

Memorandum 2011-36

Jurisdictional Limits for Small Claims and Limited Civil Cases (Status Report)

This memorandum reports on recent developments relating to a joint study of jurisdictional limits that the Judicial Council and the Commission worked on about a decade ago. The following communication is attached:

Exhibit p.

- Daniel Pone, Office of Governmental Affairs, Judicial Council -
Administrative Office of the Courts (11/7/11) 1

Before describing the recent developments, it may be helpful to provide some background on the joint study.

JOINT STUDY OF JURISDICTIONAL LIMITS

California has a three-track system of civil procedure: unlimited civil cases, limited civil cases, and small claims cases. This system predates trial court unification; unlimited civil cases are the types of cases that used to be tried in superior court, and limited civil cases are the types of cases that used to be tried in municipal court.

Although this three-track system was preserved as the trial courts unified, the Commission’s report on how to revise the codes to implement unification recommended that it be reexamined at a later date:

In the process of preparing proposed statutory revisions to implement trial court unification, the Commission has identified a number of issues that are appropriate for future study. In particular, although the implementing legislation would preserve existing procedural distinctions between traditional superior court cases, traditional municipal court cases, and small claims cases, the Commission strongly recommends that the Legislature direct a study reexamining this three-track system and its underlying policies in light of unification. Such a study may entail elimination of unnecessary procedural distinctions, reassessment of

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.

jurisdictional limits for small claims procedures and economic litigation procedures, and reevaluation of which procedures apply to which type of case. Organizations with expertise suitable for conducting the proposed study include the Judicial Council and the Law Revision Commission. A joint study and report is advisable.

Trial Court Unification: Revision of Codes, 28 Cal. L. Revision Comm'n Reports 51, 82-83 (1998) (footnotes omitted). The Legislature directed the Judicial Council and the Commission to jointly conduct such a study. See Gov't Code § 70219.

As an initial step, the Judicial Council and the Commission examined various procedural differences between limited and unlimited civil cases. In undertaking this work, the entities followed their normal study processes, but collaborated extensively at the staff level. The project culminated in legislation eliminating a number of unnecessary procedural differences. See 2001 Cal. Stat. ch. 812; *Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases*, 30 Cal. L. Revision Comm'n Reports 443 (2000).

Using the same study process, the Judicial Council and the Commission then began to consider the jurisdictional limits for small claims and limited civil cases. The Judicial Council hired a consulting firm, Policy Studies Inc. ("PSI"), to conduct empirical research on this matter and prepare a background study summarizing its findings. PSI completed its report in mid-2002. See PSI, *Report on the California Three-Track Civil Litigation Study* (July 31, 2002).

The Commission considered PSI's report and other information in developing a tentative recommendation, which proposed to:

- Increase the jurisdictional limit for a small claims case from \$5,000 to \$10,000.
- Increase the jurisdictional limit for a limited civil case from \$25,000 to \$50,000.
- Make various related changes.

See *Tentative Recommendation on Jurisdictional Limits of Small Claims Cases and Limited Civil Cases* (Dec. 2002).

The Commission received extensive input on the tentative recommendation. From that input, as well as subsequent discussions with key stakeholders and legislative contacts, it became clear that there was little hope of achieving a consensus on increasing the jurisdictional limit for a limited civil case. Prospects for increasing the small claims limit also seemed dim, due to strains on the state budget and consequent unavailability of funds to make improvements to the

small claims system that appeared necessary to achieve consensus (ensuring quality decisionmaking by temporary judges and others, improving the small claims advisory service, and increasing the availability of court interpreters).

In February 2004, the Commission decided to put its study on hold until the state budget situation improved or there were other developments suggesting that further work would be productive. The Judicial Council stopped working on the topic at about the same time.

Since that time, the Legislature has increased the small claims limit twice, subject to certain exceptions and limitations. See 2005 Cal. Stat. ch. 618 (AB 1459 (Canciamilla)) (increasing small claims limit to \$7,500 for action brought by natural person); 2011 Cal. Stat. ch. 64 (SB 221 (Simitian)) (increasing small claims limit to \$10,000 for action brought by natural person, subject to sunset date of January 1, 2015). The jurisdictional limit for a limited civil case remains at \$25,000.

RECENT DEVELOPMENTS

In 2009, the Judicial Council organized a workgroup on small civil cases, which is chaired by Judge Mary Thornton House (Los Angeles Superior Court), who also led the Judicial Council's work on the joint study of jurisdictional limits. The workgroup includes a broad spectrum of the legal community: representatives of the plaintiffs' bar, the defense bar, the insurance industry, the court system, legal services groups, and other organizations. In addition to the workgroup members, several people serve as liaisons between the workgroup and other entities (e.g., the State Bar, the California Defense Counsel, the Consumer Attorneys of California, the Civil Justice Association of California, and Consumers Union). The Chief Deputy Counsel is the liaison for the Commission. Staff from the Administrative Office of the Courts ("AOC") also participate in the workgroup meetings.

As previously reported to the Commission, the workgroup began its efforts by developing proposed legislation and court rules on expedited jury trials. The legislation was enacted in 2010, the court rules were adopted shortly thereafter, and expedited jury trials are now being conducted (on a purely voluntary basis) throughout the state. See Code Civ. Proc. §§ 630.01-630.12; Cal. R. Ct. 3.1545-3.1552; 2010 Cal. Stat. ch. 673 (AB 2284 (Evans)).

Earlier this month, the workgroup met again to begin the second phase of its work: taking another look at the jurisdictional limits for small claims and limited civil cases, as well as the procedures used in those types of cases. The focus of the meeting was on limited civil cases; the next meeting (to be held in early December) will focus on small claims cases.

The meeting was exploratory in nature and many ideas were discussed, including the following:

- (1) Increase jurisdiction for limited civil cases from \$25,000 to \$50,000 (or higher) with no changes in economic litigation rules.
- (2) Increase jurisdiction for limited civil cases from \$25,000 to \$50,000 with changes to economic litigation rules (e.g., allowing two oral depositions in cases involving \$25,000-50,000, plus possible increase in the number of interrogatories).
- (3) Increase jurisdiction for limited civil cases from \$25,000 to \$50,000 with modifications to rules on recovery cap and reclassification.
- (4) Increase jurisdiction for limited civil cases from \$25,000 to \$50,000, but carve out FEHA and other cases with statutory attorney fees provisions.
- (5) Increase jurisdiction for limited civil cases with appropriate changes to cost recovery rules (e.g., Code Civ. Proc. § 1033).
- (6) Eliminate limited civil cases track altogether.
- (7) Maintain current jurisdictional limits for limited and unlimited civil cases, but allow parties to stipulate to use economic litigation rules regardless of the amount of the claim.
- (8) Maintain current \$25,000 jurisdictional limit for limited civil cases, but encourage as best practices or impose through new case-management rules a limit on the number of required in-person conferences by the parties.
- (9) Reduce jury size in limited civil cases from 12 to 8 jurors.
- (10) Maintain the current \$25,000 jurisdictional limit for limited civil cases, but:
 - a. Allow motions to be decided on papers with no appearance by the parties;
 - b. Allow corporations to appear in pro per;
 - c. Do not impose due diligence requirements for substituted service;
 - d. Allow all limited cases to be heard by subordinate judicial officers *without* stipulation by parties;
 - e. Expand substantive jurisdiction of limited civil cases to include declaratory relief, injunctive relief, and all other

equitable relief (aside from probate and family matters) that can currently be granted in unlimited civil cases;

- f. Mandate eight person juries;
- g. Eliminate the hearsay rule (i.e., allow hearsay evidence in limited civil cases); and,
- h. Impose mandatory ADR in all limited civil cases.

- (11) Establish requirement for early exchange of basic information about the case (perhaps limited to personal injury cases), such as (for plaintiffs) location, date, and nature of injury or accident, names of witnesses, list of health care providers, and (for defendants) information about coverage.

See Exhibit pp. 1-2.

The workgroup did not reach any consensus, and none of the ideas seemed to gain any particular traction. But the stakeholders agreed to consult with and solicit input from their respective organizations on each of the proposals.

That input is due by November 23, and the workgroup will discuss the input when it meets in December. At that meeting, it might become more clear where this phase of the workgroup's efforts is going, if anywhere.

ROLE OF THE COMMISSION

For now, what should the Commission do?

First, Commissioners should **consider the various ideas that the workgroup discussed, and share any reactions they have to those ideas**. Commissioners should also **share any new ideas they might have about the jurisdictional limits for small claims or limited civil cases, or the procedures used in those cases**. Although the Commission is not a stakeholder and the Chief Deputy Counsel is not a voting member of the Small Civil Cases Workgroup, input based on the experience and expertise of the Commissioners may be helpful to that group in its deliberations. The Chief Deputy Counsel could convey such input to the group at its next meeting.

Second, the staff will keep the Commission posted on the workgroup's progress. Depending on how things go and the magnitude and urgency of other demands on the Commission's time (such as the redevelopment agency clean-up project), **it may become appropriate to reactivate the Commission's work on jurisdictional limits and related matters**. We should have a better sense of this after the workgroup conducts its next meeting, the California Supreme Court

issues its decision on the fate of the redevelopment agencies, and the Commission commences its annual review of new topics and procedures.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

**EMAIL FROM DANIEL PONE, OFFICE OF
GOVERNMENTAL AFFAIRS, JUDICIAL COUNCIL - AOC
TO SMALL CIVIL CASES WORKING GROUP (11/7/11)**

**Re: Follow up to Nov 2nd Small Civil Cases Working Group Meeting -
Solicitation of responses to limited civil cases proposals - Responses Due Nov
23rd!**

All – Thanks to everyone who was able to participate in the November 2nd meeting of the Small Civil Cases Working Group. I thought our discussions were very helpful, and appreciate the frank exchange of views and willingness to consider a variety of options for possible limited civil cases reforms. As we discussed, the goal of this overall effort is to explore potential areas of consensus regarding possible increases in the jurisdictional limits and/or changes in the procedural rules that apply in both small claims and limited civil cases in order to improve the overall handling of these cases and increase access to the courts.

Our focus in this first meeting was on limited civil cases. A number of different proposals were discussed, many of which raised significant questions, concerns or objections from one or more members of the group. However, the members who attended all agreed to consult with and solicit input from their respective organizations on each of the proposals that were identified during our meeting, and report back to the group, which will assist both the Judicial Council and the California Law Revision Commission in our respective efforts in this area.

Here is the list of the ideas/conceptual proposals that were floated, which are not listed in any priority order:

- 1) Increase jurisdiction for limited civil cases from \$25K to \$50K (or higher) with no changes in economic litigation rules.
- 2) Increase jurisdiction for limited civil cases from \$25K to \$50K with changes to economic litigation rules (e.g., allowing 2 oral depositions in cases between \$25K-50K, plus possible increase in the number of interrogatories).
- 3) Increase jurisdiction for limited civil cases from \$25 to \$50K with modifications to rules on cap and reclassification.
- 4) Increase jurisdiction for limited civil cases from \$25K to \$50K, but carve out FEHA and other cases with statutory attorney fees provisions.
- 5) Increase jurisdiction for limited civil cases with appropriate changes to cost recovery rules (e.g. Code Civ. Proc., §1033).

- 6) Eliminate limited civil cases track altogether.
- 7) Maintain current jurisdictional limits for limited and unlimited civil cases, but allow parties to stipulate to use economic litigation rules regardless of the amount of the claim.
- 8) Maintain current \$25K jurisdictional limit for limited civil cases, but encourage as best practices or impose new case-management rules that limit the number of required in-person conferences by the parties.
- 9) Reduce jury size in limited civil cases from 12 to 8 jurors.
- 10) Maintain the current \$25K jurisdictional limit for limited civil cases, but:
 - a. Allow motions to be decided on papers with no appearance by the parties;
 - b. Allow corporations to appear in pro per;
 - c. Do not impose due diligence requirements for substituted service;
 - d. Allow all limited cases to be heard by subordinate judicial officers *without* stipulations by parties;
 - e. Expand substantive jurisdiction of limited civil to include debt relief, injunctive relief, and all other actions (not probate and family) that can currently be heard in unlimited;
 - f. Mandate 8 person juries;
 - g. Eliminate hearsay rule (i.e., allow hearsay evidence in limited civil cases); and,
 - h. Impose mandatory ADR in all limited civil cases.
- 11) Establish requirement for early exchange of basic information about the case (perhaps limited to personal injury cases), such as (for plaintiffs) location, date and nature of injury or accident, names of witnesses, list of health care providers and (for defendants) information about coverage.

If you have any other proposals that you would like for the group to consider, please forward them to me by no later than COB on Thursday, November 10th, and I will circulate to the group.

And please reply to this email, after consulting with the leadership of your respective groups, by no later than COB on Wednesday, November 23rd, with your input on each of the above proposals, indicating clearly which ones you believe are worthy of

further exploration, and those that you oppose and believe should not move forward.

I look forward to hearing from you!

-Dan

Daniel Pone
Senior Attorney
Office of Governmental Affairs
Judicial Council of California - Administrative Office of the Courts
770 L Street, Room 700
Sacramento, CA 95814
916-323-3121, FAX 916-323-4347, daniel.pone@jud.ca.gov
www.courts.ca.gov