

## Memorandum 2009-51

**Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case  
(Progress Update)**

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This memorandum provides a brief update on the status of efforts to clarify the jurisdiction of a writ relating to a small claims case after unification of the municipal and superior courts. The memorandum is for informational purposes only. **No Commission action is required.**

**Pre-Unification Procedure**

Sometimes a small claims litigant may seek an extraordinary writ. For example, in *Gardiana v. Small Claims Court*, 59 Cal. App. 3d 412, 130 Cal. Rptr. 675 (1976), a small claims plaintiff requested an interpreter at public expense. The small claims court (which was then a part of the municipal court) denied the request, so the plaintiff asked the superior court to issue an extraordinary writ directing the small claims court to provide an interpreter at public expense. The superior court issued the writ as requested, and the court of appeal upheld that result, with certain refinements.

Similarly, in *City and County of San Francisco v. Small Claims Court*, 141 Cal. App. 3d 470, 190 Cal. Rptr. 3d 340 (1983), the plaintiffs filed 183 consolidated claims in small claims court against a city for airport noise. The city asked the superior court to issue an extraordinary writ restraining the small claims court from hearing the claims. The superior court denied the writ, and the court of appeal upheld that ruling.

In these cases, the writ petition was filed in a different tribunal than the small claims court, so there was no possibility that the judge hearing the petition would issue a writ directed at a colleague on the same court. After the municipal and superior courts unified, however, the small claims court became a division of the superior court.

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Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

## **Post-Unification Procedure**

Now that the municipal and superior courts are unified, the unified superior court hears both (1) the types of cases that used to be tried in municipal court, and (2) the types of cases that used to be tried in superior court. In general, an appeal in the former type of case is to the appellate division of the superior court, while an appeal in the latter type of case is to the court of appeal.

As before unification, however, an “appeal” in a small claims case is available in limited circumstances, and consists of a trial de novo in the superior court. Code Civ. Proc. §§ 116.710, 116.770. To preclude the possibility of self-review, the trial de novo must be “before a judicial officer other than the judicial officer who heard the action in the small claims division.” Code Civ. Proc. § 116.770(a).

In general, writ jurisdiction after unification tracks appellate jurisdiction. Specifically,

[t]he Supreme Court, courts of appeal, superior courts, and their judges ... have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court *in causes subject to its appellate jurisdiction*.

Cal. Const. art. VI, § 10 (emphasis added).

Because the Constitution says the appellate division has writ jurisdiction “in causes subject to its appellate jurisdiction,” and the appellate division does not have appellate jurisdiction of a small claims appeal, it is questionable whether the appellate division could constitutionally hear a petition for an extraordinary writ relating to a small claims case. The Commission has been trying to clarify this matter.

### **Efforts to Clarify the Jurisdiction of an Extraordinary Writ Relating to a Small Claims Case**

In a tentative recommendation issued in 2006, the Commission proposed legislation that was intended to: (1) make clear that when a writ petition is brought in a superior court challenging a prejudgment ruling in a small claims case, the petition can only be considered by a judicial officer of the superior court other than the one who made the challenged ruling, and (2) codify *General Electric Capital Auto Financial Services, Inc. v. Appellate Division of the Superior Court*, 88 Cal. App. 4th 136, 144-45, 105 Cal. Rptr. 2d 552 (2001), which held that

“the appellate division of the superior court has ... extraordinary writ jurisdiction of postjudgment enforcement orders of the small claims court.”

This proposal received some support, but staff from the Administrative Office of the Courts notified the Commission that the Civil and Small Claims Advisory Committee of the Judicial Council had significant concerns about it. Due to those concerns, which were not formally or precisely articulated, the Commission withdrew the proposal for further study and proceeded with the remainder of the reforms in the tentative recommendation.

Earlier this year, the Commission reactivated work on the topic, and the staff drafted a proposal that was intended to address what we thought were the concerns of the Civil and Small Claims Advisory Committee. See Memorandum 2009-20, pp. 10-14; Memorandum 2009-34, Attachment pp. 4-6; Minutes (April 2009), pp. 4-7. That proposal was not acceptable to the Civil and Small Claims Advisory Committee, but the committee expressed interest in working with the Commission to develop an alternative approach. See Second Supplement to Memorandum 2009-34, pp. 2-4 & Exhibit p. 6. The Commission was amenable to that idea. Minutes (Aug. 2009).

### **Recent Developments**

Since August, staff from the Administrative Office of the Courts has presented this matter to: (1) the Small Claims and Limited Civil Cases Subcommittee of the Civil and Small Claims Advisory Committee, and (2) the full Civil and Small Claims Advisory Committee. The discussions were preliminary in nature and do not as yet represent an official position of the subcommittee or the full committee, much less the Judicial Council as a whole.

Nonetheless, several main points became clear in the discussions:

- The committee is convinced that the issue is worth addressing. Steps should be taken to make clear which tribunal has jurisdiction of an extraordinary writ relating to a small claims case.
- The committee’s preference would be for such writs to be heard by the appellate division of the superior court, not by a superior court judge or by the court of appeal.
- For practical reasons, the committee would like to address this matter by statute if possible, instead of by a constitutional amendment.

Although this input is preliminary, it is very helpful. **The staff will analyze it for a future meeting, as soon as time permits.**

Respectfully submitted,

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