



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

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RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

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CURTIS L. CHILD
Director, Office of Governmental Affairs

March 17, 2008

Hon. Dave Jones, Chair
Assembly Judiciary Committee
State Capitol, Room 3146
Sacramento, California 95814

Subject: AB 1873 (Lieu), *as proposed to be amended* – Sponsor/Support
Hearing: Assembly Judiciary Committee – March 25, 2008

Dear Assembly Member Jones:

Assembly Bill 1873, which is sponsored by the Judicial Council, increases access to justice for litigants by authorizing the court to allow a party or witness in a small claims action to appear by telephone. The bill also clarifies the law governing post-judgment and postponement fees in small claims court. Details regarding each of these provisions are set out below.

Appearance by Telephone: The Small Claims Act does not currently authorize a court to grant the request of a party or witness to appear by telephone. The requirement to personally appear may in some circumstances be so burdensome, perhaps at a cost greater than the amount in controversy, that it defeats the underlying purpose of small claims court as an accessible forum for the resolution of minor civil disputes. As a result, practices differ statewide.

AB 1873 would authorize the court, in its discretion and upon a showing of good cause why a party or witness cannot appear in person at the small claims hearing, to allow a party or witness to appear by telephone. AB 1873 will foster the resolution of small claims disputes by improving accessibility of the forum, and will promote greater consistency in small claims courts statewide. This proposal is also consistent with legislation enacted last year — AB 500 (Lieu),

March 17, 2008

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Stats. 2007, ch. 268 — that expands the use of telephonic appearances in civil case-management conferences and other hearings and proceedings.

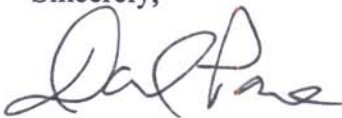
Post-Judgment Fees Clarification: The Small Claims Act states that small claims judgments may be enforced like other judgments as provided in title 9 (commencing with section 680.010) of the Code of Civil Procedure. However, the Act specifies post-judgment fees only with regard to the issuance of a writ of execution, application for an order of examination of a judgment debtor, and issuance of an abstract of judgment. The fee charged in such matters is the same as that charged for the enforcement of any civil judgment.

The Act does not identify a fee for a variety of post-judgment motions, including a motion opposing a claim of exemption or a motion to “reset” or continue examination of a judgment debtor, which occur routinely in the enforcement of a small claims judgment. Since such motions are similar to motions for the enforcement of any other civil judgment, the fee for such a motion in a general civil case would also be the appropriate fee to be charged in small claims cases. As a result of the lack of clarity in the statute, practices differ from court to court. AB 1873 would clarify that a court is authorized to charge the same fees for post-judgment motions related to the enforcement of a small claims judgment as a court charges for the enforcement of a regular civil judgment under title 9.

Postponement Fee: Courts often encounter plaintiffs who file small claims actions, but then do not pursue service on the defendant. Instead, the plaintiffs make repeated requests to postpone the trial date, which results in the use of valuable court resources to reschedule small claims trials. AB 1873 would authorize the court to charge and collect a nonrefundable postponement fee from either party who makes more than one pre-service request to postpone the trial. This fee would only be assessed after a party has already been granted one prior postponement. A self-represented party who filed a claim should know by the time the first free request for a postponement is made what procedures are available to serve his or her claim and whether any extra effort in effecting service may be required. By the second request for postponement, a minimum of 40 days to a maximum of 140 days will have passed from the date the claim was filed. This should be sufficient time for effecting service. Any additional requests for rescheduling the trial would be subject to a \$10 fee under this provision.

For these reasons, the Judicial Council requests your “aye” vote on AB 1873.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Daniel Pone', with a stylized, flowing script.

Daniel Pone
Senior Attorney

March 17, 2008

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DP/op

Enclosure: March 17, 2008 Mockup of Proposed Amendments

cc: Members, Assembly Judiciary Committee
Hon. Ted Lieu, Member of the Assembly
Ms. Leora Gershenzon, Counsel, Assembly Judiciary Committee
Mr. Mark Redmond, Consultant, Assembly Republican Office of Policy
Mr. Christopher Ryan, Deputy Legislative Secretary, Office of the Governor
Mr. Brent Jamison, Acting Director of Legislation, Office of Planning and Research

MOCKUP OF PROPOSED AMENDMENTS

March 17, 2008

[additions shown in **bold underlines**; deletions shown in ~~**bold strikeouts**~~]

BILL NUMBER: AB 1873 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Lieu

FEBRUARY 4, 2008

An act to amend Sections 116.540, 116.570, and 116.820 of the Code of Civil Procedure, relating to small claims court.

LEGISLATIVE COUNSEL'S DIGEST

AB 1873, as introduced, Lieu. Small claims court.

(1) Existing law, the Small Claims Act, sets forth a comprehensive body of law governing small claims courts. Under existing law, although generally no individual other than the plaintiff and the defendant may take part in the conduct or defense of a small claims action, a party may appear and participate in a small claims action by a representative if the party qualifies under one of specified exceptions to that rule.

This bill would authorize the court in its discretion, upon a showing of good cause why a party or witness cannot appear in person at the small claims hearing, to allow any party or witness to appear by written declaration under penalty of perjury or by telephone, as specified.

(2) Existing law authorizes any party to a small claims action to submit a written request to postpone a hearing date for good cause, as specified. Existing law requires the court to charge and collect a \$10 fee for the filing of a request for postponement and rescheduling of a hearing date after timely service of both the claim and order directing the parties to appear has been made upon the defendant.

This bill would require that the request to postpone the hearing state whether any previous requests to postpone the hearing date were made by the requesting party and whether the court granted those requests. The bill would specify that the \$10 fee for the filing of a request for postponement after service of the claim and order shall be nonrefundable. The bill would require the court also to collect a nonrefundable \$10 fee for the filing of a request for postponement and rescheduling of a hearing date before service of the claim and order, or a counterclaim, if the court granted a prior postponement to the party making the request.

(3) Existing law provides for the enforcement of the judgment of a small claims court and requires the clerk to charge and collect specified fees for the issuance of a writ of execution, an abstract of judgment, or an order of examination of a judgment debtor.

This bill would instead require the clerk to charge and collect all fees associated with the enforcement of judgments, including, among other things, statutory fees for preparing and issuing, and recording and indexing, an abstract of judgment or a certified copy of a judgment, statutory fees for filing a notice of judgment lien on personal property, and statutory fees for issuing a writ for the enforcement of the judgment, as specified. By increasing the duties of local officials, the bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 116.540 of the Code of Civil Procedure is amended to read:

116.540. (a) Except as permitted by this section, no individual other than the plaintiff and the defendant may take part in the conduct or defense of a small claims action.

(b) Except as additionally provided in subdivision (i), a corporation may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, who is employed, appointed, or elected for purposes other than solely representing the corporation in small claims court.

(c) A party who is not a corporation or a natural person may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, or in the case of a partnership, a partner, engaged for purposes other than solely representing the party in small claims court.

(d) If a party is an individual doing business as a sole proprietorship, the party may appear and participate in a small claims action by a representative and without personally appearing if both of the following conditions are met:

(1) The claim can be proved or disputed by evidence of an account that constitutes a business record as defined in Section 1271 of the Evidence Code, and there is no other issue of fact in the case.

(2) The representative is a regular employee of the party for purposes other than solely representing the party in small claims actions and is qualified to testify to the identity and mode of preparation of the business record.

(e) A plaintiff is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim or allow another individual to appear and participate on his or her behalf, if (1) the plaintiff is serving on active duty in the United States Armed Forces outside this state, (2) the plaintiff was assigned to his or her duty station after his or her claim arose, (3) the assignment is for more than six months, (4) the representative is serving without compensation, and (5) the representative has

appeared in small claims actions on behalf of others no more than four times during the calendar year. The defendant may file a claim in the same action in an amount not to exceed the jurisdictional limits stated in Sections 116.220, 116.221, and 116.231.

(f) A party incarcerated in a county jail, a Department of Corrections and Rehabilitation facility, or a Division of Juvenile Facilities facility is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim, or may authorize another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(g) A defendant who is a nonresident owner of real property may defend against a claim relating to that property without personally appearing by (1) submitting written declarations to serve as evidence supporting his or her defense, (2) allowing another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year, or (3) taking the action described in both (1) and (2).

(h) A party who is an owner of rental real property may appear and participate in a small claims action through a property agent under contract with the owner to manage the rental of that property, if (1) the owner has retained the property agent principally to manage the rental of that property and not principally to represent the owner in small claims court, and (2) the claim relates to the rental property.

(i) A party that is an association created to manage a common interest development, as defined in Section 1351 of the Civil Code, may appear and participate in a small claims action through an agent, a management company representative, or bookkeeper who appears on behalf of that association.

(j) At the hearing of a small claims action, the court shall require any individual who is appearing as a representative of a party under subdivisions (b) to (i), inclusive, to file a declaration stating (1) that the individual is authorized to appear for the party, and (2) the basis for that authorization. If the representative is appearing under subdivision (b), (c), (d), (h), or (i), the declaration also shall state that the individual is not employed solely to represent the party in small claims court. If the representative is appearing under subdivision (e), (f), or (g), the declaration also shall state that the representative is serving without compensation, and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(k) A husband or wife who sues or who is sued with his or her spouse may appear and participate on behalf of his or her spouse if (1) the claim is a joint claim, (2) the represented spouse has given his or her consent, and (3) the court determines that the interests of justice would be served.

(l) If the court determines that a party cannot properly present his or her claim or defense and needs assistance, the court may in its discretion allow another individual to assist that party.

(m) Nothing in this section shall operate or be construed to authorize an attorney to participate in a small claims action except as expressly provided in Section 116.530.

(n) (1) The court in its discretion, upon a showing of good cause why a party or witness cannot appear in person at the small claims hearing, may allow any party or witness to appear by ~~written declaration under penalty of perjury or by~~ telephone. (2) If a telephonic appearance is allowed, the court shall ensure all of the following:

~~(1)~~ (A) The testifying party is sworn as a witness.

~~(2)~~ (B) The identity of the testifying party has been established to the satisfaction of the court.

~~(3)~~ (C) The testimony of the testifying party is audible to the opposing parties and any public observers of the trial. A party or witness appearing by telephone may, at or before the time of hearing, submit a declaration authenticating documentary evidence attached thereto. Costs associated with appearing by telephone are not recoverable under section 116.610.

The court may, in its discretion, revoke its permission for the party or witness to appear by declaration or telephone ~~when the revocation is warranted in the interests of justice.~~

SEC. 2. Section 116.570 of the Code of Civil Procedure is amended to read:

116.570. (a) Any party may submit a written request to postpone a hearing date for good cause.

(1) The written request may be made either by letter or on a form adopted or approved by the Judicial Council.

(2) The request shall state whether any previous requests to postpone the hearing date were made by the requesting party and whether the court granted those requests.

~~(2)~~

(3) The request shall be filed at least 10 days before the hearing date, unless the court determines that the requesting party has good cause to file the request at a later date.

~~(3)~~

(4) On the date of making the written request, the requesting party shall mail or personally deliver a copy to each of the other parties to the action.

~~(4)~~

(5) (A) If the court finds that the interests of justice would be served by postponing the hearing, the court shall postpone the hearing, and shall notify all parties by mail of the new hearing date, time, and place.

(B) On one occasion, upon the written request of a defendant guarantor, the court shall postpone the hearing for at least 30 days, and the court shall take this action without a hearing. This subparagraph does not limit the discretion of the court to grant additional postponements under subparagraph (A).

~~(5)~~

(6) The court shall provide a prompt response by mail to any person making a written request for postponement of a hearing date under this subdivision.

(b) If service of the claim and order upon the defendant is not completed within the number of days before the hearing date required by subdivision (b) of Section 116.340, and the defendant has not personally appeared and has not requested a postponement, the court shall postpone the hearing for at least 15 days. If a postponement is ordered under this subdivision, the clerk shall promptly notify all parties by mail of the new hearing date, time, and place.

(c) This section does not limit the inherent power of the court to order postponements of hearings in appropriate circumstances.

(d) A nonrefundable fee of ten dollars (\$10) shall be charged and collected for the filing of a request for postponement and rescheduling of a hearing date after timely service pursuant to subdivision (b) of Section 116.340 has been made upon the defendant.

(e) A nonrefundable fee of ten dollars (\$10) shall be charged and collected for the filing of a request for postponement and rescheduling of a hearing date before service has been made pursuant to subdivision (b) of Section 116.340 or subdivision (b) of Section 116.360 if the court granted a prior postponement to the party making the request.

SEC. 3. Section 116.610 of the Code of Civil Procedure is amended to read:

116.610. (a) The small claims court shall give judgment for damages, or equitable relief, or both damages and equitable relief, within the jurisdictional limits stated in Sections 116.220, 116.221, and 116.231, and may make any orders as to time of payment or otherwise as the court deems just and equitable for the resolution of the dispute.

(b) The court may, at its discretion or on request of any party, continue the matter to a later date in order to permit and encourage the parties to attempt resolution by informal or alternative means.

(c) The judgment shall include a determination whether the judgment resulted from a motor vehicle accident on a California highway caused by the defendant's operation of a motor vehicle, or by the operation by some other individual, of a motor vehicle registered in the defendant's name.

(d) If the defendant has filed a claim against the plaintiff, or if the judgment is against two or more defendants, the judgment, and the statement of decision if one is rendered, shall specify the basis for and the character and amount of the liability of each of the parties, including, in the case of multiple judgment debtors, whether the liability of each is joint or several.

(e) If specific property is referred to in the judgment, whether it be personal or real, tangible or intangible, the property shall be identified with sufficient detail to permit efficient implementation or enforcement of the judgment.

(f) In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

(g) (1) The prevailing party is entitled to the costs of the action, including the costs of serving the order for the appearance of the defendant.

(2) Notwithstanding paragraph (1) of this subdivision and subdivision (b) of Section 1032, the amount of the small claims court fee paid by a party pursuant to subdivision (c) of Section 116.230 that exceeds the amount that would have been paid if the party had paid the fee pursuant to subdivision (b) of Section 116.230 shall not be recoverable as costs.

(3) Notwithstanding paragraph (1) of this subdivision and subdivision (b) of section 1032, costs associated with appearing by telephone are not recoverable.

(h) When the court renders judgment, the clerk shall promptly deliver or mail notice of entry of the judgment to the parties, and shall execute a certificate of personal delivery or mailing and place

it in the file.

(i) The notice of entry of judgment shall be on a form approved or adopted by the Judicial Council.

SEC. 4. Section 116.820 of the Code of Civil Procedure is amended to read:

116.820. (a) The judgment of a small claims court may be enforced as provided in Title 9 (commencing with Section 680.010) of Part 2 and in Sections 674 and 1174 on the enforcement of judgments of other courts. A judgment of the superior court after a hearing on appeal, and after transfer to the small claims court under subdivision (d) of Section 116.780, may be enforced like other judgments of the small claims court, as provided in Title 9 (commencing with Section 680.010) of Part 2 and in Sections 674 and 1174 on the enforcement of judgments of other courts.

(b) ~~The fees specified in subdivision (a) of Section 70626 of the Government Code shall be charged and collected by the clerk for the issuance of a writ of execution, or an abstract of judgment. The fee specified in Section 70617 of the Government Code shall be charged for an application for an order of examination of a judgment debtor.~~ clerk of the court shall charge and collect all fees associated with the enforcement of judgments under Title 9 (commencing with Section 680.010) of Part 2 . The clerk shall immediately deposit all the fees collected under this section into a bank account established for this purpose by the Administrative Office of the Courts. The money shall be remitted to the State Treasury under rules adopted by, or trial court financial policies and procedures authorized by, the Judicial Council under subdivision (a) of Section 77206 of the Government Code. The Controller shall distribute the fees to the Trial Court Trust Fund as provided in Section 68085.1 of the Government Code.

(c) The prevailing party in any action subject to this chapter is entitled to the costs of enforcing the judgment and accrued interest.

SEC.-4 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.



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May 29, 2008

Hon. Ellen Corbett, Chair
Senate Judiciary Committee
State Capitol, Room 3092
Sacramento, California 95814

Subject: AB 1873 (Lieu), as amended April 1, 2008 – Sponsor/Support
Hearing: Senate Judiciary Committee – June 24, 2008

Dear Senator Corbett:

Assembly Bill 1873, which is sponsored by the Judicial Council, increases access to justice for litigants by authorizing the court to allow a party or witness in a small claims action to appear by telephone. The bill also clarifies the law governing post-judgment and postponement fees in small claims court. Details regarding each of these provisions are set out below.

Appearance by Telephone: The Small Claims Act does not currently authorize a court to grant the request of a party or witness to appear by telephone. The requirement to personally appear may in some circumstances be so burdensome, perhaps at a cost greater than the amount in controversy, that it defeats the underlying purpose of small claims court as an accessible forum for the resolution of minor civil disputes. As a result, practices differ statewide.

AB 1873 would authorize the court, in its discretion and upon a showing of good cause why a party or witness cannot appear in person at the small claims hearing, to allow a party or witness to appear by telephone. AB 1873 will foster the resolution of small claims disputes by improving accessibility of the forum, and will promote greater consistency in small claims courts statewide. This proposal is also consistent with legislation enacted last year — AB 500 (Lieu), Stats. 2007, ch. 268 — that expands the use of telephonic appearances in civil case-management conferences and other hearings and proceedings.

Post-Judgment Fees Clarification: The Small Claims Act states that small claims judgments may be enforced like other judgments as provided in title 9 (commencing with section 680.010)

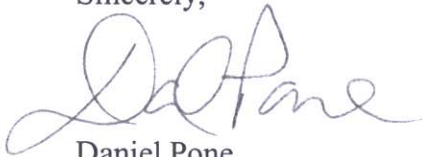
of the Code of Civil Procedure. However, the Act specifies post-judgment fees only with regard to the issuance of a writ of execution, application for an order of examination of a judgment debtor, and issuance of an abstract of judgment. The fee charged in such matters is the same as that charged for the enforcement of any civil judgment.

The Act does not identify a fee for a variety of post-judgment motions, including a motion opposing a claim of exemption or a motion to "reset" or continue examination of a judgment debtor, which occur routinely in the enforcement of a small claims judgment. Since such motions are similar to motions for the enforcement of any other civil judgment, the fee for such a motion in a general civil case would also be the appropriate fee to be charged in small claims cases. As a result of the lack of clarity in the statute, practices differ from court to court. AB 1873 would clarify that a court is authorized to charge the same fees for post-judgment motions related to the enforcement of a small claims judgment as a court charges for the enforcement of a regular civil judgment under title 9.

Postponement Fee: Courts often encounter plaintiffs who file small claims actions, but then do not pursue service on the defendant. Instead, the plaintiffs make repeated requests to postpone the trial date, which results in the use of valuable court resources to reschedule small claims trials. AB 1873 would authorize the court to charge and collect a nonrefundable postponement fee from either party who makes more than one pre-service request to postpone the trial. This fee would only be assessed after a party has already been granted one prior postponement. A self-represented party who filed a claim should know by the time the first free request for a postponement is made what procedures are available to serve his or her claim and whether any extra effort in effecting service may be required. By the second request for postponement, a minimum of 40 days to a maximum of 140 days will have passed from the date the claim was filed. This should be sufficient time for effecting service. Any additional requests for rescheduling the trial would be subject to a \$10 fee under this provision.

For these reasons, the Judicial Council requests your "aye" vote on AB 1873.

Sincerely,



Daniel Pone
Senior Attorney

DP/op

cc: Members, Senate Judiciary Committee
Hon. Ted Lieu, Member of the Assembly
Ms. Alexandra Montgomery, Counsel, Senate Judiciary Committee
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy
Mr. Christopher Ryan, Deputy Legislative Secretary, Office of the Governor
Mr. Brent Jamison, Deputy Director of Legislation, Office of Planning and Research



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CURTIS L. CHILD
Director, Office of Governmental Affairs

July 7, 2008

Hon. Tom Torlakson, Chair
Senate Appropriations Committee
State Capitol, Room 5050
Sacramento, California 95814

Subject: AB 1873 (Lieu), as amended July 2, 2008 – Sponsor/Support
Hearing: Senate Appropriations Committee – August 4, 2008

Dear Senator Torlakson:

Assembly Bill 1873, which is sponsored by the Judicial Council, clarifies the law governing post-judgment and postponement fees in small claims court.

The Small Claims Act states that small claims judgments may be enforced like other judgments as provided in title 9 (commencing with section 680.010) of the Code of Civil Procedure. However, the Act specifies post-judgment fees only with regard to the issuance of a writ of execution, application for an order of examination of a judgment debtor, and issuance of an abstract of judgment. The fee charged in such matters is the same as that charged for the enforcement of any civil judgment.

The Act does not identify a fee for a variety of post-judgment motions, including a motion opposing a claim of exemption or a motion to “reset” or continue examination of a judgment debtor, which occur routinely in the enforcement of a small claims judgment. Since such motions are similar to motions for the enforcement of any other civil judgment, the fee for such a motion in a general civil case would also be the appropriate fee to be charged in small claims cases. As a result of the lack of clarity in the statute, practices differ from court to court. Assembly Bill 1873 would clarify that a court is authorized to charge the same fees for post-judgment motions related to the enforcement of a small claims judgment as a court charges for the enforcement of a regular civil judgment under title 9.

Hon. Tom Torlakson, Chair

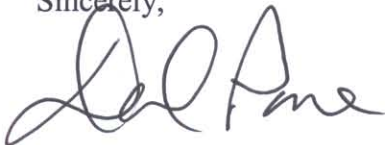
July 7, 2008

Page 2

Courts often encounter plaintiffs who file small claims actions, but then do not pursue service on the defendant. Instead, the plaintiffs make repeated requests to postpone the trial date, which results in the use of valuable court resources to reschedule small claims trials. AB 1873 would authorize the court to charge and collect a nonrefundable postponement fee from either party who makes more than one pre-service request to postpone the trial. This fee would only be assessed after a party has already been granted one prior postponement. A self-represented party who filed a claim should know by the time the first free request for a postponement is made what procedures are available to serve his or her claim and whether any extra effort in effecting service may be required. By the second request for postponement, a minimum of 40 days to a maximum of 140 days will have passed from the date the claim was filed. This should be sufficient time for effecting service. Any additional requests for rescheduling the trial would be subject to a \$10 fee under this provision.

For these reasons, the Judicial Council requests your "aye" vote on AB 1873.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Pone", written over a horizontal line.

Daniel Pone
Senior Attorney

DP/ljb

cc: Members, Senate Appropriations Committee
Hon. Ted Lieu, Member of the Assembly
Ms. Katie Johnson, Consultant, Senate Appropriations Committee
Mr. Matt Osterli, Consultant, Senate Republican Office of Policy
Mr. Christopher Ryan, Deputy Legislative Secretary, Office of the Governor
Mr. Brent Jamison, Deputy Director of Legislation, Office of Planning and Research



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August 29, 2008

Hon. Arnold Schwarzenegger
Governor of California
State Capitol, First Floor
Sacramento, California 95814

Subject: AB 1873 (Lieu) – Request for Signature

Dear Governor Schwarzenegger:

Assembly Bill 1873, which is sponsored by the Judicial Council, makes several non-controversial changes to improve court operations that are summarized below.

Post-Judgment Fees Clarification: The Small Claims Act states that small claims judgments may be enforced like other judgments as provided in title 9 (commencing with section 680.010) of the Code of Civil Procedure. However, the Act specifies post-judgment fees only with regard to the issuance of a writ of execution, application for an order of examination of a judgment debtor, and issuance of an abstract of judgment. The fee charged in such matters is the same as that charged for the enforcement of any civil judgment.

The Act does not identify a fee for a variety of post-judgment motions, including a motion opposing a claim of exemption or a motion to "reset" or continue examination of a judgment debtor, which occur routinely in the enforcement of a small claims judgment. Since such motions are similar to motions for the enforcement of any other civil judgment, the fee for such a motion in a general civil case would also be the appropriate fee to be charged in small claims cases. As a result of the lack of clarity in the statute, practices differ from court to court. AB 1873 would clarify that a court is authorized to charge the same fees for post-judgment motions

related to the enforcement of a small claims judgment as a court charges for the enforcement of a regular civil judgment under title 9.

Postponement Fee: Courts often encounter plaintiffs who file small claims actions, but then do not pursue service on the defendant. Instead, these plaintiffs make repeated requests to postpone the trial date, which results in the use of valuable court resources to reschedule small claims trials. AB 1873 would authorize the court to charge and collect a nonrefundable postponement fee from either party who makes more than one pre-service request to postpone the trial.

This fee would only be assessed after a party has already been granted one prior postponement. A self-represented party who filed a claim should know by the time the first free request for a postponement is made what procedures are available to serve his or her claim and whether any extra effort in effecting service may be required. By the second request for postponement, a minimum of 40 days to a maximum of 140 days will have passed from the date the claim was filed. This should be sufficient time for effecting service. Any additional requests for rescheduling the trial would be subject to a \$10 fee under this proposal.

American Sign Language Interpreter: The Judicial Council has established a Court Interpreters Advisory Panel under Government Code Section 68565 to assist the Council in improving the availability and quality of interpreter services provided in California courts and promoting access both to spoken-language interpreters and interpreters for deaf or hearing impaired persons. However, the current definition of court interpreter, for purposes of membership on this panel, excludes individuals who interpret for deaf or hearing impaired persons, imposing an unnecessary obstacle in the way of the panel performing its duties. By including interpreters for the deaf in the definition of interpreters for the advisory panel, the Judicial Council will be able to include an important stakeholder in the delivery of court services to an important segment of California's population.

Minor's Counsel Costs: Current law (Welfare and Institutions Code section 903.1) provides the ability to seek reimbursement for counsel provided to a child in either a juvenile delinquency (criminal) or dependency (abuse and neglect) action. The county is responsible for providing counsel in juvenile delinquency cases, but since Trial Court Funding, the court is responsible for providing counsel in dependency cases. Because of the way the statute is currently worded, however, the courts cannot seek reimbursement for the costs they incur in providing the services in juvenile dependency cases. This change will not affect the county's authority or collections in any way, but will allow the court to seek reimbursement, in limited cases, for the services they provide.

Earnings Withholding Orders: Current law specifies the procedures for the performance of levies under writs of attachment and writs of execution. One of the requirements is that documents be returned to the levying officer after service of process is accomplished on the levy. Last year, legislation was enacted to clarify that writs of attachment and writs of execution had to be returned to the levying officer five *court* days after service of process, not five days. (See AB 859 (Plescia) Stats. 2007, Ch. 15) AB 859 failed to change the five-day standard for return of

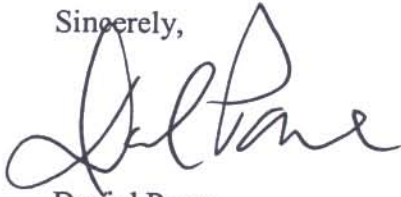
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documents relating to earnings withholding orders under CCP Section 706.108. Exactly the same rationale applies to these levies. Section 3 of AB 1873, which is sponsored by the California Association of Legal Support Professionals, makes the parallel change to this statute by requiring the earning withholding documents to be returned to the levying officer within five *court* days after service of process.

Finally, the bill includes language to avoid chaptering out problems with SB 1407. There is no opposition to AB 1873 and the bill received considerable bi-partisan support.

For these reasons, the Judicial Council requests your signature on AB 1873.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Pone', written over a horizontal line.

Daniel Pone
Senior Attorney

DP/ljb

cc: Hon. Ted Lieu, Member of the Assembly
Mr. Chris Ryan, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Brent Jamison, Director of Legislation, Governor's Office of Planning and Research