

# CALIFORNIA LAW REVISION COMMISSION

## 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 **January 16, 2011**.

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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## 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.<sup>1</sup>

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:<sup>2</sup>

- 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

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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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.”<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> 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.”<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

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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.<sup>12</sup>

#### 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.<sup>13</sup> 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.<sup>14</sup>

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”).<sup>15</sup> There is no right to appeal a judgment after a small claims trial de  
14 novo.<sup>16</sup>

#### 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.<sup>17</sup> At that time, a “small claims court”  
18 was actually a division of a municipal or justice court.<sup>18</sup> 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.<sup>19</sup>

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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.<sup>20</sup> The superior court was a  
3 countywide entity with unlimited jurisdiction.<sup>21</sup> It had an appellate department,  
4 which sat as a three-judge panel, but small claims appeals were not heard there.<sup>22</sup>  
5 Rather, the appellate department heard other types of appeals from the municipal  
6 and justice courts.<sup>23</sup>

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.<sup>24</sup>

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.<sup>25</sup>

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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 20, at 30-31.

23. *Trial Court Unification: Constitutional Revision*, *supra* note 17, 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.<sup>26</sup>
- 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.<sup>27</sup>

## 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.<sup>28</sup> 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.<sup>29</sup>

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

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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.<sup>31</sup>  
2 The municipal courts no longer exist.<sup>32</sup>

3 The small claims division is now part of the superior court, not the municipal or  
4 justice court.<sup>33</sup> 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.”<sup>34</sup> 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.<sup>35</sup> An appeal in a limited civil case is heard by the  
10 appellate division of the superior court.<sup>36</sup> 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.

21 ....<sup>37</sup>

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.<sup>38</sup> Where a

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31. *Revision of Codes*, *supra* note 20, 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.<sup>39</sup>

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.<sup>40</sup> 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*.<sup>41</sup>

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*.”<sup>42</sup> 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.<sup>43</sup> 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

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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.<sup>44</sup>

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.”<sup>45</sup> 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.<sup>46</sup> 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*,<sup>47</sup> 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.<sup>48</sup>

28 The court of appeal explained that a small claims case is a limited civil case.<sup>49</sup>  
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.<sup>50</sup> A special statute governs a small claims appeal,<sup>51</sup> so the  
32 general rule giving the appellate division jurisdiction of an appeal in a limited civil

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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 case<sup>52</sup> 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.<sup>53</sup> 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.<sup>54</sup>

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.<sup>55</sup> Past history demonstrates that small claims writs can be important in  
24 achieving justice in individual cases, and sometimes on a broader scale.<sup>56</sup> 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:

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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.<sup>57</sup>
- 4 • The workload of the courts of appeal should not be expanded unless truly  
5 necessary, because those courts already have a heavy workload.<sup>58</sup>
- 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.<sup>59</sup>
- 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.<sup>60</sup> 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.<sup>61</sup>

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

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57. *Trial Court Unification: Constitutional Revision*, *supra* note 17, 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.<sup>62</sup> The proposed legislation would constitute the necessary  
3 statutory authority.<sup>63</sup>

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.<sup>64</sup> 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.<sup>65</sup> 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.<sup>66</sup> Those procedures could be relatively quick,  
12 inexpensive, and informal, consistent with the nature of a small claims case.<sup>67</sup>

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.<sup>68</sup>

#### 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.<sup>69</sup> 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.<sup>70</sup>

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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).<sup>71</sup> 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.<sup>72</sup> 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.<sup>73</sup> 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.<sup>74</sup>

16 This approach would codify *General Electric Capital Auto Financial Services,*  
17 *Inc. v. Appellate Division.*<sup>75</sup> 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

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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.<sup>76</sup>

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.

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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.