

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Policy Coordination and Liaison Committee  
Hon. Marvin R. Baxter, Chair  
Civil and Small Claims Advisory Committee  
Hon. Elihu Berle, Chair  
Patrick O'Donnell, Committee Counsel  
Small Claims and Limited Cases Subcommittee  
Hon. Mary Thornton House, Chair  
Cara Vonk, Subcommittee Counsel  
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DATE: October 25, 2004

SUBJECT: Small Claims: Motion to Correct or Vacate Judgment (Code Civ. Proc., § 116.725) (Action Required)

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Issue Statement

Currently, Code of Civil Procedure section 116.725 does not limit the time frame during which a court may correct a clerical error or set aside a judgment. Some small claims parties file a request to correct or vacate the judgment by letter or on Judicial Council form SC-108, *Request to Correct or Vacate Judgment*, long after the time for appeal has expired. Others may file successive requests to correct or vacate the judgment, which can result in multiple appeals on corrected or new judgments, prolonging finality and certainty of a small claims judgment.

Recommendation

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend that the Judicial Council cosponsor legislation with the California Judges Association to amend Code of Civil Procedure section 116.725 to provide that a small claims motion to correct an error or vacate a judgment may be made (1) on the court's own motion at any time, or (2) on a party's motion that must be filed

within 30 days after the clerk mails notice of entry of the judgment to the parties, with only one motion allowed per party.<sup>1</sup>

The text of the proposed legislation is attached at page 4.

#### Rationale for Recommendation

This proposal was submitted by the California Judges Association (CJA) and forwarded to the Civil and Small Claims Advisory Committee for possible cosponsorship. The CJA reported that some small claims litigants were filing motions to vacate long after the period for appeal has passed and that the existing statute created a loophole that allowed litigants to file multiple appeals. The proposal to require that a motion to correct or vacate judgment be filed within 30 days after the clerk has mailed notice of entry of the judgment to the parties is consistent with the statutory procedure of allowing only 30 days to vacate judgment when (1) a plaintiff does not appear at a hearing under Code of Civil Procedure section 116.720, or (2) a defendant does not appear at a hearing under Code of Civil Procedure section 116.730.

Thirty days is a reasonable time for the parties to inspect the notice of entry of judgment for clerical or other errors and seek to correct or vacate the judgment. The 30 days would also coincide with the 30-day period for a defendant to file a notice of appeal under Code of Civil Procedure section 116.750. That section provides that “the time for filing a notice of appeal is not extended by the filing of a request to correct a mistake or by virtue of any subsequent proceedings on that request.” However, the section also provides that “a new period for filing notice of appeal shall begin on the delivery or mailing of notice of entry of any modified judgment.” (Code Civ. Proc., § 116.750(c).)

In order to reduce the opportunity to file an appeal on a corrected judgment after the small claims appellate division has already rendered judgment in a trial de novo, the time to file a motion to correct or vacate judgment would be limited to 30 days after the mailing of the notice of entry of judgment. Each party would also be limited to filing one motion, to prevent a party from filing successive motions to correct or vacate the judgment.

#### Comments From Interested Parties

The proposal was circulated for comment by the Civil and Small Claims Advisory Committee. Of the 14 comments received, 1 commentator opposed the proposal, 10 commentators supported the proposal outright with no additional suggestions, and 3 commentators supported the proposal with suggested modification or concerns.

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<sup>1</sup> The Civil and Small Claims Advisory Committee recommended last fall that the Judicial Council seek legislation to amend Code of Civil Procedure section 116.725. However, the Office of Governmental Affairs requested that the proposal first be circulated for comment to better assess support for the recommended changes.

A member of the Civil Justice Association of California felt that 30 days is not enough time in which to discover a mistake after taking into account time to process receipt of mail and then file a motion. The commentator urged 60 days for filing a motion to set aside a judgment. As was stated in the invitation to comment, 30 days is consistent with other statutory procedures to vacate a judgment when (1) a plaintiff does not appear at a hearing under Code of Civil Procedure section 116.720 or (2) a defendant does not appear at a hearing under Code of Civil Procedure section 116.730. It also coincides with the 30-day period for a defendant to file a notice of appeal. The committee believes that 30 days is sufficient time to open mail, review a judgment to discover whether a mistake has been made, and file a motion on a readily accessible Judicial Council form (form SC-108, *Request to Correct or Vacate Judgment*).

Two commentators expressed concern that “a mechanism [remain] in place for having a judgment vacated on the basis that the defendant was never served, irrespective of the time that has elapsed since the entry of judgment.” The committee notes that if a defendant were never served, the defendant then would make a motion to vacate under Code of Civil Procedure section 116.740, which allows a defendant to make a motion to vacate within 180 days after discovering that a judgment was entered against him or her.

All the other commentators supported the proposal. A chart with comments and committee responses is attached at pages 5–7.

#### Alternative Actions Considered

The committee did not consider alternative actions.

#### Implementation Requirements and Costs

The Judicial Council would incur costs in revising form SC-108, *Request to Correct or Vacate Judgment*, to conform to the revised statute if enacted. Courts may incur some minor costs in copying the revised forms and making them available to the public. The cost savings of reduced requests to correct or vacate small claims judgments may offset some of these costs.

#### Attachments

Code of Civil Procedure section 116.725 would be amended to read:

1 **§ 116.725**

2  
3 ~~Nothing in this chapter shall be construed to prevent a court from correcting a clerical~~  
4 ~~error in a judgment or from setting aside and vacating a judgment on the ground of an~~  
5 ~~incorrect or erroneous legal basis for the decision.~~  
6

7 (a) A motion to correct a clerical error in a judgment or to set aside and vacate a  
8 judgment on the ground of an incorrect or erroneous legal basis for the decision  
9 may be made as follows:

10  
11 (1) By the court on its own motion at any time, or

12  
13 (2) By a party within 30 days after the clerk mails notice of entry of  
14 judgment to the parties.

15  
16 (b) Each party may file only one motion to correct a clerical error or to set aside  
17 and vacate the judgment on the ground of an incorrect or erroneous legal basis for  
18 the decision.  
19

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(amend Code Civ. Proc., § 116.725)**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Mr. Greg Blevins Small Claims Advisor Blevins Law Firm Tulare, California	A	N	None.	No response needed.
2.	Ms. Laura Borden Riddell Civil Justice Association of California Sacramento, California	N	N	The time period of 30 days is too short because often the process of receiving the court’s judgment and responding takes longer than 30 days. If there is a mistake that is not discovered prior to the end of the 30-day time period, this provision would prohibit that mistake from being corrected. Sixty days would be more appropriate.	The committee believes that 30 days is adequate time to make a motion to vacate the judgment and that this time is consistent with time to vacate in other areas, such as Code Civ. Proc., §§ 116.720, 116.730, etc.
3.	Ms. Linda Durand Court Program Manager – Senior Superior Court of Ventura County Ventura, California	A	N	None.	No response needed.
4.	Ms. Kim Hubbard President Orange County Bar Association Irvine, California	A	N	None.	No response needed.
5.	Judicial Assistant Clerk of the Superior Court Santa Barbara, California	A	N	None.	No response needed.
6.	Mr. Stephen V. Love Executive Officer Superior Court of San Diego County San Diego, California	AM	Y	The following comments were received from our court managers: Good idea – this will help prevent repetitive motions as well as unnecessary and untimely filings. It is recommended that the Judicial Council form SC-108 be amended to contain the language outlining the new rules. For example: “ This motion must be filed within 30 days of the mailing date of the	The committee will put this proposal to amend SC-108 on its work plan so that the effective date can coincide with the effective date of the legislation.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
				Notice of Entry of Judgment. You may file this motion only if you did not appear at the trial. Only one motion allowed per party.”	
7.	Ms. Adrienne A. McMillan Staff Attorney Superior Court of San Francisco County – ACCESS San Francisco, California	A	N	Much easier to understand.	No response needed.
8.	Hon. Dennis E. Murray Presiding Judge Superior Court of California, County of Tehama Red Bluff, California	A	N	None	No response needed.
9.	Ms. Sharon Ngim Staff Liaison to the Standing Committee on the Delivery of Legal Services San Francisco, California	A	Y	SCDLS’s reviewer comments: “It makes sense to limit the number of motions to vacate a small claims judgment and the time in which to bring the motion. So long as a mechanism is still in place for having a judgment vacated on the basis that the defendant was never served, irrespective of the time that has elapsed since entry of judgment, I would support this proposed legislation.”	The basis for setting aside a judgment under Code Civ. Proc., § 116.725 is incorrect or erroneous legal basis or clerical error. If a defendant was never served, then the defendant would make a motion to vacate under Code Civ. Proc., § 116.740, within 180 days after the defendant discovers that judgment was entered. See also comment 11.
10.	Ms. Erica A. Ochoa Legal Process Supervisor Superior Court of San Joaquin Stockton, California	A	N	None.	No response needed.
11.	Ms. Tina Rasnow SHLA Center Coordinator Superior Court of Ventura County Ventura, California	AM	N	It makes sense to limit the number of motions to vacate a small claims judgment and the time in which to bring the motion. However, there needs to be a remedy for a defendant who was never served and finds out, sometimes years later, that a judgment	The basis for setting aside a judgment under Code Civ. Proc., § 116.725 is incorrect or erroneous legal basis or clerical error. If a defendant was never served, then the defendant would make a

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
				was entered against him/her. In the SHLA Center, we sometimes see people who first find out they have a judgment against them when they apply for credit, or sometimes even when they receive notice of renewal of the judgment. When we have them retrieve copies of the original pleadings and proofs of service, the defendants contend that the addresses shown for them are wrong. Thus they would not have received the copy of the judgment mailed by the clerk and could not have responded within the 30 days. So long as a mechanism is still in place for getting judgments vacated on the basis that the defendant was never served, irrespective of the time that has elapsed since entry of judgment, I would support this proposed legislation.	motion to vacate under Code Civ. Proc., § 116.740, within 180 days after the defendant discovers that judgment was entered. See also comment 9.
12.	Mr. Scott Reep Small Claims Advisor Benicia, California	AM	N	Change “Each party” to “A party” on line 14.	The committee believes that “each party” is the better phrase.
13.	Ms. Susan Sheehan Small Claims Advisor Sonoma County Legal Aid Santa Rosa, California	A	N	None.	No response needed.
14.	State Bar of California CAJ	A	Y	CAJ supports the proposal that the Judicial Council sponsor legislation to amend Code of Civil Procedure section 116.725 to limit the time to 30 days for a party to file a motion to correct an error or vacate the judgment, for the reasons stated in the staff memo.	No response needed.