

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case

August 2011

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739
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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*.

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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August 11, 2011

To: The Honorable Edmund G. Brown, Jr.
Governor of California, and
The Legislature of California

A writ proceeding sometimes provides an important means of obtaining redress that is not available through other judicial processes. Although it is not common, courts occasionally grant writ relief in connection with 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. This would closely mirror the pre-unification situation.

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 judge who is assigned to the court's appellate division.

- A writ petition relating to a small claims appeal may be heard by the 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 sole purpose of this proposed legislation is to clarify which tribunal has jurisdiction of a writ petition relating to a small claims case after trial court unification. The legislation would not alter the circumstances under which writ relief is appropriate.

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.

Respectfully submitted,

Associate Justice
John Zebrowski (Ret.)
Chairperson

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Comments from knowledgeable persons are invaluable in the Commission's study process. The Commission would like to express its appreciation to the individuals and organizations who have taken the time to share their thoughts with the Commission.

Inclusion of the name of an individual or organization should not be taken as an indication of the individual's opinion or the organization's position on any aspect of this recommendation. The Commission regrets any errors or omissions that may have been made in compiling these acknowledgments.

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TRIAL COURT RESTRUCTURING: WRIT JURISDICTION IN A SMALL CLAIMS CASE

When other judicial processes are unavailable, a proceeding for an extraordinary writ may be the only way to secure a just result. For example, a writ proceeding may be needed to obtain relief from an incorrect ruling in a small claims case. This situation does not arise often, but at times it is an important avenue of redress.¹

1. See, e.g., *Green v. Superior Court*, 10 Cal. 3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974) (breach of warranty of habitability could be asserted as defense to unlawful detainer action in small claims case); *Miller v. Municipal Court*, 22 Cal. 2d 818, 142 P.2d 297 (1943) (small claims court had jurisdiction of action under Emergency Price Control Act); *ERA-Trotter Girouard Assoc. v. Superior Court*, 50 Cal. App. 4th 1851, 58 Cal. Rptr. 2d 381 (1996) (judgment on small claims appeal was not subject to motion to vacate under Code Civ. Proc. § 473); *Township Homes, Inc. v. Superior Court*, 22 Cal. App. 4th 1587, 27 Cal. Rptr. 2d 852 (1994) (superior court had jurisdiction to offset defendant's claim against plaintiff's award when defendant prevailed in small claims appeal); *Houghtaling v. Superior Court*, 17 Cal. App. 4th 1128, 1131, 21 Cal. Rptr. 2d 855 (1993) (hearsay evidence was admissible in small claims case); *Anderson v. Superior Court*, 226 Cal. App. 3d 698, 276 Cal. Rptr. 18 (1990) (in trial de novo on plaintiff's claim, defendant was not entitled to offset for amount defendant unsuccessfully sought in small claims division); *Calvao v. Superior Court*, 201 Cal. App. 3d 921, 247 Cal. Rptr. 470 (1988) (county had no fiduciary duty to employee and thus employee had no viable claim); *Reyes v. Superior Court*, 118 Cal. App. 3d 159, 173 Cal. Rptr. 267 (1981) (purchaser of car was entitled to Spanish translation of deficiency notice); *Davis v. Superior Court*, 102 Cal. App. 3d 164, 162 Cal. Rptr. 167 (1980) (small claims defendant had no right to appeal from adverse judgment on cross-claim); *Gardiana v. Small Claims Court*, 59 Cal. App. 3d 412, 130 Cal. Rptr. 675 (1976) (indigent small claims defendant who did not speak English was entitled to interpreter at public expense); *Yoakum v. Small Claims Court*, 53 Cal. App. 3d 398, 403, 125 Cal. Rptr. 882 (1975) (small claims court erred in denying motion to be relieved of default summarily, without affording opportunity to be heard); *Lee v. Small Claims Court*, 46 Cal. App. 2d 530, 116 P.2d 170 (1941) (small claims judgment against defendant was annulled because administrator had not been properly substituted for plaintiff); *Lee v. Small Claims Court*, 34 Cal. App. 2d 1, 92 P.2d 937 (1939) (annulment of small claims judgment was improper because judgment creditor had no notice of proceeding to set aside judgment).

At present, however, it is unclear where a person should file a writ proceeding relating to a small claims case. This uncertainty is due primarily to the unification of the municipal and superior courts that occurred in the past decade.

The Law Revision Commission recommends that the proper jurisdiction for such a writ proceeding be made clear. The Commission further recommends that the proper jurisdiction depend on the stage of the small claims case at the time of the act that is challenged in the writ petition.

The sole purpose of the proposed legislation is to clarify which tribunal has jurisdiction of a writ petition relating to a small claims case after trial court unification. The legislation would not alter the circumstances under which writ relief is appropriate.

To explain the Commission's recommendations, it is first necessary to present some background material on extraordinary writs and small claims cases. Then the Commission examines how small claims writs were handled before trial court unification, describes the unification process, and explains the current uncertainty regarding how to handle small claims writs after trial court unification. Finally, the Commission demonstrates the need for clarification, analyzes the best means of providing clarification, and identifies potential benefits of the proposed legislation.

For an example of a situation that led to repeated requests for writ relief in the small claims context, see Civil Code Sections 1363.09 and 1365.2(f). These provisions give the small claims court jurisdiction to consider certain types of requests for equitable relief relating to common interest developments. Despite the express language of these provisions, small claims courts sometimes refused to consider such requests. Writ relief was the only means of redress for this wrong. This situation arose sufficiently often that the Small Claims Act was recently amended to expressly state that the small claims court has jurisdiction of a request for an injunction or other equitable relief "when a statute expressly authorizes a small claims court to award that relief." See Code Civ. Proc. § 116.220(a)(5); 2009 Cal. Stat. ch. 468 (AB 712 (Evans)), § 1; Senate Committee on Judiciary Analysis of AB 712 (June 9, 2009). It is too early to judge the effectiveness of this revision, but some evidence suggests it has been helpful.

Extraordinary Writs

A writ is a written court order, which directs a person or entity to perform or cease a specified act. In California, there are several types of extraordinary writs, including in particular:²

- (1) *A writ of review (also known as a writ of certiorari).* A writ of review is a means of reviewing judicial action when no other means of review is available.³ A court may issue a writ of review when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded its jurisdiction and there is no appeal or any plain, speedy, and adequate remedy.⁴
- (2) *A writ of mandamus (also known as a writ of mandate).* A writ of mandamus is a broad remedy to compel performance of a ministerial duty or to restore rights and privileges of a public or private office.⁵ A writ of mandamus “may be issued by any court to any inferior tribunal, corporation, board, or person, *to compel the performance of an act* which the law specifically enjoins, as a duty resulting from an office, trust, or station, or to *compel the admission of a party to the use and enjoyment of a right or office* to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board, or person.”⁶

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 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.

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).

- (3) *A writ of prohibition.* A writ of prohibition is a writ to restrain judicial action in excess of jurisdiction when there is no other adequate remedy.⁷ A writ of prohibition “arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person.⁸ The writ “may be issued by any court to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law.”⁹

To obtain a writ, it is necessary to file a petition in court, requesting that the court issue the writ. The court in which the petition is filed may summarily deny the writ, without considering the merits. Alternatively, the court may issue an order to show cause.¹⁰ If the court issues an order to show cause, the matter is fully briefed by the parties and decided by the court on the merits, either by granting the relief requested in the petition or by denying such relief.¹¹

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).

As a general rule, the court has discretion about whether to hear a writ petition on its merits. But the court must exercise that discretion within reasonable bounds and for a proper reason.¹²

Small Claims Procedures

The small claims process is intended to facilitate quick, inexpensive, and informal resolution of small disputes through simple proceedings conducted so as to promote compromise.¹³ If a dispute satisfies certain jurisdictional requirements, the plaintiff has the *option* of seeking resolution through the small claims process, instead of using more formal court procedures. Having elected to use that process, however, the plaintiff forfeits the right to appeal.¹⁴

In contrast, a small claims defendant is entitled to appeal an adverse decision by the small claims tribunal, but the appeal

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).

consists of a retrial (also known as a “trial de novo”).¹⁵ There is no right to appeal a judgment after a small claims trial de novo.¹⁶

Small Claims Writs Before Trial Court Unification

In the early 1990’s, California had three different types of trial courts: superior courts, municipal courts, and justice courts.¹⁷ At that time, a “small claims court” was actually a division of a municipal or justice court.¹⁸ These were lower courts with limited jurisdiction. They were only permitted to hear certain types of cases, and only authorized to grant monetary relief up to a statutorily-specified amount.¹⁹

If a defendant appealed from a judgment of a small claims court, the trial de novo was conducted by a judge of the superior court.²⁰ The superior court was a countywide entity with unlimited jurisdiction.²¹ It had an appellate department, which sat as a three-judge panel, but small claims appeals were not heard there.²²

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).

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.

Rather, the appellate department heard other types of appeals from the municipal and justice courts.²³

After judgment was entered in a small claims case, any postjudgment enforcement proceedings were conducted in the small claims division. If the judgment was entered by the superior court in a trial de novo, the case would be transferred back to the small claims division of the municipal or justice court for postjudgment enforcement proceedings.²⁴

Small claims litigants occasionally sought writ relief, in a variety of circumstances. The proper court to hear the writ proceeding depended on the stage of the small claims case. Invariably, however, the writ proceeding was heard by a court of higher jurisdiction than the court that made the challenged ruling. Thus, the situation was:

- *Initial hearing.* If a writ petition challenged a ruling made at the initial hearing before the small claims division of a municipal or justice court, the petition was heard by a judge of the superior court, or by a court of higher jurisdiction.²⁵

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

- *Small claims appeal.* If a writ petition challenged a ruling made by the superior court in a small claims appeal, the petition was heard by the court of appeal or by the Supreme Court.²⁶
- *Postjudgment enforcement order.* If a writ petition challenged a postjudgment enforcement order of the small claims division of a municipal or justice court, the petition was heard by the appellate department of the superior court.²⁷

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.

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). The recommended legislation 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).

Trial Court Unification

California no longer has three different types of trial courts. In 1994, the voters approved a measure to eliminate the justice courts, leaving only the municipal and superior courts.²⁸ A few years later, the voters approved a measure permitting 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.²⁹

By early 2001, the courts in every county had unified.³⁰ 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.³¹ The municipal courts no longer exist.³²

The small claims division is now part of the superior court, not the municipal or justice court.³³ A small claims appeal is heard by a judicial officer of the superior court “other than the judicial officer who heard the action in the small claims division.”³⁴ Thus, the initial hearing and the small claims appeal are both conducted within the superior court.

Similarly, cases that used to be heard in the municipal and justice courts are now known as limited civil cases.³⁵ An appeal in a limited civil case is heard by the appellate division of the

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.

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.

superior court.³⁶ Thus, again the initial hearing and the appeal are both conducted within the superior court.

Small Claims Writs After Trial Court Unification

To accommodate trial court unification, the constitutional provision governing writ jurisdiction was amended to read:

SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges have ... original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.
...³⁷

From this language, it seems evident that a small claims litigant could seek an extraordinary writ in the Supreme Court or in the court of appeal.³⁸ Where a lower tribunal also has writ jurisdiction, however, the Supreme Court and courts of appeal have discretion

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).

to deny a writ petition on the ground that it should first be presented to the lower tribunal.³⁹

From the constitutional language and other sources, it is less clear whether a small claims litigant could seek a writ within the superior court, instead of having to go to a higher court. Possible means of review within the superior court include (1) review by a superior court judge, and (2) review by the appellate division.

Review by a Superior Court Judge

Although the constitutional provision says that “superior courts, and their judges” have original jurisdiction in writ proceedings, there is a well-established body of case law indicating that a superior court judge cannot constitutionally enjoin, restrain, or otherwise interfere with a judicial act of another superior court judge.⁴⁰ The California Supreme Court has explained, however, that a superior court judge who considers an order entered earlier by another judge of the same court does not enjoin, restrain, or otherwise interfere with the judicial act of another superior court judge *when the later judge acts under statutory authority*.⁴¹

The Commission is not aware of any statutory authority expressly authorizing a superior court judge to consider a writ petition relating to a small claims case. It is possible that some statute might be construed to implicitly provide such authority, but none seems to address the matter clearly.

Review by the Appellate Division

The constitutional provision says that the appellate division has original jurisdiction in writ proceedings “directed to the superior

39. See *In re Ramirez*, 89 Cal. App. 4th 1312, 1316, 1320, 108 Cal. Rptr. 2d 229 (2001); *In re Hillery*, 202 Cal. App. 2d 293, 294, 20 Cal. Rptr. 759 (1962); Cal. R. Ct. 8.486; 2 B. Witkin, *California Procedure Jurisdiction* § 397, p. 1041 (5th ed. 2008).

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).

court *in causes subject to its appellate jurisdiction.*"⁴² It is debatable what this provision means in the context of a writ relating to a small claims case.

To some extent, the answer appears to depend on the stage of the small claims case at the time of the act challenged by the writ petition. Suppose, for example, the petition challenges the judgment in a small claims appeal. Such a ruling would not seem to be a "cause subject to appellate jurisdiction," because the judgment in a small claims appeal is final and not appealable.⁴³ It follows that a writ petition challenging such a judgment is not within the jurisdiction of the appellate division, as constitutionally defined.

The answer might be different for a writ petition challenging a decision made by the small claims division in the initial hearing. Such a decision is appealable, but the appeal consists of a trial *de novo*, as opposed to a traditional appeal. Whether the matter qualifies as a "cause subject to appellate jurisdiction" within the meaning of the constitutional provision is not altogether clear.⁴⁴

Further, the constitutional provision only gives the appellate division jurisdiction in writ proceedings "directed to the superior court in causes subject to *its* appellate jurisdiction."⁴⁵ Courts might interpret this language to mean that the appellate division only has writ jurisdiction in the same types of causes that are subject to the appellate jurisdiction of *the appellate division*. If so, then a writ petition relating to a decision in the initial small claims hearing would not seem to qualify, because such a decision is appealable to a judicial officer of the superior court, not to the appellate division.

Alternative interpretations of the constitutional language are possible, however, under which the appellate division of the superior court could consider a writ petition relating to a decision in the initial small claims hearing. For example, a court could

42. Cal. Const. art. VI, § 10 (emphasis added).

43. Code Civ. Proc. § 116.780.

44. For further discussion of this point, see Commission Staff Memorandum 2010-25, pp. 24-26.

45. Cal. Const. art. VI, § 10 (emphasis added).

interpret the constitutional provision to mean that the appellate division has writ jurisdiction in causes subject to the appellate jurisdiction *of the superior court*. That interpretation could encompass a small claims case, because a small claims appeal is heard by a superior court judge.⁴⁶ As yet, courts have not provided guidance on which of the possible interpretations is correct, so it is unclear whether the appellate division may constitutionally consider a writ petition relating to a decision in the initial small claims hearing.

The only point a court has clearly addressed relates to the postjudgment enforcement phase of a small claims case. In *General Electric Capital Auto Financial Services, Inc. v. Appellate Division*,⁴⁷ the court of appeal considered whether the appellate division had jurisdiction of a writ petition relating to a postjudgment enforcement order entered by the small claims division. The court of appeal concluded that the appellate division did have such jurisdiction.⁴⁸

The court of appeal explained that a small claims case is a limited civil case.⁴⁹ Where a statute or rule applicable to a small claims case conflicts with a statute or rule applicable to a limited civil case, the statute or rule applicable to a small claims case governs.⁵⁰ A special statute governs a small claims appeal,⁵¹ so the general rule giving the appellate division jurisdiction of an appeal in a limited civil case⁵² is inapplicable. But there is no special statute governing appeal of a postjudgment enforcement order in a small claims case. The court of appeal therefore concluded that the

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.

52. Code Civ. Proc. § 904.2.

situation is governed by the general rule giving the appellate division jurisdiction of an appeal in a limited civil case.⁵³ The court of appeal further concluded that because the appellate division has appellate jurisdiction of a postjudgment enforcement order in a small claims case, the appellate division also has extraordinary writ jurisdiction of a postjudgment enforcement order in a small claims case.⁵⁴

To summarize, the situation appears to be:

- The appellate division cannot constitutionally consider a writ petition that challenges a judgment or other act of the superior court in a small claims appeal.
- It is unclear whether the appellate division may constitutionally consider a writ petition relating to a decision in the initial small claims hearing.
- Under *General Electric Capital*, the appellate division can constitutionally consider a writ petition that challenges a postjudgment enforcement order of the small claims division.

The situation is therefore complicated and not readily understandable.

Need for Clarification

The lack of clear guidance on where to file a writ petition relating to a small claims case is not merely a theoretical problem. Litigants are confused, some are seeking assistance, and some are having writs denied due to filing in the wrong court.⁵⁵ Past history demonstrates that small claims writs can be important in achieving justice in individual cases, and sometimes on a broader scale.⁵⁶

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*,

Neither litigants nor court personnel should have to expend undue effort trying to figure out the proper jurisdiction for a small claims writ petition.

Proposed Clarification

The Law Revision Commission recommends that the proper jurisdiction for a writ petition relating to a small claims case be made clear. In achieving such clarification, key principles include:

- Judges of equal rank and dignity should not issue writs to each other, because that may generate friction and impede court collegiality and functioning.⁵⁷
- The workload of the courts of appeal should not be expanded unless truly necessary, because those courts already have a heavy workload.⁵⁸
- Within each superior court, judicial and other resources should be conserved as much as possible, while still ensuring that justice is served.
- The small claims process should facilitate quick, inexpensive, and informal yet fair resolution of small disputes.⁵⁹
- Any statutory clarification of writ jurisdiction must comply with constitutional constraints.

To implement those principles after trial court unification, writ jurisdiction should follow a hierarchical approach similar to the one that existed before unification, in which a writ could only be sought from a higher authority than the judicial officer whose

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*.

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.

action is challenged. But the courts of appeal should not have to hear all writ petitions relating to small claims cases, because that would increase their already heavy caseloads beyond pre-unification levels.

Instead, the Commission recommends that the proper jurisdiction continue to depend on the stage of the small claims case at the time of the act that is challenged in the writ petition. Specifically, the proper jurisdiction would continue to depend on whether the petition challenges: (1) an act at the initial hearing in the small claims division, (2) an act in connection with a small claims appeal, or (3) a postjudgment enforcement order in a small claims case.

Writ Petition Relating to the Initial Hearing in the Small Claims Division

If a writ petition relates to the initial hearing in the small claims division of the superior court, the Commission recommends that it be heard by judge who is assigned to the court's appellate division.⁶⁰ Alternatively, the proposed legislation would permit the petitioner to seek relief in the court of appeal or the Supreme Court,⁶¹ but those courts could deny the petition on the ground that it was not first presented to a member of the appellate division.⁶²

This approach would comply with constitutional constraints, because a judge of the superior court is authorized to issue an extraordinary writ, and the judge can even do so to another judicial officer of the same court if the judge acts pursuant to statutory

60. See proposed Code Civ. Proc. § 116.798(a)(1) *infra*. Normal rules regarding judicial disqualification (Code Civ. Proc. §§ 170-170.9) would apply.

61. See proposed Code Civ. Proc. § 116.798(a)(2) *infra*.

62. See proposed Code Civ. Proc. § 116.798 Comment *infra*. See also *In re Ramirez*, 89 Cal. App. 4th 1312, 1316, 1320, 108 Cal. Rptr. 229 (2001); *In re Hillery*, 202 Cal. App. 2d 293, 294, 20 Cal. Rptr. 759 (1962); Cal. R. Ct. 8.486; 2 B. Witkin, California Procedure *Jurisdiction* § 397, p. 1041 (5th ed. 2008).

authority.⁶³ The proposed legislation would constitute the necessary statutory authority.⁶⁴

The approach would avoid the unresolved issue of whether the appellate division may constitutionally hear a writ petition relating to the initial hearing in a small claims case.⁶⁵ The Commission is not proposing to give jurisdiction of such a petition to the appellate division as an entity, to adjudicate as a three-judge panel in accordance with its normal procedures.⁶⁶ Instead, the Commission is proposing to give jurisdiction to a single individual who is a member of the appellate division, to adjudicate independently in accordance with procedures to be established by the Judicial Council.⁶⁷ Those procedures could be relatively quick, inexpensive, and informal, consistent with the nature of a small claims case.⁶⁸

Yet the requirement that the writ petition be heard by a member of the appellate division would still provide a hierarchical structure, minimizing the likelihood that a judge would have to issue a writ to another judge of equal rank and dignity. That is especially true because many small claims hearings are conducted by subordinate judicial officers instead of judges.

A further advantage of the proposed approach is that it would conserve judicial resources. Instead of consuming the attention of a three-judge panel in the appellate division, it would only require one judge's time. In that way too it would be similar to the pre-unification situation, in which one superior court judge would have

63. See *supra* notes 40-41 and accompanying text.

64. See proposed Code Civ. Proc. § 116.798(a)(3) *infra*.

65. See *supra* notes 42-46 and accompanying text.

66. See Code Civ. Proc. § 77.

67. See proposed Code Civ. Proc. § 116.798(a)(5) *infra*.

68. The filing fee would be the same as for a small claims appeal. See proposed Code Civ. Proc. § 116.798(a)(4) *infra*. The judge's decision would not be appealable. See proposed Code Civ. Proc. § 116.798(a)(6) *infra*.

jurisdiction of a writ petition relating to a hearing in the small claims division of a municipal court.⁶⁹

Writ Petition Relating to a Small Claims Appeal

If a writ petition relates to a small claims appeal, the Commission recommends that it be heard by the court of appeal.⁷⁰ Alternatively, the proposed legislation would permit the petitioner to seek relief in the Supreme Court,⁷¹ but the Supreme Court could deny the petition on the ground that it was not first presented to the court of appeal.⁷²

This approach would be identical to the pre-unification situation (except that the appellate department of the superior court is now known as the appellate division, and is subject to constitutional requirements).⁷³ The approach is plainly consistent with the constitutional provision governing writ jurisdiction, which expressly gives the courts of appeal and the Supreme Court jurisdiction to issue an extraordinary writ.⁷⁴ Further, it totally avoids any problem of peer review, because the writ petition would be heard in a court of higher jurisdiction than the one that made the decision challenged by the writ.

Writ Petition Relating to a Postjudgment Enforcement Order

Finally, if a writ petition relates to a postjudgment enforcement order in a small claims case, the Commission recommends that it

69. See *supra* note 25 and accompanying text.

70. See proposed Code Civ. Proc. § 116.798(b) *infra*.

71. *Id.*

72. See proposed Code Civ. Proc. § 116.798 Comment *infra*. See also *In re Ramirez*, 89 Cal. App. 4th 1312, 1316, 1320, 108 Cal. Rptr. 229 (2001); *In re Hillery*, 202 Cal. App. 2d 293, 294, 20 Cal. Rptr. 759 (1962); Cal. R. Ct. 8.486; 2 B. Witkin, *California Procedure Jurisdiction* § 397, p. 1041 (5th ed. 2008).

73. See *supra* note 26 and accompanying text. For the features of the appellate division as opposed to the appellate department, see *supra* note 22.

74. Cal. Const. art. VI, § 10.

be heard by the appellate division of the superior court.⁷⁵ Alternatively, the proposed legislation would permit the petitioner to seek relief in the court of appeal or the Supreme Court,⁷⁶ but those courts could deny the petition on the ground that it was not first presented to the appellate division.⁷⁷

This approach would codify *General Electric Capital Auto Financial Services, Inc. v. Appellate Division*.⁷⁸ A significant advantage of the approach is that it treats all judgments in limited civil cases the same way for enforcement purposes. A judgment in a small claims case is handled just like any other judgment in a limited civil case.

Summary of the Proposed Legislation

To summarize, the Commission recommends adoption of statutory provisions that would implement the following jurisdictional rules:

- *Initial hearing.* If a writ petition challenges a ruling made at the initial hearing before the small claims division of a superior court, the petition could be heard by a member of the court's appellate division, or it could be heard by a court of higher jurisdiction.
- *Small claims appeal.* If a writ petition challenges a ruling made by the superior court in a small claims appeal, the petition could be heard by the court of appeal or by the Supreme Court.
- *Postjudgment enforcement order.* If a writ petition challenges a postjudgment enforcement order of the

75. See proposed Code Civ. Proc. § 116.798(c) *infra*.

76. *Id.*

77. See proposed Code Civ. Proc. § 116.798 Comment *infra*. See also *In re Ramirez*, 89 Cal. App. 4th 1312, 1316, 1320, 108 Cal. Rptr. 229 (2001); *In re Hillery*, 202 Cal. App. 2d 293, 294, 20 Cal. Rptr. 759 (1962); Cal. R. Ct. 8.486; 2 B. Witkin, California Procedure *Jurisdiction* § 397, p. 1041 (5th ed. 2008).

78. 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). For discussion of this case, see *supra* notes 47-54 and accompanying text.

small claims division of the superior court, the petition could be heard by the appellate division of the superior court, or it could be heard by a court of higher jurisdiction.

This would closely mirror the pre-unification situation.⁷⁹

Benefits of the Proposed Clarification

By providing clear guidance to small claims litigants and court personnel, the recommended legislation would prevent confusion, decrease disputes, and reduce associated expenses. The legislation would also conform to constitutional constraints, minimize peer review concerns, and conserve judicial resources. Enacting the legislation would thus further significant objectives and serve the needs of the public.

79. See *supra* notes 25-27 and accompanying text.

PROPOSED LEGISLATION

Heading of Article 7 (commencing with Section 116.710) (amended)

SECTION 1. The heading of Article 7 (commencing with Section 116.710) of Chapter 5.5 of Title 1 of Part 1 of the Code of Civil Procedure is amended to read:

Article 7. Motion to Vacate, ~~and~~ Appeal, and Related Matters

Comment. The heading “Motion to Vacate and Appeal” is amended to broaden its scope and reflect the addition of Section 116.798 (writ petition).

Code Civ. Proc. § 116.798 (added). Writ petition

SEC. 2. Section 116.798 is added to the Code of Civil Procedure, to read:

116.798. (a)(1) A petition that seeks a writ of review, a writ of mandate, or a writ of prohibition relating to an act of the small claims division, other than a postjudgment enforcement order, may be heard by a judge who is assigned to the appellate division of the superior court.

(2) A petition described in paragraph (1) may also be heard by the court of appeal or by the Supreme Court.

(3) Where a judge described in paragraph (1) grants a writ directed to the small claims division, the small claims division is an inferior tribunal for purposes of Title 1 (commencing with Section 1067) of Part 3.

(4) The fee for filing a writ petition in the superior court under paragraph (1) is the same as the fee for filing a notice of appeal under Section 116.760.

(5) The Judicial Council shall promulgate procedural rules for a writ proceeding under paragraph (1).

(6) An appeal shall not be taken from a judgment granting or denying a petition under paragraph (1) for issuance of a writ. An appellate court may, in its discretion, upon petition for extraordinary writ, review the judgment.

(b) A petition that seeks a writ of review, a writ of mandate, or a writ of prohibition relating to an act of a superior court in a small claims appeal may be heard by the court of appeal or by the Supreme Court.

(c) A petition that seeks a writ of review, a writ of mandate, or a writ of prohibition relating to a postjudgment enforcement order of the small claims division may be heard by the appellate division of the superior court, by the court of appeal, or by the Supreme Court.

Comment. Section 116.798 is added solely to clarify which tribunal has jurisdiction of a writ petition relating to a small claims case after trial court unification. This provision neither expands nor contracts the circumstances under which a small claims litigant may seek an extraordinary writ. The proper tribunal for seeking such a writ depends on the stage of the case at the time of the act that is challenged in the writ petition.

Subdivision (a) makes clear that 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. See Cal. Const. art. VI, § 10 ("The ... superior courts, and their judges have original jurisdiction ... in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition."); see also *People v. Konow*, 32 Cal. 4th 995, 1019-21, 88 P.3d 36, 12 Cal. Rptr. 3d 301 (2004) (superior court judge who considers order entered by another superior court judge does not unconstitutionally enjoin, restrain, or otherwise interfere with judicial act of another superior court judge if later judge acts under statutory authority). A ruling on such a writ petition is not appealable. For a similar restriction, see Section 904.3.

Under subdivision (a), the court of appeal and the Supreme Court also have jurisdiction to consider a writ petition relating to the initial hearing in the small claims division. See Cal. Const. art. VI, § 10 ("The Supreme Court, courts of appeal, ... and their judges have original jurisdiction ... in proceedings for extraordinary relief in the nature of mandamus certiorari, and prohibition."). In addition to other grounds for denying the writ, however, those courts may deny the writ on the ground that it was not first presented to a lower tribunal pursuant to subdivision (a). See generally *In re Ramirez*, 89 Cal. App. 4th 1312, 1316, 1320, 108 Cal. Rptr. 229 (2001); *In re Hillery*, 202 Cal. App. 2d 293, 294, 20 Cal. Rptr. 759 (1962); Cal. R. Ct. 8.486; 2 B. Witkin, *California Procedure Jurisdiction* § 397, p. 1041 (5th ed. 2008).

Subdivision (b) makes clear that a writ petition relating to a small claims appeal may only be heard by the court of appeal or by the Supreme Court. This rule is consistent with historical practice. 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); *Houghtaling v. Superior Court*, 17 Cal. App. 4th 1128, 21 Cal. Rptr. 2d 855 (1993); see generally Cal. Const. art. VI, § 11 (Except for death penalty cases, “courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995”). For the filing fee for such a writ petition, see Gov’t Code §§ 68926, 68926.1. For guidance on the applicable procedures, see Cal. R. Ct. 8.485-8.493.

Subdivision (c) makes clear that 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. This codifies *General Electric Capital Auto Financial Services, Inc. v. Appellate Division of the Superior Court*, 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). For the filing fee for such a writ petition, see Gov’t Code § 70621. For guidance on the applicable procedures, see Cal. R. Ct. 8.930-8.936.

Subdivision (c) further makes clear that the court of appeal and the Supreme Court also have jurisdiction to consider a writ petition relating to a postjudgment enforcement order of the small claims division. See Cal. Const. art. VI, § 10. In addition to other grounds for denying the writ, however, those courts may deny the writ on the ground that it was not first presented to the appellate division of the superior court. See sources cited *supra*.
