Study J-1321 August 8, 2003

Memorandum 2003-22

Jurisdictional Limits for Small Claims and Limited Civil Cases: Constitutional Issues

The Commission has circulated for comment a tentative recommendation proposing to increase the jurisdictional limit of the small claims court from $5,000 to $10,000. Comments on that tentative recommendation will be discussed in Memorandum 2003-20. The tentative recommendation includes a short discussion of whether the proposed increase would violate the constitutional right to a jury trial (pp. 15-16). This memorandum expands on that discussion and also explores other potential constitutional challenges to the proposed increase in small claims jurisdiction. The memorandum describes relevant legal standards and how they might apply, but it does not present any of the comments relating to constitutional concerns, because those will be discussed in Memorandum 2003-20.

To provide context for examination of the constitutional issues, this memorandum begins with a brief review of small claims proceedings in California. Specific practices and procedures are addressed in detail as relevant to the discussion of potential constitutional issues.

The memorandum is organized as follows:

TABLE OF CONTENTS

Except as otherwise indicated, all statutory references are to the Code of Civil Procedure.

SMALL CLAIMS PROCEEDINGS IN CALIFORNIA

Small claims courts were first instituted in California in 1921 (1921 Cal. Stat. ch. 125). California's current small claims court law ("The Small Claims Act") was enacted in 1990 and is found at Sections 116.110 to 116.950. The small claims court is a separate division of the superior court, which exercises special jurisdiction. Section 116.210.

Limited Jurisdiction

The jurisdiction of the original small claims court was limited to monetary recovery in an amount not exceeding $50. Former Section 927 (1921 Cal. Stat. ch. 125, § 1). The jurisdictional limit of the small claims court has been increased numerous times since 1921, with the current limit set at $5,000. Section 116.220(a).

In addition to actions for money damages not exceeding $5,000, the small claims court has subject matter jurisdiction in the following cases (up to the $5,000 amount in controversy limit): Actions by innkeepers, hotelkeepers, and the like to enforce possessory liens on baggage or other guest property; actions to enforce payment of unsecured personal property taxes if the defendant does not contest the legality of the tax; and actions involving fee arbitration awards between attorney and client. *Id*. The small claims court's jurisdiction has been expanded to permit limited equitable relief in the form of rescission, restitution, reformation, and specific performance in connection with any monetary claim within the court's jurisdiction. Section 116.220(b). A conditional judgment may also be issued. *Id*.

Certain unlawful detainer actions were, at one time, within the small claims court's jurisdiction (see 1988 Cal. Stat. ch. 481, § 1); that is no longer the case. Because they involve a right of possession, unlawful detainer actions require greater procedural safeguards than have historically been provided in small claims court proceedings. See *Mendoza v. Small Claims Court*, 49 Cal. 2d 668, 321 P.2d 9 (1958) (right to counsel); *Maldonado v. Superior Court*, 162 Cal. App. 3d 1259, 209 Cal. Rptr. 199 (1984) (right to jury trial on appeal).

All types of claims for the recovery of money up to $5,000 may be heard in small claims court. For example, the small claims court's jurisdiction

encompasses both contract and tort claims. See *Leuschen v. Small Claims Court*, 191 Cal. 133, 136-37, 215 P. 391 (1923). The court may also award damages not exceeding $5,000 in statutory actions for the recovery of money, including civil rights actions pursuant to Civil Code Section 52.2.

Simple Procedures

The express purpose of the Small Claims Act is to provide a judicial forum in which minor civil disputes can be resolved expeditiously, inexpensively, and fairly. Section 116.120(b). Consequently, the statutory scheme governing small claims court proceedings provides for informal procedures:

> The chief characteristics of [small claims court] proceedings are that there are no attorneys, no pleadings and no legal rules of evidence; there are no juries, and no formal findings are made on the issues presented. At the hearings the presentation of evidence may be sharply curtailed, and the proceedings are often terminated in a short space of time. The awards — although made in accordance with substantive law — are often based on the application of common sense; and the spirit of compromise and conciliation attends the proceedings.

Sanderson v. Niemann, 17 Cal. 2d 563, 573, 110 P.2d 1025 (1941).

Limited Appeal/Postjudgment Relief

In line with the purpose of small claims courts, appeal rights are quite limited. A plaintiff may choose to file an action as either a limited civil case or as a small claims proceeding if the case is within the jurisdiction of the small claims court. Section 87. By choosing to file in small claims court, the plaintiff waives any right of appeal on the claim. Section 116.710(a). The defendant, who does not enter the small claims court voluntarily, may appeal an adverse judgment on the plaintiff's claim to the superior court for a trial de novo. Section 116.710(b). The plaintiff may similarly appeal an adverse judgment on a defendant's cross-claim. *Id*. The superior court judgment is final and not appealable. Section 116.780(a).

Postjudgment relief is also limited as a means of ensuring prompt finality of the small claims decision. Provided specified conditions are satisfied, the court may vacate a judgment for improper service on the defendant or for failure of either the plaintiff or defendant to appear at the hearing in the small claims court. Sections 116.720, 116.730, 116.740. The court may also correct a clerical error in a judgment or vacate a judgment on the ground of an incorrect or erroneous legal basis for the decision. Section 116.725.

POTENTIAL CONSTITUTIONAL ISSUES — PRELIMINARY REMARKS

> Recognizing the goal of providing justice in small matters at a reasonable cost, the courts of this state have upheld provisions in the statutes governing small claims actions which restrict what are recognized otherwise as substantial, even constitutional, rights.

Houghtaling v. Superior Court, 17 Cal. App. 4th 1128, 1133, 21 Cal. Rptr. 2d 855 (1993).

The elimination in small claims proceedings of many of the ordinary civil litigation safeguards and procedural devices has been upheld in light of the purpose for which small claims courts were instituted — to resolve disputes over *small monetary amounts* in a quick, inexpensive manner. Neither the statutes nor the case law define "small monetary amount," because it is, and presumably was intended to be, a fluid concept. However, any increase in the jurisdictional amount of the small claims court presents the risk that an appellate court may ultimately hold that the new ceiling exceeds what is permissible as a "small" amount.

Due to the informal nature of small claims proceedings, there is a paucity of precedential decisions regarding this particular forum. Notwithstanding, the few cases that have been heard by appellate courts (e.g., as petitions for extraordinary review), offer important guidelines in setting a jurisdictional limit that will not offend constitutional guarantees. These will be discussed below.

A handful of states have established small claims jurisdictional limits that exceed the $5,000 limit in California. They range from $7,500 (e.g., Colorado) up to a high of $15,000 (e.g., Georgia). It is not fruitful to simply compare monetary limits, however, because the constitutionality of these higher limits is state-specific — i.e., each state's constitutional provisions, statutes, and rules, in the aggregate, are determinative of the constitutionality of a particular state's small claims proceedings. Nonetheless, other states' small claims systems may provide examples of alternative procedures that could be adopted in California to vitiate any constitutional weaknesses in our system. If the Commission is interested in this approach, the staff will prepare a detailed analysis of relevant small claims procedures in other states.

The Seventh Amendment of the United States Constitution, preserving a right of trial by jury, applies only to trials in federal courts, not to state court trials. *Minneapolis & St. Louis R.R. Co. v. Bombolis*, 241 U.S. 211, 216-17 (1916). Nor is there a right to a jury trial in a state proceeding under either the Due Process Clause or the Equal Protection Clause of the federal Constitution. See *Hawkins v. Bleakly*, 243 U.S. 210, 216 (1917); *Letendre v. Fugate*, 701 F.2d 1093, 1094 (4th Cir. 1983). Accordingly, the right to a jury trial in a state action stems from the state constitution, common law, or statutes.

Small Claims Court Hearing

The Small Claims Act does not expressly deny a right to a jury in the original small claims court hearing; however, several sections imply there is no such right, and interested participants have assumed as much. See, e.g., Sections 116.510 (hearing and disposition of small claims action shall be informal), 116.520(c) (court may investigate the controversy), 116.770 (a judicial officer other than the judicial officer who heard the action in the small claims division must hear the appeal). See also *Crouchman v. Superior Court*, 45 Cal. 3d 1167, 1170 n.1, 755 P.2d 1075, 248 Cal. Rptr. 626 (1988), in which the California Supreme Court stated:

> Petitioner (hereafter defendant) does not assert he had a right to a jury in the original small claims court hearing. It has been assumed that there is no right to a jury in the original hearing, and that "to the extent a right to trial by jury exists, it is satisfied by a two-tiered procedure which affords a jury trial in the de novo proceeding in superior court." *Maldonado v. Superior Court* (1984) 162 Cal.App.3d 1259, 1266, fn. 9, 209 Cal.Rptr. 199; see *Capital Traction Co. v. Hof* (1899) 174 U.S. 1, 19 S.Ct. 580, 43 L.Ed. 873....

The *Crouchman* Court further validated this assumption with the following finding:

> The Legislature's emphasis on informal and expeditious proceedings makes it clear that it did not contemplate a jury trial in small claims court itself.

45 Cal. 3d at 1172. Although *Crouchman* was decided before the current Small Claims Act was enacted, the statutory requirement of an informal, expedited proceeding in the initial small claims court hearing is one of long duration. See, e.g., former Section 117h (1933 Cal. Stat. ch. 743, § 30).

Trial De Novo on Appeal — Defendant's Right to Jury Trial

The *Maldonado* court assumed that if there was a right to trial by jury in small claims proceedings, it was satisfied by a jury trial in the de novo trial on appeal. The validity of this assumption was at issue in *Crouchman*.

In *Crouchman*, the defendant was sued in small claims court by his former landlord for money due on a rental contract and for damages for injury to the rented property. Possession was not at issue. With regard to small claims actions at law for money damages, the Court held that a defendant has no right to a trial by jury in the de novo proceeding when the defendant appeals from the small claims court judgment. 45 Cal. 3d at 1170.

Legislative Intent

The Court found that the Legislature intended that jury trials should *not* be held in small claims appeals. *Id.* at 1172. The Court reasoned that the Legislature had never expressly provided for a jury trial in a small claims appeal, although it had the power and ability to do so. As an example, the Court cited Section 1141.20(b), which provides that after judicial arbitration any party may elect a trial de novo, *by court or jury*, both as to law and facts. *Id.*

The Court also found that the small claims scheme created by statute and Judicial Council rules required the superior court trial de novo to be conducted pursuant to the same informal summary procedures as governed the small claims court hearing (except that attorneys may participate on appeal, pursuant to Section 116.770(c)). *Id*. at 1173.

Crouchman was decided in 1988. At that time, the statutes governing the small claims appeal directed the Judicial Council to prescribe by rule the practice and procedure to be followed in appeals. See former Section 117.10 (added by 1976 Cal. Stat. ch. 1289, § 2). Former Rules 151-158 provided that the trial de novo was to be conducted informally. The current Small Claims Act enacted in 1990 expressly provides that the hearing on appeal "shall be conducted informally" and "no party has a right to a trial by jury." Section 116.770(b). Hence, the Court's reasoning is even more persuasive today.

Statutory or Constitutional Authority

The Court further found that neither the state Constitution nor Section 592 afford the defendant the right to a jury trial on appeal. *Crouchman*, 45 Cal. 3d at 1173.

Although Article I, Section 16, of the California Constitution provides that "[t]rial by jury is an inviolate right," the state constitutional right to jury trial is the right as it existed at common law in 1850 when the state Constitution was first adopted. *Id.* Section 592, which generally guarantees a trial by jury in legal actions, is basically a codification of this principle. *Id.* at 1174. Therefore, the inquiry with regard to both authorities is an historical one. *Id.* at 1175.

The *Crouchman* decision includes a detailed analysis of common law as it existed in 1850. Based on this analysis, the Court rejected the distinction between legal and equitable cases, because that distinction was irrelevant at common law to the provision of a jury for a small monetary claim:

> The principle established by the English common law as it existed in 1850 was that small claims, as legislatively defined within limits *reasonably related to the value of money and the cost of litigation in the contemporary economy*, were to be resolved expeditiously, without a jury and without recourse to appeal.

Id. at 1177 (emphasis added).

At the time of this decision, the jurisdictional limit of the small claims court was $1,500. The Court did not attempt to determine whether five British pounds in 1850 (the amount for which no right to trial by jury existed) equaled $1500 in 1988. *Id.* Rather, the Court expounded the following principle:

> [T]he Legislature's power to raise the small claims court jurisdictional amount is limited by constitutional parameters, and any attempt to raise the small claims limit to a level which could no longer be considered a *very small monetary amount,* would probably necessitate a re-evaluation of whether a jury trial is constitutionally required for the de novo appeal.

Id. (emphasis added).

Based on the historical test, the Court found

> the current small claims ceiling to be a reasonable legislative enactment to allow claimants with small monetary demands to resolve their cases expeditiously, while preserving the defendant's right to jury trial, *as historically defined*. The $1,500 limit falls comfortably within the constitutional guidelines.

Id. (emphasis added).

Would a $10,000 small claims jurisdictional limit be considered a "small monetary amount" under the *Crouchman* approach? This issue is discussed below (see "What is a Small Monetary Amount in Today's Economy?"). Because the

history of the small claims court and the intent of the Legislature in enacting the current Small Claims Act are premised on the goal of providing justice in small matters at a reasonable cost, this inquiry is relevant to all potential constitutional issues.

Trial De Novo on Appeal — Plaintiff's Right to Jury Trial

What about the plaintiff's right to a jury on appeal? The *Crouchman* Court limited its holding to the facts before it and so did not decide this issue. The outcome would in all likelihood be the same for the following reasons:

- The plaintiff does not have a right of appeal. Section 116.710(a).
- The underlying reasons that support a denial of a jury trial to the defendant apply equally to plaintiffs.
- Section 116.770(b) expressly provides that *no party* has a right to a jury trial.
- The California Constitution permits waiver of a jury by a party in a civil action. Cal. Const. art. I, § 16. See *Escamilla v. California Ins. Guarantee Ass'n*, 150 Cal. App. 3d 53, 58, 197 Cal. Rptr. 463 (1983) (waiver of jury trial may be shown by conduct). See also *Medico-Dental Bldg. Co. v. Horton & Converse*, 21 Cal. 2d 411, 432, 132 P.2d 457 (1942) (waiver may be shown by conduct).

  By electing to sue in small claims court, the plaintiff is deemed to have accepted all of its attendant disadvantages, such as the denial of the right to counsel. See *Prudential Ins. Co. v. Small Claims Court*, 76 Cal. App. 2d 379, 382, 173 P.2d 38 (1946), discussed under "Right to Counsel" below. See also *Maldonado*, 162 Cal. App. 3d at 1264 n.5 (waiver of jury trial (dictum)); *Whitehouse v. Six Corp.*, 40 Cal. App. 4th 527, 537, 48 Cal. Rptr. 2d 600 (1995) (same).

RIGHT TO COUNSEL

Due Process Considerations

"[D]ue process requires that no person shall be deprived of a substantial right without notice and hearing." *Mendoza v. Small Claims Court,* 49 Cal. 2d 668, 672, 321 P.2d 9 (1958). The right to be heard includes the right to appear by counsel. *Id.* at 673.

As a general rule, attorneys are prohibited from *representing* a party at the small claims court hearing. Section 116.530(a). The parties are, however, entitled to legal representation in an appeal to the superior court. Sections 116.530(c), 116.770(c).

The deprivation of assistance of counsel in the original small claims court hearing has been held not to deny the litigants due process — the plaintiff has waived such assistance by choosing the forum, and the defendant's right is protected because the parties may retain a lawyer for the appeal:

> There can be little doubt but that in both civil and criminal cases the right to a hearing includes the right to appear by counsel, and that the arbitrary refusal of such right constitutes a deprivation of due process. [Citations omitted.] But that does not mean that the legislature cannot create a Small Claims Court where informal hearings may be held without the assistance of counsel, as long as the right to appear by counsel is guaranteed in a real sense somewhere in the proceeding. It is obvious that the plaintiff cannot object, although he has no right of appeal, because he has elected to commence the action in the Small Claims Court. If he desires an attorney he can sue, even on these small claims, in the Justices or Municipal Courts. The defendant has no legal cause for complaint because if he is dissatisfied with the judgment of the Small Claims Court he has a right of appeal to the Superior Court where he is entitled to a trial de novo. [Citation omitted.] In that court he and the plaintiff can, of course, appear by counsel. This satisfies the due process requirement.

Prudential Ins. Co. v. Small Claims Court, 76 Cal. App. 2d 379, 382, 173 P.2d 38 (1946).

At the time that *Prudential* was decided, the trial de novo on appeal was conducted in all respects as other trials in the superior court (e.g., formal evidentiary rules, discovery, etc.). See former Section 980a (added by 1941 Cal. Stat. ch. 462, § 4). Today, the trial de novo on appeal is conducted in the same informal manner as the original hearing in the small claims court. Section 116.770. Does this make a difference in whether the right to counsel should arise at the initial small claims hearing?

Probably not. The *Prudential* court did not mention the formality of the trial de novo as a factor in arriving at its decision. Cases decided since the switch to an informal trial on appeal have continued to cite *Prudential* as authority for the proposition that due process guarantees are not violated where the defendant's right to counsel is protected on appeal. See, e.g., *Crouchman*, 45 Cal. 3d at 1171 n.3; *Houghtaling*, 17 Cal. App. 4th at 1139. Although pretrial discovery is prohibited on appeal (Section 116.770(b)), the defendant — whether in pro per or through counsel — can still call witnesses (including experts), subpoena

documents for introduction as evidence, and present applicable defenses (something attorneys are particularly adept at).

For these same reasons, the staff does not believe that a due process violation would arise even if the jurisdictional limit is raised to $10,000, provided legal counsel is still available on appeal.

Caveat — Taking of Property

In *Mendoza, supra*, the California Supreme Court considered another due process claim resulting from the lack of legal representation at the initial small claims court hearing. At that time, the small claims court had jurisdiction over certain unlawful detainer actions. The Court found this jurisdictional grant to be unconstitutional, because the defendant could be evicted *before* a hearing with the attendant right to counsel. 49 Cal. 2d at 673-74. Although a statutory provision permitted the trial judge to stay proceedings upon the judgment pending appeal, the stay was discretionary. In response to this decision, the Legislature amended the small claims statute in 1959 to provide for an *automatic* stay of proceedings until the small claims court judgment became final. See former Section 117j (1959 Cal. Stat. ch. 1982, § 1).

In *Brooks v. Small Claims Court*, 8 Cal. 3d 661, 668, 504 P.2d 1249, 105 Cal. Rptr. 785 (1973), the California Supreme Court held that the *former* requirement that the defendant in a small claims action file an undertaking or deposit in order to appeal the decision was unconstitutional; i.e., it constituted a taking of property without a due process hearing with representation by counsel. The statute was subsequently amended to remove the undertaking requirement. See former Section 117*l* (1975 Cal. Stat. ch. 266, § 3).

The *Brooks* Court also based its decision on policy considerations stemming from the greater use of the small claims procedure by institutional creditors than by individual claimants. This topic is more fully discussed under "What is a Small Monetary Amount in Today's Economy" below.

Currently, small claims courts do not have jurisdiction over unlawful detainer actions. See Section 116.220. In addition, enforcement of the judgment of the small claims court is *automatically suspended*, without the filing of a bond by the defendant, until expiration of the time for appeal. Section 116.810(a). But the above cases demonstrate that in extending the jurisdictional limit of the small claims court, the Legislature must be careful not to institute any procedure that

would constitute a "taking" of property, even temporarily, *before* the litigant has acquired a right to legal representation.

Corporate Litigants

Ordinarily, a corporation can only prosecute or defend a legal action through an attorney. The corporate defendant in *Prudential*, therefore, argued that corporations are denied representation in small claims court. The *Prudential* court rejected that argument because the small claims court statute expressly authorizes a corporation to appear in pro per through some proper representative other than an attorney. *Prudential,* 76 Cal. App. 2d at 386. See Section 116.540 (appearances in small claims court by corporations).

In *Merco Constr. Engineers, Inc. v. Municipal Court*, 21 Cal. 3d 724, 581 P.2d 636, 147 Cal. Rptr. 631 (1978), the California Supreme Court upheld lay representation of a corporation in small claims court. The Court explained that such representation was authorized by statute *as approved by the court* in *Prudential*. Otherwise, the statute (former Section 117.4) was subject to challenge on separation of powers grounds, because only the judiciary, not the Legislature, has the power to determine who is authorized to practice law (i.e., a corporate representative is engaged in the practice of law). *Id.* at 728-30. The Court recited with approval the *Prudential* court's reasoning that the special nature of small claims court proceedings — i.e., the ban on legal representation — warranted lay representation in that court. However, the *Merco* Court warned against extending *Prudential* to other courts. *Id.* at 731.

By incorporating Section 116.540, Section 116.770(c) appears to authorize a corporation to participate in an appeal to the superior court through an employee, director, or officer. However, Section 116.770(c) also authorizes representation by counsel on appeal. Since the reason for permitting lay representation of a corporation in small claims court is nonexistent on appeal, a constitutional challenge is conceivable. Whether such a challenge would materialize — particularly if an increase in the jurisdictional limit results in more corporate litigants — is uncertain (i.e. who would make such a challenge and why?).

Insurance Companies

In limited and unlimited civil actions, a defendant may be entitled to a defense and indemnification by the defendant's insurer. In such instances, the insurer will provide legal representation for the insured, at the insurer's expense.

Previous attempts to raise the jurisdictional limit of the small claims court beyond $5,000 have encountered opposition from the insurance industry based on the lack of legal representation.

For example, AB 2506 (Andal, 1994) would have raised the jurisdictional limit to $10,000. The Personal Insurance Federation of California opposed the bill in part because "insurance companies will not be able to provide attorney representation to small claim defendants even when they paid for such representation in their insurance premiums." Assembly Committee on Judiciary Analysis of AB 2506 (May 4, 1994). Could this argument evolve into a due process contention by the insurer, alleging deprivation of property without the right to be heard?

The staff sees this issue as one of policy, rather than a constitutional issue. As stated, the defendant in a small claims action is entitled to legal representation on appeal. At that point, the insurer can provide its insured with an attorney pursuant to its duty to defend (and for which a portion of the premiums was presumably paid). Moreover, Section 116.710(c) authorizes a defendant's insurer to appeal a small claims court judgment on the plaintiff's claim if the judgment exceeds $2,500 and the insurer stipulates that its policy with the defendant covers the matter to which the judgment applies. In this way, an insurer can obtain legal representation on appeal in "larger" small claims cases to protect its interests even if the insured chooses not to appeal the judgment. Also, by requiring the insurer to stipulate to coverage, any conflict of interest issue is negated — i.e., if the insurer appeals, the insurer promises to pay the judgment.

SB 1342 (Lockyer, 1997) would have allowed a small claims court to hear auto accident cases with an amount in controversy between $5,001 and $10,000. In those cases, attorneys would have been allowed to represent the parties at the original hearing. However, in order to provide its insured with representation, an insurer would have had to stipulate that its policy with the defendant covered the matter. State Farm Insurance Companies opposed the bill for, among other reasons, placing defendants in conflict with their insurers. As argued, if the bill were enacted, insurers could not provide counsel without first determining the existence of coverage because to do so would admit liability. But, because the bill required the defendant to answer within 30 days, such a determination was impossible in such a limited time period. "In combination with the lack of discovery characteristic to small claims, this bill will undermine the quality of

defense insurers are able to provide their policyholders." Senate Floor Analysis of SB 1342 (May 14, 1997).

This "admission of liability" argument should not be at issue if the jurisdictional limit is raised to $10,000, but all other provisions of the Small Claims Act remain unchanged. Also, it is questionable whether such an argument would have any constitutional basis. Unlike SB 1342, the current statute, while requiring a stipulation of coverage, does so only if an appeal is filed. Thus, insurers have sufficient time to assess coverage. If an insurer believes that coverage might not exist, it can protect its interests by sending the insured a reservation of rights letter and not appealing an unfavorable judgment. Coverage (i.e., the insurer's duty to indemnify) would then be decided in a separate action between the insured and insurer.

Furthermore, if the restriction on discovery in small claims proceedings is constitutional with regard to the insured and all other small claims defendants, it should similarly be constitutional with regard to the insurer. See "Use of Informal Trial Procedures" below. The prohibition against attorney representation in a small claims hearing (as opposed to a small claims appeal) may thus survive a due process challenge by the defendant's insurer.

A different question is whether the prohibition against attorney representation would be unfair to an *insured defendant*, if the small claims limit is increased. Such a defendant is contractually entitled to representation by the insurer, but would be forced to appear in court without representation for a claim of as much as $10,000 at the initial hearing but not on appeal. While the defendant would not be on the hook for any adverse judgment, and would be entitled to appeal if the court rendered an adverse judgment, the mere process of self-representation may be burdensome and intimidating. The defendant's credibility may be at stake and an adverse judgment may be a severe emotional blow even if the defendant ultimately prevails on appeal with the assistance of counsel provided by the defendant's insurer. The staff thinks it unlikely that this could be effectively framed as a constitutional issue, but it is nonetheless a policy matter that the Commission should take into account in determining whether to proceed with the proposed jurisdictional increase.

RIGHT TO APPEAL

The plaintiff in a small claims court action has no right to appeal an adverse judgment on the plaintiff's claim. Section 116.710(a). The defendant with respect

to the plaintiff's claim, and a plaintiff with respect to a cross-claim of the defendant, may appeal an adverse judgment to the superior court. Section 116.710(b).

The hearing on appeal consists of a trial de novo. Like the small claims court hearing, the hearing on appeal to the superior court is conducted informally, except that attorneys may participate. Section 116.770(a)-(c). A statement of decision is not required. Section 116.770(b). The judgment of the superior court is final and not appealable. Section 116.780(a).

Statutory Right

There is no federal or state constitutional right to appeal. See *Jones v. Barnes*, 463 U.S. 745, 751 (1983); *Trede v. Superior Court*, 21 Cal. 2d 630, 634, 134 P.2d 745 (1943); *Powers v. City of Richmond*, 10 Cal. 4th 85, 91, 893 P.2d 1160, 40 Cal. Rptr. 2d 839 (1995) (Article VI, Section 11, of the California Constitution "serves to establish and allocate judicial authority, not to define or guarantee the rights of litigants").

The California Supreme Court has repeatedly held that the right to appeal in California is entirely statutory. Hence, the Legislature can change the appeals procedure, restrict the right to appeal, or even abolish the right altogether. See *Superior Wheeler Cake Corp. v. Superior Court*, 203 Cal. 384, 386, 264 P. 488 (1928) ("right of appeal is statutory and may be granted or withheld"); *Trede,* 21 Cal. 2d at 634 ("the appellate procedure is entirely statutory and subject to complete legislative control"); *Skaff v. Small Claims Court*, 68 Cal. 2d 76, 78, 435 P.2d 825, 65 Cal. Rptr. 65 (1968); B. Witkin, California Procedure *Appeal* § 2, at 60 (4th ed. Supp. 1997).

Due Process Considerations

Provided due process has been accorded in the tribunal of first instance, the right of appeal is not essential to the Due Process Clause of the Fourteenth Amendment. *Ohio ex rel. Bryant v. Akron Metro. Park Dist.*, 281 U.S. 74, 80 (1930); *Lindsey v. Normet,* 405 U.S. 56, 77 (1972).

The small claims court hearing and the trial de novo are informal. Discovery is prohibited and evidentiary standards are relaxed. Do these "abbreviated" procedures constitute a full and fair trial? This issue is discussed under "Use of Informal Trial Procedures" below.

It is also important to note that the appellate courts have jurisdiction to entertain petitions for extraordinary review in order to resolve significant issues

of small claims law or procedure. *Houghtaling*, 17 Cal. App. 4th at 1131; *Davis v. Superior Court*, 102 Cal. App. 3d 164, 168, 162 Cal. Rptr. 167 (1980).

Equal Protection Considerations

When an appeal is granted by statute, it cannot be bestowed on some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause. *Lindsey*, 405 U.S. at 77. Accordingly, conditions on the right to appeal that bear no reasonable relationship to any valid state objective and that arbitrarily discriminate against a class of appellants also violate the Equal Protection Clause. *Id*. at 76-77 (double-bond prerequisite for appealing forcible entry and wrongful detainer action unconstitutional). This principle has been explained by the California Supreme Court in the following manner:

> [L]aws which are designed to apply to or operate upon a certain class of persons only are valid if it can be seen that the Legislature was warranted in finding some natural, intrinsic, or constitutional distinction between the class so legislated about and other classes.

Superior Wheeler, 203 Cal. at 388.

Rights of Small Claims Plaintiffs v. Small Claims Defendants

In *Superior Wheeler*, the California Supreme Court considered the validity of the small claims statute that permits an appeal by the defendant, but not by the plaintiff. The respondent contended that the difference in appeal rights violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, as well as Article 1, Section 11 and Article 4, Section 25 of the California Constitution, which, respectively, required that laws of a general nature have uniform operation and prohibited special laws regulating the practice of the courts.

The Court premised the constitutionality of the denial to plaintiff of a right of appeal upon plaintiff's choice of forum:

> The plaintiff, in other words, comes under the yoke of this system voluntarily, but the defendant comes thereunder only by the strong arm of the law. The parties therefore do not enter the forum upon equal terms. If the plaintiff does not feel that he will be benefited by the procedure, he has the alternative of entering the regular jurisdiction of the justice's court, where the right of appeal is equal and reciprocal. Having this unmistakable choice in the premises, we fail to find discrimination within the meaning of any of said

> constitutional provisions. The advantage voluntarily accepted must be held a complete compensation for the loss of the right of appeal.

Id. at 387.

The Court's emphasis on the voluntary nature of a claim was reiterated in *Skaff, supra*. At the time of the *Skaff* decision, there was no express statutory provision granting the plaintiff in a small claims case the right to appeal an adverse judgment on a defendant's cross-claim (as there is today). Citing *Superior Wheeler*, the Court stated:

> The reasons for denying a plaintiff the right of appeal on his original demand do not apply to the situation in which the plaintiff has been transformed into a defendant on a counterclaim. In Superior Wheeler Cake Corp. v. Superior Court (1928) 203 Cal. 384, 264 P. 488, this court posited the constitutionality of the denial to plaintiff of a right of appeal upon plaintiff's choice of this particular forum. Because he elects "a quick and inexpensive method of trial and judgment" he forfeits the normal protection of jury trial and appeal....
>
> When plaintiff becomes metamorphosed into a defendant the situation is reversed: he does not choose the quick but nonappealable route of recovery; defendant, by filing the counterclaim, does so; plaintiff should no more become the victim of defendant's choice than defendant should become the victim of plaintiff's choice on the original claim.

Skaff, 68 Cal. 2d at 79.

Rights of Small Claims Defendants v. Other Defendants

The above decisions resolve equal protection issues between plaintiffs and defendants (and cross-claimants and cross-defendants) in small claims court appeals. But, what about the fact that a small claims court defendant's right of appeal is different from the right of appeal bestowed upon a defendant in a case within the general jurisdiction of the superior court? This issue might become significant if the jurisdictional limit of the small claims court is raised to $10,000, since the defendant will have more at stake and the case might be more complex in nature (i.e., more likely to resemble a case filed in superior court).

The plaintiffs in *City and County of San Francisco v. Small Claims Court*, 141 Cal. App. 3d 470, 190 Cal. Rptr. 340 (1983) (hereafter "*San Francisco*"), filed 183 consolidated claims in small claims court against the City and County of San Francisco, alleging that airport noise constituted a continuing nuisance causing

damages to each claimant in the maximum jurisdictional amount of the court ($750).

San Francisco argued that because it was required to defend claims worth over $135,000 in the aggregate without the "full panoply" of procedural devices and protections available to "similarly situated" defendants in municipal or superior court, it had been denied equal protection of the law. The court deemed this argument spurious:

> There is no "particular burden" imposed on a municipality or municipal public utility by requiring it to defend actions in small claims courts. San Francisco is subject to the same rules *as other defendants in small claims courts*, including the provisions for consolidation and the method of determining jurisdictional amount.

Id. at 478 (emphasis added).

Although this case did not deal with different *appeal* rights between small claims defendants and other classes of defendants, its reasoning should presumably apply with equal force to the appeal distinction. However, the court's analysis is quite brief and unsupported by any authority. The staff questions whether the California Supreme Court would be satisfied with such a thin equal protection analysis. Since the decision to file a minor claim as a small claims action rather than as a limited civil case is solely within the plaintiff's control, is it fair to engage in an analysis that looks only to the distinctions among the class of small claims defendants?

Rather, the Supreme Court might look at whether the distinction between small claims defendants and other classes of defendants bears a reasonable relationship to a valid state objective and does not arbitrarily discriminate against a class of appellants. See *Lindsey*, 405 U.S. at 76-77.

The current legislative objective is found in Section 116.120:

> (a) ....
> (b) In order to resolve minor civil disputes expeditiously, inexpensively, and fairly, it is essential to provide a judicial forum accessible to all parties directly involved in resolving these disputes.
> (c) The small claims divisions have been established to provide a forum to resolve minor civil disputes....

Resolution of equal protection claims in the small claims court context may involve a determination whether the different treatment between defendants in

small claims court and defendants in regular superior court is reasonably related to the objective of resolving *minor* civil disputes expeditiously, inexpensively, and fairly. This determination would seem, once again, to depend upon whether the current $5,000 limit or the proposed $10,000 limit constitutes a "minor" civil dispute warranting the expedited procedures. See discussion of "What is a Small Monetary Amount in Today's Economy," below.

RIGHT TO INTERPRETER

If the court determines that a party to a small claims action does not speak or understand English sufficiently to understand the proceedings or give testimony, and needs assistance to do so, the court may permit another nonattorney individual to assist that party. Section 116.550(a).

Each small claims court is obliged to make a reasonable effort to provide a list of interpreters who are able and willing to interpret in a small claims action either for no fee, or for a fee which is reasonable considering the nature and complexity of the claim. Section 116.550(b).

If a court interpreter or other competent interpreter is not available, a one-time postponement of the hearing is authorized so the party can obtain another nonattorney individual to provide assistance. Additional continuances are within the court's discretion. Section 116.550(d).

The Small Claims Act does not authorize the appointment of an interpreter for a small claims party at public expense. Is this a violation of the constitutional rights of an indigent small claims court litigant?

No Constitutional Right to Court-Appointed Interpreter at Public Expense in a Civil Case

The California Constitution mandates an interpreter for any person unable to understand English "who is charged with a crime." Cal. Const. art. I, § 14. This constitutional right extends to juvenile offenders. *In re Dung T.*, 160 Cal. App. 3d 697, 708-09, 206 Cal. Rptr. 772 (1984).

In the context of civil proceedings, the California Supreme Court has held that principles of due process and equal protection of the laws do not entitle an indigent *litigant* to a court-appointed interpreter at public expense. *Jara v. Municipal Court*, 21 Cal. 3d 181, 185-86, 578 P.2d 94, 145 Cal. Rptr. 847 (1978).

In *Jara*, however, the party alleging indigency and the need for an interpreter was represented by counsel. Although cases and treatises citing the *Jara* decision

do not emphasize this factor, it was significant to the *Jara* Court. The Court repeatedly stressed that in modern urban society, a litigant who does not speak English will usually have sources (family, friends, neighbors, private organizations) alternative to the court for language assistance to communicate *with counsel* and other community professionals and officials. *Id.* at 184-86.

> The court proceedings being controlled by counsel, we further suggest that appellant is in no worse position than the numerous represented litigants who elect not to be present in court at all.
>
> The Constitution mandates expense-paid court access in limited cases. Petitioner has not shown his access to be constitutionally impaired.

Id. at 186.

Based on a broad interpretation of *Jara*, appointment of an interpreter at public expense does not appear to be constitutionally required with regard to a small claims appeal, since the litigants are entitled to legal representation at that stage of the proceedings.

Compare — Small Claims Court Hearing

Gardiana v. Small Claims Court, 59 Cal. App. 3d 412, 130 Cal. Rptr. 675 (1976), held that in the absence of any legislative directive to the contrary, the court possesses authority to order that an interpreter be compensated at public expense if a volunteer interpreter is unavailable in small claims court. *Id.* at 424.

In *Jara*, the Supreme Court distinguished the decision in *Gardiana* because of the special nature of a small claims action. While not adopting the *Gardiana* holding (the question was not at issue in *Jara*), the Court did express support for it:

> The court's reasoning must be viewed in light of the nature of a small claims court, and when this is done the case is clearly distinguishable. That court functions informally and expeditiously. There exist no attorneys, no pleadings, and no specific rules of evidence. The awards, while made in accordance with substantive law, result from common sense. The spirit of compromise and conciliation attends the proceedings, requiring participant comprehension. [Citations omitted.] The parties are usually their own witnesses and frequently the only ones. It is apparent that unless the non-English speaking party has an interpreter he is effectively barred from access to the small claims proceeding. By way of contrast, appellant possesses an attorney capable of fully representing him in the municipal court proceeding.

Jara, 21 Cal. 3d at 185.

The *Gardiana* court based its holding on the duty of the court to appoint an interpreter for a *witness* under Evidence Code Section 752 and the inherent power of the court to appoint an interpreter "whenever such a course is necessary to the due administration of justice." *Gardiana*, 59 Cal. App. 3d at 423-24. A constitutional analysis was not part of the decision and, presumably, was not required since the court indicated that the Legislature could prohibit the appointment of interpreters at public expense in small claims court. *Id*. at 424. The Supreme Court in *Jara* likewise discussed *Gardiana* as part of its analysis of the court's inherent power, not under its constitutional analysis. *Jara*, 21 Cal. 3d at 185.

This analysis is consistent with cases involving the payment of appointed counsel in other civil cases. As discussed, representation by counsel is considered a fundamental aspect of due process. Thus, the appointment of counsel for indigent imprisoned civil litigants has been held to be constitutionally compelled. However, absent legislative authorization, the court-appointed attorney may not be paid from public funds; the attorney is expected to serve gratuitously as part of the attorney's public responsibilities. See *Payne v. Superior Court*, 17 Cal. 3d 908, 553 P.2d 565, 132 Cal. Rptr. 405 (1976); *County of Fresno v. Superior Court,* 82 Cal. App. 3d 191, 146 Cal. Rptr. 880 (1978).

Consequently, even if the jurisdictional limit of the small claims court is raised to $10,000, the denial of a court interpreter at *public expense* should not raise any constitutional issues.

USE OF TEMPORARY JUDGES

Article VI, Section 21, of the California Constitution authorizes the appointment of a temporary judge upon "stipulation of the parties litigant":

> SEC. 21. On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause.

Section 116.240 provides statutory authority for a temporary judge to hear a small claims case:

> 116.240. With the consent of the parties who appear at the hearing, the court may order a case to be heard by a temporary

> judge who is a member of the State Bar, and who has been sworn and empowered to act until final determination of the case.

Section 116.240 is in almost all respects facially consistent with the constitutional provision, except that it provides that a small claims case may be heard by a temporary judge with the consent of "the parties who appear at the hearing." This distinction, and its import, has already been considered by the Commission with regard to the authority of court commissioners to act as temporary judges. See, e.g., Memoranda 2002-32 (June 27, 2002), 2002-48 (August 12, 2002). A brief review of the relevant case law interpreting the constitutional phrase "parties litigant" is provided.

"Parties Litigant"

The term "parties litigant," as used in the constitutional provision, "means the parties who are taking part in the litigation — those who have appeared therein." *In re Kent's Estate*, 6 Cal. 2d 154, 162, 57 P.2d 901 (1936); *Reisman v. Shahverdian*, 153 Cal. App. 3d 1074, 1089, 201 Cal. Rptr. 194 (1984). The appearing parties' consent to a temporary judge may be express (either orally or in writing) or implied from conduct (e.g., voluntary participation before a temporary judge). See, e.g., the discussion in *In re Courtney H.*, 38 Cal. App. 4th 1221, 1227-28, 45 Cal. Rptr. 2d 560 (1995). *Cf. Yetenekian v. Superior Court*, 140 Cal. App. 3d 361, 189 Cal. Rptr. 458 (1983).

A party who fails to plead within the required time (i.e., a defaulting party) is not a "party litigant." Similarly, a party who has filed a responsive pleading, but fails to appear at a proceeding of which he has notice loses the status of "party litigant." *Sarracino v. Superior Court*, 13 Cal. 3d 1, 8-10, 529 P.2d 53, 118 Cal. Rptr. 21 (1974). See also *Barfield v. Superior Court*, 216 Cal. App. 2d 476, 479, 31 Cal. Rptr. 30 (1963) (stipulation required under Constitution is that "of" and not "between" the litigants).

In *Sarracino*, the defendant failed to appear at a hearing on applications for temporary support in a proceeding for dissolution of marriage and child support. The court held that the defendant's action was "indistinguishable from that of a defendant whose default is entered in a civil action following his failure to plead within the required time. Accordingly, petitioner was not a party litigant." *Sarracino,* 13 Cal. 3d at 10. Therefore, the stipulations of the parties who did appear at the hearing were "sufficient to empower the commissioner to act as a temporary judge." *Id*.

In *Bill Benson Motors, Inc. v. Macmorris Sales Corp.*, 238 Cal. App. 2d Supp. 937, 944, 48 Cal. Rptr. 123 (1965), the defendant, after filing an answer and cross-complaint, failed to appear at trial. The court concluded that the phrase "parties litigant" does not include parties who "wilfully remain away from the trial of a cause.... [T]here is no injustice in ruling that they waived their rights to object to the appointment of … a judge pro tempore in this case by their wilful absence."

In these situations, there is no implied stipulation since the defaulting party has not attained the status of "party litigant." See, e.g., *Reisman*, 153 Cal. App. 3d at 1096. Compare *Rooney v. Vermont Inv. Corp.*, 10 Cal. 3d 351, 359-60, 515 P.2d 297, 110 Cal. Rptr. 353 (1973), in which defendants' absence from a hearing did not forfeit their status as "parties litigant" where they had no notice of the proceeding.

The loss of "party litigant" status is not irrevocable. "[W]hen a formerly absent party appears at a subsequent proceeding, that party becomes a party litigant and gains the right to stipulate to the temporary judge's power." *Reisman*, 153 Cal. App. 3d at 1096-97.

In the absence of a proper stipulation, the judgment entered by the temporary judge is void. *In re Horton*, 54 Cal. 3d 82, 90, 813 P.2d 1335, 284 Cal. Rptr. 305 (1991).

Special Nature of Small Claims Court Proceedings

Defaults

Because a defendant is not required to file a responsive pleading in the small claims court, failure of the defendant to appear at the hearing constitutes a default. See *Burley v. Stein*, 40 Cal. App. 3d 752, 754 n.2, 115 Cal. Rptr. 279 (1974); *Miller v. Superior Court*, 92 Cal. App. 3d 29, 31, 154 Cal. Rptr. 491 (1979). As discussed, the appellate courts have ruled that failure to appear at trial waives the status of "party litigant" for purposes of Article VI, Section 21. Hence, the reference in Section 116.240 to "parties who appear at the hearing" appears to be consistent with the constitutional provision.

The requirements for service of process are looser in a small claims proceeding than in a regular superior court case. For example, the claim can be served on a defendant by any form of mail providing for a return receipt. See Section 116.340(a); compare Sections 415.30 (service by mail) and 415.40 (service on person outside state), which apply to limited and unlimited civil cases. It is entirely possible, therefore, that a small claims defendant may not have actual

notice of the hearing (there is no requirement that the defendant sign the receipt). Although post-judgment relief is limited in a small claims proceeding, a small claims *defendant or plaintiff* may file a motion, based on good cause, to vacate the judgment for failure to appear at the hearing. Sections 116.720, 116.730. Based on *Rooney*, *supra*, a small claims defendant who successfully demonstrates a lack of notice of the hearing would presumably not lose "party litigant" status.

Under Rule 1726 of the California Rules of Court, a temporary judge may hear matters in the small claims court *or on appeal of a small claims judgment*. A judgment of the superior court on appeal of a small claims action is not appealable (see discussion above). Hence, a temporary judge could hear the appeal on stipulation of one party only and the nonappearing party would have no avenue to argue improper appointment, except perhaps by extraordinary writ. The harshness of this outcome is lessened by the fact that a small claims judgment will not ordinarily be given collateral estoppel effect in other proceedings. See *Sanderson v. Niemann*, 17 Cal. 2d at 575; *Rosse v. DeSoto Cab Co.*, 34 Cal. App. 4th 1047, 1053, 40 Cal. Rptr. 2d 680 (1995).

Implied Stipulation

Pursuant to Rule 1727(a), a party to a small claims action is deemed to have stipulated to the matter being tried by a temporary judge if all of the following occur before the swearing in of the first witness in the hearing: (1) The court notifies the party litigant that a temporary judge will be hearing the matters for that calendar; (2) the court notifies the party litigant that the temporary judge is a qualified member of the State Bar; (3) the court notifies the party litigant that the litigant has a right to have the matter heard before a duly elected or appointed judicial officer of the court; and (4) after notice, the party litigant fails to object to the matter being heard by a temporary judge. (Note that Rule 1727 uses the constitutional designation of "party litigant.")

The required "notice" may be given by a conspicuous sign posted inside or just outside the courtroom, accompanied by oral notification or notification by videotape or audiotape by a court officer on the day of the hearing or by written stipulation signed by the party litigant. Rule 1727(b). Is this constitutionally sufficient considering that a small claims litigant is unrepresented (at least at the initial hearing) and unfamiliar with court proceedings?

Reported cases involving the validity of an implied stipulation focus on parties who are represented by counsel. See, e.g., *Yetenekian*, 140 Cal. App. 3d at

367. A few unreported decisions have involved parties who appeared in pro per at the hearing before a purported temporary judge. See, e.g., *Monge v. Gerig*, 2001 WL 1646760; *Garcia v. Ulloa*, 2003 WL 1875333. In these cases, the courts found that there was no evidence in the record that the party litigant knew that the matter was being heard by a court commissioner (acting as a temporary judge) instead of a judge. Consequently, the implied stipulation doctrine was inapplicable and the contested orders were void. In neither case, however, was there a posted notice that a temporary judge would be hearing the matter.

In *In re Frye*, 150 Cal. App. 3d 407, 197 Cal. Rptr. 755 (1983), an order of contempt was issued by a court commissioner purportedly acting as a temporary judge. *Neither the petitioner nor his counsel* stipulated to the commissioner acting in such a capacity nor were they aware he was not a judge. A notice, however, was posted in the hearing room stating that unless an objection was voiced, it would be deemed stipulated that the commissioner could act in the capacity of a temporary judge. In response, the court stated:

> Whether or not such a procedure would be sufficient if the record reflected petitioner and/or his attorney knew that Commissioner Honn was a commissioner rather than a judge and knew of the posted notice we need not decide because there is no such indication in the record before us. On the contrary, … neither petitioner nor counsel were apprised of these facts....
>
> …Manifestly, the constitutional requirement of a "stipulation of the parties litigant" as a prerequisite to a commissioner's acting as judge pro tempore [citation omitted] contemplates a voluntary and knowing assent. [Citation omitted.] There is no evidence of any such knowing assent on the part of petitioner or his counsel in this case.

Id. at 409.

In contrast to the situation in *Frye*, the posting of notice that a temporary judge will be hearing small claims court matters must be accompanied by an oral, videotape, or audiotape notification by a court officer. Whether this latter notification is sufficient depends, in part, on the factual circumstances of each case (e.g., was the party instructed to watch the videotape, was the party in the room when the videotape was played, did the videotape cover other matters, etc.).

Final Thoughts

A temporary judge is constitutionally authorized to hear any case — no matter its complexity or the monetary amount involved — provided the parties litigant have consented to trial by the temporary judge. As long as the judge is neutral and detached, due process guarantees are not offended. See *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust*, 508 U.S. 602, 617 (1993).

Hence, the use of a temporary judge in a small claims case raises no new constitutional issues if the jurisdictional limit is increased to $10,000, only policy considerations. In this regard, it should be noted that under Rule 1726, a temporary judge hearing matters in small claims court or on appeal must (1) be a member of the State Bar for at least five years, (2) complete a training program provided by the court, and (3) become familiar with the publications relating to small claims court law and procedures.

USE OF INFORMAL TRIAL PROCEDURES

The Legislature, in providing for the efficient and inexpensive disposition of small claims, relaxed, restricted, or eliminated the use of many litigation procedures that are otherwise available in a civil case within the general jurisdiction of the superior court. See Section 116.510 (hearing and disposition of small claims action shall be informal). As stated in *Sanderson*, "only by escaping from the complexity and delay of the normal course of litigation could anything be gained in a legal proceeding which may involve a small sum." 17 Cal. 2d at 573. This section examines whether the informality of the procedures used in small claims proceedings raises any due process or equal protection issues, or would do so if the jurisdictional limit of the small claims court is raised to $10,000.

Informal procedures are common in administrative proceedings. Nonetheless, there are differences between those proceedings and small claims proceedings that recommend against a wholesale adoption of case findings regarding the constitutionality of administrative procedures. For example, administrative decisions of an adjudicatory nature are reviewable by the superior court on petition for writ of administrative mandamus. Section 1094.5. The superior court's decision to deny the writ is appealable. See Section 1094.5(h)(3). In

contrast, the decision of the superior court on appeal of a small claims court judgment is final and nonappealable (see discussion above).

Comment — Small Claims Plaintiffs

As discussed, small claims plaintiffs waive constitutional and procedural rights by voluntarily choosing the small claims forum. See *Whitehouse*, 40 Cal App. 4th at 536-37, and discussion above. Accordingly, the remainder of this memorandum will focus primarily on small claims defendants.

Due Process Considerations

The core of due process "is protection of the individual against arbitrary action of government." *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998). Due process includes both substantive and procedural guarantees. The *procedural* due process guarantee protects the individual against "arbitrary takings." Hence, the requirements of notice and an opportunity to be heard in adjudicative proceedings. *Goss v. Lopez*, 419 U.S. 565, 579 (1975); *M. Lowenstein & Sons, Inc. v. Superior Court*, 80 Cal. App. 3d 762, 768, 145 Cal. Rptr. 814 (1978), disapproved on other grounds in *Johnson & Johnson v. Superior Court*, 38 Cal. 3d 243, 255 n.7, 695 P.2d 1058, 211 Cal. Rptr 517 (1985). The *substantive* due process guarantee protects the individual against the exercise of arbitrary government power — i.e., "without any reasonable justification in the service of a legitimate governmental objective." *Lewis*, 523 U.S. at 846.

The California Supreme Court has stated the general rule applied by it and the United States Supreme Court in examining legislative enactments against the due process guarantees:

> In the exercise of its police power [the legislative body] does not violate due process so long as an enactment is procedurally fair and reasonably related to a proper legislative goal. The wisdom of the legislation is not at issue in analyzing its constitutionality, and neither the availability of less drastic remedial alternatives nor the legislative failure to solve all related ills at once will invalidate a statute.

Perez v. City of San Bruno, 27 Cal. 3d 875, 889, 616 P.2d 1287, 168 Cal. Rptr. 114 (1980). Of course, a stricter level of scrutiny is applied when legislation affects constitutional or fundamental rights. *Id.* at 889-90. The procedures discussed in this section are not fundamental or constitutional rights requiring this heightened level of scrutiny. Hence, as long as the informal procedures used in

small claims court proceedings are procedurally fair and reasonably related to a proper legislative goal, they are constitutional from a due process perspective.

In *San Francisco*, the court of appeal made a sweeping pronouncement regarding the constitutionality of small claims court proceedings:

> This is a system which balances the poor litigant's right to a day in court, with the constitutional right of defendants not to be deprived of property without due process of law.... We believe it is constitutionally sound and indispensable to our system of justice.

141 Cal. App. 3d at 475.

The *San Francisco* court's "finding" was bolstered by the fact that a small claims defendant may appeal to the superior court for a trial de novo and, if still unsuccessful, may be granted a rehearing. *Id.* at 474-75. The court went so far as to state that the defendant's "right to a trial de novo in superior court *is* a cure for the informal procedures of small claims court which [defendant] decries." *Id.* at 477.

At the time that the claims involved in *San Francisco* were adjudicated, the trial on appeal was a full-blown trial conducted in all respects as other trials in the superior court. Today, however, the trial de novo on appeal is conducted as informally as the initial hearing in the small claims court. There is also a conflict among the courts of appeal as to whether a small claims appeal judgment is subject to a motion for rehearing. Compare *Adamson v. Superior Court*, 113 Cal. App. 3d 505, 169 Cal. Rptr. 866 (1980) (pro), with *ERA-Trotter Girouard Ass'n v. Superior Court*, 50 Cal. App. 4th 1851, 58 Cal. Rptr. 2d 381 (1996) (con). Moreover, the court's assumption that the plaintiff is a poor litigant may be incorrect (see discussion below). Thus, the applicability of the court's "finding" to the Small Claims Act as it exists today may be open to question. A comprehensive due process analysis is therefore warranted.

Substantive Due Process

The California courts have repeatedly recognized the important purpose served by the small claims court and have condoned the use of informal procedures to accomplish that goal. One of the most frequently cited quotes is that from *Sanderson*, 17 Cal. 2d at 573:

> It is apparent that such a court was established in order to offer a means of obtaining speedy settlement of claims of small amounts. The theory behind its organization is that only by escaping from the complexity and delay of the normal course of litigation could

> anything be gained in a legal proceeding which may involve a small sum. Consequently, the small claims court functions informally and expeditiously. The chief characteristics of its proceedings are that there are no attorneys, no pleadings and no legal rules of evidence; there are no juries, and no formal findings are made on the issues presented. At the hearings the presentation of evidence may be sharply curtailed, and the proceedings are often terminated in a short space of time. The awards — although made in accordance with substantive law — are often based on the application of common sense; and the spirit of compromise and conciliation attends the proceedings.

Indeed, it was the informal nature of the small claims court that led the Supreme Court in *Sanderson* to hold that collateral estoppel does not apply to a small claims court judgment. *Id.* at 574-75.

See also *Pace v. Hillcrest Motor Co.*, 101 Cal. App. 3d 476, 478, 161 Cal. Rptr. 622 (1980), in which the court observed:

> A small claims process was established to provide an inexpensive and expeditious means to settle disputes over small amounts. The theory behind its organization was that ordinary litigation "fails to bring practical justice" when the disputed claim is small, because the time and expense required by the ordinary litigation process is so disproportionate to the amount involved that it discourages legal resolution of the dispute.

A more recent case affirms the deference shown to the legislative purpose in creating the small claims court:

> [T]he current trend of the law is to defer to the intent of the Legislature, as grounded in historical perspective, to create an informal and flexible forum in which disputes over modest sums of money may be resolved without the necessity for incurring disproportionate expenses or consuming undue amounts of time.

Houghtaling v. Superior Court, 17 Cal. App. 4th at 1133.

Clearly, the informal procedures that characterize the small claims court are "reasonably related" to a proper legislative goal. Again, however, that goal must be kept in mind in deciding whether to raise the jurisdictional limit to $10,000 — to provide a forum for the inexpensive and expeditious resolution of "minor" claims. If $10,000 does not constitute a "minor" claim, then the use of informal procedures to adjudicate cases of that monetary value may no longer be reasonable.

Note: The *San Francisco* court held that the phrase "individual *minor* civil dispute," as used in the current provision of the Small Claims Act expressing legislative intent (Section 116.120), refers to the *financial value* of the claim to the individual plaintiff, not to the complexity of the case. 141 Cal. App. 3d at 474.

Procedural Due Process

Procedural due process requires notice and an opportunity to be heard appropriate to the nature of the case. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

Notice

Service. Section 116.340 authorizes several forms of service of the claim and order setting the hearing on the small claims defendant. Personal service is but one alternative. Substituted service as provided in Section 415.20 may be used without a showing of attempted personal service. Alternatively, the clerk may cause a copy of the claim and order to be mailed to the defendant "by any form of mail providing for a return receipt." Section 116.340(a).

The staff has not located any case discussing the constitutionality of Section 116.340. This is probably due to the lack of precedential appellate court decisions involving small claims proceedings.

The United States Supreme Court in *Mullane* noted that personal service is adequate notice in any type of proceeding, but personal service has not in all circumstances been regarded as indispensable to the process due to residents, and has more often been held unnecessary as to nonresidents. *Id.* at 313-14. The *Mullane* Court set forth a standard for determining whether the constitutional notice requirement has been satisfied. As explained in *Lowenstein, supra,* 80 Cal. App. 3d at 768:

> The required notice is that which is reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to be heard. (Mullane v. Central Hanover B. & T. Co. (1949) 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865, 873.) However, there is no constitutional requirement that personal service is indispensable when practical. (See International Shoe Co. v. Washington (1945) 326 U.S. 310, 320, 66 S.Ct. 154, 160, 90 L.Ed. 95, 105.)
>
> If the form of substituted service is reasonably calculated to give an interested party actual notice of the proceedings and an opportunity to be heard, the traditional notions of fair play and substantial justice implicit in due process are satisfied.

The primary difference between the methods of service authorized in small claims court and those permissible in other civil cases is the mailing provision. Sections 415.30 and 415.40 authorize service by mail in limited and unlimited civil cases. Section 415.30 applies to service within California. Service is deemed complete on the date a written acknowledgment of receipt of summons is executed and returned to the sender. Section 415.40 authorizes service on persons outside of California by first-class mail requiring a return receipt. This latter section is similar to the mailing provision in Section 116.340 (even though service in small claims actions generally must be made within California; see Section 116.340(d)).

The constitutionality of Section 415.40 was upheld in *Lowenstein* as a form of substituted service reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard. 80 Cal. App. 3d at 768. Notably, neither Section 415.40 nor Section 116.340 requires that the defendant sign the return receipt. Later cases have addressed this situation with regard to Section 415.40.

If the defendant does not sign the receipt, "plaintiff must provide separate evidence establishing the authority of the person who signed the return receipt on defendant's behalf" or other evidence of defendant's actual receipt. *Taylor-Rush v. Multitech Corp.*, 217 Cal. App. 3d 103, 110-11, 265 Cal. Rptr. 672 (1990). See also *Neadeau v. Foster*, 129 Cal. App. 3d 234, 237-38, 180 Cal. Rptr. 806 (1982); *Dill v. Berquist Constr. Co.*, 24 Cal. App. 4th 1426, 1435-36, 29 Cal. Rptr. 2d 746 (1994). These decisions are based on the requirement in Section 417.20(a) that proof of service by mail pursuant to Section 415.40 "shall include evidence satisfactory to the court establishing actual delivery to the person to be served, by a signed return receipt or other evidence."

Section 116.340(c) of the Small Claims Act provides that service "by the methods described in subdivision (a) shall be deemed complete on the date that the *defendant* signs the mail return receipt, on the date of the personal service, as provided in Section 415.20, or as *established by other competent evidence*, whichever applies to the method of service used." (Emphasis added.) The phrase "established by other competent evidence," while not an express incorporation of the standards set forth in *Taylor et al.*, does appear to require proof of actual notice if someone other than the defendant signs the return receipt.

The Commission may wish to revise Section 116.340(c) to incorporate the *Taylor* standards or to adopt the wording of Section 417.20(a) if the jurisdictional

limit is raised to $10,000. It is conceivable that the higher monetary amount will result in more corporate defendants in small claims court. Hence, the issue of authorization to sign the return receipt may become more prevalent.

The fact that Section 116.340 authorizes mail service with return receipt on in-state defendants whereas Section 415.30 requires a signed "acknowledgment" might be challenged on equal protection grounds. This is discussed below. From a due process perspective, the procedure should be upheld as a reasonable means of reducing costs and delay in cases involving small amounts. Again, however, the reasonableness of this procedure may be subject to question if the jurisdictional limit is raised to $10,000 — depending on whether $10,000 qualifies as a "small" amount.

Pleadings. No formal pleading other than the plaintiff's claim is necessary to initiate a small claims action. Section 116.310(a). The claim must be filed under oath with the small claims court clerk and served on the defendant by one of the methods described above. Sections 116.320, 116.340. The claim must set forth the amount and basis of the claim. Section 116.320(b). The defendant in a small claims action is not required to file an answer, but may file a cross-claim against the plaintiff. Section 116.360.

Civil complaints serve a variety of purposes, including apprising the defendant of the basis upon which the plaintiff is seeking recovery. *Committee on Children's Television, Inc. v. General Foods Corp.*, 35 Cal. 3d 197, 211-12, 673 P.2d 660, 197 Cal. Rptr. 783 (1983); *Cf. Leet v. Union Pac. R.R. Co.*, 25 Cal. 2d 605, 619, 155 P.2d 42 (1944) ("The essence of the matter is fairness in pleading to give the defendant such notice by the complaint that he may prepare his case.").

The use of formal pleadings in small claims court has been deemed inappropriate with regard to the legislative intent of efficient disposition of voluminous small claims. See *Cooper v. Pirelli Cable Corp.*, 160 Cal. App. 3d 294, 299, 206 Cal. Rptr. 581 (1984). In light of this goal, the staff believes that the requirement that the claim set forth the amount and basis of the claim ordinarily provides sufficient notice to the defendant to allow him to prepare his defense (i.e., subpoena witnesses and documents). If, in fact, the claim is insufficient to fully apprise the defendant of plaintiff's allegations, the court can order a continuance to allow the defendant time to obtain additional evidence. Section 116.570(c) (court has inherent power to order postponements of hearings in appropriate circumstances). The court could even use its power to "investigate

the controversy" to order the parties to produce evidence the court feels is necessary to resolve the case. Section 116.520(c).

Of course, if the jurisdictional limit of the small claims court is raised to $10,000, chances are that more complicated matters will be tried in that forum than under current law. That would present the question of whether a simple claim form that merely states "the basis" for the claim is sufficient to apprise defendants in a complex matter of the allegations against them.

Opportunity to be Heard

"The fundamental requirement of due process is the *opportunity* to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (emphasis added). The requirements of a fair hearing are flexible, depending upon the proceeding involved:

> The opportunity to be heard is "a fundamental requirement of due process." [Citations omitted.] However, there is no precise manner of hearing which must be afforded; rather the particular interests at issue must be considered in determining what kind of hearing is appropriate. A formal hearing, with full rights of confrontation and cross-examination is not necessarily required. [Citations omitted.] What must be afforded is a "reasonable" opportunity to be heard.

Saleeby v. State Bar, 39 Cal. 3d 547, 565, 702 P.2d 525, 216 Cal. Rptr. 367 (1985).

Determining what process is due in a particular proceeding requires a balancing of the interests involved. The following factors are generally considered and weighed in deciding what procedures are constitutionally required:

(1) The private interest that will be affected by the official action.

(2) The risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards.

(3) The dignity interest in informing individuals of the nature, grounds and consequences of the action and in enabling them to present their side of the story before a responsible governmental official.

(4) The governmental interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

In re Malinda S., 51 Cal. 3d 368, 383, 795 P.2d 1244, 272 Cal. Rptr. 787 (1990). A similar balancing test was adopted by the United States Supreme Court in

Mathews. The factors under both tests are almost identical except that the "dignity" interest is not part of the federal test.

It is important to note that only one fair hearing is required. In *Hohreiter v. Garrison*, 81 Cal. App. 2d 384, 184 P.2d 323 (1947), the decision of the Insurance Commissioner to revoke an insurance agent's license, following a hearing before a hearing officer, was subject to independent judicial review. The appellate court remarked that, "Due process contemplates that somewhere along the line a fair trial be had — not that there be two or three fair trials.... Appellant, in being given two complete trials, has been afforded more protection of his rights than is normally afforded a person accused of crime, who is legally entitled to but one trial." *Id.* at 402.

Similarly, a small claims defendant has two bites at the apple — once at the original small claims hearing and a second time on appeal. At the time that the California Supreme Court in *Sanderson* expressed approval for the informal procedures used in small claims court (see above), the trial de novo hearings were conducted according to law and rules applicable to other trials in the superior court, except that no written findings of fact or conclusions of law were required. Today, however, the trial de novo is virtually indistinguishable from the initial hearing in the small claims court (except that attorneys may participate). See discussion in *Rosse*, 34 Cal. App. 4th at 1050-53 (collateral estoppel effect may not be accorded judgment of small claims court or superior court on appeal). Because of this similarity of procedures, a failure to accord due process in the initial small claims hearing might not be rectified at the trial de novo in the superior court.

Due process requires the hearing and weighing of evidence by an impartial decisionmaker:

> When the Constitution requires a hearing, it requires a fair one, one before a tribunal which meets established standards of procedure.... To judge in a contested proceeding implies the hearing of evidence from both sides in open court, a comparison of the merits of the evidence of each side, a conclusion from the evidence of where the truth lies, application of the appropriate laws to the facts found, and the rendition of a judgment accordingly.

In re Buchman's Estate, 123 Cal. App. 2d 546, 560, 267 P.2d 73 (1954).

Impartial Decisionmaker. Due process requires a neutral judge in the first instance. "Even appeal and a trial *de novo* will not cure a failure to provide a neutral and detached adjudicator." *Concrete Pipe & Products of California, Inc. v.*

Construction Laborers Pension Trust, 508 U.S. 602, 617-18 (1993). The Small Claims Act does not exclude from application the statutes regarding disqualification of judges (Sections 170 *et seq.*). *Cf.* Section 116.140 (provisions inapplicable in small claims actions). Hence, small claims court litigants are entitled to an impartial decisionmaker.

Evidence. With regard to evidence, the Small Claims Act provides the following:

> 116.520. (a) The parties have the right to offer evidence by witnesses at the hearing or, with the permission of the court, at another time.
>
> (b) If the defendant fails to appear, the court shall still require the plaintiff to present evidence to prove his or her claim.
>
> (c) The court may consult witnesses informally and otherwise investigate the controversy with or without notice to the parties.

Due process requires that all parties to an action have the right to present evidence. "[T]he essential fairness and basic integrity required of a judicial proceeding by due process is clearly violated if only one party to the controversy is permitted to present evidence relating to the matters at issue." *Vargas v. Municipal Court*, 22 Cal. 3d 902, 915, 587 P.2d 714, 150 Cal. Rptr. 918 (1978). *Cf. Bell v. Burson*, 402 U.S. 535, 541-42 (1971). Section 116.520(a) satisfies this constitutional requirement.

In cases of default, the defendant has been given the *opportunity* to be heard, which is all that is constitutionally required. An evidentiary prove-up hearing is not always necessary to satisfy due process. See, e.g., *County of Yuba v. Savedra*, 78 Cal. App. 4th 1311, 93 Cal. Rptr. 2d 524 (2000). An analysis of the circumstances that would warrant a prove-up hearing is not necessary, since Section 116.520(b) requires that the plaintiff prove his case even in instances of default by the defendant.

An argument has been made at times that the prohibitions against pretrial discovery in small claims proceedings (Sections 116.310(b), 116.770(b)) impedes the litigants' right to present evidence. However, the opportunity to take depositions of witnesses prior to trial is not a requirement of due process. *Melancon v. Superior Court*, 42 Cal. 2d 698, 706, 268 P.2d 1050 (1954). Moreover, as the court in *Bruno v. Superior Court*, 219 Cal. App. 3d 1359, 1364, 269 Cal. Rptr. 142 (1990), noted with regard to small claims proceedings:

> Evidence to support the defenses can be obtained by means other than formal discovery. Witnesses may be called and examined at

> the trial itself. Subpoenas and subpoenas duces tecum are available for the asking. (§ 1985.)

At the time *Bruno* was decided, the Small Claims Act then in effect did not expressly prohibit pretrial discovery on appeal from a small claims court judgment, as it does today. The court held that there was no right to discovery in the trial de novo based on legislative intent:

> We are convinced that the Legislature did not intend that formal discovery procedures should be permitted in either the small claims action itself or the de novo proceeding on appeal. Obviously, formal discovery procedures in the original small claims actions would be completely inconsistent with the goals and procedures of the small claims court and would impose an unacceptable burden on unrepresented litigants. Discovery at the appeal level would also defeat the object of speedy and inexpensive settlement of disputes, the object of the entire small claims process.

Id. at 1363.

The Judicial Council has facilitated the production of evidence at a small claims hearing by adopting for mandatory use by all courts a "Small Claims Subpoena for Personal Appearance and Production of Documents and Things at Trial or Hearing and Declaration" (Form SC-107). In addition, the mandatory "Plaintiff's Claim and Order to Defendant (Small Claims)" (Form SC-100) informs the defendant that subpoenas may be issued by the clerk of the court.

Another aspect of due process is the right to confront and cross-examine witnesses. See *Malinda*, 51 Cal. 3d at 383 n.16, and cases cited therein. "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970). In contrast, where a subjective evaluation is to be made and depends on a host of intangible factors rather than on the existence of specific and contestable facts, the right to confront and cross-examine would not reduce the likelihood of an erroneous determination and is not constitutionally required. See, e.g., *People v. Ramirez,* 25 Cal. 3d 260, 599 P.2d 622, 158 Cal. Rptr. 316 (1979) (confrontation, cross-examination, and other formal hearing rights not needed to protect interests of patient-inmate from exclusion from Civil Addict Program for nonamenability).

In this area — confrontation and cross-examination — the Small Claims Act might be constitutionally weak.

Section 116.520(c) authorizes the court in a small claims proceeding to consult informally with witnesses and to otherwise investigate the controversy with or without notice to the parties. To the extent that this provision allows the court to make a decision regarding the merits of the case without one or both parties being informed of the evidence and having the opportunity to contest that evidence, a due process violation *might* occur. Additionally, if the court is permitted by this provision to consider evidence not introduced at the hearing, it *might* also violate the due process requirement that the decisionmaker base the decision on the legal rules and evidence presented in open court. *Goldberg*, 397 U.S. at 271.

> Judicial absolutism is not a part of the American way of life. The odious doctrine that the end justifies the means does not prevail in our system for the administration of justice. The power vested in a judge is to hear and determine, not to determine without hearing. ...To judge in a contested proceeding implies the hearing of evidence from both sides in open court, a comparison of the merits of the evidence of each side, a conclusion from the evidence of where the truth lies, application of the appropriate laws to the facts found, and the rendition of a judgment accordingly.

In re Buchman's Estate, 123 Cal. App. 2d at 560.

> Elementary principles of due process support our conclusion that if, during a trial, the court, sua sponte, unearths a point of law which it deems to be decisive of the cause, the party against whom the decision impends has the same right to be heard before the decision is announced *that he has to produce evidence upon the issues of fact*. Denial of that opportunity deprived defendant of a substantial right to which it was entitled by virtue of the guarantee of due process.

Moore v. California Minerals Products Corp., 115 Cal. App. 2d 834, 837, 252 P.2d 1005 (1953).

A former version of Section 116.520(c) was discussed in *Bruno, supra*:

> Section 117, subdivision (a), provides that *at the hearing* of a small claims action "[t]he judge may consult witnesses informally and otherwise investigate the controversy." ... Thus if questions of fact remain insufficiently explored through the lack of pretrial discovery or cooperation between the parties, the court *during trial* can order the parties to disclose and/or produce anything it deems necessary for resolution of the case.

Bruno, 219 Cal. App. 3d at 1364 (emphasis added).

The *Bruno* court construed Section 117(a) to apply *to the hearing*. Moreover, at the time of the decision, Section 117(a) provided: "The judge may consult witnesses informally and otherwise investigate the controversy." 1982 Cal. Stat. ch. 497, § 26. The "with or without notice" provision did not become law until the 1990 enactment. 1990 Cal. Stat. ch. 1305, § 3. Interestingly, an even earlier version of Section 116.520(c) stated that the judge "may also informally make any investigation of the controversy between the parties either *in or out of court*." Former Section 117g (1933 Cal. Stat. ch. 743, § 30).

The current version of Section 116.520(c) was mentioned in dicta in *Houghtaling*. The court commented that the "statutes are clearly designed to afford both the parties and the court considerable flexibility in presenting their cases and ascertaining the truth." 17 Cal. App. 4th at 1135. It then warned, however,

> [a]s a matter of due process and fundamental fairness, courts should tread carefully in obtaining evidence ex parte and then ruling without giving the adverse party the opportunity to respond to apparently damaging evidence so obtained. On the other hand, the Legislature has evidently recognized that small claims litigants sometimes present their cases so inexpertly that the trial court can best serve justice by using its own experience and resources to investigate the matter and evaluate the facts.

Id. at 1135 n.6.

Hearsay evidence is ordinarily inadmissible in a court proceeding because its reliability cannot be tested by cross-examination. Yet, hearsay evidence is routinely admitted in small claims proceedings, even if the evidence does not satisfy an exception to the hearsay rule. This procedure was condoned in *Houghtaling.*

The *Houghtaling* court held that in a proceeding conducted under the Small Claims Act, *relevant* hearsay evidence is *admissible* subject only to the limitations contained in Evidence Code Section 352 (time-consuming, prejudicial, confusing, and misleading evidence) and the law of testimonial privileges. The trial court then exercises its sound discretion in determining the *weight* to which the evidence is entitled. *Id.* at 1131.

In *Houghtaling*, the plaintiff in the small claims court was permitted to introduce a notarized statement from an out-of-state mechanic regarding the cause of the vehicle's malfunctioning. The court affirmed that the defendants had

no means of challenging the declarants' expertise or honesty (*id.* at 1135), but proffered several reasons for admitting such evidence nonetheless.

The court first noted that the law permits the introduction of hearsay evidence in many situations even though cross-examination is not available. *Id.* The court also noted that small claims proceedings are heard by a judge, not a jury; i.e., the risk that the evidence will be overvalued is nonexistent since judges routinely balance the probative worth of evidence against the danger it will mislead the jury. *Id.* at 1136. The court further stressed the special nature of the small claims forum, which is designed for the "unsophisticated petty litigant." Arguing practicality, the court asserted that it is "unrealistic" to expect nonattorneys to understand the formal rules of evidence. Moreover, strict enforcement of the hearsay rule would contravene the legislative goals of speed and economy by compelling the parties to bring in additional witnesses to testify in person. *Id.* Since small claims proceedings are rarely reported, the court opined that "there is little point in establishing detailed rules where errors would generally escape discovery and correction." *Id.* at 1138.

> On the other hand, and more importantly, the system is designed to depend upon the common sense ability of the judges to sort out relatively *minor* disputes. As mentioned above, the rules of evidence are commonly relaxed in court trials, a practice which reflects a recognition that judges are — and must be — trusted to treat questionable evidence in a fair and rational manner.

Id. (emphasis added).

The *Houghtaling* court seems to equate "minor disputes" with the level of complexity of the case. Recall that the *San Francisco* court determined that "minor" refers solely to the financial value of the case. 141 Cal. App. 3d at 474. This view is consistent with opinions that other courts have expressed regarding the purpose of small claims courts ever since the inception of such courts. The *Houghtaling* court itself noted that the legislative intent behind the small claims court is to create an informal forum in which disputes over "modest sums of money" may be resolved. 17 Cal. App. 4th at 1133. While most cases involving "modest sums" will be of a simplistic nature, this is not necessarily true of all small claims cases, particularly if the jurisdictional limit is raised to $10,000.

The *Houghtaling* court's emphasis on the inappropriateness of formal rules of evidence in cases involving lay persons brings into question whether the same reasoning should apply to the trial de novo since the parties may be represented

by counsel on appeal. The court did not directly address this issue. Rather, the court held that different rules were not necessary for the trial de novo because it, too, is to be conducted "informally" (Section 116.770(b)) and rules of evidence do not rise to the level of significance that representation by counsel does. 17 Cal. App. 4th at 1139.

Justice Timlin authored a lengthy dissent. His policy and statutory construction arguments merit consideration (e.g., that lay persons recognize the unreliability of such evidence even if they don't know the legal term is hearsay; that the majority's ruling just shifts the cost to the opponent of the evidence, etc.). For purposes of this memorandum, it is Justice Timlin's remarks regarding the majority's "omission" of a constitutional analysis that are most relevant:

> More importantly, the majority continues to ignore the fact that small claims proceedings, although informal, are still adjudicatory proceedings (not administrative) within the civil judicial system and as such are subject to the basic common law and statutory rules of evidence grounded in constitutional principles of the right to procedural due process and to confront and cross-examine a witness, so as to assure that all evidence to be considered by a judicial officer is trustworthy and reliable.

Id. at 1151. See also *In re Lucero L.*, 22 Cal. 4th 1227, 1244, 998 P.2d 1019, 96 Cal. Rptr. 2d 56 (2000) ("in civil proceedings, including less formal administrative proceedings, parties generally have a due process right to cross-examine available hearsay declarants.").

Early Trial Date. Small claims cases have much earlier trial dates than cases that otherwise originate in superior court. When a claim is filed, the clerk of the small claims court schedules the case for hearing and issues an order directing the parties to appear at the set time. Section 116.330(a). The order is served on the defendant along with the claim. Section 116.340(a). Alternatively, the clerk may cause a copy of the claim to be mailed, with return receipt, to the defendant. On receipt of proof that the claim was served, the clerk then issues an order scheduling the case for hearing and serves the order on the parties by mail, with return receipt. Section 116.330(b).

Generally, if the defendant resides in the county in which the action is filed, the case is scheduled for hearing between 15 and 40 days from the date of the order setting the hearing. If the defendant resides outside the county in which the action is filed, the case is scheduled for hearing between 30 and 70 days from the date of the order. Section 116.330(c). Any party may, however, request in

writing a postponement of the hearing date for good cause shown. Section 116.570.

Does this early trial date provide sufficient time for the defendant to prepare a defense? Keep in mind that in instances where the claim and order are served on the defendant together, the time period in which the defendant has to prepare for trial will be decreased by however long it takes to effect service on him.

In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950), the United States Supreme Court declared that due process requires that the notice be of such a nature as reasonably to convey the necessary information and

> it must afford a reasonable time for those interested to make their appearance. [Citations omitted.] But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met the constitutional requirements are satisfied.

In another Supreme Court case, *Lindsey v. Normet*, 405 U.S. 56 (1972), one of the issues was whether an early trial provision of Oregon's Forcible Entry and Wrongful Detainer Statute (FED) is unconstitutional on its face. Pursuant to that act, trial is to be held no later than six days after service of the complaint unless defendant posts security for accruing rent. The Court held that the provision is not invalid on its face under the Due Process Clause of the Fourteenth Amendment. *Id.* at 64.

The Court based its holding on the fact that the typical FED case involves simple issues (whether the tenant has paid rent or held over), the facts of which are as accessible to the defendant as to the plaintiff. *Id.* at 65. These actions, therefore, will not ordinarily require extended trial preparation and litigation. Moreover, in cases where the defendant requires more time to prepare for litigation, the defendant can obtain a continuance by posting security for accruing rent. *Id.* The Court cautioned, however, that the early trial provision could be *applied* so as to deprive a tenant of a proper hearing in specific situations. *Id.*

Because there are no responsive pleadings and no discovery in small claims proceedings, and pretrial motions are limited (e.g., venue), there does not appear to be a need for a lengthy pretrial preparation period. The defendant simply needs sufficient time to subpoena documents and witnesses.

Of course, the staff must once again point out the possibility that more complex cases will be heard in the small claims court if the jurisdictional limit is raised to $10,000. In some cases, the statutory time periods may be insufficient,

particularly where service is delayed or the evidence is not readily accessible to the defendant. In these instances, a postponement of the hearing may be granted. Section 116.570.

Judgment. A fair hearing requires not only the presentation of evidence, but also "a comparison of the merits of the evidence of each side, a conclusion from the evidence of where the truth lies, application of the appropriate laws to the facts found, and the rendition of a judgment accordingly." *In re Buchman's Estate*, 123 Cal. App. 2d at 560.

Section 116.610(a) requires that the court in the original small claims hearing give judgment for damages or equitable relief, or both. It does not require a statement of decision or findings of fact nor authorize the parties to request such findings. If the judgment is against two or more defendants or the defendant has filed a claim against the plaintiff, the judgment and the statement of decision, if one is rendered, must specify the basis for and the character and amount of liability of each of the parties. Section 116.610(d). If specific property is referred to in the judgment, the property must be identified with sufficient detail to permit enforcement of the judgment. Section 116.610(e). These provisions apply to the judgment of the superior court after a trial de novo on appeal. Section 116.780(b). Section 116.770(b) expressly states that no tentative decision or statement of decision is required with regard to the appeal.

In contrast, Section 632, applicable to other superior court actions, requires a statement of decision (formerly findings of fact) explaining the factual and legal basis for the court's decision as to each of the principal controverted issues *upon request of any party in a nonjury trial.*

A statement of decision serves several purposes, most of which are inapplicable to small claims proceedings. For instance, a statement of decision is essential to effective appellate review. However, the only permissible appeal of a small claims court judgment is a trial de novo. Section 116.770(a). Similarly, there is no need for a record on which to base a motion for new trial as the superior court's judgment on appeal is final. Section 116.780(a); see also *Eloby v. Superior Court*, 78 Cal. App. 3d 972, 144 Cal. Rptr. 597 (1978). Nor are findings of fact necessary to determine collateral estoppel issues in a subsequent proceeding since small claims judgments are not ordinarily given collateral estoppel effect. See *Sanderson*, 17 Cal. 2d at 575; *Rosse*, 34 Cal. App. 4th at 1053.

Where specificity is necessary for enforcement purposes (e.g., to ensure that execution is upon the correct property), Section 116.610 requires that the court

identify the property at issue and/or liability of the individual parties in its judgment.

As discussed, due process requirements vary with the necessities of the proceeding. For example, findings have been held to be constitutionally required in administrative proceedings in order to minimize the likelihood of arbitrary decisions by administrative bodies and to enable the reviewing court to trace and examine the agency's analytical route. See, e.g., *Saleeby*, 39 Cal. 3d at 567.

Due process has also been held to require findings in actions seeking a determination that a minor is a ward or dependent child of the court "so that a litigant may be apprised of the tribunal's reasons for its decision and as a basis for the review." See *In re J.T.*, 40 Cal. App. 3d 633, 641-42, 115 Cal. Rptr. 553 (1974).

The staff has been unable to find cases holding that findings are constitutionally required (either absolutely or upon request) in general civil matters, particularly where, as in the case of small claims proceedings, there is no right of review.

On the other hand, since the purpose of procedural due process is to protect against "arbitrary takings," isn't some sort of statement of reasons — oral or written — on which the court's judgment is based desirable? Because there is no right of appeal beyond the trial de novo, even of a seemingly arbitrary decision, the purpose of such findings in small claims proceedings would be to require the court to give the evidence careful consideration (i.e., to provide a "meaningful" hearing).

In *Kent v. United States*, 383 U.S. 541, 561 (1966), the United States Supreme Court ruled that an informal decision of the juvenile court to waive its exclusive jurisdiction in the case of a juvenile accused of an offense could not be reached without a statement of reasons. Not only was a statement of reasons deemed necessary for meaningful judicial review, but it was also considered desirable as an assurance that the jurisdictional question would receive "the careful consideration" of the juvenile court in the first instance. *Id.*

In *In re Strum*, 11 Cal. 3d 258, 269 n.13, 521 P.2d 97, 113 Cal. Rptr. 361 (1974), the California Supreme Court stated the following with regard to the *Kent* decision: "Kent stands for the proposition that fairness requires a statement of reasons as a guard against the arbitrary exercise of certain kinds of informal power." This statement is dictum; nevertheless, it is relevant to the question whether some form of findings should be required in small claims proceedings

given the informal nature of those proceedings, including relaxed rules of evidence.

Would the Current Procedures Satisfy Due Process if the Jurisdictional Limit is Raised to $10,000?

The answer to this question requires a review of the four factors that are to be balanced in determining what process is due:

> (1) The private interest that will be affected by the official action.
>
> (2) The risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards.
>
> (3) The dignity interest in informing individuals of the nature, grounds and consequences of the action and in enabling them to present their side of the story before a responsible governmental official.
>
> (4) The governmental interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Private Interest at Stake: In *Savedra,* the court was confronted with the issue whether a summary procedure (under former sections of the Family Code) permitting a default judgment for child support to be entered without an evidentiary prove-up hearing violated due process. The court stated that the private interest at stake in such a case is a financial interest and thus not at the same level as a deprivation of free speech, religious freedom, or liberty — i.e., not a fundamental right. 78 Cal. App. 4th at 1325.

Similarly, the private interest ordinarily at stake in a small claims proceeding is a financial one. If the jurisdictional limit of the court is raised to $10,000, then, in some cases, the financial interest at stake will be greater. To a poor defendant, the financial interest could be substantial. It should be kept in mind, however, that the Enforcement of Judgments Law (Sections 680.010 *et seq.*) provides for exemptions that allow the judgment debtor and the debtor's family to retain sufficient money and property for their support.

In an action otherwise within the jurisdictional limits of the small claims court, the court may grant specified equitable relief. The permissible equitable remedies relate primarily to contractual obligations (rescission, restitution, reformation, specific performance). Section 116.220(b). In most cases, the equitable remedy will still involve a financial interest (e.g., return of a car). As discussed in Memorandum 2001-43, p. 3 (May 4, 2001), it does not appear that the

authorized equitable relief is limited by the current $5,000 monetary limits of the small claims court. It is conceivable that as the jurisdictional limit increases, the financial interest that may be affected by the court's authorized equity jurisdiction may also increase. "At the same time, the concept of the small claims court as a court for 'small' claims necessitates some limit on the value of the item or relief in dispute, even if that limit can only be expressed in common sense, but not dollar, terms." *Consumer Law Sourcebook for Small Claims Court Judicial Officers* § 5.26 at 52 (Dep't Cons. Aff. 1996).

Dignity Interest: A civil defendant, whether in small claims court or otherwise, has a significant dignity interest in being informed of the claims made and being fully and fairly able to present evidence and arguments against them to an impartial decisionmaker.

Risk of Erroneous Deprivation/Probable Value of Additional Safeguards: The risk of an erroneous deprivation of the defendant's financial interest through the current procedures in use in the small claims court is probably not high. The defendant is entitled to present evidence and argue the case to the court. If the defendant believes that the court's judgment is wrong, either in finding liability or in the amount of that liability, the defendant may appeal to the superior court for a trial de novo before a different judge. At that hearing, the defendant may be represented by counsel. However, the superior court's judgment on appeal is ordinarily final, even if erroneous. Review by an appellate court is rare — extraordinary writ or certification of issues are the only means of obtaining such review. This led the court in *Parada v. Small Claims Court*, 70 Cal. App. 3d 766, 139 Cal. Rptr. 87 (1977), to proclaim with regard to the ban on appeals by plaintiffs: "Inherent in this scheme is, as is the case herein, the possibility of an occasional error of law that will be uncorrectable." *Id.* at 769.

In 1992, Section 116.725 was added to the Small Claims Act. It provides that nothing in the Act "shall be construed to prevent a court from … setting aside and vacating a judgment on the ground of an incorrect or erroneous legal basis for the decision." There are no published interpretations of this section. Although there is a split of authority among the appellate courts regarding the right to a rehearing, the courts have agreed that small claims appeal judgments may not be attacked by a motion to vacate or motion for new trial under Sections 473, 659, and 663. See *Eloby*, 78 Cal. App. 3d 972; *ERA-Trotter*, 50 Cal. App. 4th 1851. *ERA-Trotter* was decided four years after Section 116.725 was added to the Act; yet, the court makes no mention of it. Thus, the application of Section 116.725 is unclear,

including its application to appellate courts ("Nothing in this chapter shall be construed to prevent *a court*....") (emphasis added).

Even if Section 116.725 is available to remedy a legally erroneous judgment, mistakes of fact may go uncorrected. In the case of a small claims plaintiff, the risk of an irremediable error might to some extent be tolerable because the plaintiff selects the forum. This risk may be less acceptable in the case of a defendant who appears in the small claims forum unwillingly. The acceptability of such a risk may also decrease as the financial interests at stake increase. On the other hand, the consequences of such a risk are limited in their extension to other proceedings, because a small claims judgment is not ordinarily given collateral estoppel effect.

Notwithstanding, the staff sees several weaknesses in the current system that could be improved, particularly if the jurisdictional limit of the small claims court is raised to $10,000. Some of the suggestions might be more appropriate for the trial de novo on appeal, leaving the small claims hearing as informal as possible.

The "official" claim form assumes simple facts are at issue. An increase in the jurisdictional limit of the small claims court may bring more complex matters into the system. Increasing the space on the form for the plaintiff's explanation of the "basis of the claim" would not necessarily solve the problem. Since the parties are not trained in the law, the plaintiff's explanation would still likely be general in nature, even in a more complicated action. Requiring formal pleading rules would not serve the purposes of the small claims court and, in the vast majority of cases, would not be necessary to apprise the defendant of the nature of the claim. Such pleading rules would also be beyond the understanding of many lay persons. In a few situations, however, a continuance might be necessary to protect the defendant's due process rights where the claim fails to adequately inform the defendant of the issues involved. **The Commission should consider whether to add an express right to a continuance under such circumstances** (rather than relying solely on the court's inherent power to continue court proceedings). The standard for obtaining the continuance could be narrow (e.g., surprise). A review of the rules for continuances in small claims cases in other jurisdictions might be fruitful.

Another area of notice that might be suspect, particularly if there is an increase in the number of small claims actions against corporate defendants, is the service of the claim by mail with return receipt. **The Commission might**

revise Section 116.340(c) to incorporate the standards of *Taylor-Rush*, 217 Cal. App. 3d at 110-11, or to adopt the wording of Section 417.20 to require that the plaintiff provide evidence establishing the authority of the person who signed the return receipt on defendant's behalf or other evidence of defendant's actual receipt.

Although formal rules of evidence are not desirable in a court designed for handling disputes between lay persons, the defendant's due process rights to a meaningful hearing do not evaporate upon entering the small claims arena. The staff, therefore, **recommends that the provision in Section 116.520(c) allowing the court to investigate the controversy *without notice* to the parties be repealed.** The staff agrees with the *Houghtaling* court that small claims litigants may not be particularly adept in presenting their cases, requiring the court to step in and flush out the facts. But, the results of that "investigation" should be told to the parties and they should be given the opportunity to respond to the evidence so obtained.

Houghtaling also noted that courts routinely restrict or forbid cross-examination in small claims matters. 17 Cal. App. 4th at 1133 n.4. Of course, if cross-examination would not elicit relevant information or would necessitate undue delay, confuse the issues, or be prejudicial, the court is empowered to exclude it. Evid. Code §§ 350, 352. Except in such situations, **the right of cross-examination should be preserved (at least on appeal) and the Commission may wish to codify this right in the Small Claims Act.**

In this vein, if hearsay evidence is freely admitted, the court **should permit a short continuance where appropriate to enable the opponent of the evidence to subpoena the declarant.** The Commission should also **consider whether and under what circumstances hearsay evidence should be allowed to form the sole basis of a small claims judgment,** particularly if a larger financial interest is at risk.

In *Malinda*, the California Supreme Court considered the admissibility of social study reports for purposes of determining the court's jurisdiction to declare a minor a dependent child of the juvenile court (Welf. & Inst. Code § 300). Although the Court's holding is limited to Section 300 jurisdictional hearings (which involve fundamental liberty interests), its reasoning is instructive.

The father argued that because of the time constraints inherent in juvenile dependency proceedings, the opportunity to call witnesses mentioned in the report afforded due process on "an abstract level" only. He further argued that

the court's reliance on hearsay statements contained in the report denied him the right to confront and cross-examine adverse witnesses. 51 Cal. 3d at 382-83.

Finding that the parent has substantial private interests at stake and significant dignity interests, the Court nonetheless held that placing the burden to subpoena witnesses quoted in the report on the parent poses little risk of an erroneous deprivation of the parent's custodial rights. *Id.* at 383-84. The Court acknowledged the rapid pace at which the hearings take place and the constraints placed on continuances (granted only on good cause showing and for period of time proven necessary). The Court, however, held that "it is not so burdensome as to amount to a due process violation." *Id.* at 384. The Court emphasized the parents' right to cross-examine adverse witnesses and to employ the court's subpoena power to compel the presence of the witnesses mentioned in the report. *Id.* One additional factor was significant to the court — the reports bear indicia of trustworthiness and reliability having been prepared by disinterested parties in the regular course of their professional duties. *Id.* The Court balanced any possible hardship to the parent against the state's legitimate interest in providing an expedited proceeding to resolve the child's status without further delay. *Id.*

In *Lucero*, the California Supreme Court distinguished between the *admissibility* and *substantiality* of hearsay evidence. Noting that the mere admission of such evidence in a civil proceeding is not unconstitutional, the court stated: "Except in those instances recognized by statute where the reliability of hearsay is established, 'hearsay evidence alone is insufficient to satisfy the requirement of due process of law, and mere uncorroborated hearsay does not constitute substantial evidence.'" 22 Cal. 4th at 1244-45.

The Court noted that this rule has been partly codified in Government Code Section 11513(d), which applies to proceedings under the Administrative Procedures Act: "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." *Lucero*, 22 Cal. 4th at 1245.

Should a similar rule be codified in the Small Claims Act, with or without the necessity of an objection by a party (given that lay persons may not realize the evidence is objectionable)? If such a provision is enacted, hearsay evidence would be admissible according to the *Houghtaling* holding. The court could give the evidence due weight, but could not base a judgment solely on it unless it

would be admissible over objection in civil actions within the general jurisdiction of the superior court.

Finally, the Commission should **consider whether the small claims court or the superior court on appeal should be required to state the reasons for its decision** in order to ensure careful consideration of the evidence. This might also foster a perception among the participants that they had received a fair hearing. The findings need not be formal or even written to achieve this goal.

The above discussion assumes, for the most part, that there is a contested hearing. As stated in *Savedra, supra,* a person "who voluntarily absents himself or herself after service of the complaint has no cause for complaint." 78 Cal. App. 4th at 1326. Provided service is effective, the defendant will have notice of the maximum amount at stake if the defendant elects not to pursue a defense. Section 116.320(b) (claim must set forth amount). Section 116.520(b) requires that the plaintiff prove the case, even against a defaulting defendant. In addition, the defendant, following entry of a final judgment, can seek relief from a default. Sections 116.730, 116.740. These procedures more than amply satisfy due process, even if the jurisdictional limit is $10,000. See *Greeenup v. Rodman*, 42 Cal. 3d 822, 829, 726 P.2d 1295, 231 Cal. Rptr. 220 (1986) (rules governing default judgment provide safeguards which ensure that defendant's choice to defend or give up that right for a maximum liability is a fair and informed one).

Governmental Interest/Burden of Additional Procedures: The governmental interest is the resolution of "minor civil disputes expeditiously, inexpensively, and fairly." Section 116.120(b). For the purposes of the following discussion, $10,000 is assumed to be a "minor" claim. If it is not a "minor" amount, the balancing of interests may require additional procedural safeguards.

The goal of fairness in resolving small claims matters is entirely consistent with due process and the proposed procedural changes discussed above. Although the proposed procedures may in some instances add an additional delay and cost, such instances should be limited.

For example, the staff recommends that the court permit a short continuance where appropriate to enable the opponent of hearsay evidence to subpoena the declarant. In some cases, the evidence will be undisputed so the need for a continuance will never arise. In other cases, the opponent of the evidence may decide not to elicit live testimony from the declarant. As noted in *Malinda*, cross-examination, particularly of a live witness in place of a document, may strengthen not weaken the force of the evidence. 51 Cal. 3d at 385 n.20. Where the

declarant's testimony is desired, the party may employ the court's subpoena power to compel the witness' presence at minimal cost.

The staff also recommends short continuances where the claim is insufficient to permit the defendant to prepare an adequate defense and where the court has uncovered evidence ex parte. The court already has the inherent power to order such continuances. Codification of such a right, particularly if the standard for granting a continuance is narrow, should not cause unreasonable delays in the few cases in which such a continuance would be appropriate.

Limiting the use of hearsay evidence when the declarant is unavailable for cross-examination and the evidence does not satisfy established statutory hearsay exceptions will not prolong the hearings. The plaintiff may need to obtain additional evidence before the hearing, but the additional costs for issuing subpoenas should be minimal. If sufficient evidence is not presented, the plaintiff may be unable to sustain the burden of proof and judgment would be appropriate for the defendant.

Ensuring the parties' right of cross-examination generally should not unduly prolong the hearings and should impose no additional costs. As discussed, repetitive, prejudicial, irrelevant, and confusing cross-examination may properly be denied or curtailed by the court. Additionally, the court can assist the questioning of the witnesses in order to expedite the proceedings.

Likewise, requiring that the court state the basis of its decision at the time judgment is rendered should not cause substantial additional costs or delay. In fact, the staff suspects that most small claims judges already endeavor in some fashion to explain their reasoning to the parties. The proposed procedure would not impose an unreasonable new burden.

As discussed, due process requires only one fair hearing. Hence, the Commission could decide to leave the small claims court procedures as they are currently, but propose changes to the procedure on appeal that incorporate one or more of the staff suggestions. Since some cases will never be appealed (e.g., defendant prevails in the small claims court), any delays due to the increased formality will have a limited impact. Further, weaknesses in the parties' presentations should be revealed in the initial hearing and could be remedied before the trial de novo begins.

Of course, more formal procedures on appeal would place an unrepresented litigant at a disadvantage if the other side is represented by counsel, but that is a possibility in any civil case where one party proceeds in pro per. The staff is not

recommending that a full-blown trial be required, as was previously the case. The informal hearing was instituted at the behest of the judges due to an increase in the number of appeals following the *Brooks* decision invalidating the requirement of an undertaking on appeal (see "Right to Counsel"). See *Burley*, 40 Cal. App. 3d at 756 n.4. The staff is only suggesting that if the jurisdictional limit is raised, it may be time to reconsider whether the pendulum has swung too far in the opposite direction — i.e., towards too informal of a trial de novo.

In some states (e.g., South Dakota), small claims defendants have the right to request a transfer to a regular court docket. There are no appeals from small claims proceedings where such a transfer right exists, because the defendant is deemed to waive such a right by choosing to remain in the small claims forum. Since empirical evidence demonstrates that the majority of small claims plaintiffs today are organizations, transfer at the defendant's election to the superior court with its attendant costs would not be unreasonable. **This is another alternative the Commission might wish to explore.**

Equal Protection Considerations

As discussed, the small claims defendant in *San Francisco* argued that it was denied equal protection of the law by being denied the "full panoply" of procedural devices and protections available to "similarly situated" defendants in non-small claims actions. 141 Cal. App. 3d at 478. The appellate court, however, rejected this comparison and found no equal protection violation since the defendant was subject to the same rules as all other defendants in small claims court. *Id*. The staff raised the issue whether the comparison between small claims defendants was appropriate inasmuch as the decision to file a minor claim as a small claims action rather than as a limited civil case is solely within the plaintiff's discretion (see "Right to Appeal" above).

If the *San Francisco* court's analysis is the appropriate one, then the informal procedures used in small claims proceedings should withstand any equal protection challenge, provided small claims defendants are treated alike. If, however, the more appropriate analysis is between small claims defendants and other civil defendants, the small claims court proceedings are constitutional if the procedural distinctions bear a *reasonable relationship* to a valid state objective and do not *arbitrarily* discriminate against a class of litigants. See *Lindsey v. Normet*, 405 U.S. 56, 69-77 (1972). A more stringent standard than rationality is not necessary inasmuch as the small claims defendant's interest is not a fundamental

or constitutional one, but merely a financial interest. Nor are the distinctions between litigants based on inherently suspect classifications (e.g., race) requiring stricter scrutiny. *Id.* at 73-74.

In Lindsey, the United States Supreme Court held that Oregon's Forcible Entry and Wrongful Detainer Statute (FED) was not invalid on its face under the Equal Protection Clause:

> It is true that Oregon FED suits differ substantially from other litigation, where the time between complaint and trial is substantially longer, and where a broader range of issues may be considered. But it does not follow that the Oregon statute invidiously discriminates against defendants in FED actions.
>
> The statute potentially applies to all tenants, rich and poor, commercial and noncommercial; it cannot be faulted for over-exclusiveness or under-exclusiveness. And classifying tenants of real property differently from other tenants for purposes of possessory actions will offend the equal protection safeguard "only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective," [citation omitted], or if the objective itself is beyond the State's power to achieve.

Id. at 70. Notice that the Court's analysis compared FED defendants with defendants in other litigation. The Court did not compare the defendants in the case with other FED defendants.

The Court found that the early-trial provision and the limitation on litigable issues in FED actions are closely related to the state's objective of prompt and peaceful resolution of disputes over the right to possession of real property. *Id.* The Court also found that the state's objective had ample historical explanation and support and it was not beyond the state's power to implement that purpose by enacting special provisions applicable only to possessory disputes between landlord and tenant. *Id.* at 72. "There are unique factual and legal characteristics of the landlord-tenant relationship that justify special statutory treatment inapplicable to other litigants" (e.g., the tenant is in possession of the property and could deny the landlord the right of income incident to ownership without a speedy adjudication). *Id.*

The Court did find that one aspect of the FED Statute violated the defendants' right to equal protection of the laws: the requirement of a double bond for appealing an FED action. As the Court noted, the ordinary civil litigant need only file a single undertaking to appeal a civil case in Oregon. But, the FED defendant must, in addition, give an undertaking for the payment of twice the rental value.

If the landlord prevailed on appeal, the double-bond requirement entitled the landlord to twice the rents accruing during the appeal without proof of actual damage in that amount. The Court found this provision "imposes additional requirements that in our judgment bear no reasonable relationship to any valid state objective and that arbitrarily discriminate against tenants appealing from adverse decisions in FED actions." *Id.* at 76-77.

If the rationality test is applied to the small claims court in California, it is clear from past court decisions that the objective of the small claims court is constitutionally permissible. Indeed, the small claims court has "ample historical explanation and support." There were a number of well-established small claims tribunals in England and the American colonies and states that predated the 1850 California Constitution. See *Crouchman*, 45 Cal. 3d at 1175-76. Moreover, the informal procedures apply to all small claims defendants — rich and poor, individuals and corporations.

The next issue is whether the informal procedures that characterize the small claims court are rationally related to the objective of resolving minor civil disputes expeditiously, inexpensively, and fairly. As a whole, the procedures are aimed at reducing the time and expense required by the ordinary litigation process in order to encourage legal resolution of disputes involving small amounts of money. A prohibition on discovery, a lack of formal findings, early trial dates, and relaxed rules of evidence, service, and pleading, are all rationally related to that purpose. Of course, if $5,000 or $10,000 is not a "small" sum, then the informal proceedings cannot be said to rationally implement the legislative goal; but rather, arbitrarily discriminate against civil defendants in small claims proceedings.

Further, if distinctions are made among small claims defendants based on the value of the claim involved (e.g., different procedures for cases valued between $5,001 and $10,000), the rationality test would also apply in determining whether those distinctions violate the Equal Protection Clause.

UNENFORCEABILITY OF CHOICE OF FORUM CLAUSES

Last year, the Legislature enacted a new provision (Section 116.225) invalidating any agreement entered into or renewed after January 1, 2003, that establishes a forum outside California "for an action arising from an offer or provision of goods, services, property, or extensions of credit primarily for

personal, family, or household purposes that is otherwise within the jurisdiction of a small claims court of this state." 2002 Cal. Stat. ch. 247 (AB 2949) (Wayne). This legislation was introduced to "respond to the increasing use of choice of forum clauses in consumer contracts that seek to require California consumers to litigate disputes over consumer contracts outside of the state." Senate Judiciary Committee Analysis of AB 2949 (June 18, 2002). According to the author:

> This bill resolves a small part of the problem by preserving the jurisdiction of the small claims court as the people's court for the resolution of relatively *small* consumer disputes. The bill would ensure that a choice of forum provision could not be used to defeat the ability of a consumer to have his or her day in court for the vindication of many consumer disputes. The bill would also ensure that a consumer would not be victimized by a choice of forum provision in having to defend a case in a remote locale, perhaps thousands of miles away, when the case was otherwise in the small claims court's jurisdiction. It is simply unrealistic to expect that a consumer could afford to bring or defend an action for *a few hundred or even a few thousand dollars* in a distant forum.

Id. (emphasis added).

A potential constitutional issue was raised during the legislative process regarding the effect that AB 2949 would have on the enforcement of out-of-state judgments. Specifically, the issue is whether a California court's refusal to enforce an out-of-state judgment on the basis of Section 116.225 would violate the Full Faith and Credit Clause of the United States Constitution (art. IV, § 1), which requires each state to give effect to the judicial proceedings of sister states. That issue exists at present, but the analysis could be affected by a doubling of the jurisdictional limit. If the issue is raised in a case, it will be necessary to analyze whether either of the exceptions to the Full Faith and Credit Clause applies: lack of jurisdiction and violation of a fundamental state interest.

Lack of Jurisdiction

An out-of-state judgment need not be accorded full faith and credit if the issuing court did not have jurisdiction over the subject matter or the parties. See *Underwriters Nat'l Assurance Co. v. North Carolina Life & Accident & Health Ins. Guaranty Ass'n*, 455 U.S. 691, 705 (1982); *Medical Legal Consulting Services, Inc. v. Covarrubias*, 234 Cal. App. 3d 80, 87, 285 Cal. Rptr. 559 (1991). While it might be argued that Section 116.225 establishes that a foreign court would lack both subject matter and personal jurisdiction over consumer disputes within the

jurisdictional limits of California's small claims court (see Senate Judiciary Committee Analysis of AB 2949 (June 18, 2002)), a state cannot legislate except with reference to its own jurisdiction. *Bonaparte v. Tax Court*, 104 U.S. 592, 594 (1881); *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 571 (1996).

The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which the person has established no meaningful "contacts, ties, or relations." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985). However, personal jurisdiction is a waivable right. *Id.* at 472 n.14. Forum selection clauses do not offend due process when they are "freely negotiated" and are not "unreasonable and unjust." *Id.*; see also *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972); *Smith, Valentino & Smith, Inc. v. Superior Court*, 17 Cal. 3d 491, 495-96, 551 P.2d 1206, 131 Cal. Rptr. 374 (1976).

"Mere inconvenience or additional expense is not the test of unreasonableness since it may be assumed that the plaintiff received under the contract consideration for these things." *Smith, Valentino & Smith.* 17 Cal. 3d at 496. In *Bremen,* the Court implied that lack of sophistication of the parties and other factual circumstances should be taken into account where a party challenges a forum selection clause. 407 U.S. at 16-17. The Court also cautioned, however, that any challenger "should bear a heavy burden of proof." *Id*. at 17.

Although many consumer contracts will qualify as adhesion contracts (standardized contracts imposed without an opportunity to negotiate terms), this factor in and of itself does not make a forum selection clause unreasonable. "A forum selection clause within an adhesion contract will be enforced 'as long as the clause provided adequate notice to the [party] that he was agreeing to the jurisdiction cited in the contract.'" *Intershop Communications v. Superior Court*, 104 Cal. App. 4th 191, 201-02, 127 Cal. Rptr. 2d 847 (2002) (plaintiff had full notice he was agreeing to Hamburg as place of trial, even though he chose not to read contract).

Based on the above, if a California consumer could show that the forum selection clause was not freely negotiated or was unreasonable on another basis, then a California court would not be obligated to accord it full faith and credit. This is, however, a context-specific factual determination.

Violation of "Fundamental State Interest"

Another, though rare, exception to application of the full faith and credit clause arises when enforcement of another state's judgment would violate a fundamental state interest. *United Bank of Denver v. K & W Trucking Co.*, 147 Cal. App. 3d 217, 222, 195 Cal. Rptr. 49 (1983). The Senate Judiciary Committee analysis of AB 2949 referred to this exception, and pointed out that in a somewhat different context the court in *America Online, Inc. v. Superior Court*, 90 Cal. App. 4th 1, 108 Cal. Rptr. 2d 699 (2001), had found that preserving California consumer remedies is an important public policy interest.

Thus far, however, the United States Supreme Court has not applied the "fundamental interest" exception to money judgments. See *Medical Legal Consulting*, 234 Cal. App. 3d at 90-91 (listing Supreme Court cases). California courts have followed suit. See, e.g., *United Bank*, 147 Cal. App. 3d at 222.

Even if the fundamental policy exception were applicable to a money judgment, an increase in the small claims court jurisdictional limit to $10,000 could possibly weaken such an argument. Recall that AB 2949 was brought to preserve the jurisdiction of the small claims court for the resolution of "*relatively small consumer disputes*." Indeed, reference was made to a "few hundred" or "a few thousand dollars." Senate Judiciary Committee Analysis of AB 2949 (June 18, 2002). Would a suit for $10,000 still be considered a "small consumer dispute"?

WHAT IS A SMALL MONETARY AMOUNT IN TODAY'S ECONOMY?

In *Crouchman*, the California Supreme Court cautioned that the "Legislature's power to raise the small claims court jurisdictional amount is limited by constitutional parameters." 45 Cal. 3d at 1177. The Court also warned that an increase in the jurisdictional amount of the court "to a level which could no longer be considered a *very small monetary amount,* would probably necessitate a re-evaluation of whether a jury trial is constitutionally required for the de novo appeal." *Id.* (emphasis added).

Although the *Crouchman* decision focused solely on the right to a jury trial, the history of the small claims court and the intent of the Legislature in enacting the Small Claims Act are premised on the goal of providing justice in small monetary matters at a reasonable cost. Under the Due Process and Equal Protection Clauses, the small claims procedures and distinctions must be reasonably related to that goal in order to withstand constitutional challenges.

In 1988, the jurisdictional limit of the small claims court was $1,500. This amount was deemed constitutional in *Crouchman*:

> We find the current small claims ceiling to be a reasonable legislative enactment to allow claimants with small monetary demands to resolve their cases expeditiously, while preserving the defendant's right to jury trial, as historically defined. The $1,500 limit falls comfortably within the constitutional guidelines.

Id.

No appellate decision has determined the constitutionality of the current $5,000 small claims court jurisdictional limit. Whether this limit or the proposed $10,000 limit constitutes a "small monetary amount" in today's economy is still to be decided.

The *Crouchman* Court presented the following test:

> The principle established by the English common law as it existed in 1850 was that small claims, as legislatively defined within *limits reasonably related to the value of money and the cost of litigation in the contemporary economy*, were to be resolved expeditiously, without a jury and without recourse to appeal.

Id. (emphasis added). By its reference to the "contemporary economy," the Court rejected the notion that the concept of a small monetary amount is static. Rather, the determination is one based on current economic conditions.

The *Crouchman* decision repeatedly references Barrett, *The Constitutional Right to Jury Trial: A Historical Exception for Small Monetary Claims*, 39 Hastings L.J. 125 (1987). Professor Barrett advanced the thesis that modern legislatures must periodically adjust the small claims jurisdictional limits:

> [M]odern legislative bodies, like their preconstitutional counterparts, should be able to determine and periodically adjust the amount-in-controversy that will be deemed a "small claim" for purposes of the juryless adjudication procedure. Amount-in-controversy requirements should take into account objective factors such as changes in the value of money and in the complexity and expense of litigation.

Id. at 130.

Based on the above, the relevant inquiry is: At what point does the expense associated with modern litigation procedures become so disproportionate to the value of the money involved that it discourages legal resolution of the dispute? See *Pace*, 101 Cal. App. 3d at 478.

Whose Perspective?

As originally conceived, small claims courts were viewed as a means of securing legal redress for poor plaintiffs. See Eye, Comments, *The Small Claims Court: Justice for the Poor or Convenience for the Businessman*, 1 Pepp. L. Rev. 71 (1973). See also Barrett, *supra,* at 160: "In many cases, the added cost imposed through introduction of a jury would make litigation of a small claim economically impractical, leaving a plaintiff with no realistic means of obtaining legal redress."

This original purpose appears throughout the early cases. See, e.g., *Prudential Ins. Co. v. Small Claims Court*, 76 Cal. App. 2d 379, 383, 173 P.2d 38 (1946):

> Justice should not be a rich man's luxury. The Magna Carta guaranteed that justice would not be denied or delayed. Ever since 1215 those interested in the administration of justice have struggled somewhat unsuccessfully to live up to that promise so far as the poor litigant is concerned. The delay and expense incident to litigation have long discouraged the attempts of the poor litigant to secure redress for claims meritorious but small in amount.

Even more recently, the *San Francisco* court held that the word "minor," as used in the modern legislative intent provision of the Small Claims Act, refers to the financial value of the claim to the *individual plaintiff*:

> From their inception, small claims courts have been held to exist to make it possible for plaintiffs with meritorious claims for small amounts of money, to bring these claims to court without spending more money on attorney's fees and court expenses than the claims were worth.

141 Cal. App. 3d at 474.

This original concern for poor plaintiffs was also mentioned during the *Crouchman* Court's analysis of 1850 common law. *Crouchman*, 45 Cal. 3d at 1175. Nonetheless, the Court's test for determining the constitutionality of the small claims limit does not distinguish between plaintiffs and defendants (see above). Nor does the current legislative purpose, as expressed in Section 116.120:

> 116.120. The Legislature hereby finds and declares as follows:
> (a) Individual minor civil disputes are of special importance to the parties and of significant social and economic consequence collectively.
> (b) In order to resolve minor civil disputes expeditiously, inexpensively, and fairly, it is essential to provide a judicial forum

> accessible to all parties directly involved in resolving these disputes.
>
> (c) The small claims divisions have been established to provide a forum to resolve minor civil disputes, and for that reason constitute a fundamental element in the administration of justice and the protection of the rights and property of individuals.
>
> (d) The small claims divisions, the provisions of this chapter, and the rules of the Judicial Council regarding small claims actions shall operate to ensure that the convenience of parties and witnesses who are individuals shall prevail, to the extent possible, over the convenience of any other parties or witnesses.

The "value of money" is not inherently plaintiff-specific. As expressed in a recent unpublished appellate court decision, the value of money to the defendant is equally significant:

> Despite its label, $5,000 is not, by any stretch of the imagination, a "small" claim. It has the potential to bankrupt a modest wage earner or a financially strapped public entity, particularly where, as here, several "small" claims are consolidated to form a huge aggregate claim....While we are aware of the relative informality of small claims court hearings [citations omitted] and "[u]rge the trial courts to be innovative" in this area, they cannot be "unmindful of the accompanying dangers of injustice" [citation omitted]. Due process demands no less.

Housing Authority of City and County of San Francisco v. Superior Court, 18 Cal. Rptr. 2d 218 [previously published at 14 Cal. App. 4th 874] (1993). Additionally, if the costs of defending an action exceed the amount of the claim, many defendants will simply default. Empirical data demonstrates that the default rate among individual small claims defendants is fairly high (see below).

Notwithstanding the original concern for poor plaintiffs, empirical evidence demonstrates that businesses and governmental entities are the principal users of today's small claims court. This phenomenon was discussed extensively in *Brooks*. 8 Cal. 3d at 668-69. It constituted a compelling policy reason supporting the Court's decision to strike down the former undertaking requirement before a defendant could appeal a small claims decision (*id.* at 668):

> Empirical studies have shown a proportionately greater use of the small claims procedure by institutional creditors than by individual creditors.
>
> ....
>
> These studies indicate that the institutional creditor, rather than the ordinary individual claimant, is more likely to avail itself of the

> small claims court. The monetary limit has now been increased to $500 (s 117). Additionally, section 396 permits waiver of the amount of the demand in excess of $500 in order to sustain jurisdiction. "Even a party who asserts a demand for more than the jurisdictional limits of a small claims court will often benefit financially by sacrificing part of the claim to avoid the expense and delay of prosecution through municipal or justice courts." (Skaff v. Small Claims Court (1968) 68 Cal.2d 76, 77, fn. 1, 65 Cal.Rptr. 65, 435 P.2d 825.) All of these factors would seem to make the small claims court increasingly attractive to the institutional creditor-claimant. In addition, such type of creditor has frequently employed the rules of venue so as to bring an action at great distances from the residence of the defendant. This contributes significantly to the number of defaults entered.

Id. at 668-69.

The Court reviewed the findings of two studies examining users of small claims courts. In an empirical study made of the Oakland-Piedmont-Emeryville small claims court in 1963, the study revealed that 65.3 percent of the plaintiffs were businesses or governmental entities (proprietorship-16.8%; corporation-28.5%; governmental agency-20%). Conversely, 85.7 percent of the defendants were individuals. The study also found that 89.5 percent of all judgments were in favor of the plaintiff. *Brooks*, 8 Cal. 3d at 668 (citing Comment, *The California Small Claims Court,* 52 Cal. L. Rev. 876, 893-94 (1964)).

Similar figures, developed in a survey of rural small claims courts, revealed that the burden on the individual was not confined to urban communities. *Brooks*, 8 Cal. 3d at 668 (citing Note, *The Persecution and Intimidation of the Low-Income Litigant as Performed by the Small Claims Court in California*, 21 Stan. L. Rev. 1657, 1659-61 (1969)).

A later study of the Pomona Small Claims Court resulted in the same conclusions based on similar findings. Eye, Comments, *The Small Claims Court: Justice for the Poor or Convenience for the Businessman*, 1 Pepp. L. Rev. 71 (1973). The study found that only 33.9 percent of plaintiffs were private parties. In contrast, 63.1 percent of the plaintiffs were businesses, and 3.0 percent were government agencies. *Id.* at 84. In contested cases, the plaintiff won a judgment in 70.8 percent of the cases. Of more interest, however, is the finding that the plaintiff received judgment in almost 93 percent of the cases when the plaintiff was a business or government agency and the defendant was a private party. *Id.* at 85. When the

plaintiff was a private party and the defendant a business or government entity, judgment for the plaintiff occurred in only 65.5 percent of the cases. *Id.*

Also telling was the incidence of default. When the plaintiff was a business and the defendant a private party, defaults occurred in 67.2 percent of the cases. When the parties were reversed, the business defendant defaulted only 22.1 percent of the time. When both the plaintiff and defendant were private parties, the default rate was 28.7 percent. *Id.* The author theorizes that the "private party's high rate of default is evidently due to his fear of facing a business plaintiff in court." *Id.* at 76. He argues that a high jurisdictional limit makes it convenient for businessmen to collect their bills through the small claims court system. *Id.* at 79. Of course, a higher default rate may also occur because the plaintiffs are more sophisticated and file only meritorious suits.

The view that small claims courts are being used as collection vehicles for businesses is also propounded in *Small Claims Courts as Collection Agencies*, 4 Stan. L. Rev. 237 (1951-52).

A later study cites the results of a joint experiment by the Department of Consumer Affairs and the Judicial Council conducted between mid-1977 and mid-1979, after the jurisdictional limit of the small claims court was raised from $750 to $1,500 (Monetary Jurisdiction Experiment 1980). See HALT, California Small Claims Court Study 6 (2002), available at Halt's website <http://www.halt.org>. According to the HALT study, the joint experiment showed that the increase in the small claims jurisdictional limit in six courts in California operated primarily to the benefit of individuals, especially plaintiffs. *Id.* at 6-7. In other words, a significant increase in the percentage of individuals who brought actions over $750 occurred while the percentage of business and government creditors declined. The experiment further demonstrated that the percentage of individual defendants decreased in actions over $750, defaults dropped, and defendants prevailed more frequently in contested cases. *Id.* at 7. "The report concluded that this shift in plaintiff composition demonstrated the success of the experiment in affording increased access to the courts and that as a result the small claims monetary jurisdiction should be increased." *Id.*

The findings of the joint experiment, as reported by HALT, could indicate that raising the jurisdictional limit to $10,000 would benefit individuals over corporations. The staff can surmise that defaults might decrease since an individual defendant would be more likely to appear and contest a suit for a larger amount. They might also be better prepared for trial. Furthermore, as the

jurisdictional amount rises, it is conceivable that more institutional entities will become defendants. It is not clear, however, why the percentage of businesses as plaintiffs would decrease.

The current legislative policy does not distinguish between plaintiffs and defendants, or rich and poor. However, it does favor the "individual" over businesses and other entities. See Section 116.120. This, combined with the fact that some studies demonstrate that an individual is more likely to be the defendant in a small claims proceeding, leads the staff to recommend that the value of money and cost of litigation be considered from both the plaintiff's and the defendant's perspective.

Does "cost of litigation" also entail costs to society and the judicial system? Some commentators and courts have espoused this view. See, e.g., *Iowa Nat'l Mut. Ins. Co. v. Mitchell*, 305 N.W.2d 724, 728 (1981) (emphasis added):

> A settled common-law rule withheld that [jury trial] right in small claims in the interests of cost to the parties, time constraints, and *judicial resources*.

See also Barrett, *supra*, at 160:

> These procedures are grounded in the pragmatic realization that very small monetary disputes do not justify the individual and *societal expense* of a jury.

(Emphasis added.) Professor Barrett would include juror time and allocation of judicial resources into the equation. *Id.* at 144.

Value of Money

The *Crouchman* Court did not attempt to determine whether five British pounds in 1850 (the amount for which no right to trial by jury existed) was the equivalent of $1,500 in 1988. Rather, the court opined that $1,500 was comfortably within the constitutional guidelines. *Crouchman*, 45 Cal. 3d at 1177. As discussed, no court has directly upheld the current $5,000 limit. Therefore, little benefit is attained by comparing $5,000 in 1991 (the year the current limit became effective) with $10,000 in 2003 or 2004.

According to the California Consumer Price Index for 2001 (the last available year), $1,500 was worth $2,199 in 2001. Using the inflation calculator provided by the United States Department of Labor, $1,500 in 1988 dollars is the equivalent of $2,327 in 2003 dollars.

Although neither of the above figures is close to $5,000 or $10,000, two things must be kept in mind. First, the California Supreme Court stated that $1,500 was "comfortably within the constitutional guidelines." *Crouchman*, *supra*. In other words, $1,500 was not the maximum amount constitutionally permissible in 1988. Second, the value of money is balanced against the current costs of litigation (see below). This latter factor should be emphasized in any recommendation to increase the jurisdictional limits. Governor Wilson, looking only to the value of money, vetoed an earlier bill (AB 246) that would have raised the jurisdictional limit of the small claims court to $7,500, because there had not been a sufficient rise in inflation since 1990 to justify a 50 percent increase. See Governor Wilson's Veto Message regarding AB 246 (Oct. 13, 1997).

The Commission should also consider that at least one study has indicated a possible tendency for plaintiffs in small claims proceedings to overvalue their claims. HALT, California Small Claims Court Study (2002). The study "attempts to further HALT's goal of increasing the small claims monetary jurisdictional limits throughout the country and specifically in California." *Id.* at 1. It looked at claims filed in two cities (Oakland and Hayward) for $5,000 in small claims court and between $5,000 and $10,000 in superior court. Although the methodology raises questions of reliability with regard to the findings pertaining to superior court cases, the results regarding small claims court filings are informative. The study found that 27.5 percent of the claims were filed for $5,000. However, the average final judgment amount of claims filed for $5,000 was $2,718.97. *Id.* at 3. As the researchers explain, this "may indicate that many claimants overvalue their cases or that they are not adequately prepared to prove their damages with supporting evidence at trial." *Id.*

Costs of Litigation

The jurisdictional limit of the small claims court must also be reasonably related to the cost of litigation. Some of these costs are intangible and cannot be easily quantified (e.g., whether the availability of small claims courts reduces more time-consuming and costly litigation in superior court). One court has questioned whether it makes sense to consider the extent to which costs are recoverable or can be mitigated by careful litigation management in calculating the costs of litigation. See *America Online*, 90 Cal. App. 4th at 19 & n.18. Such potential cost savings are also speculative.

However, there are costs of litigation that can be verified and quantified, such as filing fees, jury fees, discovery costs, and attorney fees. Indeed, Professor Barrett urged the usefulness of empirical data to determine the amount at which a claim will not be rendered impractical to litigate from an economic standpoint if a jury trial is demanded. *Barrett, supra,* at 163 n.184.

Concrete data regarding litigation costs in state actions is difficult to obtain. Some information is included in the report prepared by Policy Studies Inc. ("PSI") for the Judicial Council. Weller, et al., *Report on the California Three Track Civil Litigation Study* at 16, 33-34, 41, 59 (July 31, 2002) (hereafter, "PSI Report"). PSI found that parties are often unable "to find attorneys who will handle cases between $5,000 and $10,000 for a fee that does not eat up all the potential award." PSI Report at 33; see also Senate Judiciary Committee Analysis of AB 246 (July 1, 1997); Lewis, *Not So Small Anymore*, Cal. Law 22 (June 1999). That finding is discussed in the tentative recommendation (p. 13) and is reinforced by some of the comments that the Commission received. See Memorandum 2003-20.

A good example of empirical evidence regarding litigation costs is available in Willging et al., *An Empirical Study of Discovery and Disclosure Practice Under the 1993 Federal Rule Amendments*, 39 B.C. L. Rev. 525 (1998). In that study, plaintiff and defense attorneys in federal cases were asked to estimate their total litigation expenses, including attorney fees, paralegal fees, and fees for expert witnesses, transcripts, and litigation support services. *Id.* at 547. The participants also quantified such factors as the percentage of litigation costs attributable to document production and the number of hours spent in depositions. *Id*. We have not found comparable statistics for California state court cases seeking $10,000 or less. Any information along these lines would be useful. We will continue to search for such information and compile additional data on the costs of litigation as time permits.

CONCLUSION

There are many constitutional challenges that could be raised regarding small claims procedures, and most of those arguments would be strengthened if the jurisdictional limit for a small claims case was increased. In general, the outcome of any particular challenge that might be brought following a jurisdictional increase is not easy to predict and may be influenced by the factual circumstances in which the issue arises.

Fundamental fairness is an overriding consideration in assessing the constitutionality of small claims procedures, particularly with regard to the right to due process. The more steps that the Commission can take to ensure that the small claims process is fair to all parties (e.g., improving the small claims advisory service, facilitating access to interpreters), the more likely it becomes that the process will withstand constitutional attack. The key is to ensure that all of the parties can participate meaningfully in the case and effectively present their sides of the dispute to a competent, impartial decisionmaker.

The lack of a jury trial and use of other abbreviated procedures in small claims court are justified as a means of providing access to justice in "minor" disputes that are not economical to resolve through normal court procedures. The smaller the amount of money at stake, the more probable it is that a dispute will be considered sufficiently "minor" to warrant the deviation from normal procedures, and therefore consistent with constitutional requirements such as the right to a jury trial, which does not attach to a "minor" dispute. Thus, a modest increase in the jurisdictional limit (e.g., to $7,500) is more likely to be considered constitutional than a more substantial increase (e.g., to $10,000 or more).

Reforms along the following lines might also help to alleviate potential constitutional concerns stemming from a jurisdictional increase:

(1) *Service of a claim*. Revise Section 116.340(c) to incorporate the standards of *Taylor-Rush*, 217 Cal. App. 3d at 110-11, or to adopt the wording of Section 417.20 to require that a plaintiff provide evidence establishing the authority of any person who signs a return receipt on a defendant's behalf or other evidence of the defendant's actual receipt.

(2) *Notice of the nature of a claim*. Make it mandatory rather than discretionary for a small claims court to grant a continuance to a defendant where a claim substantially fails to adequately inform the defendant of the issues involved.

(3) *Opportunity to rebut evidence that may form the basis of the court's decision*. Amend Section 116.520(c) such that the court has authority to investigate a small claims case, but must notify the parties regarding the results of any investigation it conducts.

(4) *Right of cross-examination*. Codify the right of cross-examination in the Small Claims Act.

(5) *Opportunity to counter hearsay evidence*. Where an important piece of hearsay evidence is introduced in a small claims case, and the evidence would not be admissible under any recognized exception to the hearsay rule, the small claims court should have clear

authority (and perhaps be required) to grant a short continuance to enable the opponent of the evidence to subpoena the declarant.

(6) *Judgment based on hearsay evidence*. Prohibit the small claims court from basing a judgment solely on hearsay evidence that would not be admissible under any recognized exception to the hearsay rule.

(7) *Statement of reasons for the court's decision*. Require the small claims court or the superior court on appeal to state the basis for its decision. This could be done orally or in writing at the court's discretion; a brief statement would be sufficient.

(8) *Transfer a small claims case at the defendant's election*. Consider giving a small claims defendant the option to have the case reclassified as a limited civil case.

If the jurisdictional limit is increased to $10,000, and it is determined that $10,000 is not a small monetary amount, additional protections and safeguards may need to be added to the Small Claims Act (e.g., a jury). Since the plaintiff waives constitutional rights by selecting the small claims forum, such additional safeguards may be more appropriate for the trial de novo on appeal than for the initial hearing, so that the initial hearing stays as informal as possible.

As the Commission refines its proposal to increase the jurisdictional limit of a small claims case and tries to achieve consensus with the Judicial Council, the staff will continue to assess the constitutional implications of the reforms under discussion and bring pertinent issues to the Commission's attention.

Respectfully submitted,

Lynne Urman
Staff Counsel