

Memorandum 2010-44

**Trial Court Restructuring:
Writ Jurisdiction in a Small Claims Case
(Draft of Tentative Recommendation)**

The Commission has been studying whether and, if so, how to provide clarification on which tribunal has jurisdiction of a writ petition relating to a small claims case. The Commission is seeking to develop an approach that would receive broad acceptance, including support from the Civil and Small Claims Advisory Committee of the Judicial Council (hereafter, "Civil and Small Claims Advisory Committee"), which previously expressed concerns about two different attempts the Commission made to address this matter.

Attached is a draft of a tentative recommendation, for the Commission to review and consider. Background information on this topic is provided in the attached draft. New Commissioners might also want to refer to Memorandum 2010-25, which was discussed at the June meeting.

Also attached are the following communications that the Commission recently received:

Exhibit p.

- Prof. J. Clark Kelso, McGeorge School of Law (Aug. 10, 2010) 1
- Alan Wiener, Administrative Office of the Courts (Aug. 3, 2010) 3
- Alan Wiener, Administrative Office of the Courts (Sept. 10, 2010) 5
- Doug Wong (July 30, 2010) 11

Those communications are discussed below.

The Commission needs to decide whether to approve the attached draft (with or without revisions) as a tentative recommendation to be posted to its website and circulated for comment.

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.

NEED FOR CLARIFICATION

At one point in this study, the staff recommended that the Commission “drop the attempt to clarify small claims writ jurisdiction after unification, at least until there is clear evidence of confusion or problems that the courts cannot solve.” Memorandum 2009-20, p. 12. The Commission initially decided to follow that advice, but changed its position after receiving informal input from the Civil and Small Claims Advisory Committee, indicating that the matter was worth addressing. See Minutes (April 2009), p. 7; Memorandum 2010-18, p. 1.

Recently, the Commission has received a number of communications confirming that the problem is worth addressing. In late July, the staff heard from Douglas Wong, who reported:

I read with interest the study on writ jurisdiction in a small claims case. I too believe this should be addressed because sometimes the forum of a small claims hearing is not conducive to an airing of all evidence in a case. One has a very limited amount of time to present evidence. I can also understand why Comm. Paul Slavit has not seen any cases of a writ in connection with a small claims case - all the attorneys we have consulted believe: 1) A plaintiff cannot appeal a loss, 2) There is no option for further appeal for a defendant after a trial de novo. And for many small claims cases, the cost of hiring an attorney often exceeds the cost of an adverse judgment, so it simply doesn't make economic sense.

However, due to the unusual nature of my wife's small claims case, the only option she has is for a higher court to review the matter. There is a conflict in jurisdiction between the court system (small claims court in this case), and the fee arbitration rules and statute (California Business and Professions code section 6200). She petitioned for fee arbitration and it was accepted by the LA county fee arbitration program, but the law firm filed a small claims lawsuit anyway despite the mandatory stay (and won), so the fee arbitration staff said they couldn't do anything in the face of a judgment.

Exhibit p. 11. Mr. Wong sought guidance on where to file a writ petition, which the staff declined to provide, because it lacks authority to provide legal advice to individuals.

Similarly, in mid-summer staff from the Administrative Office of the Courts (“AOC”) received an inquiry from someone about whether the appellate division should consider a writ related to a small claims case. AOC staff referred the

person who made the inquiry to Memorandum 2010-25. See email from A. Wiener to B. Gaal (Aug. 4, 2010).

Most recently, a small claims advisor who belongs to the Civil and Small Claims Advisory Committee provided the following information to Alan Wiener at the AOC, who passed it along to the Commission:

I thought I would share a pro per writ with you. I think this highlights not only the need to know where to file these cases but the assistance small claims litigants need to resolve these disputes.

A small claims litigant filed a memorandum of costs just prior to appearing at a debtor exam. The defendant paid the judgment (minus the recently filed memorandum) at the hearing. At the OJD the Judge ordered the debtor to file a satisfaction. The P stated that he had just filed a memo of costs and needed to be reimbursed. The Judge disagreed and over P's objection entered a satisfaction.

P filed an SC-105 asking for recon and a Request to Correct or Vacate. Both denied. P wrote a letter to the PJ and a complaint to the Committee on Judicial Performance. *I told him he would probably need to file a Writ.* He went to the law library and this is what he came up with. *The Clerk at the 4th DCA asked if he meant to file there or with the Appellate Division of the Superior Court.*

This is not the only litigant who was recently denied post-judgment costs.

Exhibit p. 5 (emphasis added). The writ petition was denied by the court of appeal, on the ground that "a corporation can appear at the Appellate Division only through an attorney." *Id.*

These recent communications demonstrate that the problem the Commission is trying to address is real and warrants clarification.

FURTHER GUIDANCE ON CONSTITUTIONAL CONSTRAINTS

The Commission has also received a recent communication from Prof. J. Clark Kelso of McGeorge School of Law regarding the constitutional provision on writ jurisdiction. Exhibit pp. 1-2. Prof. Kelso served as the Commission's consultant on trial court unification, and also provided extensive assistance to the Judicial Council in connection with trial court unification. As his communication reflects, he was deeply involved in the negotiations on revising the California Constitution to accommodate unification.

Upon reading Memorandum 2010-25, Prof. Kelso consulted his computer files to see what he could find regarding small claims writ jurisdiction. Having done so, he "know[s] pretty well exactly what happened!" Exhibit p. 1.

Prof. Kelso describes in detail the development of the constitutional provision on writ jurisdiction. *Id.* at 1-2. He focuses in particular on the language relating to the appellate division, which states that the appellate division has jurisdiction in writ proceedings “directed to the superior court in causes subject to its appellate jurisdiction.” Cal. Const. art. VI, § 10. As described at pages 7-9 of the attached draft of a tentative recommendation, that language is susceptible to more than one interpretation. From the relevant history, however, Prof. Kelso confidently concludes that the “appellate division’s writ jurisdiction *is limited to matters within the division’s appellate jurisdiction.*” Exhibit p. 2 (emphasis added). In other words, “writs in small claims do NOT go to the appellate division since the appellate division does not have appellate jurisdiction in small claims cases.” *Id.* at 1 (emphasis in original).

Prof. Kelso closes by commenting:

This obviously leaves a gap with respect to small claims, which has been difficult to resolve. It should be no surprise to anyone that there is this gap. The fact that we dealt with small claims appeals in the transition provisions in Section 23 strongly indicates we did not have solutions ready in hand to solve procedural issues in small claims cases. Moreover, procedures in small claims have always been sui generis and not neatly tied in to the overall constitutional structure, and that is true both before and after unification

Id. at 2 (emphasis added).

The staff is very grateful to Prof. Kelso for piecing together the history of the constitutional provision, and for sharing his insights on it. **Based on his analysis, the staff cautions the Commission not to propose any statute purporting to give the appellate division authority to hear a writ petition relating to a small claims appeal or an initial hearing in a small claims case.** There is too much risk that such an approach would be considered unconstitutional.

Given Prof. Kelso’s careful analysis, the staff is not inclined to spend further time studying and speculating on the constitutional parameters. If the Commission sees things differently, we would begin by checking the sources to which Prof. Kelso refers, seeking information from the Judicial Council, and perhaps visiting State Archives.

FURTHER INFORMAL INPUT FROM THE
CIVIL AND SMALL CLAIMS ADVISORY COMMITTEE

At the June meeting, the Commission (acting through a subcommittee, whose actions were subsequently ratified) considered a number of options for handling this study. The Commission rejected the following options described at pages 37-44 of Memorandum 2010-25:

- Amend the California Constitution to squarely address small claims writ jurisdiction (Option # 2).
- Propose a statute under which a writ petition relating to a small claims case could be heard by any judge of the superior court, other than the one whose conduct is the subject of the petition (Option # 3).
- Statutorily require that all writs relating to small claims cases be heard by the courts of appeal or by the California Supreme Court (Option #5).

Minutes (June 2010), p. 6. The Commission expressed tentative interest in these options:

- Propose a statute under which a writ petition relating to a small claims case could be heard by a single judge of the appellate division (Option #4).
- Statutorily clarify that the appellate division may hear certain writ petitions relating to small claims cases (Option #6). In particular, the staff raised the possibility of statutorily clarifying that the appellate division (1) has jurisdiction to hear a writ petition relating to an act of the small claims division, (2) lacks jurisdiction to hear a writ petition relating to an act in a trial de novo, and (3) has jurisdiction to hear a writ petition relating to a postjudgment enforcement order made by the small claims division, regardless of whether the order is made after a trial de novo or after the case is heard in the small claims division. See Memorandum 2010-25, p. 43.

Id. The Commission also decided:

- It would like to avoid taking a position on the extent to which a small claims plaintiff can seek writ relief.
- Depending on how things develop, it might want to revisit the option of taking no action (Option #1).

Id.

In late July, the Civil and Small Claims Advisory Committee discussed the same options. It has since provided informal input for the Commission's consideration, which is "not a formal position of the committee or the Judicial Council." Exhibit p. 3.

The committee's informal input is similar in nature to the guidance that the Commission gave in June. "Of the approaches that it appears the CLRC might feasibly pursue, a majority of the committee prefers a combination of the fourth and sixth options discussed in Memorandum 2010-25." *Id.*

The committee explained that this hybrid approach would clarify and provide by statute the following:

- (1) A single judge who is assigned to the appellate division, the court of appeal, and the Supreme Court (but not the appellate division) have jurisdiction to hear a writ petition relating to an act of the small claims division.
- (2) The court of appeal and the Supreme Court (but not a single judge assigned to the appellate division or the appellate division) have jurisdiction to hear a writ petition relating to an act in a trial de novo.
- (3) The appellate division, the court of appeal, and the Supreme Court (but not a single judge assigned to the appellate division) have jurisdiction to hear a writ petition relating to a postjudgment enforcement order made by the small claims division, regardless of whether the order is made after a trial de novo or after the case is heard in the small claims division.

Id.

The approach suggested by the Civil and Small Claims Advisory Committee is comparable in spirit but more detailed and precise than the guidance the Commission gave in June. The staff is encouraged by this apparent trend towards consensus.

We also think it wise that a writ petition relating to an act of the small claims division could be heard by a "single judge who is assigned to the appellate division," but not by the appellate division. That would be consistent with our advice, based on Prof. Kelso's constitutional analysis, not to propose any statute purporting to give the appellate division authority to hear a writ petition relating to an initial hearing in a small claims case.

The attached draft of a tentative recommendation would implement and flesh out the approach informally suggested by the Civil and Small Claims Advisory

Committee. In particular, the proposed legislation would establish the following jurisdictional rules:

- *Initial hearing.* If a writ petition challenges a ruling made at the initial hearing before the small claims division of a superior court, the petition could be heard by a member of the court's appellate division who did not conduct the initial hearing, or it could be heard by a court of higher jurisdiction.
- *Small claims appeal.* If a writ petition challenges a ruling made by the superior court in a small claims appeal, the petition could be heard by the local court of appeal or by the Supreme Court.
- *Postjudgment enforcement order.* If a writ petition challenges a postjudgment enforcement order of the small claims division of the superior court, the petition could be heard by the appellate division of the superior court, or it could be heard by a court of higher jurisdiction.

This would closely mirror the pre-unification situation.

The Commission should consider the attached draft and determine whether to approve it as a tentative recommendation (with or without revisions), to be posted to the Commission's website and circulated for comment.

In making that determination, the Commission should perhaps give particular attention to the treatment of a postjudgment enforcement order, which is discussed at pages 5, 8-9, and 12 of the attached draft. The proposed approach would codify *General Electric Capital Auto Financial Service, Inc. v. Appellate Division of the Superior Court*, 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001), which holds that the appellate division has jurisdiction of a writ petition relating to a postjudgment enforcement order of the small claims division. For the reasons explained in the draft, the staff is not concerned about the constitutionality of this approach. The approach also has the advantage of treating all judgments in limited civil cases the same way for enforcement purposes. But the staff wonders whether it might be better policy to give jurisdiction of such a writ petition to a superior court judge who is a member of the appellate division and who did not conduct the initial hearing. That way, all

writ petitions relating to acts of the small claims division would be treated the same way. **We encourage input and discussion of this point.**

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

**EMAIL FROM PROF. J. CLARK KELSO,
MCGEORGE SCHOOL OF LAW]
(AUGUST 20, 2010)**

Re: Appellate Division Writ Jurisdiction

Good morning, my friends.

Reading through your June 2 memorandum on writ jurisdiction in a small claims case brought back such fond memories of controversy over appellate and writ jurisdiction in a unified court context, I was inspired to consult my computer files to see what I might discover regarding your question. As it happens, I know pretty well exactly what happened!

As of around April 28, 1994, we still were using the language Nat Sterling and I had worked out for writ jurisdiction early that year (to wit, “Those courts also have original jurisdiction . . . but a superior court may exercise that jurisdiction in such proceedings directed to the superior court only through its appellate division and only in causes within the appellate jurisdiction of the appellate division”). In a February 23, 1994, letter to Bill Vickrey and Nat Sterling, I commented as follows:

“This seems to nail down our intent. It makes clear (1) that within the superior court, only the appellate division has writ jurisdiction against the superior court, and (2) that the superior court’s extraordinary writ jurisdiction directed against itself is limited only to those matters within the appellate jurisdiction of the appellate division.”

It would appear clear from this language that writs in small claims do NOT go to the appellate division since the appellate division does not have appellate jurisdiction in small claims cases.

Between April 28 and May 16, we had a series of drafts and conversations, mostly about appellate jurisdiction of the courts of appeal, which were triggered by objections raised by the trial lawyers’ to the then-current draft and suggestions by an appellate justice. Most of these conversations revolved around whether the right to appeal was constitutionally protected and whether our language in Section 11 adequately protected those rights. Those conversations resulted, on May 11, 1994, in the compromise language that now appears in Section 11.

A few days later, I had a few more conversations with the same appellate justice about how Section 10 was drafted. Although I don’t recall the specifics of those conversations, I do know that on May 15, 1994, I shared with this appellate justice the following language and sought his reactions: “The appellate division of the superior court also has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition limited to causes within the appellate jurisdiction of the appellate division.”

Just comparing this language with the language Nat and I had previously worked out, my best guess is that we had become concerned that the earlier draft could be misconstrued as a general limitation upon the superior court’s writ jurisdiction (i.e., it could be read as saying the superior court’s writ jurisdiction was limited to writs directed

at the superior court in causes subject to the appellate division's appellate jurisdiction). That, of course, was not the intention. To get rid of this possible misconception, we decided to simply add a third sentence in Section 10 dealing directly and positively with the appellate division's writ jurisdiction. As you can see in the paragraph above, our suggested redraft made it similarly clear that the appellate division's writ jurisdiction was limited to causes within the appellate jurisdiction of the appellate division.

On May 16, 1994, I submitted to the pro Tem's office edits for the Leg Counsel version of the bill, which included the following: "On page 4, line 17, after 'prohibition.' Insert: The appellate division of the superior court has original jurisdiction in proceedings for . . . extraordinary relief in the nature of mandamus, certiorari, and prohibition in proceedings directed to the superior court in causes subject to its appellate jurisdiction."

I am quite confident that the change from "causes within the appellate jurisdiction of the appellate division" to "causes subject to its appellate jurisdiction" was made simply to avoid the wordy use of the phrase "appellate jurisdiction of the appellate division" (it seemed particularly wordy since the sentence already began with the phrase "The appellate division of the superior court") and that no substantive change was intended. In other words, the phrase "its appellate jurisdiction" was, in context, intended to refer to the "appellate jurisdiction of the appellate division".

The final language adopted by Leg Counsel, which drops the unnecessary phrase "in proceedings," is the language that now appears in Section 10.

On June 23, 1994, I sent to Judge Roger Warren a letter explaining the final amendments which Speaker Willie Brown had put through on SCA 3. With respect to the changes in Section 10, I explained as follows:

"There have also been changes in the language dealing with appellate and writ jurisdiction. The new language dealing with the appellate department's writ jurisdiction more clearly expresses what the Law Revision Commission was essentially trying to do: to wit, give the appellate department [sic] writ jurisdiction over those cases in which it would have appellate jurisdiction."

Although I can understand in retrospect how the phrase "its appellate jurisdiction" might be interpreted as referring to the "superior court" instead of to the "appellate division of the superior court," as you note in your June 2 memorandum, that is NOT the most common or likely interpretation. I hope the above reinforces your common sense interpretation. The appellate division's writ jurisdiction is limited to matters within the division's appellate jurisdiction.

This obviously leaves a gap with respect to small claims, which has been difficult to resolve. It should be no surprise to anyone that there is this gap. The fact that we dealt with small claims appeals in the transition provisions in Section 23 strongly indicates we did not have solutions ready in hand to solve procedural issues in small claims cases. Moreover, procedures in small claims have always been sui generis and not neatly tied in to the overall constitutional structure, and that is true both before and after unification (see, e.g., your wonderful discussion of writs in small claims prior to unification on pages 2-3 of your memo – what a mess!).

I can of course provide you with copies of the above emails and drafts if you think that would assist the Commission in its work. Thanks!

**EMAIL FROM ALAN WIENER,
ADMINISTRATIVE OFFICE OF THE COURTS
(AUG. 3, 2010)**

Re: Small Claims Writs

Hi Barbara,

Thank you for all of your efforts regarding the small claims writ jurisdiction issue, and for giving the Civil and Small Claims Advisory Committee (committee) the opportunity to provide informal input before the California Law Revision Commission (CLRC) considers a new draft tentative recommendation on this issue.

On July 28, the committee discussed the options for addressing small claims writ jurisdiction that are set forth at pages 37–44 of CLRC Staff Memorandum 2010-25. Of the approaches that it appears the CLRC might feasibly pursue, a majority of the committee prefers a combination of the fourth and sixth options discussed in Memorandum 2010-25. This hybrid approach would clarify and provide by statute, in substance, that:

1. A single judge who is assigned to the appellate division, the court of appeal, and the Supreme Court (but not the appellate division) have jurisdiction to hear a writ petition relating to an act of the small claims division.
2. The court of appeal and the Supreme Court (but not a single judge assigned to the appellate division or the appellate division) have jurisdiction to hear a writ petition relating to an act in a trial de novo.
3. The appellate division, the court of appeal, and the Supreme Court (but not a single judge assigned to the appellate division) have jurisdiction to hear a writ petition relating to a postjudgment enforcement order made by the small claims division, regardless of whether the order is made after a trial de novo or after the case is heard in the small claims division.

Some (perhaps most) members of the committee still think that the appellate division should have jurisdiction to hear writs relating to an act in a trial de novo. The committee did not discuss this in much depth because it does not appear to be among the options that it would be feasible for the CLRC to pursue. However, there was some discussion indicating that the committee may wish to pursue the expansion of the appellate division's writ jurisdiction to encompass writs related to an act in a trial de novo at some future time.

Please understand that this is *informal input* and not a formal position of the committee or the Judicial Council. We understand that there will be an opportunity for the committee and the Judicial Council to provide formal input if the CLRC proceeds to address the small claims writ jurisdiction issue.

Thank you again for all of your work on this project.

Alan

Alan Wiener

Attorney

Office of the General Counsel

Judicial Council of California - Administrative Office of the Courts

Southern Regional Office

2255 North Ontario Street, Suite 200

Burbank, CA 91504

818-558-3051, Fax 818-558-3112, alan.wiener@jud.ca.gov

www.courtinfo.ca.gov

“Serving the courts for the benefit of all Californians”

**EMAIL FROM ALAN WIENER,
ADMINISTRATIVE OFFICE OF THE COURTS
(SEPT. 10, 2010)**

Hi Barbara,

I thought that you might be interested in the attached writ petition and the following commentary and rendition of the facts provided by the small claims advisor (also a member of the Civil and Small Claims Advisory Committee) who submitted it to me:

I thought I would share a pro per writ with you. I think this highlights not only the need to know where to file these cases but the assistance small claims litigants need to resolve these disputes.

A small claims litigant filed a memorandum of costs just prior to appearing at a debtor exam. The defendant paid the judgment (minus the recently filed memorandum) at the hearing. At the OJD the Judge ordered the debtor to file a satisfaction. The P stated that he had just filed a memo of costs and needed to be reimbursed. The Judge disagreed and over P's objection entered a satisfaction.

P filed an SC-105 asking for recon and a Request to Correct or Vacate. Both denied. P wrote a letter to the PJ and a complaint to the Committee on Judicial Performance. I told him he would probably need to file a Writ. He went to the law library and this is what he came up with. The Clerk at the 4th DCA asked if he meant to file there or with the Appellate Division of the Superior Court.

This is not the only litigant who was recently denied post-judgment costs.

Today, the small claims advisor informed me that the litigant received the following minute order from the Court of Appeal:

“Although Mr. McAllister was entitled to appear on behalf of the plaintiff in the small claims case, a corporation can appear at the Appellate Division only through an attorney. (See *Ferruzzo v. Superior Court* (1980) 104 Cal.App.3d 501, 503.) For this reason, the writ petition is denied.”

Regards,

Alan

Alan Wiener

Attorney

Office of the General Counsel

Judicial Council of California - Administrative Office of the Courts

Southern Regional Office

2255 North Ontario Street, Suite 200

Burbank, CA 91504

818-558-3051, Fax 818-558-3112, alan.wiener@jud.ca.gov

www.courtinfo.ca.gov

“Serving the courts for the benefit of all Californians”

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA**

**All American Wallpapering Inc.
petitioner**

vs.

**Dan Brown
respondent**

**From Court of Appeals
4 th Appellat District
601 West Santa Ana Blvd.
Santa Ana, CA 92701
(714)571-2600**

**PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR
STATUTORY WRIT OR OTHER APPROPRIATE RELIEF: MEMORANDUM
SUPPORTING EXHIBITS**

Both parties Pro-Per

Court of Appeals

All American Wallpapering got a judgement on 6-18-09. At fourth Debt exam hearing All American was told by Judge Chuang the following:

If the sheriff allows plaintiffs to impound the defendants second car which defendant represented to the court was a \$50,000 porche, a second car parked in the defendants garage, my court (judge Chuang said) will handle the attempted impounding of the defendants car much differently than the sheriff. Judge Chuang went on to rule, I will not allow any post judgement costs even though the plaintiff has shown me a court date stamped memorandum of costs. I will not allow the plaintiff to get a debt exam of the defendant. I will not allow the bank statements that the court has in its possession to be given to the plaintiff even though four debt exam delays were granted to allow Wells Fargo the time to get these doc's to the court. I will not allow the \$105 fee plaintiff paid Wells Fargo for defendants subpoenaed bank statements. The fact that the plaintiffs debt exam has been delayed four times to allow Wells Fargo time to send subpoenaed bank statements does not matter Judge Chuang said. Judge Chuang said all this is happening because the plaintiff legally exercised his right to collect on a judgement by having the sheriff try to impound the defendants paid off \$50,000 second car porche. Judge Chuang satisfied the judgement in court with out the plaintiffs consent. The plaintiff was told by employees in the court offices and the small claims advisors offices that Judge Chuang told them that Judge Chuang was angry that the plaintiff exercised his legal right and used the sheriff to attempt to impound the defendants second car.

Twice SC-105 & 108 were submitted and denied. Court should reinstate judgement with all post judgement costs.

ALEGATION 1: Judicial council does not give the right to any judge to not grant post judgement costs on a memorandum of costs. Some costs can be deemed excessive but not costs listed on memo of costs like debt exam costs etc. There would be no way Judge Chuang would not know that she was wrong when she denied these costs.

Remedy: Call a new court date to go over all post judgement costs including some where memo of costs has not been filed yet.

ALEGATION 2: Judge Chuang was arrogant and comfortable enough to do all of this in open court. Judge Chuang thinks she can not follow the Judicial Council Rules and she will not be scrutinized. This is wrong.

Remedy: something should be done to prevent this Judge from doing this again.

ALLEGATION 3: The subpoenaed bank statements should be given to the plaintiff and the costs of \$105 should be allowed as post judgement costs.

ALLEGATION 4: A court date should be set for a debt exam. The Judge denied a debt exam and this is not allowed.

ALLEGATION 5: The writ fee of \$655 should be waived because the court should not profit from their own Judges arrogant mistakes. Neither the plaintiff or defendant should pay this fee. If the court does not waive this fee then the court is saying if you have a few hundred in post judgement costs you have to pay \$655 and walk away with a loss. This would support and endorse Judge Chuang's blatant and arrogant disregard for the Judicial Councils laws and rules.

Submitted 8-18-10 us mail
Greg McAllister
All American Wallpapering
20810 Corte Solomon
Murrieta, CA 92562
(714)501-2238



Plaintiff/Petitioner

FW-003

**Order on Court Fee Waiver
(Superior Court)**

Clerk stamps date here when form is filed.

1 Person who asked the court to waive court fees:

Name: GREG McALLISTER
Street or mailing address: 20810 Corte Solomon
City: Munietta State: CA Zip: 92562

2 Lawyer, if person in 1 has one (name, address, phone number, e-mail, and State Bar number):

NO ATTY

3 A request to waive court fees was filed on (date): SENT US MAIL 8/18/10

The court made a previous fee waiver order in this case on (date): _____

Fill in court name and street address:
Superior Court of California, County of

Fill in case number and case name:
Case Number: 30-2009-00259891-SC-SC-NJC
Case Name: All American vs. Dan Brown

Read this form carefully. All checked boxes are court orders.

Notice: The court may order you to answer questions about your finances and later order you to pay back the waived fees. If this happens and you do not pay, the court can make you pay the fees and also charge you collection fcs. If there is a change in your financial circumstances during this case that increases your ability to pay fees and costs, you must notify the trial court within five days. (Use form FW-010.) If you win your case, the trial court may order the other side to pay the fees. If you settle your civil case for \$10,000 or more, the trial court will have a lien on the settlement in the amount of the waived fees. The trial court may not dismiss the case until the lien is paid.

4 After reviewing your (check one): Request to Waive Court Fees Request to Waive Additional Court Fees
the court makes the following orders: WRIT

a. The court grants your request, as follows:

- (1) **Fee Waiver.** The court grants your request and waives your court fees and costs listed below. (Cal. Rules of Court, rule 3.55.) You do not have to pay the court fees for the following:
- Filing papers in Superior Court
 - Making copies and certifying copies
 - Sheriff's fee to give notice
 - Reporter's daily fee (for up to 60 days following the fee waiver order at the court-approved daily rate)
 - Preparing and certifying the clerk's transcript on appeal
 - Giving notice and certificates
 - Sending papers to another court department
 - Court-appointed interpreter in small claims court
 - Court fees for phone hearings

- (2) **Additional Fee Waiver.** The court grants your request and waives your additional superior court fees and costs that are checked below. (Cal. Rules of Court, rule 3.56.) You do not have to pay for the checked items.
- Jury fees and expenses
 - Fees for court-appointed experts
 - Reporter's daily fees (beyond the 60-day period following the fee waiver order)
 - Other (specify): _____
 - Fees for a peace officer to testify in court
 - Court-appointed interpreter fees for a witness

- (3) **Fee Waiver for Appeal.** The court grants your request and waives the fees and costs checked below, for your appeal. (Cal. Rules of Court, rules 3.55, 3.56, 8.26, and 8.818.) You do not have to pay for the checked items.
- Preparing and certifying clerk's transcript for appeal
 - Other (specify): WRIT fee's of \$655 file fee for writ.

Your name: Greg McAulster

Case Number: 30-2009-00259891-3C-3C
NJC

b. The court denies your request, as follows:

Warning! If you miss the deadline below, the court cannot process your request for hearing or the court papers you filed with your original request. If the papers were a notice of appeal, the appeal may be dismissed.

(1) The court denies your request because it is incomplete. You have 10 days after the clerk gives notice of this order (see date below) to:
• Pay your fees and costs, or
• File a new revised request that includes the items listed below (specify incomplete items):

(2) The court denies your request because the information you provided on the request shows that you are not eligible for the fee waiver you requested (specify reasons):

The court has enclosed a blank *Request for Hearing About Court Fee Waiver Order (Superior Court)*, form FW-006. You have 10 days after the clerk gives notice of this order (see date below) to:

- Pay your fees and costs, or
- Ask for a hearing in order to show the court more information. (Use form FW-006 to request hearing.)

c. The court needs more information to decide whether to grant your request. You must go to court on the date below. The hearing will be about (specify questions regarding eligibility):

Bring the following proof to support your request if reasonably available:

Hearing Date → Date: _____ Time: _____ Name and address of court if different from page 1: _____
Dept.: _____ Rm.: _____

Warning! If item c is checked, and you do not go to court on your hearing date, the judge will deny your request to waive court fees, and you will have 10 days to pay your fees. If you miss that deadline, the court cannot process the court papers you filed with your request. If the papers were a notice of appeal, the appeal may be dismissed.

Date: _____

Signature of (check one): Judicial Officer Clerk, Deputy



Request for Accommodations. Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Request for Accommodation*, Form MC-410. (Civil Code, § 54.8.)

Clerk's Certificate of Service

I certify that I am not involved in this case and (check one): A certificate of mailing is attached.
 I handed a copy of this order to the party and attorney, if any, listed in ① and ②, at the court, on the date below.
 This order was mailed first class, postage paid, to the party and attorney, if any, at the addresses listed in ① and ②, from (city): _____, California on the date below.

Date: _____ Clerk, by _____, Deputy

Revised July 1, 2009

This is a Court Order.

EMAIL FROM DOUGLAS WONG (JULY 30, 2010)

Re: Writ Jurisdiction in a Small Claims Case

Hello Ms. Gaal,

I read with interest the study on writ jurisdiction in a small claims case. I too believe this should be addressed because sometimes the forum of a small claims hearing is not conducive to an airing of all evidence in a case. One has a very limited amount of time to present evidence. I can also understand why Comm. Paul Slavit has not seen any cases of a writ in connection with a small claims case - all the attorneys we have consulted believe: 1) A plaintiff cannot appeal a loss, 2) There is no option for further appeal for a defendant after a trial de novo. And for many small claims cases, the cost of hiring an attorney often exceeds the cost of an adverse judgement, so it simply doesn't make economic sense.

However, due to the unusual nature of my wife's small claims case, the only option she has is for a higher court to review the matter. There is a conflict in jurisdiction between the court system (small claims court in this case), and the fee arbitration rules and statute (California Business and Professions code section 6200). She petitioned for fee arbitration and it was accepted by the LA county fee arbitration program, but the law firm filed a small claims lawsuit anyway despite the mandatory stay (and won), so the fee arbitration staff said they couldn't do anything in the face of a judgment.

Can you suggest a guide to filing a small claims writ and the proper venue?

Sincerely,
Douglas Wong
949-623-2936

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case

October 2010

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission may consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN _____.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739
650-494-1335
<commission@clrc.ca.gov>

SUMMARY OF TENTATIVE RECOMMENDATION

A writ proceeding sometimes provides an important means of obtaining redress that is not available through other judicial processes. A person may seek a writ in many different contexts, including a writ that challenges a decision made by a court in a small claims case. The proper tribunal for seeking a writ relating to a small claims case is currently unclear, due largely to unification of the municipal and superior courts.

That uncertainty should be eliminated, so a litigant can readily determine where to file a petition for a writ relating to a small claims case. The Law Revision Commission recommends that the proper tribunal be dependent on the stage of the small claims case at the time of the act that is challenged in the writ petition.

Specifically, the Commission recommends legislation providing as follows:

- A writ petition relating to the initial hearing in the small claims division of the superior court may be heard by a member of the court's appellate division, who did not conduct the initial hearing.
- A writ petition relating to a small claims appeal may be heard by the local court of appeal.
- A writ petition relating to a postjudgment enforcement order of the small claims division may be heard by the appellate division of the superior court.

In each instance, the writ petition could also be filed in a higher court, but that court could deny the writ on the ground that the petition should first be presented to a lower tribunal.

The proposed legislation would conform to constitutional constraints, minimize peer review concerns, and conserve judicial resources. By providing clear guidance, it would also prevent confusion, decrease disputes, and reduce associated expenses.

This recommendation was prepared pursuant to Government Code Section 71674 and Resolution Chapter 98 of the Statutes of 2009.

TRIAL COURT RESTRUCTURING: WRIT JURISDICTION IN A SMALL CLAIMS CASE

1 When other judicial processes are unavailable, a proceeding for an extraordinary
2 writ may be the only way to secure a just result. For example, a writ proceeding
3 may occasionally be needed to obtain relief from an incorrect ruling in a small
4 claims case.¹

5 At present, however, it is unclear where a person should file a writ proceeding
6 relating to a small claims case. This uncertainty is due primarily to the unification
7 of the municipal and superior courts that occurred in the past decade.

8 The Law Revision Commission recommends that the proper jurisdiction for
9 such a writ proceeding be made clear. The Commission further recommends that
10 the proper jurisdiction depend on the stage of the small claims case at the time of
11 the act that is challenged in the writ petition.

12 To explain these recommendations, it is first necessary to present some
13 background material on extraordinary writs and small claims cases. Then the
14 Commission examines how small claims writs were handled before trial court
15 unification, describes the unification process, and explains the current uncertainty
16 regarding how to handle small claims writs after trial court unification. Finally, the
17 Commission demonstrates the need for clarification, analyzes the best means of
18 providing clarification, and identifies potential benefits of the proposed legislation.

19 **Extraordinary Writs**

20 A writ is a written court order, which directs a person or entity to perform or
21 cease a specified act. In California, there are several types of extraordinary writs,
22 including in particular:²

- 23 (1) *A writ of review (also known as a writ of certiorari).* A writ of review is a
24 means of reviewing judicial action when no other means of review is

1. See, e.g., *Green v. Superior Court*, 10 Cal. 3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974); *Miller v. Municipal Court*, 22 Cal. 2d 818, 142 P.2d 297 (1943); *ERA-Trotter Girouard Assoc. v. Superior Court*, 50 Cal. App. 4th 1851, 58 Cal. Rptr. 2d 381 (1996); *Township Homes, Inc. v. Superior Court*, 22 Cal. App. 4th 1587, 27 Cal. Rptr. 2d 852 (1994); *Houghtaling v. Superior Court*, 17 Cal. App. 4th 1128, 1131, 21 Cal. Rptr. 2d 855 (1993); *Anderson v. Superior Court*, 226 Cal. App. 3d 698, 276 Cal. Rptr. 18 (1990); *Calvao v. Superior Court*, 201 Cal. App. 3d 921, 247 Cal. Rptr. 470 (1988); *Reyes v. Superior Court*, 118 Cal. App. 3d 159, 173 Cal. Rptr. 267 (1981); *Davis v. Superior Court*, 102 Cal. App. 3d 164, 162 Cal. Rptr. 167 (1980); *Gardiana v. Small Claims Court*, 59 Cal. App. 3d 412, 130 Cal. Rptr. 675 (1976); *Yoakum v. Small Claims Court*, 53 Cal. App. 3d 398, 403, 125 Cal. Rptr. 882 (1975); *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).

2. Another important type of writ is a writ of habeas corpus, which is used in criminal proceedings. See Cal. Const. art. VI, § 10; 6 B. Witkin & N. Epstein, *California Criminal Law Criminal Writs* § 1, at 519 (3d ed. 2000). This tentative recommendation focuses only on the three types of extraordinary writs described in the text: a writ of review, a writ of mandamus, and a writ of prohibition.

1 available.³ A court may issue a writ of review when an inferior tribunal,
2 board, or officer, exercising judicial functions, has exceeded its jurisdiction
3 and there is no appeal or any plain, speedy, and adequate remedy.⁴

4 (2) *A writ of mandamus (also known as a writ of mandate)*. A writ of mandamus
5 is a broad remedy to compel performance of a ministerial duty or to restore
6 rights and privileges of a public or private office.⁵ A writ of mandamus
7 “may be issued by any court to any inferior tribunal, corporation, board, or
8 person, *to compel the performance of an act* which the law specifically
9 enjoins, as a duty resulting from an office, trust, or station, or to *compel the*
10 *admission of a party to the use and enjoyment of a right or office* to which
11 the party is entitled, and from which the party is unlawfully precluded by
12 such inferior tribunal, corporation, board, or person.”⁶

13 (3) *A writ of prohibition*. A writ of prohibition is a writ to restrain judicial
14 action in excess of jurisdiction when there is no other adequate remedy.⁷ A
15 writ of prohibition “arrests the proceedings of any tribunal, corporation,
16 board, or person exercising judicial functions, when such proceedings are
17 without or in excess of the jurisdiction of such tribunal, corporation, board,
18 or person.⁸ The writ “may be issued by any court to an inferior tribunal or to
19 a corporation, board, or person, in all cases where there is not a plain,
20 speedy, and adequate remedy in the ordinary course of law.”⁹

21 To obtain a writ, it is necessary to file a petition in court, requesting that the
22 court issue the writ. The court in which the petition is filed may summarily deny
23 the writ, without considering the merits. Alternatively, the court may issue an
24 order to show cause.¹⁰ If the court issues an order to show cause, the matter is fully
25 briefed by the parties and decided by the court on the merits, either by granting the
26 relief requested in the petition or by denying such relief.¹¹

3. 8 B. Witkin, California Procedure *Extraordinary Writs* § 4, at 784-85 (4th ed. 1997) (hereafter “1997 Witkin”).

4. Code Civ. Proc. § 1068(a). In purpose and effect, certiorari is quite similar to appeal. 8 B. Witkin, California Procedure *Extraordinary Writs* § 6, at 888 (5th ed. 2008) (hereafter “2008 Witkin”).

5. 2008 Witkin, *supra* note 4, *Extraordinary Writs* § 23, at 902.

6. Code Civ. Proc. § 1085(a) (emphasis added).

7. 2008 Witkin, *supra* note 4, *Extraordinary Writs* § 18, at 899.

8. Code Civ. Proc. § 1102.

9. Code Civ. Proc. § 1103(a).

10. The order to show cause is 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. In rare instances, the court proceeds directly to a determination on the merits, without issuing an order to show cause.

11. 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* note 3, *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).

1 As a general rule, the court has discretion about whether to hear a writ petition
2 on its merits. But the court must exercise that discretion within reasonable bounds
3 and for a proper reason.¹²

4 **Small Claims Procedures**

5 The small claims process is intended to facilitate quick, inexpensive, and
6 informal resolution of small disputes through simple proceedings conducted so as
7 to promote compromise.¹³ If a dispute satisfies certain jurisdictional requirements,
8 the plaintiff has the *option* of seeking resolution through the small claims process,
9 instead of using more formal court procedures. Having elected to use that process,
10 however, the plaintiff forfeits the right to appeal.¹⁴

11 In contrast, a small claims defendant is entitled to appeal an adverse decision by
12 the small claims tribunal, but the appeal consists of a retrial (also known as a “trial
13 de novo”).¹⁵ There is no right to appeal a judgment after a small claims trial de
14 novo.¹⁶

15 **Small Claims Writs Before Trial Court Unification**

16 In the early 1990’s, California had three different types of trial courts: superior
17 courts, municipal courts, and justice courts.¹⁷ At that time, a “small claims court”
18 was actually a division of a municipal or justice court.¹⁸ These were lower courts
19 with limited jurisdiction. They were only permitted to hear certain types of cases,
20 and only authorized to grant monetary relief up to a statutorily-specified amount.¹⁹

12. Powers v. City of Richmond, 10 Cal. 4th 85, 113, 893 P.2d 1160, 40 Cal. Rptr. 2d 839 (1995) (plurality); see also 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).

13. 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).

14. “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).

15. Code Civ. Proc. §§ 116.710(b), 116.770.

16. Code Civ. Proc. § 116.780(a).

17. *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm’n Reports 1, 14 (1994); see also former Cal. Const. art. VI, § 1.

18. See 1990 Cal. Stat. ch. 1305, § 3 (former Code Civ. Proc. § 116.210).

19. See former Cal. Const. art. VI, § 5; 2 B. Witkin, *California Procedure Courts* § 164, at 236-37 (5th ed. 2008).

1 If a defendant appealed from a judgment of a small claims court, the trial de
2 novo was conducted by a judge of the superior court.²⁰ The superior court was a
3 countywide entity with unlimited jurisdiction.²¹ It had an appellate department,
4 which sat as a three-judge panel, but small claims appeals were not heard there.²²
5 Rather, the appellate department heard other types of appeals from the municipal
6 and justice courts.²³

7 After judgment was entered in a small claims case, any postjudgment
8 enforcement proceedings were conducted in the small claims division. If the
9 judgment was entered by the superior court in a trial de novo, the case would be
10 transferred back to the small claims division of the municipal or justice court for
11 postjudgment enforcement proceedings.²⁴

12 Small claims litigants occasionally sought writ relief, in a variety of
13 circumstances. The proper court to hear the writ proceeding depended on the stage
14 of the small claims case. Invariably, however, the writ proceeding was heard by a
15 court of higher jurisdiction than the court that made the challenged ruling. Thus,
16 the situation was:

- 17 • *Initial hearing.* If a writ petition challenged a ruling made at the initial
18 hearing before the small claims division of a municipal or justice court, the
19 petition was heard by a judge of the superior court, or by a court of higher
20 jurisdiction.²⁵

20. *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 75 (1998); see former Code Civ. Proc. § 116.770.

21. Former Cal. Const. art. VI, § 4; former Cal. Const. art. VI, § 10.

22. The appellate department of the superior court was created by statute, not by a constitutional provision. See 1984 Cal. Stat. ch. 704, § 1 (former Code Civ. Proc. § 77). In contrast, today's appellate division is a constitutional entity, and its members are appointed by the Chief Justice "for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division." Cal. Const. art. VI, § 4. These features were intended to address the problem of peer review in a unified superior court. See *Revision of Codes*, *supra* note __, at 30-31.

23. *Trial Court Unification: Constitutional Revision*, *supra* note 20, at 27; see former Cal. Const. art. VI, § 11.

24. 1994 Cal. Stat. ch. 587, § 3 (former Code Civ. Proc. § 116.780(d)); 1991 Cal. Stat. ch. 915, § 26 (former Code Civ. Proc. § 116.780(d)).

25. See, e.g., *Skaff v. Small Claims Court*, 68 Cal. 2d 76, 435 P.2d 825, 65 Cal. Rptr. 65 (1968) (writ proceeding was originally heard by one superior court judge); *City and County of San Francisco v. Small Claims Court*, 141 Cal. App. 3d 470, 190 Cal. Rptr. 340 (1983) (same); *Yoakum v. Superior Court*, 53 Cal. App. 3d 398, 125 Cal. Rptr. 882 (1975) (same); but see *Mendoza v. Small Claims Court*, 49 Cal. 2d 668, 321 P.2d 9 (1958) (writ proceeding was originally heard by appellate department).

In some cases, the writ petition challenged a *prejudgment ruling*, such as whether an indigent defendant was entitled to an interpreter at public expense. See, e.g., *Gardiana v. Small Claims Court*, 59 Cal. App. 3d 412, 130 Cal. Rptr. 675 (1976). In other cases, the writ petition challenged a *judgment* entered by the small claims division. See, e.g., *Lee v. Small Claims Court*, 46 Cal. App. 2d 530, 116 P.2d 170 (1941). In still other cases, the writ petition challenged a *postjudgment act*, such as a small claims court's refusal to permit the filing of an appeal. See, e.g., *Skaff*, 68 Cal. 2d 76.

- 1 • *Small claims appeal.* If a writ petition challenged a ruling made by the
2 superior court in a small claims appeal, the petition was heard by the local
3 court of appeal or by the Supreme Court.²⁶
- 4 • *Postjudgment enforcement order.* If a writ petition challenged a
5 postjudgment enforcement order of the small claims division of a municipal
6 or justice court, the petition was heard by the appellate department of the
7 superior court.²⁷

8 **Trial Court Unification**

9 California no longer has three different types of trial courts. In 1994, the voters
10 approved a measure to eliminate the justice courts, leaving only the municipal and
11 superior courts.²⁸ A few years later, the voters approved a measure permitting the
12 municipal and superior courts in each county to unify on a vote of a majority of
13 the municipal court judges and a majority of the superior court judges in the
14 county.²⁹

15 By early 2001, the courts in every county had unified.³⁰ Each county now has a
16 unified superior court, which handles all of the matters previously heard in

In general, a small claims defendant has no reason or basis to seek a writ to overturn a judgment entered by the small claims division, because the defendant 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); but 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).

Similarly, some authority holds that a small claims plaintiff cannot seek a writ to overturn a judgment entered by the small claims division, because the plaintiff forfeited the right of appeal by selecting the small claims forum, and thereby also forfeited the right to seek a writ. See, e.g., *Parada v. Small Claims Court*, 70 Cal. App. 3d 766, 769, 139 Cal. Rptr. 87 (1977); *Yoakum*, 53 Cal. App. 3d at 404; see also *Pitzen v. Superior Court*, 120 Cal. App. 4th 1374, 1380, 16 Cal. Rptr. 3d 628 (2004). The extent to which this doctrine applies is not altogether clear, particularly when the judgment is based on jurisdictional grounds rather than on the merits. See *Taliaferro v. Locke*, 179 Cal. App. 2d 777, 780-81, 4 Cal. Rptr. 223 (1960); see also *Mendoza*, 49 Cal. 2d 668; *Parada*, 70 Cal. App. 3d at 770, 772 (Roth, P.J., concurring and dissenting). This tentative recommendation is not intended to resolve or in any way affect the extent to which a small claims plaintiff is entitled to seek writ relief.

26. See, e.g., *Crouchman v. Superior Court*, 45 Cal. 3d 1167, 755 P.2d 1075, 248 Cal. Rptr. 626 (1988); *Universal City Nissan, Inc. v. Superior Court*, 65 Cal. App. 4th 203, 75 Cal. Rptr. 2d 910 (1998); *Eloby v. Superior Court*, 78 Cal. App. 3d 972, 144 Cal. Rptr. 597 (1978).

27. See *General Electric Capital Auto Financial Services, Inc. v. Appellate Division*, 88 Cal. App. 4th 136, 145, 105 Cal. Rptr. 2d 552 (2001).

For further discussion of small claims writs before trial court unification, see Commission Staff Memorandum 2010-18, pp. 5-15.

28. 1994 Cal. Stat. res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994).

29. Former Cal. Const. art. VI, § 5(c), approved by the voters June 2, 1998 (Proposition 220).

30. The courts in Kings County were the last to unify, on February 8, 2001.

1 municipal court, as well as all of the matters previously heard in superior court.³¹
2 The municipal courts no longer exist.³²

3 The small claims division is now part of the superior court, not the municipal or
4 justice court.³³ A small claims appeal is heard by a judicial officer of the superior
5 court “other than the judicial officer who heard the action in the small claims
6 division.”³⁴ Thus, the initial hearing and the small claims appeal are both
7 conducted within the superior court.

8 Similarly, cases that used to be heard in the municipal and justice courts are now
9 known as limited civil cases.³⁵ An appeal in a limited civil case is heard by the
10 appellate division of the superior court.³⁶ Thus, again the initial hearing and the
11 appeal are both conducted within the superior court.

12 **Small Claims Writs After Trial Court Unification**

13 To accommodate trial court unification, the constitutional provision governing
14 writ jurisdiction was amended to read:

15 SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges
16 have ... original jurisdiction in proceedings for extraordinary relief in the nature
17 of mandamus, certiorari, and prohibition. The appellate division of the superior
18 court has original jurisdiction in proceedings for extraordinary relief in the nature
19 of mandamus, certiorari, and prohibition directed to the superior court in causes
20 subject to its appellate jurisdiction.

21³⁷

22 From this language, it seems evident that a small claims litigant could seek an
23 extraordinary writ in the Supreme Court or in the local court of appeal.³⁸ Where a

31. *Revision of Codes*, *supra* note 5, at 64.

32. *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm’n Reports 305, 309 (2006).

33. See Code Civ. Proc. § 116.210.

34. See Code Civ. Proc. § 116.770(a).

35. See Code Civ. Proc. § 85 & Comment.

36. See Code Civ. Proc. § 904.2.

37. Cal. Const. art. VI, § 10.

38. For a recent case in which a small claims litigant successfully sought a writ in a court of appeal, see *Bricker v. Superior Court*, 133 Cal. App. 4th 634, 35 Cal. Rptr. 3d 7 (2005). The court of appeal offered the following guidance regarding small claims writs:

The Courts of Appeal have historically been reluctant to review rulings in small claims matters. The reason for this is obviously to promote the policy of speedy and inexpensive resolution of cases falling within the jurisdiction of the small claims court. But while disfavored, it has been held that review of small claims judgments may be available by extraordinary writ where there is “statewide importance of the general issues presented” and “in order to secure uniformity in the operations of the small claims courts and uniform interpretation of the statutes governing them.” Writ review is appropriate under the foregoing authorities in light of the due process problem raised by petitioner.

Id. at 637 (citations omitted).

1 lower tribunal also has writ jurisdiction, however, the Supreme Court and courts of
2 appeal have discretion to deny a writ petition on the ground that it should first be
3 presented to the lower tribunal.³⁹

4 From the constitutional language and other sources, it is less clear whether a
5 small claims litigant could seek a writ within the superior court, instead of having
6 to go to a higher court. Possible means of review within the superior court include
7 (1) review by a superior court judge, and (2) review by the appellate division.

8 ***Review by a Superior Court Judge***

9 Although the constitutional provision says that “superior courts, and their
10 judges” have original jurisdiction in writ proceedings, there is a well-established
11 body of case law indicating that a superior court judge cannot constitutionally
12 enjoin, restrain, or otherwise interfere with a judicial act of another superior court
13 judge.⁴⁰ The California Supreme Court has explained, however, that a superior
14 court judge who considers an order entered earlier by another judge of the same
15 court does not enjoin, restrain, or otherwise interfere with the judicial act of
16 another superior court judge *when the later judge acts under statutory authority*.⁴¹

17 The Commission is not aware of any statutory authority expressly authorizing a
18 superior court judge to consider a writ petition relating to a small claims case. It is
19 possible that some statute might be construed to implicitly provide such authority,
20 but none seems to address the matter clearly.

21 ***Review by the Appellate Division***

22 The constitutional provision says that the appellate division has original
23 jurisdiction in writ proceedings “directed to the superior court *in causes subject to*
24 *its appellate jurisdiction*.”⁴² It is debatable what this provision means in the
25 context of a writ relating to a small claims case.

26 To some extent, the answer appears to depend on the stage of the small claims
27 case at the time of the act challenged by the writ petition. Suppose, for example,
28 the petition challenges the judgment in a small claims appeal. Such a ruling would
29 not seem to be a “cause subject to appellate jurisdiction,” because the judgment in
30 a small claims appeal is final and not appealable.⁴³ It follows that a writ petition
31 challenging such a judgment is not within the jurisdiction of the appellate division,
32 as constitutionally defined.

33 The answer might be different for a writ petition challenging a decision made by
34 the small claims division in the initial hearing. Such a decision is appealable, but

39. See *In re Ramirez*, 89 Cal. App. 4th 1312, 1316, 1320, 108 Cal. Rptr. 2d 229 (2001).

40. See, e.g., *Ford v. Superior Court*, 188 Cal. App. 3d 737, 742, 233 Cal. Rptr. 607 (1986).

41. See *People v. Konow*, 32 Cal. 4th 995, 1019-21, 88 P.3d 36, 12 Cal. Rptr. 3d 301 (2004).

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

43. Code Civ. Proc. § 116.780.

1 the appeal consists of a trial de novo, as opposed to a traditional appeal. Whether
2 the matter qualifies as a “cause subject to appellate jurisdiction” within the
3 meaning of the constitutional provision is not altogether clear.⁴⁴

4 Further, the constitutional provision only gives the appellate division jurisdiction
5 in writ proceedings “directed to the superior court in causes subject to *its* appellate
6 jurisdiction.”⁴⁵ Courts might interpret this language to mean that the appellate
7 division only has writ jurisdiction in the same types of causes that are subject to
8 the appellate jurisdiction of *the appellate division*. If so, then a writ petition
9 relating to a decision in the initial small claims hearing would not seem to qualify,
10 because such a decision is appealable to a judicial officer of the superior court, not
11 to the appellate division.

12 Alternative interpretations of the constitutional language are possible, however,
13 under which the appellate division of the superior court could consider a writ
14 petition relating to a decision in the initial small claims hearing. For example, a
15 court could interpret the constitutional provision to mean that the appellate
16 division has writ jurisdiction in causes subject to the appellate jurisdiction of *the*
17 *superior court*. That interpretation could encompass a small claims case, because a
18 small claims appeal is heard by a superior court judge.⁴⁶ As yet, courts have not
19 provided guidance on which of the possible interpretations is correct, so it is
20 unclear whether the appellate division may constitutionally consider a writ petition
21 relating to a decision in the initial small claims hearing.

22 The only point a court has clearly addressed relates to the postjudgment
23 enforcement phase of a small claims case. In *General Electric Capital Auto*
24 *Financial Services, Inc. v. Appellate Division*,⁴⁷ the court of appeal considered
25 whether the appellate division had jurisdiction of a writ petition relating to a
26 postjudgment enforcement order entered by the small claims division. The court of
27 appeal concluded that the appellate division did have such jurisdiction.⁴⁸

28 The court of appeal explained that a small claims case is a limited civil case.⁴⁹
29 Where a statute or rule applicable to a small claims case conflicts with a statute or
30 rule applicable to a limited civil case, the statute or rule applicable to a small
31 claims case governs.⁵⁰ A special statute governs a small claims appeal,⁵¹ so the
32 general rule giving the appellate division jurisdiction of an appeal in a limited civil

44. For further discussion of this point, see Commission Staff Memorandum 2010-25, pp. 24-26.

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

46. For possible alternative interpretations, see Commission Staff Memorandum 2010-25, pp. 12, 28.
For analysis of the possible interpretations, see *id.* at 29-37

47. 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001).

48. *Id.* at 138.

49. *Id.*; see Code Civ. Proc. § 87.

50. Code Civ. Proc. § 87.

51. Code Civ. Proc. § 116.770.

1 case⁵² is inapplicable. But there is no special statute governing appeal of a
2 postjudgment enforcement order in a small claims case. The court of appeal
3 therefore concluded that the situation is governed by the general rule giving the
4 appellate division jurisdiction of an appeal in a limited civil case.⁵³ The court of
5 appeal further concluded that because the appellate division has appellate
6 jurisdiction of a postjudgment enforcement order in a small claims case, the
7 appellate division also has extraordinary writ jurisdiction of a postjudgment
8 enforcement order in a small claims case.⁵⁴

9 To summarize, the situation appears to be:

- 10 • The appellate division cannot constitutionally consider a writ petition that
11 challenges a judgment or other act of the superior court in a small claims
12 appeal.
- 13 • It is unclear whether the appellate division may constitutionally consider a
14 writ petition relating to a decision in the initial small claims hearing.
- 15 • Under *General Electric Capital*, the appellate division can constitutionally
16 consider a writ petition that challenges a postjudgment enforcement order of
17 the small claims division.

18 The situation is therefore complicated and not readily understandable.

19 **Need for Clarification**

20 The lack of clear guidance on where to file a writ petition relating to a small
21 claims case is not merely a theoretical problem. Litigants are confused, some are
22 seeking assistance, and some are having writs denied due to filing in the wrong
23 court.⁵⁵ Past history demonstrates that small claims writs can be important in
24 achieving justice in individual cases, and sometimes on a broader scale.⁵⁶ Neither
25 litigants nor court personnel should have to expend undue effort trying to figure
26 out the proper jurisdiction for a small claims writ petition.

27 **Proposed Clarification**

28 The Law Revision Commission recommends that the proper jurisdiction for a
29 writ petition relating to a small claims case be made clear. In achieving such
30 clarification, key principles include:

52. Code Civ. Proc. § 904.2.

53. *General Electric Capital*, 88 Cal. App. 4th at 138, 144.

54. *Id.* at 145; see Cal. Const. art. VI, § 10.

55. See Commission Staff Memorandum 2010-44.

56. See, e.g., *Green v. Superior Court*, 10 Cal. 3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974) (warranty of habitability); *Houghtaling v. Superior Court*, 17 Cal. App. 4th 1128, 1131, 21 Cal. Rptr. 2d 855 (1993) (admission of hearsay evidence in small claims case); *Gardiana v. Small Claims Court*, 59 Cal. App. 3d 412, 130 Cal. Rptr. 675 (1976) (indigent defendant's right to interpreter at public expense); see also cases cited in note 1 *supra*.

- 1 • Judges of equal rank and dignity should not issue writs to each other,
2 because that may generate friction and impede court collegiality and
3 functioning.⁵⁷
- 4 • The workload of the courts of appeal should not be expanded unless truly
5 necessary, because those courts already have a heavy workload.⁵⁸
- 6 • A judge should not be responsible for reviewing any of the judge's own
7 decisions.
- 8 • Within each superior court, judicial and other resources should be conserved
9 as much as possible, while still ensuring that justice is served.
- 10 • The small claims process should facilitate quick, inexpensive, and informal
11 yet fair resolution of small disputes.⁵⁹
- 12 • Any statutory clarification of writ jurisdiction must comply with
13 constitutional constraints.

14 To implement those principles after trial court unification, writ jurisdiction
15 should follow a hierarchical approach similar to the one that existed before
16 unification, in which a writ could only be sought from a higher authority than the
17 judicial officer whose action is challenged. But the courts of appeal should not
18 have to hear all writ petitions relating to small claims cases, because that would
19 increase their already heavy caseloads beyond pre-unification levels.

20 Instead, the Commission recommends that the proper jurisdiction continue to
21 depend on the stage of the small claims case at the time of the act that is
22 challenged in the writ petition. Specifically, the proper jurisdiction would continue
23 to depend on whether the petition challenges: (1) an act at the initial hearing in the
24 small claims division, (2) an act in connection with a small claims appeal, or (3) a
25 postjudgment enforcement order in a small claims case.

26 ***Writ Petition Relating to the Initial Hearing in the Small Claims Division***

27 If a writ petition relates to the initial hearing in the small claims division of the
28 superior court, the Commission recommends that it be heard by a member of the
29 court's appellate division, who did not conduct the initial hearing.⁶⁰ Alternatively,
30 the proposed legislation would permit the petitioner to seek relief in the local court
31 of appeal or the Supreme Court, but those courts could deny the petition on the
32 ground that it was not first presented to a member of the appellate division.⁶¹

33 This approach would comply with constitutional constraints, because a judge of
34 the superior court is authorized to issue an extraordinary writ, and the judge can

57. *Trial Court Unification: Constitutional Revision*, *supra* note 20, at 30.

58. *Id.* at 26-27.

59. See *supra* note 13; see also Code Civ. Proc. § 116.120.

60. See proposed Code Civ. Proc. §§ 1068.5(a), 1085.3(a), 1103.5(a) *infra*.

61. See proposed Code Civ. Proc. §§ 1068.5(e), 1085.3(e), 1103.5(e) *infra*.

1 even do so to another judicial officer of the same court if the judge acts pursuant to
2 statutory authority.⁶² The proposed legislation would constitute the necessary
3 statutory authority.⁶³

4 The approach would avoid the unresolved issue of whether the appellate
5 division may constitutionally hear a writ petition relating to the initial hearing in a
6 small claims case.⁶⁴ The Commission is not proposing to give jurisdiction of such
7 a petition to the appellate division as an entity, to adjudicate as a three-judge panel
8 in accordance with its normal procedures.⁶⁵ Instead, the Commission is proposing
9 to give jurisdiction to a single individual who is a member of the appellate
10 division, to adjudicate independently in accordance with procedures to be
11 established by the Judicial Council.⁶⁶ Those procedures could be relatively quick,
12 inexpensive, and informal, consistent with the nature of a small claims case.⁶⁷

13 Yet the requirement that the writ petition be heard by a member of the appellate
14 division would still provide a hierarchical structure, minimizing the likelihood that
15 a judge would have to issue a writ to another judge of equal rank and dignity. That
16 is especially true because many small claims hearings are conducted by
17 subordinate judicial officers instead of judges.

18 A further advantage of the proposed approach is that it would conserve judicial
19 resources. Instead of consuming the attention of a three-judge panel in the
20 appellate division, it would only require one judge's time. In that way too it would
21 be similar to the pre-unification situation, in which one superior court judge would
22 have jurisdiction of a writ petition relating to a hearing in the small claims division
23 of a municipal court.⁶⁸

24 ***Writ Petition Relating to a Small Claims Appeal***

25 If a writ petition relates to a small claims appeal, the Commission recommends
26 that it be heard by the local court of appeal.⁶⁹ Alternatively, the proposed
27 legislation would permit the petitioner to seek relief in the Supreme Court, but the
28 Supreme Court could deny the petition on the ground that it was not first presented
29 to the local court of appeal.⁷⁰

62. See *supra* notes 40-41 and accompanying text.

63. See proposed Code Civ. Proc. §§ 1068.5(b), 1085.3(b), 1103.5(b) *infra*.

64. See *supra* notes 42-46 and accompanying text.

65. See Code Civ. Proc. § 77.

66. See proposed Code Civ. Proc. §§ 1068.5(d), 1085.3(d), 1103.5(d) *infra*.

67. The filing fee would be the same as for a small claims appeal. See proposed Code Civ. Proc. §§ 1068.5(c), 1085.3(c), 1103.5(c) *infra*.

68. See *supra* note 25 and accompanying text.

69. See proposed Code Civ. Proc. §§ 1068.5(f)(1), 1085.3(f)(1), 1103.5(f)(1) *infra*.

70. See proposed Code Civ. Proc. §§ 1068.5(f)(2), 1085.3(f)(2), 1103.5(f)(2) *infra*.

1 This approach would be identical to the pre-unification situation (except that the
2 appellate department of the superior court is now known as the appellate division,
3 and is subject to constitutional requirements).⁷¹ The approach is plainly consistent
4 with the constitutional provision governing writ jurisdiction, which expressly
5 gives the courts of appeal and the Supreme Court jurisdiction to issue an
6 extraordinary writ.⁷² Further, it totally avoids any problem of peer review, because
7 the writ petition would be heard in a court of higher jurisdiction than the one that
8 made the decision challenged by the writ.

9 ***Writ Petition Relating to a Postjudgment Enforcement Order***

10 Finally, if a writ petition relates to a postjudgment enforcement order in a small
11 claims case, the Commission recommends that it be heard by the appellate
12 division of the superior court.⁷³ Alternatively, the proposed legislation would
13 permit the petition to seek relief in the local court of appeal or the Supreme Court,
14 but those courts could deny the petition on the ground that it was not first
15 presented to the appellate division.⁷⁴

16 This approach would codify *General Electric Capital Auto Financial Services,*
17 *Inc. v. Appellate Division.*⁷⁵ A significant advantage of the approach is that it treats
18 all judgments in limited civil cases the same way for enforcement purposes. A
19 judgment in a small claims case is handled just like any other judgment in a
20 limited civil case.

21 ***Summary of the Proposed Legislation***

22 To summarize, the Commission recommends adoption of statutory provisions
23 that would implement the following jurisdictional rules:

- 24 • *Initial hearing.* If a writ petition challenges a ruling made at the initial
25 hearing before the small claims division of a superior court, the petition
26 could be heard by a member of the court's appellate division who did not
27 conduct the initial hearing, or it could be heard by a court of higher
28 jurisdiction.
- 29 • *Small claims appeal.* If a writ petition challenges a ruling made by the
30 superior court in a small claims appeal, the petition could be heard by the
31 local court of appeal or by the Supreme Court.
- 32 • *Postjudgment enforcement order.* If a writ petition challenges a
33 postjudgment enforcement order of the small claims division of the superior

71. See *supra* note 26 and accompanying text. For the features of the appellate division as opposed to the appellate department, see *supra* note 22.

72. Cal. Const. art. VI, § 10.

73. See proposed Code Civ. Proc. §§ 1068.5(g)(1), 1085.3(g)(1), 1103.5(g)(1) *infra*.

74. See proposed Code Civ. Proc. §§ 1068.5(g)(2), 1085.3(g)(2), 1103.5(g)(2) *infra*.

75. 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). For discussion of this case, see *supra* notes 47-54 and accompanying text.

1 court, the petition could be heard by the appellate division of the superior
2 court, or it could be heard by a court of higher jurisdiction.

3 This would closely mirror the pre-unification situation.⁷⁶

4 **Benefits of the Proposed Clarification**

5 By providing clear guidance to small claims litigants and court personnel, the
6 recommended legislation would prevent confusion, decrease disputes, and reduce
7 associated expenses. The legislation would also conform to constitutional
8 constraints, minimize peer review concerns, and conserve judicial resources.
9 Enacting the legislation would thus further significant objectives and serve the
10 needs of the public.

76. See *supra* notes 25-27 and accompanying text.

PROPOSED LEGISLATION

1 **Code Civ. Proc. § 1068.5 (added). Writ of review in small claims case**

2 SECTION 1. Section 1068.5 is added to the Code of Civil Procedure, to read:

3 1068.5 (a) A petition that seeks a writ of review relating to an act of the small
4 claims division, other than a postjudgment enforcement order, may be heard by a
5 judge of the superior court who satisfies both of the following requirements:

6 (1) The judge is a member of the appellate division of the superior court.

7 (2) The judge did not make any ruling that is challenged by the writ petition.

8 (b) Where a judge described in subdivision (a) grants a writ of review directed to
9 the small claims division, the small claims division is an inferior tribunal for
10 purposes of this chapter.

11 (c) The fee for filing a writ petition in the superior court under subdivision (a) is
12 the same as the fee for filing a notice of appeal under Section 116.760.

13 (d) The Judicial Council shall promulgate procedural rules for a writ proceeding
14 under subdivision (a).

15 (e) A petition described in subdivision (a) may also be heard by the appropriate
16 court of appeal or by the Supreme Court. If the petition was not previously
17 presented to a judge of the superior court in accordance with subdivision (a), the
18 court of appeal or the Supreme Court may deny the petition on that basis.

19 (f)(1) A petition that seeks a writ of review relating to an act of a superior court
20 in a small claims appeal may be heard by the appropriate court of appeal.

21 (2) A petition described in this subdivision may also be heard by the Supreme
22 Court. If the petition was not previously presented to the appropriate court of
23 appeal, the Supreme Court may deny the petition on that basis.

24 (g)(1) A petition that seeks a writ of review relating to a postjudgment
25 enforcement order of the small claims division may be heard by the appellate
26 division of the superior court.

27 (2) A petition described in this subdivision may also be heard by the appropriate
28 court of appeal or by the Supreme Court. If the petition was not previously
29 presented to the appellate division of the superior court, the court of appeal or the
30 Supreme Court may deny the petition on that basis.

31 **Comment.** Section 1068.5 is added to clarify which tribunal has jurisdiction of a writ petition
32 relating to a small claims case after trial court unification. The proper tribunal depends on the
33 stage of the case at the time of the act that is challenged in the writ petition.

34 Subdivisions (a) and (b) make clear that a writ petition relating to the initial hearing in the
35 small claims division of the superior court may be heard by a member of the court's appellate
36 division, who did not conduct the initial hearing. See Cal. Const. art. VI, § 10 ("The ... superior
37 courts, and their judges have original jurisdiction ... in proceedings for extraordinary relief in the
38 nature of mandamus, certiorari, and prohibition."); see also *People v. Konow*, 32 Cal. 4th 995,
39 1019-21, 88 P.3d 36, 12 Cal. Rptr. 3d 301 (2004) (superior court judge who considers order
40 entered by another superior court judge does not unconstitutionally enjoin, restrain, or otherwise

1 interfere with judicial act of another superior court judge if later judge acts under statutory
2 authority).

3 Subdivision (c) specifies the filing fee for a writ petition relating to the initial hearing in the
4 small claims division, and subdivision (d) directs the Judicial Council to provide guidance on the
5 procedures applicable to such a writ proceeding.

6 Subdivision (e) makes clear that the local court of appeal and the Supreme Court also have
7 jurisdiction to consider a writ petition relating to the initial hearing in the small claims division.
8 See Cal. Const. art. VI, § 10 (“The Supreme Court, courts of appeal, ... and their judges have
9 original jurisdiction ... in proceedings for extraordinary relief in the nature of mandamus
10 certiorari, and prohibition.”). In addition to other grounds for denying the writ, however, those
11 courts may deny the writ on the ground that it was not first presented to a lower tribunal pursuant
12 to subdivision (a). See generally *In re Ramirez*, 89 Cal. App. 4th 1312, 1320, 108 Cal. Rptr. 229
13 (2001).

14 Subdivision (f) makes clear that a writ petition relating to a small claims appeal may only be
15 heard by the local court of appeal or by the Supreme Court. This rule is consistent with historical
16 practice. See, e.g., *Crouchman v. Superior Court*, 45 Cal. 3d 1167, 755 P.2d 1075, 248 Cal. Rptr.
17 626 (1988); *Universal City Nissan, Inc. v. Superior Court*, 65 Cal. App. 4th 203, 75 Cal. Rptr. 2d
18 910 (1998); *Houghtaling v. Superior Court*, 17 Cal. App. 4th 1128, 21 Cal. Rptr. 2d 855 (1993);
19 see generally Cal. Const. art. VI, § 11 (Except for death penalty cases, “courts of appeal have
20 appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the
21 appellate jurisdiction of the courts of appeal on June 30, 1995 ...”). For the filing fee for such a
22 writ petition, see Gov’t Code §§ 68926, 68926.1. For guidance on the applicable procedures, see
23 Cal. R. Ct. 8.485-8.493.

24 Subdivision (g) makes clear that a writ petition relating to a postjudgment enforcement order of
25 the small claims division may be heard by the appellate division of the superior court. This
26 codifies *General Electric Capital Auto Financial Services, Inc. v. Appellate Division of the*
27 *Superior Court*, 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). For the filing fee for such a
28 writ petition, see Gov’t Code § 70621. For guidance on the applicable procedures, see Cal. R. Ct.
29 8.930-8.936.

30 Subdivision (g) further makes clear that the local court of appeal and the Supreme Court also
31 have jurisdiction to consider a writ petition relating to a postjudgment enforcement order of the
32 small claims division. See Cal. Const. art. VI, § 10. In addition to other grounds for denying the
33 writ, however, those courts may deny the writ on the ground that it was not first presented to the
34 appellate division of the superior court. See generally *Ramirez*, 89 Cal. App. 4th at 1320.

35 **Code Civ. Proc. § 1085.3 (added). Writ of mandate in small claims case**

36 SEC. 2. Section 1085.3 is added to the Code of Civil Procedure, to read:

37 1085.3. (a) A petition that seeks a writ of mandate relating to an act of the small
38 claims division, other than a postjudgment enforcement order, may be heard by a
39 judge of the superior court who satisfies both of the following requirements:

- 40 (1) The judge is a member of the appellate division of the superior court.
41 (2) The judge did not make any ruling that is challenged by the writ petition.

42 (b) Where a judge described in subdivision (a) grants a writ of mandate directed
43 to the small claims division, the small claims division is an inferior tribunal for
44 purposes of this chapter.

45 (c) The fee for filing a writ petition in the superior court under subdivision (a) is
46 the same as the fee for filing a notice of appeal under Section 116.760.

47 (d) The Judicial Council shall promulgate procedural rules for a writ proceeding
48 under subdivision (a).

1 (e) A petition described in subdivision (a) may also be heard by the appropriate
2 court of appeal or by the Supreme Court. If the petition was not previously
3 presented to a judge of the superior court in accordance with subdivision (a), the
4 court of appeal or the Supreme Court may deny the petition on that basis.

5 (f)(1) A petition that seeks a writ of mandate relating to an act of a superior
6 court in a small claims appeal may be heard by the appropriate court of appeal.

7 (2) A petition described in this subdivision may also be heard by the Supreme
8 Court. If the petition was not previously presented to the appropriate court of
9 appeal, the Supreme Court may deny the petition on that basis.

10 (g)(1) A petition that seeks a writ of mandate relating to a postjudgment
11 enforcement order of the small claims division may be heard by the appellate
12 division of the superior court.

13 (2) A petition described in this subdivision may also be heard by the appropriate
14 court of appeal or by the Supreme Court. If the petition was not previously
15 presented to the appellate division of the superior court, the court of appeal or the
16 Supreme Court may deny the petition on that basis.

17 **Comment.** Section 1085.3 is added to clarify which tribunal has jurisdiction of a writ petition
18 relating to a small claims case after trial court unification. The proper tribunal depends on the
19 stage of the case at the time of the act that is challenged in the writ petition.

20 Subdivisions (a) and (b) make clear that a writ petition relating to the initial hearing in the
21 small claims division of the superior court may be heard by a member of the court's appellate
22 division, who did not conduct the initial hearing. See Cal. Const. art. VI, § 10 ("The ... superior
23 courts, and their judges have original jurisdiction ... in proceedings for extraordinary relief in the
24 nature of mandamus, certiorari, and prohibition."); see also *People v. Konow*, 32 Cal. 4th 995,
25 1019-21, 88 P.3d 36, 12 Cal. Rptr. 3d 301 (2004) (superior court judge who considers order
26 entered by another superior court judge does not unconstitutionally enjoin, restrain, or otherwise
27 interfere with judicial act of another superior court judge if later judge acts under statutory
28 authority).

29 Subdivision (c) specifies the filing fee for a writ petition relating to the initial hearing in the
30 small claims division, and subdivision (d) directs the Judicial Council to provide guidance on the
31 procedures applicable to such a writ proceeding.

32 Subdivision (e) makes clear that the local court of appeal and the Supreme Court also have
33 jurisdiction to consider a writ petition relating to the initial hearing in the small claims division.
34 See Cal. Const. art. VI, § 10 ("The Supreme Court, courts of appeal, ... and their judges have
35 original jurisdiction ... in proceedings for extraordinary relief in the nature of mandamus
36 certiorari, and prohibition."). In addition to other grounds for denying the writ, however, those
37 courts may deny the writ on the ground that it was not first presented to a lower tribunal pursuant
38 to subdivision (a). See generally *In re Ramirez*, 89 Cal. App. 4th 1312, 1320, 108 Cal. Rptr. 229
39 (2001).

40 Subdivision (f) makes clear that a writ petition relating to a small claims appeal may only be
41 heard by the local court of appeal or by the Supreme Court. This rule is consistent with historical
42 practice. See, e.g., *Crouchman v. Superior Court*, 45 Cal. 3d 1167, 755 P.2d 1075, 248 Cal. Rptr.
43 626 (1988); *Universal City Nissan, Inc. v. Superior Court*, 65 Cal. App. 4th 203, 75 Cal. Rptr. 2d
44 910 (1998); *Houghtaling v. Superior Court*, 17 Cal. App. 4th 1128, 21 Cal. Rptr. 2d 855 (1993);
45 see generally Cal. Const. art. VI, § 11 (Except for death penalty cases, "courts of appeal have
46 appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the
47 appellate jurisdiction of the courts of appeal on June 30, 1995 ..."). For the filing fee for such a
48 writ petition, see Gov't Code §§ 68926, 68926.1. For guidance on the applicable procedures, see
49 Cal. R. Ct. 8.485-8.493.

1 Subdivision (g) makes clear that a writ petition relating to a postjudgment enforcement order of
2 the small claims division may be heard by the appellate division of the superior court. This
3 codifies *General Electric Capital Auto Financial Services, Inc. v. Appellate Division of the*
4 *Superior Court*, 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). For the filing fee for such a
5 writ petition, see Gov't Code § 70621. For guidance on the applicable procedures, see Cal. R. Ct.
6 8.930-8.936.

7 Subdivision (g) further makes clear that the local court of appeal and the Supreme Court also
8 have jurisdiction to consider a writ petition relating to a postjudgment enforcement order of the
9 small claims division. See Cal. Const. art. VI, § 10. In addition to other grounds for denying the
10 writ, however, those courts may deny the writ on the ground that it was not first presented to the
11 appellate division of the superior court. See generally *Ramirez*, 89 Cal. App. 4th at 1320.

12 **Code Civ. Proc. § 1103.5 (added). Writ of prohibition in small claims case**

13 SEC. 3. Section 1103.5 is added to the Code of Civil Procedure, to read:

14 1103.5. (a) A petition that seeks a writ of prohibition relating to an act of the
15 small claims division, other than a postjudgment enforcement order, may be heard
16 by a judge of the superior court who satisfies both of the following requirements:

17 (1) The judge is a member of the appellate division of the superior court.

18 (2) The judge did not make any ruling that is challenged by the writ petition.

19 (b) Where a judge described in subdivision (a) grants a writ of prohibition
20 directed to the small claims division, the small claims division is an inferior
21 tribunal for purposes of this chapter.

22 (c) The fee for filing a writ petition in the superior court under subdivision (a) is
23 the same as the fee for filing a notice of appeal under Section 116.760.

24 (d) The Judicial Council shall promulgate procedural rules for a writ proceeding
25 under subdivision (a).

26 (e) A petition described in subdivision (a) may also be heard by the appropriate
27 court of appeal or by the Supreme Court. If the petition was not previously
28 presented to a judge of the superior court in accordance with subdivision (a), the
29 court of appeal or the Supreme Court may deny the petition on that basis.

30 (f)(1) A petition that seeks a writ of prohibition relating to an act of a superior
31 court in a small claims appeal may be heard by the appropriate court of appeal.

32 (2) A petition described in this subdivision may also be heard by the Supreme
33 Court. If the petition was not previously presented to the appropriate court of
34 appeal, the Supreme Court may deny the petition on that basis.

35 (g)(1) A petition that seeks a writ of prohibition relating to a postjudgment
36 enforcement order of the small claims division may be heard by the appellate
37 division of the superior court.

38 (2) A petition described in this subdivision may also be heard by the appropriate
39 court of appeal or by the Supreme Court. If the petition was not previously
40 presented to the appellate division of the superior court, the court of appeal or the
41 Supreme Court may deny the petition on that basis.

42 **Comment.** Section 1103.5 is added to clarify which tribunal has jurisdiction of a writ petition
43 relating to a small claims case after trial court unification. The proper tribunal depends on the
44 stage of the case at the time of the act that is challenged in the writ petition.

1 Subdivisions (a) and (b) make clear that a writ petition relating to the initial hearing in the
2 small claims division of the superior court may be heard by a member of the court’s appellate
3 division, who did not conduct the initial hearing. See Cal. Const. art. VI, § 10 (“The ... superior
4 courts, and their judges have original jurisdiction ... in proceedings for extraordinary relief in the
5 nature of mandamus, certiorari, and prohibition.”); see also *People v. Konow*, 32 Cal. 4th 995,
6 1019-21, 88 P.3d 36, 12 Cal. Rptr. 3d 301 (2004) (superior court judge who considers order
7 entered by another superior court judge does not unconstitutionally enjoin, restrain, or otherwise
8 interfere with judicial act of another superior court judge if later judge acts under statutory
9 authority).

10 Subdivision (c) specifies the filing fee for a writ petition relating to the initial hearing in the
11 small claims division, and subdivision (d) directs the Judicial Council to provide guidance on the
12 procedures applicable to such a writ proceeding.

13 Subdivision (e) makes clear that the local court of appeal and the Supreme Court also have
14 jurisdiction to consider a writ petition relating to the initial hearing in the small claims division.
15 See Cal. Const. art. VI, § 10 (“The Supreme Court, courts of appeal, ... and their judges have
16 original jurisdiction ... in proceedings for extraordinary relief in the nature of mandamus
17 certiorari, and prohibition.”). In addition to other grounds for denying the writ, however, those
18 courts may deny the writ on the ground that it was not first presented to a lower tribunal pursuant
19 to subdivision (a). See generally *In re Ramirez*, 89 Cal. App. 4th 1312, 1320, 108 Cal. Rptr. 229
20 (2001).

21 Subdivision (f) makes clear that a writ petition relating to a small claims appeal may only be
22 heard by the local court of appeal or by the Supreme Court. This rule is consistent with historical
23 practice. See, e.g., *Crouchman v. Superior Court*, 45 Cal. 3d 1167, 755 P.2d 1075, 248 Cal. Rptr.
24 626 (1988); *Universal City Nissan, Inc. v. Superior Court*, 65 Cal. App. 4th 203, 75 Cal. Rptr. 2d
25 910 (1998); *Houghtaling v. Superior Court*, 17 Cal. App. 4th 1128, 21 Cal. Rptr. 2d 855 (1993);
26 see generally Cal. Const. art. VI, § 11 (Except for death penalty cases, “courts of appeal have
27 appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the
28 appellate jurisdiction of the courts of appeal on June 30, 1995”). For the filing fee for such a
29 writ petition, see Gov’t Code §§ 68926, 68926.1. For guidance on the applicable procedures, see
30 Cal. R. Ct. 8.485-8.493.

31 Subdivision (g) makes clear that a writ petition relating to a postjudgment enforcement order of
32 the small claims division may be heard by the appellate division of the superior court. This
33 codifies *General Electric Capital Auto Financial Services, Inc. v. Appellate Division of the*
34 *Superior Court*, 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). For the filing fee for such a
35 writ petition, see Gov’t Code § 70621. For guidance on the applicable procedures, see Cal. R. Ct.
36 8.930-8.936.

37 Subdivision (g) further makes clear that the local court of appeal and the Supreme Court also
38 have jurisdiction to consider a writ petition relating to a postjudgment enforcement order of the
39 small claims division. See Cal. Const. art. VI, § 10. In addition to other grounds for denying the
40 writ, however, those courts may deny the writ on the ground that it was not first presented to the
41 appellate division of the superior court. See generally *Ramirez*, 89 Cal. App. 4th at 1320.