

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

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

December 2010

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739
www.clrc.ca.gov

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

Cite this report as *Obsolete Cross-References to Former Code of Civil Procedure Section 116.780(d)*, 39 Cal. L. Revision Comm'n Reports 223 (2009).

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CALIFORNIA LAW REVISION COMMISSION

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December 15, 2010

To: The Honorable Arnold Schwarzenegger
Governor of California, and
The Legislature of California

Two small claims statutes currently refer to subdivision (d) of Code of Civil Procedure Section 116.780, but that section no longer has a subdivision (d). The Law Revision Commission recommends that these obsolete cross-references be corrected.

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

Respectfully submitted,

Associate Justice
John Zebrowski (Ret.)
Chairperson

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

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

Historical Background

Subdivision (d) was added to Section 116.780 in 1991.² At that time, a small claims case was heard in the small claims division of the municipal or justice court,³ which was also known as the “small claims court.”⁴ An appeal from a decision of the small claims court consisted of a retrial in the superior court.⁵ Subdivision (d) originally required a superior court to transfer a small claims appeal back to the small claims court for enforcement upon completion of the appeal process.⁶ In 1994, the provision was revised to allow the

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

2. 1991 Cal. Stat. ch. 915, § 26.

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

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

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

6. As originally enacted, subdivision (d) stated: “Upon the completion of the appeal process, the superior court shall order the appeal and any judgment transferred to the small claims court in which the action was originally filed for

superior court to retain jurisdiction of the case for ten days following the completion of the appeal process, at which time the case was to be transferred back to the small claims court for enforcement.⁷

The justice courts were eliminated soon afterwards, leaving only the municipal and superior courts.⁸ A few years later, the voters approved a measure to permit the municipal and superior courts in each county to unify on a vote of a majority of the municipal court judges and a majority of the superior court judges in the county.⁹ By early 2001, the courts in every county had unified.¹⁰ Each county now has a unified superior court, which handles all of the matters previously heard in municipal court, as well as all of the matters previously heard in superior court.¹¹ The municipal courts no longer exist.¹²

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 return the matter to the small claims court, without the jurisdictional

purposes of enforcement and other proceedings under Article 8 (commencing with Section 116.810) of this chapter.” See 1991 Cal. Stat. ch. 915, § 26.

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

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

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

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

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

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

13. See Code Civ. Proc. § 116.210.

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

Obsolete Cross-References

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

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

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 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.¹⁶ That will properly reflect the post-unification situation.

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

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

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

Effect of the Proposed Legislation

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

PROPOSED LEGISLATION

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

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

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

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

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

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

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

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

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.
