Study J-1452 June 2, 2010

Memorandum 2010-25

Trial Court Restructuring:
Writ Jurisdiction in a Small Claims Case
(Discussion of Issues)

The Commission has been studying whether and, if so, how to provide clarification on which tribunal has jurisdiction of a writ petition relating to a small claims case. The Commission is seeking to develop an approach that would receive broad acceptance, including support from the Civil and Small Claims Advisory Committee of the Judicial Council (hereafter, "Civil and Small Claims Advisory Committee"), which previously expressed concerns about two different attempts the Commission made to address this matter.

The Civil and Small Claims Advisory Committee has informally expressed the following views:

- The issue is important to address. Steps should be taken to make clear which tribunal has jurisdiction of a writ petition relating to a small claims case.
- Such writ petitions should generally be heard by the appellate division of the superior court, not by another superior court judge or by the court of appeal.
- For practical reasons, the committee would like to see this matter addressed by statute if possible, instead of by a constitutional amendment.

The Commission has also received comments from the San Francisco County Superior Court, which are attached as an Exhibit. This memorandum discusses the comments and provides a preliminary analysis of possible approaches, including the approach advocated by the Civil and Small Claims Advisory Committee.

The staff does not expect the Commission to be able to make a firm decision on how to proceed at the upcoming meeting. Further research and input, particularly from the Civil and Small Claims Advisory Committee, will be

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

needed before the Commission settles on how to draft a tentative recommendation, if any. **At this point, it would be helpful to hear the Commission's preliminary reaction to the issues and ideas presented.** We will then await input from the Civil and Small Claims Advisory Committee and others, and conduct further research as appears appropriate. We will provide this additional information for a later meeting, at which the Commission can revisit the matter and settle on a course of action.

This memorandum begins with a quick review of how small claims writ petitions were handled before trial court unification. Next, the memorandum provides background information on trial court unification, explains the jurisdictional uncertainty relating to small claims writs after trial court unification, and describes the Commission's previous attempts to address that uncertainty. We then analyze the relevant constitutional provision in detail and explore various options for how to proceed.

SMALL CLAIMS WRITS BEFORE TRIAL COURT UNIFICATION

In April, the Commission examined how small claims writ petitions were handled before trial court unification. See Memorandum 2010-18. Before the trial courts unified, a small claims case was initially heard in the small claims division of a municipal or justice court. Only the defendant could appeal an adverse decision; the plaintiff forfeited the right to appeal by selecting the small claims forum. The appeal consisted of a trial de novo in the superior court, a court of higher jurisdiction.

Before unification, writ petitions relating to small claims cases appear to have been handled as follows:

- **Prejudgment ruling of the small claims division.** A writ relating to a prejudgment ruling by the small claims division of a municipal or justice court could be sought from the superior court, acting through a single judge, or from a court of higher jurisdiction.
- **Judgment of the small claims division.** A small claims plaintiff apparently could not seek a writ to overturn the judgment of the small claims division, except perhaps if the judgment was based on jurisdictional grounds. A small claims defendant ordinarily had no reason to seek a writ, because the defendant could appeal. In unusual circumstances where an appeal was unavailable, the defendant could seek a writ from the superior court, acting through a single judge, or from a court of higher jurisdiction.

- **First postjudgment phase (after judgment of the small claims division).** In general, a writ relating to a postjudgment ruling by the small claims division could be sought from the superior court, acting through a single judge, or from a court of higher jurisdiction. A writ relating to a postjudgment enforcement order might have been treated differently; it may have been within the jurisdiction of the appellate department of the superior court.
- **Prejudgment ruling in the trial de novo.** A writ relating to a prejudgment ruling in the trial de novo could be sought from a court of appeal or the Supreme Court.
- **Judgment after the trial de novo.** A writ to overturn a judgment entered upon trial de novo could be sought from a court of appeal or the Supreme Court. Those courts would consider such a writ petition on the merits where necessary to secure uniformity or to address a significant issue of small claims law.
- **Second postjudgment phase (after the trial de novo).** In general, a writ to overturn a ruling made after the trial de novo could be sought from a court of appeal or the Supreme Court. A writ relating to a postjudgment enforcement order might have been treated differently; it may have been within the jurisdiction of the appellate department of the superior court.

See *id.*

This pre-unification scheme suggests a number of questions. In determining which tribunal now has jurisdiction of a writ petition relating to a small claims case, should all types of writ petitions be treated the same way? Should any distinctions be drawn between a small claims plaintiff and a small claims defendant? Should any distinction be drawn based on the stage of the proceeding? In particular, since a writ petition challenging a decision in a trial de novo historically had to be brought in a court of appeal or the Supreme Court, should that practice be continued today?

TRIAL COURT UNIFICATION

In the early 1990's, California had several kinds of trial courts: superior courts, municipal courts, and justice courts. The justice courts were eliminated in 1995. Since then, the superior court and municipal courts in each county have unified their operations in the superior court; municipal courts no longer exist.

The process of trial court unification is described in greater detail below, with an emphasis on matters relating to small claims cases, appellate jurisdiction, and writ jurisdiction.

SCA3 and the Law Revision Commission's Study of Constitutional Reforms

In the 1993-94 legislative session, Senator Lockyer (now Treasurer Lockyer) authored a measure — SCA 3 — to amend the State Constitution to achieve trial court unification on a statewide basis.

While that measure was pending, the Legislature directed the Law Revision Commission to study and make recommendations on the best means of amending the State Constitution to unify the trial courts. See SCR 26 (Lockyer) (1993-94 Reg. Sess.), 1993 Cal. Stat. res. ch. 96. The Commission was not asked to evaluate the wisdom or desirability of unification. *Id*.

In response to that directive, the Law Revision Commission prepared a report on the constitutional changes necessary to implement trial court unification — *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1 (1994) (hereafter, "*TCU: Constitutional Revision*"). The Commission recommended a number of constitutional changes, some of which are described below.

Municipal and Justice Courts

The Commission proposed to repeal the constitutional provision establishing municipal and justice courts. *Id.* at 72-73. The Commission further proposed that the original jurisdiction of the superior court be expanded to encompass all types of causes, including those formerly within the jurisdiction of the municipal and justice courts. *Id*. at 26, 76.

Appellate Division

The Commission proposed that each unified superior court have an appellate division. *Id*. at 33, 76-77. The appellate division would be similar to the appellate department of the superior court, which heard appeals from the municipal and justice courts. Because judges of the appellate division would be reviewing decisions made by other superior court judges, however, the Commission suggested that the appellate division be a constitutional entity and not a creature of statute:

> Although an appellate division could be created by statute or court rule, the Commission believes SCA 3 is correct in its constitutional establishment of an appellate division. The existing superior court appellate department works because the appellate department exercises review over lower court cases, not over other superior court cases. To ensure proper functioning of an appellate department staffed by judges of the same jurisdiction as the judges

> being reviewed, a constitutional hierarchy is desirable. *This will avoid the dilemma of judges of equal rank claiming the constitutional right to reverse (and possibly overrule reversals of) each other.*

Id. at 30-31 (emphasis added).

To further alleviate the peer review problem, the Commission recommended that judges be assigned to the appellate division "by the Chief Justice for a specified term pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division." *Id*. at 77; *see also id.* at 31. Such rules "may set forth relevant factors to be used in making appointments to the appellate division, such as length of service as a judge, reputation within the unified court, and degree of separateness of the appellate division workload from the judge's regular assignments …." *Id*. at 77.

Appellate Jurisdiction

The Commission gave the following guidance regarding the appellate jurisdiction of the appellate division:

> The criminal jurisdiction of the appellate division should include misdemeanor appeals, parallel to the current criminal appellate jurisdiction of the superior courts. The civil jurisdiction of the appellate division should be defined by the Legislature or by court rule not inconsistent with statute. As a transitional matter the trial court appellate division would handle appeals for causes currently appealable from the municipal and justice courts to the superior courts.

Id. at 33; see also *id*. at 76-77, 81-83. The Commission further recommended that the courts of appeal be given jurisdiction of all other appeals, except any appeal from a judgment of death, which would remain within the exclusive jurisdiction of the state Supreme Court. *Id*. at 76-77.

Writ Jurisdiction

The Commission considered writ jurisdiction in addition to appellate jurisdiction. In particular, the Commission recommended that the provision governing the original jurisdiction of the courts (Cal. Const. art. VI, § 10) be amended as shown in strikeout and underscore below:

> SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition, but a superior court may not exercise

> that jurisdiction in such proceedings directed to the superior court except by its appellate division.
>
> Superior courts also have original jurisdiction in all causes ~~except those given by statute to other trial courts~~.
>
> The court may make such comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the cause.

TCU: Constitutional Revision, *supra*, at 76. The proposed Comment stated in part:

> The first paragraph is amended to limit the former jurisdiction of superior courts to issue extraordinary writs to compel or prohibit action by the municipal and justice courts and their judges. *Only the appellate divisions of superior courts (together with the Supreme Court and courts of appeal) may issue extraordinary writs for review of proceedings in the superior court.*

Id. (emphasis added).

The accompanying narrative discussion explained that superior court judges should not be able to issue writs to each other, but the appellate division should have such authority to avoid overburdening the courts of appeal:

> Under existing law the superior court has original jurisdiction, along with the appellate courts, in proceedings for extraordinary relief in the nature of habeas corpus, mandamus, certiorari, and prohibition. This jurisdiction includes authority to issue extraordinary writs to the municipal and justice courts. *This scheme requires revision in a unified court since it is not appropriate to have trial court judges of equal dignity in the same court issuing writs directed to one another.*
>
> It would be possible to leave extraordinary writs for review of trial court proceedings to the appellate courts. The Commission understands that there are approximately 1,000 writs issued annually from the superior courts to the municipal and justice courts. These are primarily for bail (habeas corpus), discovery, and speedy trial matters.
>
> The Commission has concluded that the workload of the courts of appeal is so great that it would be inadvisable to shift writ review of trial court proceedings completely to the appellate level. *The unified trial courts should have appellate divisions, and it is appropriate that the appellate divisions have writ review capacity over the trial courts.*

Id. at 26-27 (emphasis added; footnotes omitted).

Small Claims Cases

The Commission concluded that "small claims procedures … will need to be preserved in the unified court or the caseload will become unmanageable." *Id.* at 52. The Commission further recommended that small claims rehearings "should continue to be heard by individual superior court judges as they are now." *Id.* at 33 (footnote omitted). The Commission did not specifically discuss small claims writs.

The Fate of SCA 3 and the Commission's Constitutional Recommendations

Many of the recommendations from the Commission's report were incorporated into SCA 3. Compare *TCU: Constitutional Revision, supra,* with SCA 3 (Lockyer) (1993-94 Reg. Sess.), as amended on June 22, 1994.

SCA 3 passed the Senate and made it to the Assembly floor without a "no" vote. But then the measure stalled. It was defeated on the Assembly floor, falling short of the two-thirds vote required to place it on the ballot.

Elimination of the Justice Courts

Although SCA 3 was defeated, a measure to eliminate the justice courts was passed by the Legislature and approved by the voters at the November 1994 election. See 1994 Cal. Stat. res. ch. 113 (Proposition 191). As of January 1, 1995, all existing justice courts became municipal courts.

SCA 4 and Related Developments

Shortly after SCA 3 was defeated, Senator Lockyer introduced another trial court unification measure, SCA 4. Again, the measure incorporated many but not all of the recommendations from the Commission's report.

Municipal Courts

Unlike SCA 3, SCA 4 did not attempt to simultaneously unify all of the state's trial courts. Instead, it authorized unification on a county-by-county basis: The superior and municipal courts in a county could unify on a vote of a majority of the superior court judges and a majority of the municipal court judges in that county.

Appellate Division

Like SCA 3, SCA 4 proposed that each unified superior court have an appellate division. The constitutional language describing the appellate division was essentially the same as the language recommended by the Commission.

Appellate Jurisdiction

SCA 4 proposed to amend the constitutional provision governing appellate jurisdiction (Cal. Const. art. VI, § 11) to read:

> (a) The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception *courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995,* and in other causes prescribed by statute. When appellate jurisdiction in civil causes is determined by the amount in controversy, the Legislature may change the appellate jurisdiction of the courts of appeal by changing the jurisdictional amount in controversy.
>
> (b) Except as provided in subdivision (a), the appellate division of the superior court has appellate jurisdiction in causes prescribed by statute.
>
> ….

(Emphasis added.)

This is quite different from the language that the Commission proposed in its report. In particular, the language in SCA 4 preserves the historic jurisdiction of the courts of appeal as of June 30, 1995. The Commission's report includes no comparable provision. See *TCU: Constitutional Revision*, *supra*, at 76-77.

Writ Jurisdiction

SCA 4 proposed to amend the constitutional provision governing writ jurisdiction (Cal. Const. art. VI, § 10) to read:

> (a) The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. *The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.*
>
> ….

(Emphasis added.)

Again, this is quite different from the language that the Commission proposed in its report. Unlike the Commission's proposal, SCA 4 would link the writ jurisdiction of the appellate division to corresponding appellate jurisdiction.

Small Claims Cases

Like SCA 3 and the Commission's proposal, SCA 4 sought to preserve the preexisting trial de novo procedure for small claims cases. The proposed transitional provision (Cal. Const. art. VI, § 23) said: "Matters of a type previously subject to rehearing by a superior court judge remain subject to rehearing by a superior court judge, other than the judge who originally heard the matter."

Statutory Revisions to Implement SCA 4

SCA 4 was passed by the Legislature in mid-1996, but was not placed on the ballot until June 1998. In the meantime, the Legislature directed the Law Revision Commission to make recommendations "pertaining to statutory changes that may be necessitated by court unification." 1997 Cal. Stat. res. ch. 102; see also 1998 Cal. Stat. res. ch. 91.

In response to that directive, the Commission prepared a lengthy report on how to revise the codes to implement SCA 4. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51 (1998) (hereafter, "*TCU: Revision of Codes*"). "The objective of the proposed revisions [was] generally to preserve existing rights and procedures in the context of unification." *Id.* at 55. Thus, "[t]here should be no disparity of treatment between a party appearing in municipal court and a similarly situated party appearing in superior court as a result of unification of the municipal and superior courts in the county." *Id*.

To that end, the Commission introduced the concept of a "limited civil case." The Commission recommended that causes traditionally within the jurisdiction of the municipal court be listed in a new Section 85 of the Code of Civil Procedure, and be referred to as "limited civil cases." *Id*. at 64, 138-40. The Commission further explained:

> In a county in which the courts have not unified, the municipal court has jurisdiction of limited civil cases. In a county in which the courts have unified, the superior court has original jurisdiction of limited civil cases, but these cases are governed by economic litigation procedures, local appeal, filing fees, and the other procedural distinctions that characterize these cases in a municipal court.

Id.

The Commission also considered the proper treatment of small claims cases. It concluded:

> The current appeal route for a small claim is a new trial in the superior court, a court of higher jurisdiction. Upon unification of the municipal and superior courts in a county, the superior court will include the small claims division and will not be a court of higher jurisdiction. SCA 4 addresses this matter by providing for a rehearing in the superior court by a judge other than the judge who originally heard the case. The proposed law preserves the scheme of SCA 4: a hearing before a new judicial officer, with legal representation, is a sufficient review opportunity for the litigants without being a substantial burden on judicial resources.

Id. (footnotes omitted).

The Fate of SCA 4 and the Commission's Statutory Recommendations

SCA 4 was approved by the voters on June 2, 1998, and became operative the day after the election. A bill to implement the Commission's statutory recommendations was enacted shortly thereafter. 1998 Cal. Stat. ch. 931 (SB 2139 (Lockyer)). The trial courts began unifying as soon as SCA 4 was approved.

Completion of Unification; Subsequent Code Clean-Up

By early 2001, the courts in all of California's 58 counties had unified. At the direction of the Legislature, the Commission began preparing legislation to reflect the elimination of the municipal courts, as well as the enactment of the Trial Court Employment Protection and Governance Act ("TCEPGA") and the shift from local to state funding of trial court operations. A massive clean-up bill was enacted in 2002. Further reforms followed, and the Commission is continuing to clean up the codes today. The current study of small claims writ jurisdiction is part of that effort.

SMALL CLAIMS WRITS AFTER TRIAL COURT UNIFICATION

Where can a writ petition relating to a small claims case be filed after trial court unification? As explained below, that is not entirely clear.

Existing Uncertainty

Article VI, Section 10(a), of the California Constitution now provides the following guidance on writ jurisdiction:

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

From this language, it seems evident that a small claims litigant could seek a writ in the Supreme Court or in the local court of appeal. Where a lower tribunal also has writ jurisdiction, however, the Supreme Court and courts of appeal "ha[ve] discretion to refuse to issue the writ … *on the ground that application has not been made therefor in a lower court in the first instance*." *See In re Ramirez*, 89 Cal. App. 4th 1312, 1316, 1320, 108 Cal. Rptr. 2d 229 (2001) (emphasis added).

From the constitutional language, it is not immediately clear whether a small claims litigant could seek a writ within the superior court, instead of having to go to a higher court. Possible means of review within the superior court include (1) review by a superior court judge, and (2) review by the appellate division. Each of those possibilities is discussed below.

Review by a Superior Court Judge

Although the constitutional provision says that "superior courts, and their judges" have original jurisdiction in writ proceedings, there is a well-established body of case law indicating that a superior court judge cannot constitutionally enjoin, restrain, or otherwise interfere with a judicial act of another superior court judge. *See, e.g., Ford v. Superior Court*, 188 Cal. App. 3d 737, 742, 233 Cal. Rptr. 607 (1986). The California Supreme Court has explained, however, that a superior court judge who considers an order entered earlier by another superior court judge does not enjoin, restrain, or otherwise interfere with the judicial act of another superior court judge *when the later judge acts under statutory authority*. *See People v. Konow*, 32 Cal. 4th 995, 1019-21, 88 P.3d 36, 12 Cal. Rptr. 3d 301 (2004).

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

Review by the Appellate Division

The constitutional provision says that the appellate division has original jurisdiction in writ proceedings "directed to the superior court *in causes subject to its appellate jurisdiction*." Cal. Const. art. VI, § 10 (emphasis added). This provision could be construed to mean that the appellate division has writ jurisdiction in the same types of causes that are subject to its appellate jurisdiction.

An appeal in a small claims case is not heard by the appellate division. Rather, "[t]he appeal to the superior court shall consist of a new hearing before a judicial officer other than the judicial officer who heard the action in the small claims division." Code Civ. Proc. § 116.770(a). Consequently, it could be said that the appellate division lacks writ jurisdiction in a small claims case.

It is possible, however, that the constitutional provision might be construed to mean that the appellate division has writ jurisdiction in the same types of causes that are subject to the appellate jurisdiction *of the superior court*. That construction is not as obvious as the preceding interpretation, because the superior court generally exercises appellate jurisdiction through its appellate division. But interpreting the constitutional provision to refer to the appellate jurisdiction *of the superior court* would seem to encompass a small claims appeal, and thus a small claims writ.

Which of these constructions is correct? We examined case law to see if the courts have answered this question.

Case Law

We found only three published post-unification cases that discuss writs relating to small claims cases.

Bricker

In *Bricker v. Superior Court,* 133 Cal. App. 4th 634, 35 Cal. Rptr. 3d 7 (2005), a superior court judge dismissed a woman's eleven related small claims appeals because the woman had not appeared in the small claims division, only her husband. The woman filed a writ petition in the court of appeal, seeking relief from the dismissal of her appeals. The court of appeal granted such relief, holding that the dismissal violated due process because the superior court "never properly noticed or held a hearing on the question of whether petitioner's appeals should be dismissed …." *Id*. at 639.

In reaching this result, the court of appeal commented:

> The Courts of Appeal have historically been reluctant to review rulings in small claims matters. The reason for this is obviously to promote the policy of speedy and inexpensive resolution of cases falling within the jurisdiction of the small claims court. But while disfavored, it has been held that review of small claims judgments may be available by extraordinary writ where there is "statewide importance of the general issues presented" and "in order to secure uniformity in the operations of the small claims courts and uniform interpretation of the statutes governing them." Writ review is appropriate under the foregoing authorities in light of the due process problem raised by petitioner.

Id. at 637 (citations omitted). *Bricker* thus confirms that the court of appeal remains an appropriate forum for seeking a writ relating to a small claims case.

But *Bricker* did not discuss whether a small claims litigant could seek a writ within the superior court, instead of having to go to a higher court. It provides no guidance on that matter.

Pitzen

Another post-unification case discussing small claims writs is *Pitzen v. Superior Court*, 120 Cal. App. 4th 1374, 16 Cal. Rptr. 3d 628 (2004). The writ petition in *Pitzen* did not challenge any ruling or action in a small claims case; the petition simply concerned whether a small claims decision has collateral estoppel effect in an ordinary civil case.

Nonetheless, the court of appeal discussed the extent to which a plaintiff may seek a writ to overturn a judgment of the small claims division. The court described in detail and with apparent approval the earlier case of *Parada v. Small Claims Court,* 70 Cal. App. 3d 766, 139 Cal. Rptr. 87 (1977), which held that a small claims plaintiff cannot seek such a writ. *See Pitzen*, 120 Cal. App. 4th at 1380.

While *Pitzen* arguably supports that limitation on a plaintiff's ability to seek writ relief, the case does not address the extent to which a small claims litigant may seek a writ within the superior court, instead of having to go to a higher court. Like *Bricker*, it provides no guidance on that matter.

General Electric Capital

A more illuminating decision is *General Electric Capital Auto Financial Services, Inc. v. Appellate Division*, 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). In that case, a small claims defendant lost the initial hearing and the trial de novo. The plaintiff sought to collect from the defendant, but the defendant refused to

answer interrogatories about its assets. The plaintiff brought a motion to compel and request for sanctions in the small claims division, which were granted. The defendant then tried to file a petition for a writ of mandate in the appellate division, challenging the order compelling responses and imposing sanctions. But the clerk of the appellate division refused to accept the petition for filing, saying that the appellate division has no jurisdiction over small claims cases.

The defendant then sought writ relief in the court of appeal. That court framed the issue as whether "the appellate division of the superior court, following trial court unification, [has jurisdiction] to hear a petition for writ of mandate arising out of enforcement proceedings in the small claims court." *Id*. at 138. The court answered that question in the affirmative, holding that "the appellate division of the superior court has appellate and extraordinary writ jurisdiction of postjudgment enforcement orders in small claims actions." *Id*. at 145.

In reaching that result, the court noted that a small claims case is a type of limited civil case. *Id.* at 142 (citing Code Civ. Proc. § 87(a)). "Unless otherwise provided by statute or rule, the statutes or rules applicable to limited civil cases are applicable to small claims cases." *General Electric Capital*, 88 Cal. App. 4th at 142. "Where a statute or rule applicable to a small claims case conflicts with a statute or rule applicable to a limited civil case, the statute or rule applicable to a small claims case governs the small claims case and the statute or rule applicable to a limited civil case does not." Code Civ. Proc. § 87(a).

Applying those rules in the case before it, the court explained that a specific statute governs an appeal from a judgment entered by the small claims division. *General Electric Capital*, 88 Cal. App. 4th at 142 (citing Code Civ. Proc. § 116.770, which says that a small claims appeal "shall consist of a new hearing before a judicial officer other than the judicial officer who heard the action in the small claims division"). The court further explained that no specific statute governs an appeal from a postjudgment enforcement order in a small claims case. Consequently, the court concluded that the statute for a limited civil case applies and vests jurisdiction in the appellate division:

> Petitioner and respondent court both contend that the appellate division of the superior court has no appellate jurisdiction over small claims matters. This is incorrect. The appellate division of the superior court has no appellate jurisdiction over appeals from small claims court *judgments*. That jurisdiction rests with the superior court and is exercised by a trial de novo before a superior court

> judicial officer, other than the judicial officer who heard the action in the small claims court. After the de novo review a judgment is entered and the judgment is returned to the small claims court for enforcement. The small claims judgment is enforced in the same manner as other judgments. A small claims case is also a limited civil case. Since there are no small claims statutes or rules concerning the appeal of postjudgment enforcement orders, the limited civil case statutes and rules are applicable. Those statutes explicitly provide for appellate division jurisdiction of limited civil case postjudgment order review.

General Electric Capital, 88 Cal. App. 4th at 144 (emphasis in original; citations omitted).

The court of appeal went on to explain that because the appellate division has jurisdiction of an appeal from a postjudgment enforcement order in a small claims case, the appellate division also has jurisdiction of a writ petition challenging a postjudgment enforcement order in a small claims case:

> [T]he plain language of the various statutory provisions, taken as a whole, mandates a conclusion that the appellate division of the superior court has appellate *and extraordinary writ jurisdiction* of postjudgment enforcement orders of the small claims court. This statutory construction is consistent with the amended constitutional provisions. The California Constitution, as amended by Proposition 220, provides that Courts of Appeal have appellate jurisdiction of causes when the superior court has original jurisdiction, provided the Courts of Appeal had appellate jurisdiction prior to trial court unification. In other cases, the appellate division of the superior court has appellate jurisdiction. *The appellate division also has original jurisdiction in writ proceedings in causes subject to its appellate jurisdiction. The plain import of these constitutional provisions is to preserve the status quo prior to trial court unification.*

Id. at 144-45 (emphasis added).

General Electric Capital thus squarely resolves that the appellate division has jurisdiction of a writ petition challenging a postjudgment enforcement order in a small claims case. But *General Electric Capital* is only a decision of a court of appeal, not a decision by the court of highest jurisdiction. And the decision rests in part on statutory rules that could be changed.

More importantly, *General Electric Capital* only concerns postjudgment enforcement orders. It does not resolve whether the appellate division has jurisdiction of a writ petition challenging other aspects of a small claims case,

such as a judgment or pretrial order. There does not appear to be any case law directly addressing that issue.

Because the courts have not fully resolved the proper jurisdiction of small claims writs, the Commission should closely examine the constitutional provision and draw its own conclusions about how the provision should be interpreted. Before undertaking such analysis, however, we briefly describe the Commission's previous attempts to provide clarification in this area.

THE COMMISSION'S PREVIOUS ATTEMPTS TO CLARIFY SMALL CLAIMS WRIT JURISDICTION AFTER TRIAL COURT UNIFICATION

In 2006 and again in 2009, the Commission attempted to clarify the proper jurisdiction of a writ petition relating to a small claims case after trial court unification. Each attempt met with resistance from the Civil and Small Claims Advisory Committee. Those efforts are described in greater detail below.

The 2006 Proposal

The 2006 proposal was grounded on a key assumption regarding the constitutional provision on writ jurisdiction (Cal. Const. art. VI, § 10). The Commission interpreted that provision to give the appellate division writ jurisdiction only in causes that are subject to its appellate jurisdiction. See *Tentative Recommendation on Statutes Made Obsolete by Trial Court Restructuring: Part 3* (Aug. 2006), pp. 9-10.

The Commission further concluded that because the appellate division lacks jurisdiction of a small claims appeal, the appellate division also lacks jurisdiction of a writ petition seeking to overturn a judgment or prejudgment ruling entered by the small claims court. *Id.* at 10. The Commission recommended that three statutes relating to writ jurisdiction (Code Civ. Proc. §§ 1068, 1085, 1103) be amended to make that limitation more clear. For example, the Commission recommended that Section 1068 be amended as follows:

> 1068. (a) A writ of review may be granted by any court when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of ~~such~~ that tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.
>
> (b) The appellate division of the superior court may grant a writ of review directed to the superior court in a limited civil case subject to its appellate jurisdiction or in a misdemeanor or infraction case subject to its appellate jurisdiction. Where the

appellate division grants a writ of review directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

Comment. Subdivision (b) of Section 1068 is amended to more closely track the language of Article VI, Section 10, of the California Constitution. This is not a substantive change.

The amendment helps clarify the treatment of a small claims case. An appeal from a judgment in a small claims case is not within the jurisdiction of the appellate division. Rather, such an appeal consists of a new hearing before a judicial officer other than the judicial officer who heard the action in the small claims division. See Section 116.770(a). Because the appellate division lacks jurisdiction of a small claims appeal, the appellate division also lacks authority to review a judgment or a prejudgment ruling in a small claims case by way of extraordinary writ. See Cal. Const. art. VI, § 10. For further guidance on seeking a writ of review in a small claims case, see Section 1068.5.

Section 1068 is also amended to make a stylistic revision.

Id. at 34-35. The proposed amendments of Sections 1085 and 1103 were similar, but related to a writ of mandate and a writ of prohibition, respectively. *See id.* at 36, 37-38.

The Commission further proposed to add three new provisions on writ jurisdiction. These provisions were intended to: (1) make clear that when a writ petition is brought in a superior court challenging a ruling in a small claims case, the petition can only be considered by a judicial officer of the superior court other than the one who made the challenged ruling, and (2) codify *General Electric Capital*, which held that the appellate division has jurisdiction of a writ petition challenging a postjudgment enforcement order in a small claims case.

For example, proposed Code of Civil Procedure Section 1068.5 would have provided:

Code Civ. Proc. § 1068.5 (added). Writ of review in small claims case

1068.5. (a) A writ of review directed to a superior court with respect to a ruling of the small claims division may be granted by an appellate court or by a judicial officer of the superior court, other than the judicial officer who heard the case in the small claims division. Where a judicial officer of a superior court grants a writ of review directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

(b) Notwithstanding subdivision (a), a writ of review directed to the superior court with respect to a postjudgment enforcement

order in a small claims case may be granted by an appellate court or by the appellate division of the superior court.

Comment. Section 1068.5 is added to clarify the proper treatment of a writ petition relating to a small claims case.

Subdivision (a) makes clear that if a writ of review is sought in superior court with respect to a ruling of the small claims division, the writ proceeding is to be heard by a judicial officer of the superior court other than the one who heard the case in the small claims division. This parallels the treatment of a small claims appeal. See Section 116.770 (small claims appeal is to be heard by judicial officer of superior court other than officer who heard case in small claims division); see also Section 1068 Comment (200_) (appellate division lacks writ jurisdiction of judgment or prejudgment ruling in small claims case); City & County of San Francisco v. Small Claims Court, 141 Cal. App. 3d 470, 470, 481, 190 Cal. Rptr. 340 (1983) (affirming decision of superior court judge on writ petition relating to small claims case, thus implicitly deciding that superior court judge had writ jurisdiction); Gardiana v. Small Claims Court, 59 Cal. App. 3d 412, 412, 425, 130 Cal. Rptr. 675 (1976) (same).

Subdivision (b) codifies *General Electric Capital Auto Financial Services, Inc. v. Appellate Division of the Superior Court*, 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). A small claims case is a limited civil case. *Id*. at 138. Where a statute or rule applicable to a small claims case conflicts with a statute or rule applicable to a limited civil case, the statute or rule applicable to a small claims case governs. Section 87.

A special statute governs a small claims appeal (Section 116.770), so the general rule giving the appellate division jurisdiction of an appeal in a limited civil case (Section 904.2) is inapplicable. But there is no special statute governing appeal of a postjudgment enforcement order in a small claims case. Consequently, the situation is governed by the general rule giving the appellate division jurisdiction of an appeal in a limited civil case. *General Electric Capital*, 88 Cal. App. 4th at 138, 144.

Because the appellate division has appellate jurisdiction of a postjudgment enforcement order in a small claims case, the appellate division also has extraordinary writ jurisdiction of a postjudgment enforcement order in a small claims case. *Id*. at 145; see Cal. Const. art. VI, § 10. Subdivision (b) thus states the rule of Section 1068(b) as applied in the specific context of a postjudgment enforcement order in a small claims case.

Proposed Code of Civil Procedure Sections 1085.3 (relating to a writ of mandate) and 1103.5 (relating to a writ of prohibition) were similar to proposed Section 1068.5.

Comments on the 2006 Proposal

The State Bar Committee on Appellate Courts submitted written comments supporting all of the reforms discussed above. See Memorandum 2006-44, pp. 7-8 & Exhibit p. 3. Similarly, the San Diego County Superior Court supported the proposed amendments of Sections 1068, 1085, and 1103 without reservation. See *id*. at p. 8 & Exhibit p. 5. The San Diego County Superior Court also supported the proposed new writ provisions, but only if the language was slightly modified. See *id.*

However, staff from the Administrative Office of the Courts ("AOC") notified Commission staff that the Civil and Small Claims Advisory Committee had significant concerns about the proposed reforms. As we understood it, the concerns related to (1) whether and, if so, to what extent, a superior court judicial officer should be able to issue a small claims writ to another judicial officer of the same court, and (2) whether addressing this issue by statute would prompt a flood of small claims writ petitions and subvert the efficiency and inexpensiveness of the small claims process. See Memorandum 2009-34, p. 3; see also Memorandum 2009-20, p. 12. The committee did not submit written comments, because there was not time to obtain the necessary approval at a higher level within the Judicial Council. See Memorandum 2006-44, pp. 8-9. But AOC staff made clear that the committee desired an opportunity to thoroughly study the matter and would not be able to do so for awhile.

Due to the concerns expressed, the Commission withdrew all of the reforms relating to small claims writs from its 2006 proposal, and proceeded to obtain enactment of the remaining reforms.

The 2009 Proposal

The Commission revisited the topic in 2009. Again, it proceeded on the assumption that the appellate division could constitutionally assert writ jurisdiction only in causes that are subject to its appellate jurisdiction. This time, the Commission simply proposed to amend Sections 1068, 1085, and 1103 to make that limitation explicit. See Minutes (April 2009), pp. 4-6; see also Memorandum 2009-34, Attachment pp. 4-6, 19-20. The Commission decided not to propose any new provisions on writ jurisdiction in a small claims case. See Minutes (April 2009), p. 7.

This proposal was designed to meet the concerns that AOC staff informally expressed in 2006. The proposal would not authorize a superior court judicial

officer to issue a small claims writ to another judicial officer of the same court; the proposed statutory text would not refer to a small claims writ at all, and thus would not be likely to prompt a flood of small claims writ petitions.

Comments on the 2009 Proposal

Before the 2009 proposal could be put in a tentative recommendation, the Commission received written comments from staff to the Civil and Small Claims Advisory Committee. See Second Supplement to Memorandum 2009-34, Exhibit p. 6. The committee objected to the proposed amendments of Sections 1068, 1085, and 1103, and requested that the Commission not proceed with them.

The committee's objection was not to what those amendments would do, but to what they would not do. See *id*. at 2.

The committee put it this way:

> As CLRC staff memorandum 2009-20 indicates, the Civil and Small Claims Advisory Committee had previously expressed concerns about a 2006 CLRC Tentative Recommendation relating to writ jurisdiction in small claims cases, which would have provided that writs directed to a superior court with respect to a ruling of the small claims division may be granted by another judicial officer of the superior court. The advisory committee appreciates CLRC's responsiveness to concerns that it informally expressed in 2006, by not including the originally proposed sections in the current draft Tentative Recommendation. However, *the committee is concerned that the current draft does not resolve uncertainties about what tribunals currently have, and policy issues about what tribunals should have, jurisdiction to issue writs in small claims cases.*

Id. at Exhibit p. 6 (emphasis added).

In other words, the committee thought the proposal should squarely address which tribunal has jurisdiction to issue an extraordinary writ relating to a small claims case, instead of simply indicating that the appellate division lacks such jurisdiction. The committee sought "to collaborate with the Law Revision Commission" to address this matter. *Id*. As with the 2006 proposal, these comments reflected the view of the Civil and Small Claims Advisory Committee only, because there was not time to determine the position of the Judicial Council.

The Commission decided to drop the proposed amendments and undertake such collaboration as requested, while following normal Commission procedures. See Minutes (Aug. 2009), pp. 6-7.

Since then, the Commission's staff and the Civil and Small Claims Advisory Committee's staff have discussed this issue at length.

The committee's staff emphasized that the committee's discussions were preliminary in nature and do not as yet represent an official position of the subcommittee or the full committee, much less the Judicial Council as a whole.

Nonetheless, several main points became clear in the committee's discussions:

- The committee is convinced that the issue is important to address. Steps should be taken to make clear which tribunal has jurisdiction of a petition for an extraordinary writ relating to a small claims case.
- The committee's preference would be for such writ petitions to be heard by the appellate division of the superior court, not by another superior court judge or by the court of appeal.
- For practical reasons, the committee would like to see this matter addressed by statute if possible, instead of by a constitutional amendment.

See Memorandum 2009-51, p. 3. According to AOC staff, the committee did not discuss the possibility of distinguishing between review of an act of the small claims division and review of an act in a trial de novo. It is not clear what position the committee would take on this point.

The Commission has not yet responded to the ideas raised by the Civil and Smalls Claims Advisory Committee. To do so effectively, the Commission needs to take a hard look at the constitutional constraints on writ jurisdiction.

CONSTITUTIONAL CONSTRAINTS

The constitutional provision governing writ jurisdiction (Cal. Const. art. VI, § 10) is discussed below. In preparing this discussion, the staff has reviewed the ballot arguments relating to SCA 4 (Proposition 220), the bill analyses of SCA 3 and SCA 4, and the Commission's recommendations relating to trial court unification. We have not researched the history of SCA 3 and SCA 4 at State Archives, nor have we had access to the Judicial Council's files relating to those measures. **It is possible that further research would uncover additional relevant material.**

Before discussing the constitutional provision, we review the applicable principles of interpretation.

Principles of Interpretation

In interpreting a constitutional provision, the court's "primary task is to determine the lawmakers' intent." *Delaney v. Superior Court*, 50 Cal. 3d 785, 798, 789 P.2d 934, 268 Cal. Rptr. 753 (1990); *see also Davis v. City of Berkeley*, 51 Cal. 3d 227, 234, 794 P.2d 897, 272 Cal. Rptr. 139 (1990). "In the case of a constitutional provision adopted by the voters, their intent governs." *Delaney*, 50 Cal. 3d at 798; *see also id*. at 802.

To determine intent, the court first examines the words of the constitutional provision, giving them their ordinary meaning. *See, e.g., People v. Rizo*, 22 Cal. 4th 681, 685, 996 P.2d 27, 94 Cal. Rptr. 2d 375 (2000); *Delaney*, 50 Cal. 3d at 798. Textual analysis "is the best indicator of the intended meaning of a constitutional provision." *Powers v. City of Richmond*, 10 Cal. 4th 85, 93, 893 P.2d 1160, 40 Cal. Rptr. 2d 839 (1995) (plurality).

"If the constitutional language is clear and unambiguous, there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters)." *Lungren v. Deukmejian*, 45 Cal. 3d 727, 735, 755 P.2d 299, 248 Cal. Rptr. 115 (1988). "[W]e need not look beyond the language of the [Constitution] when its language is unambiguous. *Delaney*, 50 Cal. 3d at 802; *see also id*. at 798, 801; *but see id*. at 822-23 (Broussard, J., concurring) (court interpreting constitutional provision should consider its history and background, as well as its plain language).

When the constitutional language is ambiguous, however, courts refer to other indicia of the voters' intent, particularly the analyses and arguments in the ballot pamphlet. *People v. Rizo*, 22 Cal. 4th at 685; *see also Davis*, 51 Cal. 3d at 235. In interpreting constitutional provisions, courts "are obligated to construe constitutional amendments in a manner that effectuates the voters' purpose in adopting the law." *Silicon Valley Taxpayers' Ass'n v. Santa Clara County*, 44 Cal. 4th 431, 448, 187 P.3d 37, 79 Cal. Rptr. 3d 312 (2008); *see also People v. Giordano*, 42 Cal. 4th 644, 655, 170 P.3d 623, 68 Cal. Rptr. 3d 51 (2007).

Article VI, Section 10. Writ Jurisdiction

Under Article VI, Section 10, of the state constitution,

> [t]he appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.

The staff is not sure where this language originated.

The Commission specifically considered and rejected such an approach in its study:

> The Commission considered whether to constitutionally specify that the appellate division could only issue writs in cases that would be within the jurisdiction of the appellate division if appealed. The Commission decided that there need not be such a constitutional limitation.

Minutes (Nov. 1993), p. 12.

As best we can tell, the language appears to have been developed sometime between when the Commission finalized its report on January 7, 1994, and when SCA 3 was amended on June 22, 1994. **We hope the Judicial Council or someone else might be able to shed light on how the language developed and what was intended.**

Regardless of its history, the plain language of the provision must be our starting point in determining the meaning of this provision and its application to small claims cases.

Plain Language

In defining the original jurisdiction of the appellate division, Article VI, Section 10, refers to "causes subject to its appellate jurisdiction." This poses two key questions:

(1) Is a small claims case a "cause subject to … appellate jurisdiction"?

(2) If so, is the cause subject to "its" appellate jurisdiction, within the meaning of Article VI, Section 10?

Each of these questions is addressed below.

Meaning of "Cause Subject to … Appellate Jurisdiction"

A threshold question is whether a small claims case is a "cause subject to … appellate jurisdiction" within the meaning of Article VI, Section 10. That question should perhaps be broken into two subparts:

- Is a proceeding before the small claims division a "cause subject to … appellate jurisdiction" within the meaning of Section 10?
- Is a small claims trial de novo a "cause subject to … appellate jurisdiction" within the meaning of Section 10?

For ease of discussion, we consider these subparts in reverse order.

The answer to the second subpart would appear to be "no." The judgment of a superior court after a trial de novo "is final and not appealable." Code Civ. Proc. § 116.780. As far as the staff is aware based on minimal research, other decisions in a trial de novo (e.g., a preliminary procedural decision) are not appealable either. Thus, a decision in a trial de novo does not appear to be a "cause subject to … appellate jurisdiction." It follows that a writ petition challenging such a decision does not appear to be within the jurisdiction of the appellate division under Article VI, Section 10.

In other words, **it appears that the appellate division cannot constitutionally consider a writ petition challenging a decision in a trial de novo.** To give the appellate division jurisdiction of such a writ petition would seem to require a constitutional amendment, or a statute permitting an appeal from a decision in a trial de novo. The latter step — changing the appealability of a decision in a small claims trial de novo — would go well beyond the Commission's authority to recommend revisions of material made obsolete by trial court restructuring. **If the Civil and Small Claims Advisory Committee expresses interest in such an approach, the Commission should defer action and allow the committee to pursue the matter.**

The preceding analysis covers the constitutional constraints on jurisdiction of a writ petition relating to a trial de novo. **The remainder of this constitutional analysis focuses on jurisdiction of a writ petition relating to a proceeding before the small claims division.**

The answer to the first subpart ("Is a proceeding before the small claims division a "cause subject to … appellate jurisdiction" within the meaning of Section 10?") appears less straightforward than the issue just discussed. Whether a proceeding before the small claims division is a "cause subject to … appellate jurisdiction" would seem to depend on whether a small claims appeal constitutes an exercise of "appellate jurisdiction."

A small claims appeal is a trial de novo; it "consists of a new hearing before a judicial officer other than the judicial officer who heard the action in the small claims division." Code Civ. Proc. § 116.770(a). In contrast, a traditional appeal involves no new presentation of evidence.

The constitutional provision governing traditional appeals (Cal. Const. art. VI, § 11) is adjacent to Article VI, Section 10. On its face, that provision does not seem to contemplate that a superior court could exercise "appellate jurisdiction" other than through its appellate division:

> (a) The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in other causes prescribed by statute. When appellate jurisdiction in civil causes is determined by the amount in controversy, the Legislature may change the appellate jurisdiction of the courts of appeal by changing the jurisdictional amount in controversy.
>
> (b) Except as provided in subdivision (a), the appellate division of the superior court has appellate jurisdiction in causes prescribed by statute.
>
> (c) The Legislature may permit courts exercising appellate jurisdiction to take evidence and make findings of fact when jury trial is waived or not a matter of right.

Similarly, the constitutional transitional provision for trial court unification (former Cal. Const. art. VI, § 23) appeared to distinguish between the "appellate jurisdiction" of the superior court and a small claims trial de novo. Subdivision (c) of that provision said:

> (c) Except as provided by statute to the contrary, in any county in which the superior and municipal courts become unified, the following shall occur automatically in each preexisting superior and municipal court:
>
> ….
>
> (5) Matters of a type previously within the *appellate jurisdiction* of the superior court remain within the jurisdiction of the appellate division of the superior court.
>
> (6) Matters of a type previously *subject to rehearing by a superior court judge* remain subject to rehearing by a superior court judge, other than the judge who originally heard the matter.
>
> ….

(Emphasis added.)

If the term "appellate jurisdiction" was not intended to include a small claims appeal in Section 11 and former Section 23 of Article VI, then perhaps the same meaning applies to Section 10 of that article. It is "'generally presumed that when a word is used in a particular sense in one part of a statute, it is intended to have the same meaning if it appears in another part of the same statute.'" *Delaney v. Baker,* 20 Cal. 4th 23, 41, 971 P.2d 986, 82 Cal. Rptr. 2d 610 (1999), *quoting People v. Dillon,* 34 Cal. 3d 441, 468, 668 P.2d 697, 194 Cal. Rptr. 390 (1983).

Under this narrow construction of "appellate jurisdiction," the most natural conclusion is that the appellate division could not constitutionally exercise

jurisdiction over a writ petition relating to an act of the small claims division. A small claims case would not appear to be a "cause subject to … appellate jurisdiction," yet Section 10 only gives the appellate division writ jurisdiction in proceedings "directed to the superior court in causes subject to its appellate jurisdiction." To give the appellate division jurisdiction of such a writ petition, as the Civil and Small Claims Advisory Committee has suggested, would seem to require a constitutional amendment if "appellate jurisdiction" is construed in this narrow way.

However, there is no rule of law necessarily requiring that the same meaning be given to the same word when that word is used in different places in the same statute. *People v. Hernandez,* 30 Cal. 3d 462, 468, 637 P.2d 706, 179 Cal. Rptr. 239 (1981); *Service Employees Internat'l Union v. City of Redwood City,* 32 Cal. App. 4th 53, 38 Cal. Rptr. 2d 86 (1995). When an occasion demands it, the same word may have different meanings in different places, to effectuate the intent of the act in which the word appears. *Hernandez,* 30 Cal. 3d at 468.

Further, there is some authority suggesting that the term "appellate jurisdiction" in Section 10 may be sufficiently broad to encompass a small claims trial de novo. For example, in construing Section 11, a plurality of the California Supreme Court has said that "the ordinary and widely accepted meaning of the term 'appellate jurisdiction' is simply the power of a reviewing court to correct error in a trial court proceeding." *Powers,* 10 Cal. 4th at 93. The Court explained that the term "permits some variation in and experimentation with the traditional procedures for appellate review of civil actions brought in the superior courts, provided always that the constitutional powers of the courts are not thereby impaired." *Id.* at 115.

Even if one does not accept this view of "appellate jurisdiction," there is another possible basis for considering a proceeding before the small claims division a "cause subject to … appellate jurisdiction" within the meaning of Section 10. The small claims process is elective. Any cause asserted in the small claims division could instead have been brought as an ordinary limited civil case. *See, e.g., Rosenberg v. Superior Court*, 67 Cal. App. 4th 860, 867, 79 Cal. Rptr. 2d 369 (1998) ("the municipal court and the small claims court *both* have jurisdiction over claims in the amount of $5,000 or less"). An ordinary limited civil case is unquestionably a "cause subject to … appellate jurisdiction," so one could argue that this remains true even if the plaintiff elects to bring the case in the small claims division.

For purposes of the discussion that follows, the staff has assumed that a proceeding before the small claims division is a "cause subject to … appellate jurisdiction" within the meaning of Article VI, Section 10. Further research on this point might be necessary later in this study.

Meaning of "Its"

Article VI, Section 10, says that the appellate division "has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to *its* appellate jurisdiction." (Emphasis added.) A key issue is whether the phrase "*its* appellate jurisdiction" refers to the appellate jurisdiction of the appellate division, or to the appellate jurisdiction of the superior court.

"Its" is an anaphor — i.e., a pronoun or other linguistic unit that is used to refer back to another word or phrase. There does not appear to be any infallible grammatical formula for figuring out what "its" means in the context of Article VI, Section 10. See Wikipedia's discussion of "Anaphor resolution" (located at http://en.wikipedia.org/wiki/Anaphora_(linguistics)), which describes the process of determining what "its" and other anaphors mean. The article presents examples of sentences in which it is impossible to reliably determine what the anaphor was meant to reference (e.g., "the dog ate the bird and it died" and "we gave the bananas to the monkeys because they were here").

In its previous proposals, the Commission assumed that "*its* appellate jurisdiction" in Section 10 refers to the appellate jurisdiction of the appellate division. That is a natural construction, because the superior court generally exercises appellate jurisdiction through its appellate division. The Commission thus interpreted the constitutional provision to mean that the appellate division has writ jurisdiction in the same types of causes that are subject to the appellate jurisdiction of the appellate division. The court of appeal seemed to adopt the same interpretation in *General Electric Capital*. See 88 Cal. App. 4th at 145 ("The appellate division also has original jurisdiction in writ proceedings in causes subject to its appellate jurisdiction."). Because the appellate division does not hear a small claims appeal, the Commission further concluded that the appellate division lacks jurisdiction of a writ petition relating to an act of the small claims division.

For ease of reference, **we will refer to this view of the constitutional provision as "the Commission's Original View."** If this view of the

constitutional provision is correct, **then it would not be possible to give the appellate division jurisdiction of such a writ petition by statute.** The result desired by the Civil and Small Claims Advisory Committee would require a constitutional amendment.

The staff has, however, thought of several alternative views of the constitutional language. These include:

- ***Alternative #1.*** The phrase "its appellate jurisdiction" in Article VI, Section 10, refers to the appellate jurisdiction of the appellate division, as discussed above. However, a proceeding before the small claims division qualifies as a cause subject to the appellate jurisdiction of the appellate division, because the small claims process is elective. Any cause asserted in the small claims division could instead have been brought as an ordinary limited civil case. An ordinary limited civil case is within the appellate jurisdiction of the appellate division, so under Article VI, Section 10, a writ directed to the small claims division is also within the jurisdiction of the appellate division.
- ***Alternative #2.*** The phrase "its appellate jurisdiction" in Article VI, Section 10, refers to the appellate jurisdiction of *the superior court,* not the appellate jurisdiction of *the appellate division*. Because a small claims appeal can be viewed as an exercise of "appellate jurisdiction," and such an appeal is within the jurisdiction of the superior court, a writ petition directed to the small claims division would be within the jurisdiction of the appellate division.
- ***Alternative #3.*** The reference to "a cause subject to its appellate jurisdiction" in Article VI, Section 10, was intended as a proxy for municipal court matters that traditionally were reviewed by the superior court, including acts of the small claims division of the municipal court. See generally Minutes (Jan. 1994), pp. 7-8 (To refer to the traditional jurisdiction of the superior court, the Commission proposed to use the phrase "other than causes of which the superior court shall have appellate jurisdiction." By implication, the phrase "causes of which the superior court shall have appellate jurisdiction" would refer to all causes traditionally within the jurisdiction of the municipal court, including those heard in the small claims division.). Because Section 10's reference to "a cause subject to its appellate jurisdiction" would include an act of the small claims division, a writ petition directed to the small claims division would be within the jurisdiction of the appellate division under that section.

Which of these four views of the constitutional language is correct? **In the staff's opinion, neither the plain language of Article VI, Section 10, nor the plain language of its surrounding provisions dictates a clear answer.**

Because the plain language is ambiguous, we need to look further to discern the meaning of the constitutional provision.

Ballot Pamphlet

In determining the meaning of a constitutional provision adopted by the voters, their intent governs. *Delaney*, 50 Cal. 3d at 798; *see also id*. at 802. "Ballot arguments are accepted sources from which to ascertain the voters' intent." *Id*. at 799; *In re Lance W.*, 37 Cal. 3d 873, 888 n.8, 210 Cal. Rptr. 631, 694 P.2d 744 (1985); *Penner v. County of Santa Barbara*, 37 Cal. App. 4th 1672, 1677, 44 Cal. Rptr. 2d 606 (1995).

However, the ballot arguments on Proposition 220 do not discuss small claims writ jurisdiction. That is hardly surprising, because small claims writ cases are uncommon and obscure. There were more significant issues to consider in deciding whether to unify the trial courts in what by many measures is the largest court system in the world.

The analysis by the Legislative Analyst does state that municipal courts "generally handle misdemeanors and infractions and most civil lawsuits involving disputes of $25,000 or less." The analysis then uses essentially identical language to describe the jurisdiction of the appellate division: "A consolidated superior court would have an appellate division to handle misdemeanors and infractions and most civil lawsuits involving disputes of $25,000 or less that are currently *appealed from* a municipal court to a superior court." (Emphasis added.) That suggests an intent that after unification the appellate division would hear the same types of appeals that the superior court heard before unification.

But what about writs? The Legislative Analyst also states that a "consolidated superior court would have jurisdiction in *all* matters that currently fall under the jurisdiction of either the superior or municipal courts." (Emphasis added.) That statement suggests that the superior court would continue to have jurisdiction of the types of small claims writ petitions that it handled before unification. It does not, however, make clear whether such petitions could be considered by the appellate division.

The remainder of the ballot pamphlet is even less directly related to the issue at hand. It is clear that trial court unification was intended as a cost-saving measure. According to the Legislative Analyst, unification "would likely result in net savings to the state ranging in the millions to the tens of millions of dollars

annually in the long term." Similarly, the argument in favor of the ballot measure said "WILL PROPOSITION 220 SAVE TAXPAYERS MONEY? YES!"

It is also clear that unification was intended to improve judicial efficiency and effectiveness. For instance, the rebuttal to the argument against the measure promised that unification would "hold the judicial branch accountable for the full and effective use of judicial time and resources."

Thus, **the voters probably intended the courts to handle small claims writ petitions in a manner that would minimize the costs of the court system and maximize its efficiency and effectiveness.** The ballot pamphlet does not clearly indicate how to achieve those goals in the context of small claims writs.

Bill Analyses

There are numerous bill analyses of SCA 4 and its predecessor, SCA 3. Like the ballot pamphlet, however, these materials do not discuss small claims writ jurisdiction. Moreover, they are less significant than the ballot pamphlet, because they are indicative of the Legislature's intent, not the intent of the voters.

Some of the bill analyses do suggest an intent to preserve the historic workload allocation between the courts of appeal and the superior courts. For example, one analysis says that the measure

> [p]rovides that each superior court shall have an appellate division to hear causes prescribed by statute that arise within that superior court (e.g., the appellate division may hear matters *now heard by existing superior courts on appeal from municipal courts*).

Assembly Committee on Judiciary Analysis of SCA 4 (July 5, 1995) (emphasis added); see also Assembly Committee on Judiciary Analysis of SCA 4 (July 12, 1995); Assembly Committee on Judiciary Analysis of SCA 3 (July 13, 1993).

Somewhat similarly, another analysis explains that the "appellate divisions created by this bill are to operate *in the same way* as do the present appellate departments of superior courts." Assembly Committee on Judiciary Analysis of SCA 4 (June 4, 1996) (emphasis added). The analysis goes on to say that the measure

> "[e]stablishes an appellate division in each unified superior court *to hear matters currently within the appellate jurisdiction of the superior court*, and provides that *matters of a type currently subject to rehearing by a superior court judge,* together with criminal matters subject to review by a superior court judge, *shall be heard by a judge other than the one who heard the matter initially*.

Id. (emphasis added); see also Assembly Committee on Judiciary Analysis of SCA 4 (June 18, 1996); Assembly Third Reading Analysis of SCA 4 (July 18, 1996). Those comments could be construed to reflect an intent to preserve the historic workload allocation between the courts of appeal and the superior courts. They might also be construed as evidence that a small claims appeal does not constitute an exercise of "appellate jurisdiction" within the meaning of Article VI of the state constitution.

Again, however, the evidence is inconclusive. The bill analyses do not provide a clear answer regarding which tribunal should hear a writ petition relating to a proceeding before the small claims division.

What is clear from the bill analyses is that the Legislature paid close attention to the Commission's report on the constitutional changes necessary to achieve unification. See, e.g., Senate Constitutional Amendments Committee Analysis of SCA 4 (Dec. 6, 1994); Senate Third Reading Analysis of SCA 4 (Dec. 6, 1994). That conclusion is reinforced by the Legislature's adoption of much of the constitutional language proposed by the Commission, such as use of the term "superior court" rather than "district court."

Unlike the ballot pamphlet and bill analyses, the Commission's report specifically discusses writ jurisdiction. The report does not address small claims writs, but it evaluates the competing policies in handling writ petitions after trial court unification.

Because the plain language of SCA 4, the ballot pamphlet, and the bill analyses do not shed much light on jurisdiction of small claims writs, we examine the competing policy considerations. At appropriate points, the discussion refers to the Commission's report and other aspects of legislative history.

Policy Analysis, with References to Legislative History

In determining the jurisdiction of a writ petition relating to a proceeding before a small claims division, there are essentially three choices. The possible tribunals are:

(1) A superior court judge, other than the one whose ruling is under review.
(2) The appellate division.
(3) The courts of appeal or the California Supreme Court.

We examine each possibility in turn.

Writ Jurisdiction is Exercised by a Superior Court Judge, Other Than the One Whose Ruling is Under Review

The first possibility would be to authorize a superior court judge, other than the one who previously considered the matter, to hear a writ petition relating to an act of a small claims division. Such an approach might be considered most consistent with the pre-unification scheme, in which a single superior court judge would consider a writ petition relating to a ruling made by the small claims division of a municipal court. See Memorandum 2010-18, pp. 6-11, 15.

"[T]he objective of the statutory revisions implementing trial court unification was 'to preserve existing rights and procedures despite unification, with no disparity of treatment between a party appearing in municipal court and a similarly situated party appearing in superior court as a result of unification of the municipal and superior courts in a county.'" *Lempert v. Superior Court*, 112 Cal. App. 4th 1161, 1169, 5 Cal. Rptr. 3d 700 (2003), *quoting TCU: Constitutional Revision*, *supra*, at 60; *see also General Electric Capital*, 88 Cal. App. 4th at 141. This principle weighs in favor of maintaining a scheme in which a single judge, rather than an appellate panel, considers a writ petition relating to an act of the small claims division.

But the Commission's report also reflects strong sentiment that judges of equal dignity should not issue writs to each other. *TCU: Constitutional Revision*, *supra*, at 26. As the Commission explained, "[t]here may be a collegiality or deference on the court that [would] destroy the independent judgment necessary for a fair review." *Id.* at 30.

This principle is so important and so strongly endorsed by the judiciary that having superior court judges issue writs to each other in connection with proceedings formerly handled by the municipal courts did not appear to be a viable option when the Commission issued its report in early 1994. Rather, the Commission recommended that "[o]nly the appellate divisions of superior courts (together with the Supreme Court and courts of appeal) may issue extraordinary writs for review of proceedings in the superior courts." *Id.* at 76.

SCA 4 did not adopt the Commission's language regarding writ review, but nothing in the legislative history suggests greater tolerance for having judges of equal rank issue writs to each other. **Such a method of review might be considered inconsistent with the voters' intent to maximize the effectiveness of the court system.**

The Appellate Division Considers a Writ Petition Relating to an Act of the Small Claims Division

Another possibility would be for the appellate division of the superior court to consider a writ petition relating to an act of the small claims division. That approach still presents a peer review problem, because judges of a superior court would be reviewing a colleague's work and deciding whether to issue a writ to their colleague.

But the peer review problem is minimized to some extent by the rules governing the appellate division. For example, the appellate division is of constitutional dimension, as the Commission recommended: "To ensure proper functioning of an appellate department staffed by judges of the same jurisdiction as the judges being reviewed, a constitutional hierarchy is desirable." *TCU: Constitutional Revision*, *supra*, at 31. Similarly, the members of the appellate division are appointed by the Chief Justice, for specified terms, "pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division." Cal. Const. art. VI, § 4. These requirements were also recommended by the Commission and adopted in SCA 4. They lend further legitimacy to having the appellate division exercise authority over other judges of the same court. *See TCU: Constitutional Revision*, *supra*, at 31.

Vesting jurisdiction in the appellate division, rather than a higher court, has a significant advantage. It helps avoid overburdening the courts of appeal. That was of great concern in the Commission's study, and drove its approach to writ jurisdiction. In the course of the study, the Commission expressed the point succinctly:

> The appellate division and its judges should be authorized to issue writs to other judges in the unified trial court. This avoids having to increase the writ jurisdiction of the Courts of Appeal.

Minutes (Oct. 1993), p. 14. The Commission expanded on this point in its final report, which was presented to and considered by the Legislature:

> It would be possible to leave extraordinary writs for review of trial court proceedings to the appellate courts. The Commission understands that there are approximately 1,000 writs issued annually from the superior courts to the municipal and justice courts. These are primarily for bail (habeas corpus), discovery, and speedy trial matters.

> *The Commission has concluded that the workload of the courts of appeal is so great that it would be inadvisable to shift writ review of trial court proceedings completely to the appellate level.* The unified trial courts should have appellate divisions, and it is appropriate that the appellate divisions have writ review capacity over the trial courts.

TCU: Constitutional Revision, *supra*, at 26-27 (emphasis added; footnotes omitted).

The Commission thus weighed the competing policies relating to writ jurisdiction — the peer review problem and the heavy workload of the courts of appeal — and decided that the workload considerations were so serious that the appellate division should have jurisdiction of *all* writ petitions relating to superior court proceedings. *See id.* at 76.

But the Legislature disagreed. Instead of adopting the language proposed by the Commission, SCA 4 gives the appellate division "jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court *in causes subject to its appellate jurisdiction*." (Emphasis added.) By limiting the writ jurisdiction of the appellate division to "causes subject to its appellate jurisdiction," the Legislature appears to have been trying to maintain the historical workload balance between the trial courts and the courts of appeal.

Further evidence of such intent comes from the constitutional provision governing appellate jurisdiction, which provides:

> (a) The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception *courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995,* and in other causes prescribed by statute.…

Cal. Const. art. VI, § 11 (emphasis added.) The Legislature selected the italicized language over language proposed by the Commission, which would have afforded more latitude in defining the jurisdiction of the courts of appeal. See *TCU: Constitutional Revision, supra,* at 76-78. The Legislature's language serves to "'preserve the appellate jurisdiction of the court of appeal in cases historically within the original jurisdiction of the superior court.'" *People v. Nickerson*, 128 Cal. App. 4th 33, 38, 26 Cal. Rptr. 3d 563 (2005), *quoting TCU: Revision of Codes*, *supra*, 28 Cal. L. Revision Comm'n Reports at 73. "[T]rial court unification — and

the resulting elimination of the municipal court — did not change the court to which cases were to be appealed. *Nickerson*, 128 Cal. App. 4th at 38.

As a matter of policy, the Legislature appears to have determined that the courts would function best if the workload balance between the trial courts and the appellate courts remained similar to what it was before unification. With regard to writ jurisdiction, that intent would be effectuated by authorizing the appellate division to consider *all* writ petitions heard by the superior courts before unification, *including those relating to proceedings in the small claims division.*

In drafting the constitutional provision on writ jurisdiction, the Legislature may well have meant to convey such intent. Further, by approving the language chosen by the Legislature and making clear they wanted the courts to function efficiently and effectively, the voters seem to have endorsed the Legislature's assessment of the relevant policies. **It may thus be reasonable to interpret Article VI, Section 10, as authorizing the appellate division to consider a writ petition relating to an act of the small claims division.**

Only the Court of Appeal or the Supreme Court May Consider a Writ Petition Relating to an Act of the Small Claims Division

The last possibility is that the courts of appeal and the Supreme Court are the only tribunals authorized to consider a writ petition relating to an act of the small claims division. The language of Article VI, Section 10, is certainly susceptible to such an interpretation. That is clear from the Commission's previous proposals on this topic and the comments received. Some of the court's statements in *General Electric Capital* also suggest such an interpretation. See 88 Cal. App. 4th at 144, 145 (appellate division has "jurisdiction in writ proceedings in causes subject to its appellate jurisdiction," but appellate division has no appellate jurisdiction over appeal from judgment of small claims division).

An advantage of this approach is that it would entirely avoid the problem of having judges review decisions of their peers. A writ would never be issued from one or more judges to another judge of the same court.

But it would be ironic to require that writ petitions relating to small claims cases be filed in the appellate courts, while allowing writ petitions relating to other types of limited civil cases (including ones involving more money) to be filed in the appellate division. It seems unlikely that such a result was intended.

Moreover, limiting jurisdiction of small claims writ petitions to the courts of appeal and the Supreme Court would increase the workloads of those courts

beyond the pre-unification level. Before unification, a writ petition relating to an act of the small claims division generally was not heard by the courts of appeal or the Supreme Court in the first instance. See Memorandum 2010-18, pp. 6-11, 15. Imposing that duty on the courts of appeal after unification could be considered poor policy. As the Commission said in explaining the need for an appellate division of the superior court,

> even discretionary review [of matters now reviewed by the superior courts] would be an increased and unwelcome burden on the Courts of Appeal. The Courts of Appeal are already overburdened, with each justice having to generate approximately one-and-a-half opinions per day.

Minutes (Oct. 1993), p. 13; see also *id*. at 12 (appellate justices are "reluctant to hear the types of cases now being appealed to the superior courts," and the "formalities, delay, and expense of obtaining review in a Court of Appeal may be unduly burdensome in such cases.").

There is thus a strong policy basis for rejecting the notion that only a court of appeal or the Supreme Court may consider a writ petition relating to an act of the small claims division. The workload considerations are not the only policy interest implicated in this context, but they may have driven the Legislature's drafting of SCA 4, as discussed above. And since the voters seem to have endorsed the Legislature's assessment of the relevant policies, **one could conclude that interpreting Article VI, Section 10, in that manner would conflict with the voters' intent.**

Summary

The constitutional provision governing writ jurisdiction gives the appellate division jurisdiction of "proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court *in causes subject to its appellate jurisdiction*." Cal. Const. art. VI, § 10 (emphasis added).

An act of a superior court in connection with a small claims trial de novo does not seem to be a "cause subject to … appellate jurisdiction," because there is no appeal from the judgment in a trial de novo or, to our knowledge, from any other ruling in a trial de novo. Consequently, **it appears that the appellate division could not constitutionally consider a writ petition challenging an act in a trial de novo.**

It is less clear how the constitutional provision would apply to a writ petition challenging an act of the small claims division. The plain language is susceptible

to differing interpretations. Neither the ballot pamphlet nor the bill analyses expressly address small claims writ jurisdiction. It is plain, however, that the voters intended the courts to operate in a manner that would minimize the costs of the court system and maximize its efficiency and effectiveness. A policy analysis, coupled with references to legislative history, **suggests that the appellate division could constitutionally consider a writ petition challenging an act of the small claims division.** The evidence is not overwhelming, but this appears to be a reasonable and perhaps the best conclusion. **Further research might shed additional light on the constitutional provision and its proper interpretation.**

OPTIONS

Given the information presented above, how should the Commission proceed in this study? A number of different options are discussed and evaluated below.

Take No Action, at Least at This Time

One possibility would be to take no action and devote the Commission's resources to other matters. Writ petitions relating to small claims cases are uncommon, so few people are likely to need guidance in this area. If jurisdictional issues arise, they could be resolved by the courts, interpreting existing law.

The infrequency of small claims writ petitions is evident from the following comments that Court Commissioner Paul Slavit submitted on behalf of the San Francisco County Superior Court in response to Memorandum 2010-18:

> The CLR Commission's memo represents a comprehensive study of a problem I did not know we had. In 8 years as a *pro tem*, another seven or eight years training *pro tems*, and nearly four years sitting in small claims as a commissioner, I can not think of one instance of a litigant filing a writ in connection with a small claims case. As such, it is difficult to comment on the issues discussed.
>
> I can offer my observation that most issues pertaining to the jurisdiction of the small claims court (which apparently is a principal subject of writ petitions) or other procedural matters are raised by use of Judicial Council forms SC-105 [Request for Court Order], or SC-108 [Request to Correct or Cancel Judgment]. They are then dealt with summarily, or by setting a hearing. Because appeals from small claims judgments are *de novo* proceedings, I have always assumed that such questions are, or can be raised again at the trial *de novo*. Whatever disagreement parties may have with those procedural orders, they have not led to writ petitions.

Exhibit p. 1. Mr. Slavit does not go so far as to say that the Commission should discontinue its study. See *id*.

Earlier in this study, the staff did suggest that "it would be better to leave the area alone, instead of trying to provide statutory clarification." Memorandum 2009-20, p. 13. In response, the Civil and Small Claims Advisory Committee commented that statutory clarification would be desirable. See Memorandum 2009-34, Exhibit p. 6; see also Memorandum 2009-51; p. 3. The Commission considered those comments and decided to collaborate with the committee to pursue such clarification. Minutes (Aug. 2009), pp. 6-7. **At this point, it seems prudent to stick with that decision,** particularly given the support that the Commission's first clarification attempt received from the San Diego County Superior Court and the State Bar Committee on Appellate Courts.

Constitutional Amendment

A second possibility would be to amend the state constitution to squarely resolve the jurisdictional issues relating to small claims cases. If the matter were addressed through a constitutional amendment, jurisdiction could be allocated as appears optimal from a policy standpoint, without worrying about whether that allocation conforms to existing constitutional constraints.

But the process of amending the state constitution is burdensome and expensive. The Civil and Small Claims Advisory Committee would prefer to avoid that approach, if possible. See Memorandum 2009-51, p. 3. **The staff emphatically agrees that this matter does not warrant separate constitutional amendment.** In our experience, such an approach would consume an inordinate amount of Commission resources.

Suppose, however, that a constitutional amendment appears necessary to achieve the optimal allocation of writ jurisdiction in small claims context. **In that circumstance, it might be reasonable to await a possibility to incorporate such an amendment into a broader constitutional reform,** such as a court-related reform proposed by the Judicial Council. We are already aware of another minor reform that probably should be handled in this manner. See Memorandum 2002-14, p. 33 (discussing obsolete "constable" references in Penal Code Sections 412 and 413, which can only be deleted by a vote of the People). **So far, at least, it does not seem necessary to resort to this approach,** which would involve indefinite and probably considerable delay.

A Small Claims Writ Is Heard by Another Judge of the Superior Court

A third possibility would be to propose a statute under which a writ petition relating to a small claims case could be heard by a judge of the superior court, other than the one whose conduct is the subject of the petition. Such an approach might be considered constitutional under the doctrine enunciated by the California Supreme Court in *Konow*, 32 Cal. 4th at 1019-21 (superior court judge who considers an order entered earlier by another superior court judge does not enjoin, restrain, or otherwise interfere with the judicial act of another superior court judge *when the later judge acts under statutory authority*).

But the history of SCA 3 and SCA 4, including the Commission's own report, reflects a strong aversion to "hav[ing] trial court judges of equal dignity in the same court issuing writs directed to one another." *TCU: Constitutional Revision*, *supra*, at 26. Such sentiment remains strong today, as the Civil and Small Claims Advisory Committee made clear in rejecting the Commission's first attempt to clarify small claims writ jurisdiction. **An approach that would authorize a superior court judge to issue a writ to another judge of the same court does not appear to be a viable option.**

Small Claims Writ is Heard by a Single Judge of the Appellate Division

A variant on the preceding option would be to propose a statute under which a writ petition relating to a small claims case could be heard by a single judge *of the appellate division*. For example, Code of Civil Procedure Section 77(d) establishes a general rule that the concurrence of two judges is necessary for the appellate division to render a decision. There is an exception under which a single judge can render a decision in a traffic infraction appeal. See Code Civ. Proc. § 77(h). It would be a simple matter to add another exception for a writ petition relating to a small claims case.

Requiring that writ review be conducted by a member of the appellate division would alleviate the peer review problem to some extent. There is a degree of separation between the appellate division and the rest of the court, because the appellate division is of constitutional stature and its judges are appointed by the Chief Justice pursuant to rules intended to promote the independence of the appellate division. That might help mitigate the sting of receiving a writ from a fellow superior court judge.

Further, review by a single judge of somewhat higher rank (due to membership in the appellate division) is closely similar to the pre-unification

process for reviewing an act of the small claims division. See Memorandum 2010-18, pp. 6-11, 15. It would be more economical to have one judge consider a writ petition than to have a three-judge panel consider the petition. That would serve the voters' goal of minimizing the costs of the court system.

It is possible, however, that this type of approach would still encounter resistance from the judiciary, including the Civil and Small Claims Advisory Committee. Requiring the reviewing judge to be a member of the appellate division may not be enough to overcome the concerns about having judges from the same court issuing writs to each other. **This approach deserves serious consideration, but pursuing it may be futile and a waste of resources if it is unacceptable to the Civil and Small Claims Advisory Committee and others in the judicial branch.** The Commission should bear in mind, however, that both the San Diego County Superior Court and the State Bar Committee on Appellate Courts supported the Commission's first proposal on small claims writs, under which a writ petition relating to an act of the small claims division would "be heard by a judicial officer of the superior court other than the one who heard the case in the small claims division." *Tentative Recommendation on Statutes Made Obsolete by Trial Court Restructuring: Part 3* (Aug. 2006), pp. 11-12, 35-39; see Memorandum 2006-44, pp. 7-8 & Exhibit pp. 3, 5.

All Small Claims Writs Are Heard by Either the Court of Appeal or the California Supreme Court

Still another possibility would be to statutorily require that all writs relating to small claims cases be heard by the courts of appeal or the Supreme Court. That would totally avoid the peer review problem. A writ relating to a small claims case would always be issued by a higher tribunal, not by the superior court.

Such an approach would expand the writ jurisdiction of the appellate courts beyond the pre-unification level. Although there are not many small claims writ petitions, any increase in the workload of the appellate courts is likely to generate concern, because those courts already have a heavy workload.

When the Commission first started working on trial court unification, the staff suggested that writs directed to trial courts or trial court judges "be within the exclusive jurisdiction of the appellate courts." Memorandum 93-59, p. 3. That approach was soundly rejected, after the Commission heard testimony vehemently objecting to the concept of expanding the workload of the appellate courts. See Minutes (Oct. 1993), p. 14.

The staff would not completely rule out this approach, but it would conflict with the policy assessment the Commission made in its report on the constitutional revisions necessary for trial court unification. See *TCU: Constitutional Revision*, *supra*, at 26-27. After it issues a final recommendation, the Commission usually does not reverse its position on a policy determination, unless there is a good reason for doing so. See generally CLRC Handbook Rule 3.5 ("The Commission has established that, as a matter of policy, unless there is a good reason for doing so, the Commission will not recommend to the Legislature changes in laws that have been enacted on Commission recommendation."). Based on our current information, the staff is not convinced that sufficient grounds for reversing course exist here. **Absent further justification, we do not recommend requiring that all writs relating to small claims cases be heard by the courts of appeal or the Supreme Court.**

Statutorily Clarify That the Appellate Division May Hear Certain Writ Petitions Relating to Small Claims Cases

A final possibility would be to statutorily clarify that the appellate division may hear certain writ petitions relating to small claims cases.

There is already general guidance regarding the authority of the appellate division to issue a writ directed to the superior court in a limited civil case. For example, Code of Civil Procedure Section 1068 provides:

> 1068. (a) A writ of review may be granted by any court when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.
>
> (b) *The appellate division of the superior court may grant a writ of review directed to the superior court in a limited civil case* or in a misdemeanor or infraction case. Where the appellate division grants a writ of review directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

(Emphasis added.) Code of Civil Procedure Sections 1085 and 1103 are similar provisions for a writ of mandate and a writ of prohibition, respectively.

"Unless otherwise provided by statute or rule, the statutes or rules applicable to limited civil cases are applicable to small claims cases." *General Electric Capital*, 88 Cal. App. 4th at 142. Thus, Sections 1068, 1085, and 1103 could be construed to govern jurisdiction of small claims writ petitions.

The staff believes, however, that more specific guidance would be advisable. In particular, we have previously explained that it may not be constitutional for the appellate division to hear a writ petition relating to an act in a trial de novo (at least not unless the type of act involved is already appealable, or the law is changed to make that type of act appealable, which would be beyond the Commission's authority). Sections 1068, 1085, and 1103 do not distinguish that situation. They appear to authorize the appellate division to consider any request for a writ directed to the superior court in a limited civil case. To prevent confusion, and thereby save resources of litigants and courts, **it would be helpful to expressly clarify when the appellate division does, and when the appellate division does not, have jurisdiction of a writ petition relating to a small claims case.**

Precisely how should that be done?

First, we suggest that **the proposed provision state that the appellate division lacks jurisdiction to hear a writ petition relating to an act in a trial de novo** (exceptions could be noted if any are appropriate, but we are not presently aware of any appealable acts in a trial de novo)**.** Under Article VI, Section 10, such a petition should be directed to a court of appeal or to the Supreme Court.

Second, we suggest that **the proposed provision state that the appellate division has jurisdiction to hear a writ petition relating to an act of the small claims division.** That would be consistent with the Commission's policy determination in its report on the constitutional changes necessary for trial court unification. With regard to writs generally, the Commission

> concluded that the workload of the courts of appeal is so great that it would be inadvisable to shift writ review of trial court proceedings completely to the appellate level. *The unified trial courts should have appellate divisions, and it is appropriate that the appellate divisions have writ review capacity over the trial courts.*

TCU: Constitutional Revision, supra, at 27 (emphasis added; footnote omitted). Based on the research and analysis we have done thus far, it does not appear to be constitutionally possible to give the appellate division jurisdiction of *all* writ petitions relating to small claims cases (unless the judgment and other rulings in a trial de novo were made appealable), but it does appear to be constitutionally possible to give the appellate division jurisdiction of writ petitions *relating to an act of the small claims division*. Absent persuasive evidence precluding this

constitutional construction, **it would make sense to stick with the Commission's original policy determination to this extent.**

Third, we suggest that **the proposed provision specifically state that the appellate division has jurisdiction to hear a writ petition relating to a postjudgment enforcement order made by the small claims division, regardless of whether the order is made after a trial de novo or after the case is heard in the small claims division.** That would codify the holding in *General Electric Capital*. It would also be consistent with the suggested general rule that the appellate division has jurisdiction to hear a writ petition relating to an act of the small claims division.

Fourth, there is the question of how to handle a writ sought by a small claims plaintiff. Should the Commission attempt to clarify the extent to which a small claims plaintiff is entitled to seek writ relief? **The staff recommends against this.** The Commission is not expressly authorized to study that issue. It is true that when the Commission is authorized to study a topic (e.g., trial court restructuring), the Commission often addresses related issues that arise in the course of its study. In fact, the grant of authority sometimes expressly encompasses related issues. In this instance, however, Government Code Section 71674 does not include such language. Neither does the latest resolution relating to the Commission's calendar of topics (2009 Cal. Stat. res. ch. 98). That suggests that the Commission should refrain from addressing the issue, particularly since the extent to which a small claims plaintiff may seek writ relief is a significant and potentially controversial issue, not just a minor point. Any attempt to resolve the issue might raise significant concerns, and thus might sink the proposal to clarify small claims writ jurisdiction. **It may be better to avoid the issue relating to plaintiffs, state that the Commission's proposal is not intended to affect it, and leave the matter to the courts to resolve.**

In sum, **it may be reasonable to propose a statute that avoids the issue relating to plaintiffs but clarifies the following points:**

- The appellate division has jurisdiction to hear a writ petition relating to an act of the small claims division.
- The appellate division lacks jurisdiction to hear a writ petition relating to an act in a trial de novo.
- The appellate division has jurisdiction to hear a writ petition relating to a postjudgment enforcement order made by the small claims division, regardless of whether the order is made after a trial de novo or after the case is heard in the small claims division.

Such statutory guidance may be helpful to both small claims litigants and the courts. Although the constitutional language is murky, there is a strong presumption in favor of the Legislature's interpretation of an unclear or ambiguous constitutional provision. *See, e.g., Heckendorn v. City of San Marino,* 42 Cal. 3d 481, 488, 723 P.2d 64, 229 Cal. Rptr. 324 (1986); *Penner v. County of Santa Barbara,* 37 Cal. App. 4th 1672, 1678, 44 Cal. Rptr. 2d 324 (1986). Thus, if the Legislature were to enact a statute along these lines, the courts may be inclined to uphold it.

Issue Before the Commission

The Commission should consider the options discussed above, as well as the information and analysis presented in this memorandum. **At the upcoming meeting it would be helpful to:**

(1) Hear the Commission's preliminary reaction to the issues and ideas presented.
(2) Perhaps reach a preliminary consensus on what type of approach to pursue.
(3) Assess whether further research is needed, and, if so, what should be done.

We expect that the Civil and Small Claims Advisory Committee will develop and provide some feedback on this topic over the course of the summer. **We encourage others to do the same.** Once the Commission receives such feedback and we complete any needed research, the Commission should be able to settle on how to draft a tentative recommendation, if any.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

Superior Court of California
County of San Francisco

GORDON PARK-LI
CHIEF EXECUTIVE OFFICER

MEMORANDUM

DATE: April 26, 2010

TO: Hon. James J. Mc.Bride

FROM: Comm. Paul Slavit

RE: Law Revision Commission Memorandum 2010-18

I reviewed Memorandum 2010-18, which addresses issues pertaining to writ jurisdiction in small claims cases. Although your transmittal memo referred to a proposal, Memo 2010-18 is an analysis of the issues, without any particular proposals. Apparently, proposals for any required corrective action will be the subject of future meetings or study.

The memo examines instances in which litigants challenge an order or judgment of the small claims court by extraordinary writ. The four general instances where writs are requested are those (1) challenging pre-hearing orders; (2) following entry of a small claims judgment; (3) following notice of appeal, but before trial de novo; and (4) following trial *de novo*. The memo further discusses—but does not resolve--the question of the appropriate court for writ review—i.e., appellate department of the superior court, district court of appeal.

The CLR Commission's memo represents a comprehensive study of a problem I did not know we had. In 8 years as a *pro tem*, another seven or eight years training *pro tems*, and nearly four years sitting in small claims as a commissioner, I can not think of one instance of a litigant filing a writ in connection with a small claims case. As such, it is difficult to comment on the issues discussed.

I can offer my observation that most issues pertaining to the jurisdiction of the small claims court (which apparently is a principal subject of writ petitions) or other procedural matters are raised by use of Judicial Council forms SC-105 [Request For Court Order], or SC-108 [Request To Correct or Cancel Judgment]. They are then dealt with summarily, or by setting a hearing. Because appeals from small claims judgments are *de novo* proceedings, I have always assumed that such questions are, or can be raised again at the trial *de novo*. Whatever disagreement parties may have with those procedural orders, they have not led to writ petitions.

Once the Commission has taken further steps to address this matter, I would be happy to review its findings or proposals. In the mean time, if you would like to discuss the memo, or my thoughts, feel free to contact me.

Comm. Paul Slavit

EX 1