Study J-1452 April 12, 2010

Memorandum 2010-18

Trial Court Restructuring:
Writ Jurisdiction in a Small Claims Case
(Discussion of Issues)

The Commission has been studying whether and, if so, how to provide clarification on which tribunal has jurisdiction of an extraordinary writ relating to a small claims case. The Commission is seeking to develop an approach that would be acceptable to the Civil and Small Claims Advisory Committee of the Judicial Council, which previously expressed concerns about two different attempts the Commission made to address this matter.

In December, the staff reported that the Civil and Small Claims Advisory Committee had informally expressed the following views:

- 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.
- Such writs should 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, it would be preferable to address this matter by statute if possible, instead of by a constitutional amendment.

This memorandum provides some background material that will be useful in analyzing that type of approach, as well as other possible approaches. We plan to provide additional background material and a preliminary analysis of possible approaches for the upcoming June meeting.

The discussion below begins with a brief description of extraordinary writs and writ procedure. We then make some prefatory remarks, which may be helpful in considering this topic. Finally, the memorandum describes how small claims writs were handled before trial court unification. The unification process

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). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

and post-unification case law will be discussed in a memorandum for the June meeting.

No Commission decision is necessary at this time. This memorandum does not present sufficient information to properly frame the issues that the Commission will need to address in this study. Nonetheless, comments on the matters discussed would be welcome and appreciated.

(Note: The Commission first considered this topic as part of its study on *Statutes Made Obsolete by Trial Court Restructuring: Part 3* (Study J-1402). We severed this aspect from that study to allow the remainder of the study to proceed to a final recommendation and legislation. The Commission revisited the topic as part of its study on *Statutes Made Obsolete by Trial Court Restructuring: Part 5* (Study J-1404). Again, it was necessary to sever this aspect from that study to allow the remainder of the study to proceed. For administrative convenience, we have since created a separate study number (Study J-1452) for the Commission's ongoing work on small claims writs. The following materials from the earlier studies pertain to the topic: Memorandum 2006-21, pp. 27-36; First Supplement to Memorandum 2006-21, pp. 9-12 & Exhibit pp. 1-6; Memorandum 2006-31, Attachment pp. 9-13, 34-39; Memorandum 2006-44, pp. 7-9 & Exhibit pp. 1-3, 5; Memorandum 2009-20, pp. 6-14; Memorandum 2009-34, Attachment pp. 4-6, 19-20; Second Supplement to Memorandum 2009-34, pp. 2-4 & Exhibit p. 6; Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring: Part 3* (Aug. 2006), pp. 9-13, 34-39; Minutes (June 2006), pp. 19-25; Minutes (Aug. 2006), p. 5; Minutes (Dec. 2006), p. 13; Minutes (April 2009), pp. 4-7; Minutes (Aug. 2009), pp. 6-7.)

EXTRAORDINARY WRITS

A writ is a written court order, which directs a person or entity to perform or cease a specified act. In California, there are several types of extraordinary writs:

(1) *A writ of review (also known as a writ of certiorari).* A writ of review is a means of reviewing judicial action when no other means of review is available. B. Witkin, California Procedure *Extraordinary Writs* § 4, at 784-85 (4th ed. 1997) (hereafter "1997 Witkin"). A court may issue a writ of review when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded its jurisdiction and there is no appeal or any plain, speedy, and adequate remedy. Code Civ. Proc. § 1068(a). "Certiorari in purpose and effect is quite similar to appeal." B. Witkin, California

Procedure *Extraordinary Writs* § 6, at 888 (6th ed. 2008) (hereafter "2008 Witkin").

(2) *A writ of mandamus (also known as a writ of mandate)*. A writ of mandamus is a broad remedy to compel performance of a ministerial duty or to restore rights and privileges of a public or private office. 2008 Witkin, *supra*, *Extraordinary Writs* § 23, at 902. A writ of mandamus "may be issued by any court to any inferior tribunal, corporation, board, or person, *to compel the performance of an act* which the law specifically enjoins, as a duty resulting from an office, trust, or station, or to *compel the admission of a party to the use and enjoyment of a right or office* to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board, or person." Code Civ. Proc. § 1085(a) (emphasis added.)

(3) *A writ of prohibition*. A writ of prohibition is a writ to restrain judicial action in excess of jurisdiction when there is no other adequate remedy. 2008 Witkin, *supra*, *Extraordinary Writs* § 18, at 899. A writ of prohibition "arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person. Code Civ. Proc. § 1102. The writ "may be issued by any court to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law." Code Civ. Proc. § 1103(a).

A writ proceeding is initiated by filing a petition seeking a particular writ. The court in which the petition is filed may summarily deny the writ, without considering the merits. Alternatively, the court may issue an order to show cause (often in the form of an alternative writ, which essentially directs the respondent to do what is sought by the petition and/or show cause why the respondent should not have to do so). If the court issues an order to show cause, the matter is fully briefed by the parties and decided by the court on the merits, either by granting the relief requested in the petition or by denying such relief. In rare instances, the court proceeds directly to a determination on the merits, without issuing an order to show cause. *See, e.g.*, *Lewis v. Superior Court*, 19 Cal. 4th 1232, 1240, 970 P.2d 872, 82 Cal. Rptr. 2d 85 (1999); 1997 Witkin, *supra*, *Extraordinary Writs* § 159, at 959-60, § 182, at 981; Scott, *Writs in California State Courts Before and After Conviction*, *in* Appeals and Writs in Criminal Cases §§ 2.121-2.134, at 461-75 (Cal. Cont. Ed. Bar 2006).

"Although appellate review by extraordinary writ petition is said to be discretionary, a court must exercise its discretion 'within reasonable bounds and

for a proper reason.'" *Powers v. City of Richmond*, 10 Cal. 4th 85, 113, 893 P.2d 1160, 40 Cal. Rptr. 2d 839 (1995) (plurality), *quoting Scott v. Municipal Court*, 40 Cal. App. 3d 995, 997, 115 Cal. Rptr. 620 (1974). "The discretionary aspect of writ review comes into play primarily when the petitioner has another remedy by appeal and the issue is whether the alternative remedy is adequate." *Powers*, 10 Cal. 4th at 113. "[W]hen writ review is the exclusive means of appellate review of a final order or judgment, an appellate court may not deny an apparently meritorious writ petition, timely presented in a formally and procedurally sufficient manner, merely because, for example, the petition presents no important issue of law or because the court considers the case less worthy of its attention than other matters." *Id.* at 114. In those circumstances, it would be an abuse of discretion to deny the writ. *Id.*; *but see id.* at 171-73 (Lucas, C.J. dissenting).

PREFATORY REMARKS

The small claims process is intended to facilitate quick, inexpensive, and informal resolution of small disputes through simple proceedings conducted so as to promote compromise. *See, e.g., Sanderson v. Niemann*, 17 Cal. 2d 563, 574, 110 P.2d 1025 (1941); *Houghtaling v. Superior Court*, 17 Cal. App. 4th 1128, 1136, 21 Cal. Rptr. 2d 855 (1993). If a dispute satisfies certain jurisdictional requirements, the plaintiff has the *option* of seeking resolution through the small claims process, instead of using more formal court procedures. Having elected to use that process, however, the plaintiff forfeits the right to appeal. "A small claims court plaintiff, taking advantage of the speedy, inexpensive procedures and other benefits of that court, accepts all of its attending disadvantages such as the denial of the right to … an appeal. *Cook v. Superior Court*, 274 Cal. App. 2d 675, 677-78, 79 Cal. Rptr. 285 (1969); *see also Superior Wheeler Cake Corp. v. Superior Court*, 203 Cal. 384, 387, 264 P. 488 (1928). In contrast, a small claims defendant is entitled to appeal an adverse decision by the small claims tribunal, but the appeal consists of a trial de novo. Code Civ. Proc. §§ 116.710(b), 116.770. There is no right to appeal a judgment after a small claims trial de novo. Code Civ. Proc. § 116.780(a).

Although a small claims case is conducted quickly and informally, it nevertheless may proceed through several different stages:

- Prejudgment phase before the small claims tribunal.
- Judgment of the small claims tribunal.

- First postjudgment phase (after judgment of the small claims tribunal).
- Prejudgment phase of trial de novo.
- Judgment following trial de novo.
- Second postjudgment phase (after trial de novo).

Thus, a small claims litigant might seek an extraordinary writ challenging any of the following types of rulings:

- A prejudgment ruling of the small claims tribunal (e.g., a ruling on whether a party is entitled to an interpreter at public expense).
- The judgment of the small claims tribunal.
- A postjudgment ruling relating to the judgment of the small claims tribunal (e.g., a postjudgment enforcement order based on the judgment of the small claims tribunal).
- A prejudgment ruling in the trial de novo (e.g., a ruling on whether the hearsay rule applies to the trial de novo).
- The judgment after the trial de novo.
- A postjudgment ruling relating to the judgment after the trial de novo (e.g., a motion to vacate the judgment).

In our previous discussions of small claims writs, we have not clearly distinguished between these different situations, nor have we carefully differentiated between a writ sought by a small claims plaintiff and a writ sought by a small claims defendant. Going forward, it might be helpful to pay closer attention to these matters. We have tried to do so in the discussion that follows.

SMALL CLAIMS WRITS BEFORE TRIAL COURT UNIFICATION

In the early 1990's, California had three different types of trial courts: superior courts, municipal courts, and justice courts. The court system has since been unified; only superior courts remain. This section describes how small claims writs were handled before trial court unification.

At that time, a "small claims court" was actually a division of a municipal or justice court. These were inferior courts with limited jurisdiction. They were only permitted to hear certain types of cases, and only authorized to grant monetary relief up to a statutorily-specified amount.

If a defendant appealed from a judgment of a small claims court, the trial de novo was conducted by a judge of the superior court, not by the appellate

department of the superior court. The superior court was a countywide entity with unlimited jurisdiction.

Small claims litigants occasionally sought writ relief, in a variety of circumstances as described below.

Prejudgment Ruling of the Small Claims Tribunal

On occasion, a small claims litigant sought an extraordinary writ challenging a prejudgment ruling by the small claims court. 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 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, *acting through a single judge rather than a panel of the appellate department*, issued the writ as requested. 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. 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. *A judge of the superior court* denied the writ, and the court of appeal upheld that ruling. A similar case is *Prudential Ins. Co. v. Small Claims Court*, 76 Cal. App. 2d 379, 173 P.2d 38 (1946) (denying defendant's petition for writ restraining small claims court from hearing case). Here too, the writ was initially denied by a single judge of the superior court and that ruling was upheld on appeal. *See id.* at 379.

A further example is *Merchants Service Co. v. Small Claims Court*, 35 Cal. 2d 109, 216 P.2d 846 (1950). There, the clerk of a small claims court refused to accept a case for filing because the case was based on an assignment. The plaintiff sought a writ from the superior court compelling the small claims court to file the case. *Acting through a single judge*, the superior court granted the writ. *See id.* at 109. But the defendants appealed and the California Supreme Court reversed on the merits. *Id.* at 115. The Court did not discuss whether the appellate department of the superior court should have considered the petition, instead of a single judge.

Yet another example is *Miller v. Municipal Court*, 22 Cal. 2d 818, 142 P.2d 297 (1943), in which a small claims court refused to hear an action under the

Emergency Price Control Act. The plaintiff sought a writ from the California Supreme Court compelling the small claims court to hear the action. The Court granted the writ, explaining that the small claims court was wrong in concluding that it lacked jurisdiction of the case. *Id*. at 852. It is not clear from the Court's opinion whether the plaintiff sought writ relief in any other tribunal before going to the California Supreme Court.

These cases appear to indicate that a writ challenging a prejudgment ruling by the small claims court could be sought from the superior court, acting through a single judge, or from a court of higher jurisdiction.

Judgment of the Small Claims Tribunal

When a litigant seeks a writ overturning a judgment of a small claims court, different considerations apply depending on whether the litigant is the plaintiff or the defendant.

Writ Sought by Plaintiff

In *Yoakum v. Small Claims Court*, 53 Cal. App. 3d 398, 125 Cal. Rptr. 882 (1975), a small claims plaintiff sought a writ overturning a judgment entered in favor of defendant Foran after a hearing on the merits. A judge of the superior court (as opposed to the appellate department) issued the writ as requested. But the court of appeal reversed, explaining:

> Yoakum, as a plaintiff who voluntarily elected the advantages to him of the small claims process, has no right of appeal from an adverse judgment. *He is not entitled to a disguised appeal in the form of a petition for certiorari or mandate where all that is asserted is that the small claims court erroneously weighed the evidence after giving him a full opportunity to be heard.*

Id. at 404 (citations omitted; emphasis added).

Similarly, in *Parada v. Small Claims Court*, 70 Cal. App. 3d 766, 139 Cal. Rptr. 87 (1977), a small claims plaintiff sought a writ challenging a judgment entered by a small claims tribunal. This was the plaintiff's only hope of overturning the judgment, because he was not entitled to a trial de novo. The superior court, acting through a single judge, denied the writ on the merits. The court of appeal affirmed, but on jurisdictional grounds. It explained that the plaintiff was not entitled to seek a writ:

> [A] plaintiff who elects to proceed in the small claims court is finally bound by an adverse judgment. This means that *the lack of the right of appeal cannot then be relied upon as a basis for a petition for*

> *an extraordinary writ* which is designed to seek appellate review of an adverse judgment. Such a procedure would emasculate the prohibition against appeals by plaintiffs from judgments rendered by a small claims court.

Id. at 769 (emphasis added).

Presiding Justice Roth concurred and dissented. He agreed that the plaintiff was not entitled to appeal, but he thought that a writ petition was proper. *Id*. at 770, 772 (Roth, P.J., concurring and dissenting).

In an earlier case, the superior court apparently also thought that a small claims plaintiff could seek writ relief, at least where the plaintiff's claim was dismissed for lack of jurisdiction instead of on the merits. There, the small claims court had dismissed the plaintiff's claim on the ground that the statute on which jurisdiction was based was unconstitutional. The plaintiff then *sought and obtained writ relief* from the superior court. However, the California Supreme Court reversed. It agreed with the small claims court that the statute on which jurisdiction was based was unconstitutional. *Mendoza v. Small Claims Court*, 49 Cal. 2d 668, 321 P.2d 9 (1958). Consequently, the writ issued by the superior court was nullified.

What is interesting about this case is that the writ was issued by a three-judge panel of the superior court (i.e., by the appellate department), not by a single judge. *See id.* at 668. The Supreme Court did not discuss whether the superior court had jurisdiction to consider a writ petition by a small claims plaintiff, much less whether such review should be conducted by the appellate department as opposed to a single judge of the superior court.

Still another case in which a small claims plaintiff sought writ relief to overturn an adverse result was *Taliaferro v. Locke*, 179 Cal. App. 2d 777, 4 Cal. Rptr. 223 (1960). The plaintiff contended that the small claims court should have entered the defendant's default, because the person who appeared for the defendant was an attorney and thus not authorized to represent the corporate defendant in small claims court. The superior court, *acting through a single judge,* denied the writ. *Id.* at 777. The court of appeal affirmed, explaining that the attorney was authorized to represent the corporate defendant because he was an officer of the corporation and appeared in that capacity. *Id*. at 781-82. The court of appeal made clear that the superior court had jurisdiction to consider the writ on its merits:

> Section 117j, Code of Civil Procedure, denies a plaintiff in the small claims court the right of appeal. "The judgment of said court shall be conclusive upon the plaintiff." While errors within a court's jurisdiction ordinarily may not be corrected by means of writ of mandamus, in other words, mandamus may not be used as a writ of error or review, *the question of whether or not a defendant has appeared in a civil action is one of jurisdiction and the failure of a court to enter a default when proper is a matter to which mandamus will lie. As petitioner did not have the right of appeal, mandamus is the correct remedy to determine whether or not the court should have entered the corporation's default.* The finding that petitioner had an adequate remedy is incorrect. However, such error is not important in view of the fact that the court properly determined this proceeding on the merits.

Id. at 780-81 (citations omitted; emphasis added).

The court of appeal thus appeared to distinguish between a jurisdictional ruling and a decision on the merits: *The court seems to have been saying that a small claims plaintiff is permitted to challenge a jurisdictional ruling by way of writ, but not a decision on the merits.* The other cases discussed above could be viewed as consistent with this principle. Alternatively, *Parada* and perhaps even *Yoakum* could be construed to preclude a small claims plaintiff from challenging any adverse decision by way of writ, even one based on jurisdictional grounds.

Writ Sought by Defendant

We found only one situation in which a small claims defendant sought a writ challenging a judgment entered by a small claims tribunal. That is not surprising, because the defendant ordinarily has a right of appeal. "Because there is an adequate remedy at law, writ relief is unavailable to the defendant to challenge an adverse small claims court judgment." California Civil Writ Practice *Writ Petitions in Limited Civil and Small Claims Cases* § 12.26, at 287 (4th ed. 2008).

The single exception we found involved unusual facts. The small claims court entered judgment against the defendant, but the defendant received no notice of that judgment until after the time to appeal had expired. Having no opportunity to appeal, the defendant sought writ relief to overturn the judgment. After various procedural complications, the defendant eventually obtained such relief from *a single judge of the superior court*, and that ruling was upheld on appeal. *See Lee v. Small Claims Court*, 46 Cal. App. 2d 530, 116 P.2d 170 (1941); *Lee v. Small Claims Court*, 34 Cal. App. 2d 1, 92 P.2d 937 (1939).

First Postjudgment Phase (After Judgment of the Small Claims Tribunal)

On occasion, a writ proceeding relates to a postjudgment ruling of a small claims court. For example, the court of appeal's opinion in *Yoakum* not only addresses the case against defendant Foran, but also two other small claims cases brought by the same plaintiff. In those cases, the small claims court entered a default judgment against the plaintiff, because the plaintiff was not present when the court called the case for hearing. The plaintiff filed a motion to be relieved of the default, which the small claims court denied without providing a hearing.

The plaintiff then sought a writ in superior court to *set aside the judgments*. A judge of the superior court (former Commission member Arthur Marshall) granted different relief: A writ compelling the superior court *to hear* the plaintiff's postjudgment motion to be relieved of the default. The court of appeal affirmed, stating:

> The action of the small claims court in denying Yoakum's motion to be relieved of default in the Tostado and Duarte matters is properly reviewable on certiorari or mandate. Parties to an action in small claims court have a right to offer evidence and thus to be heard. The failure of a trial court to afford a hearing where one is provided by statute or other law is action in a manner contrary to that required by governing law and hence is in excess of the court's jurisdiction, as jurisdiction is defined for the purposes of certiorari and mandate. Here the superior court determined that Yoakum's motion to be relieved of default was denied by the small claims court summarily and without giving him an opportunity to be heard.
>
> Unquestionably, the small claims court was entitled to rely upon its own investigation to determine that Yoakum's assertions of fact in support of his motion were not true. That power of the small claims court, however, is not so broad as to permit it to refuse to hear Yoakum's side of the matter.

53 Cal. App. 3d at 403 (citations omitted).

Likewise, in *Skaff v. Small Claims Court*, 68 Cal. 2d 76, 435 P.2d 825, 65 Cal. Rptr. 65 (1968), a small claims court refused to permit the plaintiff/cross-defendant to file an appeal. The plaintiff/cross-defendant sought a writ compelling the small claims court to permit the filing of the appeal. The superior court, *acting through a single judge rather than the appellate department*, denied the writ and the court of appeal affirmed. But the California Supreme Court granted a hearing on its own motion "to decide a novel and important question in the day-to-day operations of small claims courts." *Id*. at 78. Specifically, the Court

decided that "the party who initially brings an action in the small claims court may appeal from an adverse judgment on the opposing party's counterclaim or cross-complaint." *Id*.

Although a single judge of the superior court reviewed the postjudgment rulings in *Yoakum* and *Skaff*, the courts may not have followed that procedure with regard to all types of postjudgment motions. In *General Electric Capital Auto Financial Services, Inc. v. Appellate Division*, 88 Cal. App. 4th 136, 145, 105 Cal. Rptr. 2d 552 (2001), "the parties concede[d] that prior to unification small claims postjudgment enforcement orders were reviewed *by the appellate department* of the superior court …." (Emphasis added.) The decision does not specifically discuss pre-unification writ review of a postjudgment enforcement order, as opposed to review by way of appeal.

We also found a few cases in which the procedural history is not entirely clear from the appellate opinion. As best we can tell, in these cases the petitioner went directly to a higher court for writ relief, without first seeking such relief in the superior court. See *Brooks v. Small Claims Court*, 8 Cal. 3d 661, 504 P.2d 1249, 105 Cal. Rptr. 785 (1973) (small claims court refused to allow defendant to appeal without filing undertaking; Supreme Court granted writ overturning that ruling); *Miller v. Superior Court*, 92 Cal. App. 3d 29, 154 Cal. Rptr. 491 (1979) (small claims court denied motion to vacate default judgment; defendant sought but did not obtain writ overturning that ruling).

Prejudgment Ruling in the Trial de Novo

We found several pre-unification cases in which a small claims litigant challenged a prejudgment ruling made by a superior court judge in a trial de novo. For example, in *Crouchman v. Superior Court*, 45 Cal. 3d 1167, 755 P.2d 1075, 248 Cal. Rptr. 626 (1988), a small claims defendant demanded a jury for the trial de novo. The judge conducting the trial de novo denied that request. The defendant then petitioned the court of appeal for a writ compelling the superior court to grant a jury trial. The court of appeal denied the writ, as did the California Supreme Court, which carefully explained why a jury trial is inappropriate in a small claims trial de novo. *Neither of these appellate courts appears to have contended that the writ petition should have been directed to the appellate department of the superior court.*

The same was true in two earlier cases in which a small claims defendant demanded and was denied a jury for the trial de novo. In those cases, the court of

appeal issued a writ requiring the superior court to provide a jury as requested. *See Maldonado v. Superior Court*, 162 Cal. App. 3d 1259, 209 Cal. Rptr. 199 (1985); *Smith v. Superior Court*, 93 Cal. App. 3d 977, 156 Cal. Rptr. 149 (1979). No one appears to have raised or considered the possibility of seeking the writ from the appellate department, rather than the court of appeal. That is unsurprising, because such a procedure would have posed a peer review problem: The reviewing judges would have been from the same court as the judge who made the ruling under consideration.

Likewise, in *Bruno v. Superior Court*, 219 Cal. App. 3d 1359, 269 Cal. Rptr. 142 (1990), a small claims defendant tried to take discovery in the trial de novo. The superior court denied the defendant's motion to compel, and awarded sanctions to the plaintiff. The defendant sought a writ from the court of appeal, which held that discovery was improper but sanctions were inappropriate. Again, no one seems to have contended that the writ petition should have been filed in the appellate department rather than the court of appeal.

Another example is *Houghtaling v. Superior Court*, 17 Cal. App. 4th 1128, 21 Cal. Rptr. 2d 855 (1993). There, the superior court refused to accept hearsay evidence offered by a small claims plaintiff in a trial de novo. The plaintiff sought a writ from the court of appeal, contending that this ruling was incorrect. The court of appeal granted the writ as requested, and specifically explained that it had jurisdiction of the matter:

> [The judgment in the trial de novo] was not subject to appeal by Houghtaling. However, due to the informal nature of small claims proceedings, no precedential decision can ever be rendered in proceedings governed by the act. Thus, if law is to be made settling significant issues of small claims law or procedure, the appellate courts must have jurisdiction to entertain petitions for extraordinary review in appropriate instances. We think this is such an instance, and therefore consider Houghtaling's petition on the merits.

Id. at 1131 (citations omitted). There is no indication that anyone thought the writ should have been filed in the appellate department of the superior court.

Judgment After the Trial de Novo

Numerous pre-unification decisions involve a writ petition challenging a judgment entered after a small claims trial de novo. Again, these writs were sought in the court of appeal, not in the appellate department. *See, e.g., Universal City Nissan, Inc. v. Superior Court*, 65 Cal. App. 4th 203, 75 Cal. Rptr. 2d 910 (1998)

(denying writ sought by plaintiff/cross-defendant); *Linton v. Superior Court*, 53 Cal. App. 4th 1097, 62 Cal. Rptr. 2d 202 (1997) (same); *Township Homes, Inc. v. Superior Court*, 22 Cal. App. 4th 1587, 27 Cal. Rptr. 2d 852 (1994) (granting in part and denying in part writ sought by plaintiff/cross-defendant); *Lew v. Superior Court*, 20 Cal. App. 4th 866, 25 Cal. Rptr. 2d 42 (1993) (denying writ sought by plaintiff); *Anderson v. Superior Court*, 226 Cal. App. 3d 698, 276 Cal. Rptr. 18 (1990) (granting writ sought by plaintiff/cross-defendant); *Calvao v. Superior Court*, 201 Cal. App. 3d 921, 247 Cal. Rptr. 470 (1988) (granting writ sought by defendant); *Reyes v. Superior Court*, 118 Cal. App. 3d 159, 173 Cal. Rptr. 267 (1981) (same); *Davis v. Superior Court*, 102 Cal. App. 3d 164, 162 Cal. Rptr. 167 (1980) (granting writ sought by plaintiff/cross-defendant).

The courts have made clear that reviewing the result of a small claims trial de novo through a writ proceeding is warranted in some instances. As the *Davis* court explained:

> Since statewide precedents can only be created by appellate courts, jurisdiction to decide appropriate small claims court issues must be retained by appellate courts in order to secure uniformity in the operations of small claims courts and uniform interpretation of the statutes governing them. We do not believe that the Legislature intended to make all actions of the superior courts in such cases totally unreviewable or reviewable only on certification.

102 Cal. App. 3d at 168. Similarly, the court in *Universal City Nissan* said: "Writ relief is appropriate to review significant issues in small claims law and to ensure uniform interpretation of the governing statutes." 65 Cal. App. 4th at 205; *see also Linton*, 53 Cal. App. 4th at 1099 n.2; *Township Homes*, 22 Cal. App. 4th at 1590 n.2; *Calvao*, 201 Cal. App. 3d at 922 n.1.

Second Postjudgment Phase (After the Trial de Novo)

We also found several writ proceedings in which a party sought to overturn a ruling made by the superior court after conducting a trial de novo. For example, in *Eloby v. Superior Court*, 78 Cal. App. 3d 972, 144 Cal. Rptr. 597 (1978), a small claims plaintiff lost the trial de novo and then brought a motion for a new trial in the superior court. The superior court refused to consider the motion, so the plaintiff sought a writ of mandamus in the court of appeal, commanding the superior court to consider the motion. The court of appeal denied the writ, concluding that a superior court lacks jurisdiction to consider a new trial motion after it conducts a trial de novo in a small claims case. *Id.* at 976.

In contrast, in *Adamson v. Superior Court*, 113 Cal. App. 3d 505, 169 Cal. Rptr. 866 (1980), a small claims plaintiff won a trial de novo and the defendant brought a motion for rehearing. The superior court granted the motion and redecided the case in favor of the defendant. The plaintiff then sought a writ to overturn that result in the court of appeal. The court of appeal denied the writ, concluding that a superior court does have jurisdiction to grant a rehearing after it conducts a trial de novo in a small claims case. *Id*. at 976.

Later, in *ERA-Trotter Girouard Assoc. v. Superior Court*, 50 Cal. App. 4th 1851, 58 Cal. Rptr. 2d 381 (1996), a small claims plaintiff won a trial de novo and the defendant brought a motion to vacate the judgment. The superior court granted the motion and ordered the case retried, but the plaintiff sought a writ in the court of appeal. The court of appeal granted the writ, holding that the superior court had no jurisdiction to consider the motion to vacate. *Id*. at 1854. The court of appeal explained:

> We agree with [*Eloby*], which held that a small claims appeal judgment may not be considered on a motion for new trial or a motion to vacate under section 663. We disagree with [*Adamson*], which held that such a judgment was subject to a motion for rehearing. *In short, the legislative mandate that a judgment on a small claims appeal be "final and not appealable" … means the judgment is immune from virtually any postjudgment attack.* In a proceeding designed to be a speedy resolution of disputes over relatively minor amounts of money, this immunity is the cost of finality.

Id. at 1853-54 (citations omitted; emphasis added.) Although the court of appeal said that a judgment on a small claims appeal is "immune from virtually any postjudgment attack," the court specifically recognized the possibility of writ review: "[I]f there is a need for a statewide precedent on an issue, a Court of Appeal may entertain a petition for extraordinary writ as we are doing in the present case." *Id*. at 1857 n.4.

In each of the three cases discussed above, the postjudgment ruling of the superior court was challenged by seeking a writ in the court of appeal. None of them involved the appellate department of the superior court.

It appears, however, that if the small claims court made a postjudgment enforcement order after the superior court conducted a trial de novo, that order might have been reviewable by the appellate department instead of by the court of appeal. As mentioned above in connection with the first postjudgment phase, the parties in *General Electric Capital* "concede[d] that prior to unification small

claims postjudgment enforcement orders were reviewed *by the appellate department* of the superior court ….” 88 Cal. App. 4th at 145 (emphasis added).

Summary of Pre-Unification Law

To summarize, the state of the law before trial court unification appears to have been:

- **Prejudgment ruling of the small claims tribunal.** A writ challenging a prejudgment ruling by the small claims court could be sought from the superior court, acting through a single judge, or from a court of higher jurisdiction.
- **Judgment of the small claims tribunal.** A small claims plaintiff apparently could not seek a writ challenging the judgment of the small claims court, except perhaps if the judgment was based on jurisdictional grounds. A small claims defendant ordinarily had no reason to seek a writ, because the defendant could appeal. In unusual circumstances where an appeal was unavailable, the defendant could seek a writ from the superior court, acting through a single judge, or from a court of higher jurisdiction.
- **First postjudgment phase (after judgment of the small claims tribunal).** In general, a writ challenging a postjudgment ruling by the small claims court could be sought from the superior court, acting through a single judge, or from a court of higher jurisdiction. A writ relating to a postjudgment enforcement order might have been treated differently; it may have been within the jurisdiction of the appellate department of the superior court.
- **Prejudgment ruling in the trial de novo.** A writ challenging a prejudgment ruling in the trial de novo could be sought from a court of appeal or the Supreme Court.
- **Judgment after the trial de novo.** A writ challenging a judgment entered upon trial de novo could be sought from a court of appeal or the Supreme Court. Those courts would consider such a writ petition on the merits where necessary to secure uniformity or to address a significant issue of small claims law.
- **Second postjudgment phase (after the trial de novo).** In general, a writ challenging a ruling made after the trial de novo could be sought from a court of appeal or the Supreme Court. A writ relating to a postjudgment enforcement order might have been treated differently; it may have been within the jurisdiction of the appellate department of the superior court.

ISSUES FOR FUTURE CONSIDERATION

Having examined the pre-unification case law, a number of questions come to mind. In determining which tribunal now has jurisdiction of a writ relating to a

small claims case, should all types of writ petitions be treated the same way? Should any distinctions be drawn between a small claims plaintiff and a small claims defendant? Should any distinction be drawn based on the stage of the proceeding? In particular, since a writ challenging a decision in a trial de novo historically had to be brought in a court of appeal or the Supreme Court, should that practice be continued today?

NEXT STEP

For the June meeting, the staff plans to provide background information on trial court unification, explain the jurisdictional uncertainty relating to small claims writs after trial court unification, and describe the Commission's previous attempts to address that uncertainty. We then plan to explore various options for how to proceed, including the approach suggested by the Civil and Small Claims Advisory Committee. The Commission should then be in a position to provide preliminary input on the issues and ideas presented.

Respectfully submitted,

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