

Memorandum 2010-56

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

In October 2010, the Commission released for public comment its tentative recommendation regarding revision of obsolete cross-references to former Code of Civil Procedure Section 116.780(d).

The tentative recommendation takes into account the fact that Section 116.780 no longer has a subdivision (d). The proposal would delete two references to this former subdivision that are currently found in Code of Civil Procedure Sections 116.780(b) and 116.820(a).

The tentative recommendation also proposes to amend Code of Civil Procedure Section 116.820(a) to reflect changes resulting from trial court unification. Prior to court unification, a small claims appeal heard by the superior court was “transferred” back to the separate small claims court (a division of the municipal court) for enforcement. However, after unification the small claims court became a division within the superior court and there was no longer a post-appeal transfer of small claims cases. In light of this, the tentative recommendation proposes to replace the existing reference to a “transfer” of appeals with “reassignment” of the appeals to the small claims court.

Recently, we have received an e-mail communication relating to the tentative recommendation:

Exhibit p.

1. Alan Wiener, Civil and Small Claims Advisory Committee (Nov. 30, 2000)1

Alan Wiener, writing on behalf of the Civil and Small Claims Advisory Committee of the Judicial Council, states that the committee supports the recommendation to amend Section 116.780(b) to delete the reference to former

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.

subdivision (d). Exhibit p. 1. This statement and the committee's other comments are informal input, not an official position of the Judicial Council. *Id.*

Although the committee is also generally supportive of the recommendation to amend Section 116.820(a), it suggests that this provision be amended in a way that deletes the obsolete cross-reference to 116.780(d) without referencing "transfer" or "reassignment" of small claims appeals. The committee believes there should not be a reference to "transfer" or "reassignment" of a small claims appeal because courts follow different procedures in this regard and some courts do not even reassign or transfer cases to the small claims division. Maintaining such a reference may increase the likelihood of confusion among litigants and court staff. Furthermore, the committee suggests deleting the second sentence of Section 116.820(a) entirely, as it is unnecessarily repetitive and confusing. Exhibit p. 1.

Specifically, the committee recommends that Section 116.820(a) be revised as follows:

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

Id.

This is a good suggestion. In light of the fact that courts follow different procedures regarding small claims appeals, the committee's suggestion provides a clear and concise reading of Section 116.820(a) and should be adopted. Hence, the staff recommends that the Commission incorporate this suggestion into its proposal and revise the Comment to Section 116.820 accordingly. If the Commission agrees, **the complete amendment and corresponding Comment would read:**

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

116.820. (a) The judgment of a small claims court, or the judgment of the superior court after a hearing on appeal, may be enforced by the small claims court as provided in Title 9

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

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

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

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

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

Now that the trial courts have unified, the small claims court is a division of the superior court. See Code Civ. Proc. § 116.210. Upon resolving a small claims appeal, it is no longer necessary to effect a transfer to the municipal court system. Accordingly, Section 116.780 was amended to delete subdivision (d). See 2005 Cal. Stat. ch. 706, § 8. Section 116.820 is now amended to reflect that development.

The preliminary part of the Commission’s proposal (narrative discussion) should also be revised to reflect the suggested new approach. In particular, **the staff suggests that the paragraph on page 2, lines 4-11, be revised along the following lines:**

As a consequence of unification, the small claims court is now a division of the superior court, so a post-appeal transfer from the superior court back to the municipal court system is no longer necessary.¹³ The superior court can simply ~~reassign~~ return the

matter to the small claims court, without the jurisdictional and other complications inherent in a transfer between two distinct court systems. Accordingly, Section 116.780 was amended to delete subdivision (d) and allow enforcement proceedings to commence immediately after resolution of a small claims appeal.¹⁴

The staff further suggests that the paragraph on page 2, lines 22-26, be revised as follows:

The other obsolete reference appears in Section 116.820(a). There, it is no longer correct to refer to a “transfer to the small claims court under subdivision (d) of Section 116.780.” Instead, the ~~provision should simply refer to a “reassignment to the small claims court.”~~ language relating to “transfer” should be deleted, and the rule for a judgment of the superior court after a hearing on appeal should be stated in the same sentence as the rule for a judgment of a small claims court.¹ That will simplify the statute and properly reflect the procedure used after the trial courts unified post-unification situation.

With these revisions, the staff recommends that the Commission approve the proposal as a final recommendation, for printing and submission to the Legislature.

Respectfully submitted,

Michael Lew
Law Clerk

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

Re: Tentative Recommendation T-102

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

Dear Commissioners and Staff,

The Civil and Small Claims Advisory Committee of the Judicial Council (the committee) considered California Law Revision Commission (CLRC) Tentative Recommendation T-102, *Obsolete Cross-References to Former Code of Civil Procedure Section 116.780(d)*, on November 17, 2010. The committee's informal input regarding this tentative recommendation, which does not constitute a position of the Judicial Council, follows.

The committee supports the tentative recommendation to amend Code of Civil Procedure section 116.780(b) as proposed by the CLRC.

The committee also supports, in principle, amending Code of Civil Procedures section 116.820(a) to remove the obsolete reference to former section 116.780(d). However, the committee respectfully suggests that the CLRC propose amending this section in a manner that deletes the obsolete reference and current duplicative statutory references without referring to either the transfer or the reassignment of the case to the small claims court. In particular, the committee suggests that section 116.820(a) be amended as follows:

The judgment of a small claims court, or the judgment of the superior court after a hearing on appeal, may be enforced by the small claims court as provided in Title 9 (commencing with Section 680.010) of Part 2 and in Sections 674 and 1174 on the enforcement of judgments of other courts. A judgment of the superior court after a hearing on appeal, and after transfer to the small claims court under subdivision (d) of Section 116.780, may be enforced like other judgments of the small claims court, as provided in Title 9 (commencing with Section 680.010) of Part 2 and in Sections 674 and 1174 on the enforcement of judgments of other courts.

The committee suggests that section 116.820(a) not refer to either "transfer" or "reassignment" of a small claims case after the trial de novo because courts follow different procedures in this regard and some courts do not transfer or reassign cases to the small claims division. The use of either "transfer" or "reassignment" may therefore confuse litigants and court staff. And, as indicated above, it is not necessary to use either term to make the statute clear or meaningful. The committee suggests deleting the second sentence of section 116.820(a) because it is unnecessarily repetitive of the first sentence, which makes the statute harder to understand and may be particularly confusing to self-represented litigants.

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,

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