relief consistent with the case made by the complaint and embraced within the issue. The court may impose liability, regardless of whether the theory upon which liability is sought to be imposed involves legal or equitable principles.

(b) Notwithstanding subdivision (a), the following types of relief may not be granted in a limited civil case:

- (1) Relief exceeding the maximum amount in controversy for a limited civil case as provided in Section 85, exclusive of attorney's fees, interest, and costs.
- (2) A permanent injunction.
- (3) ~~A determination of title to real property.~~
- (4) Enforcement of an order under the Family Code.
- (5) ~~Declaratory relief, except as authorized by Section 86.~~

**Comment.** Section 580 is amended to enable several types of equitable relief previously precluded in a limited civil case. See Sections 86(b)(1) (title to real property), 86(a)(7) (declaratory relief). **Under subdivision (b)(1), any equitable relief awarded may not exceed the amount in controversy limitation of Section 85. The amount in controversy includes the cost to the defendant of any equitable relief awarded. See Section 85(a) and Comment.**

The changes to subdivision (a) are technical.

The statutes do not specify a particular procedure that a defendant would use to limit the award in the case, but presumably there are plenty of opportunities for that both during the proceeding and in response to any proposed court order.

The limitation on the equitable relief that may be awarded may seem harsh to the plaintiff. But it is the plaintiff that selects the jurisdictional classification of the case, as well as the relief requested. If the plaintiff wishes to seek more substantial relief, the option of an unlimited civil case is available.

### **Insurance Issues**

If equitable relief granted in a limited civil case costs the defendant more than \$25,000 to comply with, is the defendant's insurer obligated to reimburse the defendant for the full amount, or is the insurer's liability limited to \$25,000? As a practical matter, the defendant (or the insurer if the insurer has accepted the defense) should be able to object to the limited civil classification of the case or to any relief that will cost more than \$25,000. See discussion immediately above.

If neither the defendant nor the insurer objects, and the relief awarded costs the defendant more than \$25,000, the insurer's liability is arguably determined by the terms of the policy of insurance. The staff does not know how these policies are typically phrased today.

It is possible that the insurance industry would have the concerns that Mr. Marcus identifies, and would want to make sure that insurers are protected against additional liability that might be triggered by any change in law. **The Commission probably should make further inquiry of the insurance industry about these matters before proceeding with a final recommendation.** The staff will attempt to get some input for the September Commission meeting.

### **Declaratory Relief**

The tentative recommendation was most tentative about allowing declaratory relief in a limited civil case. The concern was that a major cost could be hidden in an apparently harmless action to construe the terms of an instrument.

We received no comment on this point, although we specifically requested it. But the staff’s response would be the same as for any other type of action where the plaintiff classifies the action as a limited civil case and the defendant’s potential liability exposure is greater than that — simply reclassify the case.

Perhaps **it would be helpful to make clear that the amount in controversy includes the consequences for the defendant** of a declaratory relief judgment. We would add a reference to consequences (set out in bold face below) to supplement our previously proposed language relating to costs:

**Code Civ. Proc. § 85 (amended). Miscellaneous limited civil cases**

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

(a) The amount in controversy does not exceed twenty-five thousand dollars (\$25,000). As used in this section, “amount in controversy” means the amount of the demand, or the cost or consequences of the recovery or other relief sought, or the value of the property, or the amount of the lien, that is in controversy in the action, exclusive of attorneys’ fees, interest, and costs.

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

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

...

**Comment.** Subdivision (a) is amended to make clear that the amount in controversy may take into account the monetary consequences to the defendant of declaratory relief awarded. For example, if the application for declaratory relief would construe the terms of a contract in such a way as to increase the defendant’s liability, the amount in controversy should be determined taking into account that liability.

The language “cost or consequences of the recovery or other relief sought” is nebulous and will undoubtedly be applied in ways we cannot now predict. But its only function is to determine whether the monetary consequences of the relief will exceed \$25,000 for purposes of determining limited civil case classification. In that arena we can probably tolerate some unexpected results.



## **General Observation**

A person calling our office once thought our receptionist answered the phone with the words “Long Range Vision Commission.” Arguably, we should have long range vision on all of our projects. What should be our vision on equitable relief in a limited civil case?

This matter comes before us as a consequence of trial court unification. The then existing limitations on municipal court civil jurisdiction were carried forward into the unified court system as a transitional matter. This was done by means of the limited civil case classification structure.

We have erected an elaborate system in an effort to preserve pre-unification municipal court procedures in the superior court. Like the ancient forms of pleading, the equitable jurisdiction and other limitations of the former municipal courts continue to rule us from the grave.

In recent years the Commission has had to grapple with fundamental questions relating to the limited civil case system. Should the \$25,000 jurisdictional limit be increased? Does superior court appellate division review of limited civil cases create a conflict of interest?

Our experience in studying whether to increase the limited civil case jurisdictional limit from \$25,000 to \$50,000 would suggest that neither the plaintiffs bar nor the defense bar is enamored with the limited civil case procedural regime. It is quite likely that neither interest group will have much sympathy for fixing up the system and extending its reach to equitable cases that are not currently subject to it. It is unfortunate that neither group offered comments on the tentative recommendation, but perhaps we can get some input from them by the time of the September meeting.

Should we continue to put band aids on the existing system, or should we re-examine the whole concept of the limited civil case now that the transitional period of trial court unification is behind us?

Is it worth the complexity in the law created by the limited civil case system if the jurisdictional limit remains stuck at \$25,000? Is HALT correct that in order to achieve full justice, injunctive relief must be allowed in all cases? Is HALT correct that significant savings are achieved by limited civil case procedure? What is the satisfaction level of the courts, as opposed to litigants, with the current system? We have no empirical data on these matters.

What do other states do that have unified court systems? Do they have simpler procedures for simpler cases? If so, do they differentiate based on the

amount in controversy, or do they categorize their cases on some other basis, such as the nature of the proceeding?

The staff is not necessarily arguing for it, but **the Commission should seriously consider the possibility of holding back the equitable relief recommendation** while it takes a broader look at the concept of differentiated civil procedures within a unified court.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

Exhibit

---

**COMMENTS ON TENTATIVE RECOMMENDATION**

**DAVID MARCUS**

I write to express my opposition to the proposed changes to grant the limited jurisdiction courts the power to grant equitable relief.

The proposal specifically indicates that changes will be made to allow limited jurisdiction courts to render the following equitable relief: Determination of Title to Real Property, Declaratory Relief, and Good Faith Improver Relief.

CCP Section 760.040 reads as follows:

(b) The court has complete jurisdiction over the parties to the action and the property described in the complaint and is deemed to have obtained possession and control of the property for the purposes of the action with complete jurisdiction to render the judgment provided for in this chapter.

(c) Nothing in this chapter limits any authority the court may have to grant such equitable relief as may be proper under the circumstances of the case.

The quiet title legislation clearly gives the court the broadest possible jurisdiction, including both in personam and in rem jurisdiction.

There appears to be an inherent contradiction in a limited jurisdiction court being conferred unlimited jurisdiction. On the one hand the limited jurisdiction judge has the power to make orders concerning real property, but nevertheless the court's hands are tied in that, unlike the unlimited courts, where the courts have unfettered power under the statute, the limited court can't do everything allowed under the statute.

Real property is often (for specific performance purposes) deemed unique. The proposal attempts to restrict jurisdiction to the limited jurisdiction court when the amount in dispute, the value of the property, falls below the threshold. However, this in practice is very difficult, if not impossible.

Let us assume that an owner of property wants to quiet title to the property because there is a lien that the owner considers unenforceable. If the lien is less than \$25,000, under this change the court could rule on the matter.

Let us assume that a person owns property worth \$100,000 with a \$75,000 encumbrance on it. Further assume that the owner is defrauded out of title to the property and refinances the property so that the \$75,000 encumbrance is paid and takes out the \$25,000 in equity in cash. Is the suit by the victim one which falls within the limited court jurisdiction since the amount in dispute is only \$25,000. What if the victim seeks to set aside the new deed of trust for \$100,000 but makes no mention of the equitable lien for \$75,000 that would be imposed. If the defendant lender raises the issue of the equitable lien, does that move the case back to limited jurisdiction?

Assume that a portion of A's home encroaches slightly onto B's property taking up perhaps 10 square feet. The value to B of the loss of his property might be de minimis and in any event is certainly worth less than \$5000. But if B sues to force A to remove the ten feet, it may cost A \$100,000 to remove the encroaching portion and reconstruct his house.

It isn't appropriate for the limited jurisdiction courts to be the ones making these valuation judgments.

There is the practical matter that many matters involving boundary disputes involve insurance companies, either title insurers or homeowners liability insurance. If a plaintiff sues to remove a boundary line and sues in the limited jurisdiction court, what is to stop an insurer from tendering the insured the \$25,000? What happens if an insured defends a matter and is forced to remove a wall, or a garage, or portion of the swimming pool and then finds to his chagrin the value exceeds \$25,000. Doesn't this give the insurer the power to say that the court determined the value to be less than \$25,000?

These are certainly not the only reasons, but off the top of my head, they seem strong enough that there is no compelling reason to change the existing law (except to give the limited jurisdiction judges more interesting work). I do believe in the laws of unintended consequences and oppose making changes unless its clear the advantages of making them outweigh the consequences of not changing them.

Thank you for your consideration,

David M. Marcus  
Marcus, Watanabe, Snyder and Dave, LLP  
1901 Avenue of the Stars  
Suite 300  
Los Angeles California 90067  
(310) 284-2020

**HALT** *An Organization Of*  
**AMERICANS FOR LEGAL REFORM**

July 29, 2005

Nathaniel Sterling  
Executive Secretary  
California Law Revision Commission  
BY E-MAIL: [sterling@clrc.ca.gov](mailto:sterling@clrc.ca.gov)

Dear Mr. Sterling:

I am writing to you on behalf of HALT—*An Organization of Americans for Legal Reform*. HALT is a national advocacy organization committed to improving accessibility and increasing accountability in the civil justice system. On behalf of our 50,000 members nationwide, including 11,000 members in California, I would like to express HALT's support for the CLRC's Tentative Recommendation on Equitable Relief in a Limited Civil Case.

Each year, tens of millions of low- and moderate-income households nationwide need legal help, but are denied access to the civil justice system. These Americans are shut out of the civil justice system simply because they cannot afford to hire a lawyer to help resolve their legal problem. Limited jurisdiction proceedings such as those in small claims courts and in economic litigation procedures are among the ways to address the enormous gap in access to justice that exists between those in upper income brackets and those with average or lower incomes.

While limited civil cases provide some relief to litigants hoping to avoid the expense of full-blown superior court litigation, users of the legal system are prevented from taking full advantage of limited civil cases by the inability of courts to grant injunctive relief in such cases. There is no reason that limited civil case jurisdiction should not be extended to all cases with under \$25,000 in dispute, whether in law or in equity. The Commission has taken a valuable step toward that goal with its recommendation that the superior court be authorized to award declaratory relief and good faith improver relief and to determine title to real property. When such relief has a value below the jurisdiction of limited civil court, there is no need to let archaic distinctions between law and equity courts stand in the way of access to justice.

HALT has long urged courts nationwide to expand access to limited jurisdiction courts. We hope that in the future the Commission will consider recommending additional equitable relief in limited civil cases, as well as in small claims cases. The expansion of equitable relief in the Commission's recommendation is an important step in the march toward full access to the law for all Californians.

Sincerely,

Thomas M. Gordon  
Senior Counsel