

First Supplement to Memorandum 2010-55

Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Further Input and Issues on Tentative Recommendation)

The Commission has received the following new input on the tentative recommendation on *Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part 1)*:

Exhibit p.

- Alan Wiener, Civil and Small Claims Advisory Committee1

This new input and a number of other issues relating to the tentative recommendation are discussed below.

SMALL CLAIMS ADVISORY SERVICES: CODE OF CIVIL PROCEDURE SECTION 116.940

To reflect the switch from county funding to state funding of trial court operations, the tentative recommendation proposes an amendment of Code of Civil Procedure Section 116.940, which relates to small claims advisory services. That amendment would expressly acknowledge that a small claims advisory service can be run by the county, by the court, or by a third party who has contracted with the county or the court to provide small claims advisory services:

116.940. (a) Except as otherwise provided in this section or in rules adopted by the Judicial Council, which are consistent with the requirements of this section, the characteristics of the small claims advisory service required by Section 116.260 shall be determined by each county, or by the superior court in a county where the small claims advisory service is administered by the court, in accordance with local needs and conditions.

(b) Each advisory service shall provide the following services:

(1) Individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance. The topics covered by individual personal advisory services shall include, but not be

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.

limited to, preparation of small claims court filings, procedures, including procedures related to the conduct of the hearing, and information on the collection of small claims court judgments.

(2) Recorded telephone messages may be used to supplement the individual personal advisory services, but shall not be the sole means of providing advice available in the county.

(3) Adjacent counties, or superior courts in adjacent counties, may provide advisory services jointly.

(c) In any county in which the number of small claims actions filed annually is 1,000 or less as averaged over the immediately preceding two fiscal years, the county or the superior court may elect to exempt itself from the requirements set forth in subdivision (b). This If the small claims advisory service is administered by the county, this exemption shall be formally noticed through the adoption of a resolution by the board of supervisors. If the small claims advisory service is administered by the superior court, this exemption shall be formally noticed through adoption of a local rule. If a county or court so exempts itself, the county or court shall nevertheless provide the following minimum advisory services in accordance with rules adopted by the Judicial Council:

(1) Recorded telephone messages providing general information relating to small claims actions filed in the county shall be provided during regular business hours.

(2) Small claims information booklets shall be provided in the court clerk's office of each superior court, ~~the county administrator's office,~~ other appropriate county offices, and in any other location that is convenient to prospective small claims litigants in the county.

(d) The advisory service shall operate in conjunction and cooperation with the small claims division, and shall be administered so as to avoid the existence or appearance of a conflict of interest between the individuals providing the advisory services and any party to a particular small claims action or any judicial officer deciding small claims actions.

(e) Advisers may be volunteers, and shall be members of the State Bar, law students, paralegals, or persons experienced in resolving minor disputes, and shall be familiar with small claims court rules and procedures. Advisers may not appear in court as an advocate for any party.

(f) Advisers, including independent contractors, other employees, and volunteers have the immunity conferred by Section 818.9 of the Government Code with respect to advice provided as a public service on behalf of a court or county to small claims litigants and potential litigants under this chapter.

(g) Nothing in this section precludes a court or county from contracting with a third party to provide small claims advisory services as described in this section.

Comment. Section 116.940 is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655). See Gov't Code §§ 77003 ("court operations" defined), 77200 (state funding of "court operations"); see also Cal. R. Ct. 10.810(d), Function 10 ("small claims advisor program costs").

As amended, Section 116.940 makes explicit that a small claims advisory service can be run by the county, by the court, or by a third party who has contracted with the county or the court to provide small claims advisory services. For a similar provision, see Section 116.230 (filing fees for small claims cases).

This amendment would parallel a similar revision of Code of Civil Procedure Section 116.231, which was enacted in 2007. See 2007 Cal. Stat. ch. 738, § 3; see also Memorandum 2009-35, pp. 11-17. It would reflect that small claims advisory services are being run in different ways in different counties, and would provide flexibility to continue that approach.

Alan Wiener of the Administrative Office of the Courts has provided informal input on this amendment on behalf of the Civil and Small Claims Advisory Committee of the Judicial Council. See Exhibit pp. 1-2. This input does not represent an official position of the Judicial Council. *Id.* at 1.

Court and County Administering Advisory Services in Adjacent Counties

The Civil and Small Claims Advisory Committee "supports the CLRC proposal to amend section 116.940 to provide, in substance, that courts that administer small claims advisory services shall have the same administrative authority and discretion that the county would have if the county were administering the services." *Id.* The committee suggests, however, that the Commission "slightly revise the proposed amendment to paragraph (b)(3) of section 116.940 to clarify that a court and a county that are administering advisory services in adjacent counties may provide advisory services jointly." *Id.* The committee does not suggest specific language to achieve this objective.

The staff suggests the following:

(b) Each advisory service shall provide the following services:

....

(3) Adjacent counties, superior courts in adjacent counties, or any combination thereof, may provide advisory services jointly.

Is this revision acceptable to the Commission?

Response to Commission's Specific Request for Input

In connection with the proposed amendment of Section 116.940, the tentative recommendation included the following note soliciting input:

Note. The Commission seeks comment on any aspect of the amendment proposed above, but would especially appreciate input on (1) the current division of responsibility for small claims advisory services, and (2) whether the proposed amendment would be an appropriate allocation of such responsibility.

In response to this note, the Civil and Small Claims Advisory Committee comments that "courts and counties currently administer advisory services in a broad array of ways, about which the committee does not currently have comprehensive information." Exhibit p. 1. Accordingly, the committee "recommends maintaining flexibility to locally determine the most appropriate allocation of administrative responsibilities for advisory services at the time." *Id.*

The committee's comments on this point are consistent with the approach taken in the tentative recommendation. **No change appears necessary to address them.**

ISSUES FLAGGED FOR ATTENTION IN THE TENTATIVE RECOMMENDATION

The tentative recommendation includes a number of notes ("**Note.**") that identify an issue relating to a proposed amendment and specifically seek input on that point. The Commission received input relevant to a number of these provisions, which has been discussed elsewhere. See Memorandum 2010-55, pp. 2-4 (Gov't Code § 25257), 4-10 (Bus. & Prof. Code § 25762; Gov't Code § 71384), 11-12 (Gov't Code § 29370), 15-19 (Penal Code § 1463.22); see also the above discussion of Code Civ. Proc. § 116.940.

The Commission did not receive any input in response to the following notes:

- The note relating to **Code of Civil Procedure Section 631.2**, which asks whether the provision should refer to "general funds of the court" or use some other terminology for the funds in question.
- The note relating to **Family Code Section 1820**, which asks whether the phrase "other court personnel" in subdivision (c)(3) is surplusage.
- The note relating to **Family Code Section 1838**, which asks whether aid invoked by a court under subdivision (b) is a "court operation."

- The note relating to **Government Code Section 1750**, which asks who should receive a written resignation by a superior court officer.
- The note relating to **Government Code Section 31116**, which asks how the Trial Court Employment Protection and Governance Act affects that provision.
- The note relating to **Government Code Section 68083**, which asks whether any court officer is still permitted to receive a percentage of the fees collected by the officer.

The absence of input on these points, which were specifically flagged for attention, suggests that the treatment of them in the tentative recommendation is unobjectionable. Based on our current information, the staff recommends that the Commission **proceed with the proposed amendments of these sections as presented in the tentative recommendation.**

ACCOUNTING BY COURTS: GOVERNMENT CODE SECTION 24352

In the tentative recommendation, the Commission proposes to revise a number of provisions to reflect that under the Trial Court Funding Act, the Judicial Council and the Controller share oversight responsibility for recordkeeping and accounting by the trial courts. See the proposed amendments to Gov't Code §§ 24352, 71380, 71381, 71382, 71384; see also the discussion at pages 6-7 of the tentative recommendation.

The Los Angeles County Superior Court objects to the proposed amendments to Government Code Sections 71380, 71381, 71382, and 71384. See Memorandum 2010-55, pp. 7-10. In particular, the court objects that the amendments would not “provide for any consultation or involvement of trial courts in the establishment of [an accounting] system.” *Id.* at Exhibit p. 8. Due to that objection, the staff has recommended withdrawing those provisions from the Commission’s proposal. See *id.* at 9.

The Los Angeles County Superior Court does not refer to Government Code Section 24352 in its comments. Like the amendments to which that court objects, however, the proposed amendment of that section is based on the recordkeeping and accounting requirements in the Trial Court Funding Act, which make a court officer subject to regulations formulated by the Judicial Council, in consultation with the Controller. See n. 26 on p. 7 of the tentative recommendation.

Because the proposed amendment of Section 24352 has the same basis as the amendments to which the court objects, the staff recommends

withdrawing it from the Commission's current proposal. The Commission should revisit this provision at the same time that it revisits Government Code Sections 71380, 71381, 71382, and 71384.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

**EMAIL FROM ALAN WIENER ON BEHALF OF THE CIVIL AND SMALL
CLAIMS ADVISORY COMMITTEE OF THE JUDICIAL COUNCIL
(NOV. 30, 2010)**

Re: Tentative Recommendation J-1451

***Trial Court Restructuring: Rights and Responsibilities of the County as Compared
to the Superior Court (Part 1)***

Dear Commissioners and Staff,

The Civil and Small Claims Advisory Committee of the Judicial Council (the committee) considered the California Law Revision Commission (CLRC) proposal to amend Code of Civil Procedure section 116.940 (pertaining to small claims court advisory services) that is set forth in the Tentative Recommendation *Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part 1)*, (TR J-1451) on November 17, 2010. The committee's informal input regarding this single aspect of TR J-1451, which does not constitute a position of the Judicial Council, follows.

The committee supports the CLRC proposal to amend section 116.940 to provide, in substance, that courts that administer small claims advisory services shall have the same administrative authority and discretion that the county would have if the county were administering the services. However, the committee respectfully suggests that the CLRC slightly revise the proposed amendment to paragraph (b)(3) of section 116.940 to clarify that a court and a county that are administering advisory services in adjacent counties may provide advisory services jointly.

In response to the CLRC's specific request for comments on this subject, the committee discussed the current division of responsibility for small claims advisory services and the appropriate allocation of such responsibility. The committee noted that courts and counties currently administer advisory services in a broad array of ways, about which the committee does not currently have comprehensive information. The committee therefore recommends maintaining flexibility to locally determine the most appropriate allocation of administrative responsibilities for advisory services at this time.

As indicated above, the foregoing is informal input from the Civil and Small Claims Advisory Committee, and is not a position of the Judicial Council of California. Please do

not hesitate to contact me if you have any questions about the committee's views or comment concerning this tentative recommendation.

Thank you,

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
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