

Memorandum 2010-50

**Obsolete Cross-References to
Former Code of Civil Procedure Section 116.780(d)
(Draft of Tentative Recommendation)**

In 2005, AB 1742 (Committee on Judiciary) was introduced to help streamline California's court operations and practice. This was not a Commission proposal; rather the bill included a number of noncontroversial reforms from a variety of sources. Among other things, the bill amended Code of Civil Procedure Section 116.780, relating to judgment on a small claims appeal. Specifically, subdivision (d) of Section 116.780 was deleted by AB 1742's enactment into law. See 2005 Cal. Stat. ch. 706.

Last year, the Commission was alerted that the California codes still contain two references to subdivision (d) of Section 116.780, even though that subdivision no longer exists. See Memorandum 2009-38, Exhibit p. 29. These cross-references are now defective and should be amended. The Commission decided to study the matter on a low priority basis, because the matter did not appear routine enough for inclusion in the Legislative Counsel's annual maintenance of the codes bill. See Minutes (Oct. 2009), pp. 3-4.

A draft of a tentative recommendation, including a narrative explanation and proposed amendments to delete the obsolete cross-references, is attached for the Commission's review. **The Commission needs to decide whether to approve the draft as a tentative recommendation (as is, or with revisions), for circulation for comment.**

If the Commission approves the draft as a tentative recommendation, the Commission also needs to consider how long the comment period should be. **The staff recommends a comment deadline of December 1.** Although the Commission typically allows more time for comment, this proposal is short and

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.

relatively straightforward, and a December 1 deadline would permit continuity in staffing the project.

Respectfully submitted,

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CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Obsolete Cross-References to Former Code of Civil Procedure Section 116.780(d)

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.

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OBSOLETE CROSS-REFERENCES TO FORMER CODE OF
CIVIL PROCEDURE SECTION 116.780(d)

1 Code of Civil Procedure Section 116.780 specifies rules applicable to a
2 judgment that is entered after a hearing on a small claims appeal. Two statutory
3 provisions currently refer to subdivision (d) of that section, yet the section no
4 longer has a subdivision (d). The Law Revision Commission recommends that
5 those obsolete cross-references be corrected.¹

6 **Historical Background**

7 Subdivision (d) was added to Section 116.780 in 1991.² At that time, a small
8 claims case was heard in the small claims division of the municipal or justice
9 court,³ which was also known as the “small claims court.”⁴ An appeal from a
10 decision of the small claims court consisted of a retrial in the superior court.⁵
11 Subdivision (d) originally required a superior court to transfer a small claims
12 appeal back to the small claims court for enforcement upon completion of the
13 appeal process.⁶ In 1994, the provision was revised to allow the superior court to
14 retain jurisdiction of the case for ten days following the completion of the appeal
15 process, at which time the case was to be transferred back to the small claims court
16 for enforcement.⁷

17 The justice courts were eliminated soon afterwards, leaving only the municipal
18 and superior courts.⁸ A few years later, the voters approved a measure to permit
19 the municipal and superior courts in each county to unify on a vote of a majority
20 of the municipal court judges and a majority of the superior court judges in the
21 county.⁹ By early 2001, the courts in every county had unified.¹⁰ Each county now

1. This recommendation was prepared pursuant to Government Code Section 8298 and Resolution Chapter 98 of the Statutes of 2009.

2. 1991 Cal. Stat. ch. 915, § 26.

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

4. The small claims division is frequently referred to as the “small claims court.” See Code Civ. Proc. § 116.210 (“The small claims division may be known as the small claims court.”).

5. *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 75 (1998).

6. As originally enacted, subdivision (d) stated: “Upon the completion of the appeal process, the superior court shall order the appeal and any judgment transferred to the small claims court in which the action was originally filed for purposes of enforcement and other proceedings under Article 8 (commencing with Section 116.810) of this chapter.” See 1991 Cal. Stat. ch. 915, § 26.

7. As revised, Section 116.780(d) required a transfer to the small claims court “[u]pon the expiration of 10 days following the completion of the appeal process,” instead of “[u]pon the completion of the appeal process.” See 1994 Cal. Stat. ch. 587, § 3 (emphasis added); see also Assembly Committee on Judiciary Analysis of AB 3600 (May 11, 1994), p. 1.

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

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

1 has a unified superior court, which handles all of the matters previously heard in
2 municipal court, as well as all of the matters previously heard in superior court.¹¹
3 The municipal courts no longer exist.¹²

4 As a consequence of unification, the small claims court is now a division of the
5 superior court, so a post-appeal transfer from the superior court back to the
6 municipal court system is no longer necessary.¹³ The superior court can simply
7 reassign the matter to the small claims court, without the jurisdictional and other
8 complications inherent in a transfer between two distinct court systems.
9 Accordingly, Section 116.780 was amended to delete subdivision (d) and allow
10 enforcement proceedings to commence immediately after resolution of a small
11 claims appeal.¹⁴

12 **Obsolete Cross-References**

13 Although Section 116.780 no longer has a subdivision (d), the codes still contain
14 two references to that now-nonexistent subdivision. Those references should be
15 updated.

16 The first such reference appears in Section 116.780 itself. Specifically,
17 subdivision (b) states that “Article 6 (commencing with Section 116.610) on
18 judgments of the small claims court applies to judgments of the superior court
19 after a hearing on appeal, except as provided in subdivisions (c) and (d).” Here,
20 the reference to subdivision (d) should simply be eliminated, because it no longer
21 states a special rule that needs to be recognized as an exception.¹⁵

22 The other obsolete reference appears in Section 116.820(a). There, it is no
23 longer correct to refer to a “transfer to the small claims court under subdivision (d)
24 of Section 116.780.” Instead, the provision should simply refer to a “reassignment
25 to the small claims court.”¹⁶ That will properly reflect the procedure used after the
26 trial courts unified.

27 **Effect of the Proposed Legislation**

28 The recommended revisions will help to prevent confusion and thus conserve
29 court and litigant resources. The revisions should be promptly made to achieve
30 these beneficial effects.

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

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

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

13. See Code Civ. Proc. § 116.210.

14. See 2005 Cal. Stat. ch. 706, § 8; see also Senate Committee on Judiciary Analysis of AB 1742 (July 12, 2005), p. 9; Assembly Committee on Judiciary Analysis of AB 1742 (April 26, 2005), p. 6.

15. See proposed amendment to Code Civ. Proc. § 116.780 *infra*.

16. See proposed amendment to Code Civ. Proc. § 116.820 *infra*.

PROPOSED LEGISLATION

1 **Code Civ. Proc. § 116.780 (amended). Judgment after hearing on small claims appeal**

2 SECTION 1. Section 116.780 of the Code of Civil Procedure is amended to
3 read:

4 116.780. (a) The judgment of the superior court after a hearing on appeal is final
5 and not appealable.

6 (b) Article 6 (commencing with Section 116.610) on judgments of the small
7 claims court applies to judgments of the superior court after a hearing on appeal,
8 except as provided in ~~subdivisions~~ subdivision (c) ~~and (d)~~.

9 (c) For good cause and where necessary to achieve substantial justice between
10 the parties, the superior court may award a party to an appeal reimbursement of (1)
11 attorney's fees actually and reasonably incurred in connection with the appeal, not
12 exceeding one hundred fifty dollars (\$150), and (2) actual loss of earnings and
13 expenses of transportation and lodging actually and reasonably incurred in
14 connection with the appeal, not exceeding one hundred fifty dollars (\$150).

15 **Comment.** Section 116.780 is amended to delete an obsolete reference to subdivision (d),
16 which no longer exists. For the legislation that eliminated subdivision (d), see 2005 Cal. Stat. ch.
17 706, § 8. For the text of that subdivision, see 1994 Cal. Stat. ch. 587, § 3; 1991 Cal. Stat. ch. 915,
18 § 26.

19 **Code Civ. Proc. § 116.820 (amended). Enforcement of small claims judgment**

20 SEC. 2. Section 116.820 of the Code of Civil Procedure is amended to read:

21 116.820. (a) The judgment of a small claims court may be enforced as provided
22 in Title 9 (commencing with Section 680.010) of Part 2 and in Sections 674 and
23 1174 on the enforcement of judgments of other courts. A judgment of the superior
24 court after a hearing on appeal, and after ~~transfer~~ reassignment to the small claims
25 court ~~under subdivision (d) of Section 116.780~~, may be enforced like other
26 judgments of the small claims court, as provided in Title 9 (commencing with
27 Section 680.010) of Part 2 and in Sections 674 and 1174 on the enforcement of
28 judgments of other courts.

29 (b) The clerk of the court shall charge and collect all fees associated with the
30 enforcement of judgments under Title 9 (commencing with Section 680.010) of
31 Part 2. The clerk shall immediately deposit all the fees collected under this section
32 into a bank account established for this purpose by the Administrative Office of
33 the Courts. The money shall be remitted to the State Treasury under rules adopted
34 by, or trial court financial policies and procedures authorized by, the Judicial
35 Council under subdivision (a) of Section 77206 of the Government Code. The
36 Controller shall distribute the fees to the Trial Court Trust Fund as provided in
37 Section 68085.1 of the Government Code.

38 (c) The prevailing party in any action subject to this chapter is entitled to the
39 costs of enforcing the judgment and accrued interest.

1 **Comment.** Section 116.820 is amended to delete obsolete language referring to a transfer
2 “under subdivision (d) of Section 116.780.”

3 In the past, subdivision (d) of Section 116.780 required a superior court to transfer a small
4 claims appeal to the small claims court for enforcement after the superior court resolved the
5 appeal. See 1994 Cal. Stat. ch. 587, § 3; 1991 Cal. Stat. ch. 915, § 26. Such a transfer was
6 necessary before the municipal and superior courts unified, because the small claims court was a
7 division of the municipal court, not the superior court.

8 Now that the trial courts have unified, the small claims court is a division of the superior court.
9 See Code Civ. Proc. § 116.210. Upon resolving a small claims appeal, the superior court can
10 simply reassign the matter to the small claims court, without having to effect a transfer to the
11 municipal court system. Accordingly, Section 116.780 was amended to delete subdivision (d).
12 See 2005 Cal. Stat. ch. 706, § 8. Section 116.820 is now amended to reflect that development.
