



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

TANI CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

April 13, 2011

Hon. Mike Feuer, Chair
Assembly Judiciary Committee
State Capitol, Room 2013
Sacramento, California 95814

Subject: Assembly Bill 1067 (Huber), as introduced – Support, if amended
Hearing: Assembly Judiciary Committee – April 26, 2011

Dear Assembly Member Feuer:

The Judicial Council is pleased to support AB 1067, which provides that the denial of a motion to reconsider an order pursuant to Code of Civil Procedure (CCP) section 1008 is not separately appealable. There is currently a split of authority in the appellate courts on whether an order denying a motion for reconsideration pursuant to CCP section 1008 is appealable. (See e.g., *Tate v. Wilburn* (2010) 184 Cal.App.4th 150, which discusses the two lines of authority). AB 1067 would codify the majority view that such orders are not appealable. The Judicial Council supports this change since it will provide clarity, eliminate confusion and reduce the number of appeals in this area. In doing so, AB 1067 promotes judicial economy, which is particularly beneficial for the courts during the current fiscal crisis. The council also notes that this provision in AB 1067 parallels the law governing the appealability of orders denying a motion for a new trial.

AB 1067 also seeks to clarify that, while a party cannot appeal the order denying reconsideration by itself, the court can consider the issue in connection with a timely appeal from the order that was the subject of the reconsideration motion. The Judicial Council supports the goal of this latter provision, but believes that the language in the bill on this point is confusing. Therefore,

Hon. Mike Feuer
April 13, 2011
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the council's support for AB 1067 is conditioned on proposed subdivision (g) of CCP section 1008 being amended as follows:

(g) An order denying a motion for reconsideration made pursuant to subdivision (a) is not separately appealable. However, ~~a determination made pursuant to subdivision (a) may be reviewed on appeal from an appealable~~ if the order that was the subject of a motion made pursuant to this section for reconsideration is appealable, the denial of the motion for reconsideration is reviewable as part of an appeal from that order.

If these clarifying amendments were to be adopted, the council would be in full support of the bill.

If you have any questions about the Judicial Council's position on AB 1067 or the proposed clarifying amendments, please feel free to contact me at (916) 323-3121 or via email at daniel.pone@jud.ca.gov.

Sincerely,



Daniel Pone
Senior Attorney

DP/lp

cc: Members, Assembly Judiciary Committee

Hon. Alyson Huber, Member of the Assembly

Mr. Tom Clark, Counsel, Assembly Judiciary Committee

Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor

Ms. Kirsten Kolpitzke, Deputy Director of Legislation, Governor's Office of Planning and Research

Mr. Mark Redmond, Consultant, Assembly Republican Office of Policy

Mr. Larry Doyle, Lobbyist, Conference of California Bar Associations



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ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

770 L Street, Suite 700 • Sacramento, California 95814-3358
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

TANI CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

CURTIS L. CHILD
Director, Office of Governmental Affairs

June 28, 2011

Hon. Edmund G. Brown, Jr.
Governor of California
State Capitol, First Floor
Sacramento, California 95814

Subject: AB 1067 (Huber) – Request for Signature

Dear Governor Brown:

The Judicial Council is pleased to support AB 1067, which provides that the denial of a motion to reconsider an order pursuant to Code of Civil Procedure (CCP) section 1008 is not separately appealable. There is currently a split of authority in the appellate courts on whether an order denying a motion for reconsideration pursuant to CCP section 1008 is appealable. (See e.g., *Tate v. Wilburn* (2010) 184 Cal.App.4th 150, which discusses the two lines of authority). AB 1067 would codify the majority view that such orders are not appealable. The Judicial Council supports this change since it will provide clarity, eliminate confusion and reduce the number of appeals in this area. In doing so, AB 1067 promotes judicial economy, which is particularly beneficial for the courts during the current fiscal crisis.

For these reasons, the Judicial Council requests your signature on AB 1067.

Sincerely,

Daniel Pone
Senior Attorney

DP/lp

cc: Hon. Alyson Huber, Member of the Assembly
Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Larry Doyle, Lobbyist, Conference of California Bar Associations



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WILLIAM C. VICKREY
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RONALD G. OVERHOLT
Chief Deputy Director

June 3, 2011

Hon. Noreen Evans, Chair
Senate Judiciary Committee
State Capitol, Room 4034
Sacramento, California 95814


Subject: Assembly Bill 1067 (Huber), as amended April 25, 2011 - Support
Hearing: Senate Judiciary Committee – June 14, 2011

Dear Senator Evans:

The Judicial Council is pleased to support AB 1067, which provides that the denial of a motion to reconsider an order pursuant to Code of Civil Procedure (CCP) section 1008 is not separately appealable. There is currently a split of authority in the appellate courts on whether an order denying a motion for reconsideration pursuant to CCP section 1008 is appealable. (See e.g., *Tate v. Wilburn* (2010) 184 Cal.App.4th 150, which discusses the two lines of authority). AB 1067 would codify the majority view that such orders are not appealable. The Judicial Council supports this change since it will provide clarity, eliminate confusion and reduce the number of appeals in this area. In doing so, AB 1067 promotes judicial economy, which is particularly beneficial for the courts during the current fiscal crisis.

For these reasons, the Judicial Council supports AB 1067.

Sincerely,



Daniel Pone
Senior Attorney

DP/lp

cc: Members, Senate Judiciary Committee
Hon. Alyson Huber, Member of the Assembly
Ms. Ronak Daylami, Counsel, Senate Judiciary Committee
Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Kirsten Kolpitzke, Deputy Director of Legislation, Governor's Office of Planning and Research
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy
Mr. Larry Doyle, Lobbyist, Conference of California Bar Associations