

RESOLUTION 06-04-2008

DIGEST

Small Claims Services: Prohibit from County District Attorneys' Offices

Amends Code of Civil Procedure section 116.940 to prohibit small claims advisory services from being located in or provided by District Attorneys' offices.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 116.940 to prohibit small claims advisory services from being located in or provided by District Attorneys' offices. This resolution should be approved in principle because it discourages the appearance of any conflicts of interest between a small claims litigant who was or is a criminal defendant prosecuted by the same District Attorney's office.

While this situation is rare, by locating a small claims advisory services office within a District Attorney's Office, it may pose a hardship or barrier for potential small claims litigants who may seek those services from the same District Attorney's office that was or is prosecuting that litigant in a criminal matter. Existing law specifies that the services be administered in a manner that avoids creating an actual or perceived conflict of interest (Code Civ. Proc. §116.940 (d)) but does not provide guidance in any situation that might give rise to such a real or perceived conflict. Most small claims advisory services are located in the county court or the county department of consumer affairs, practices that are more likely to avoid the appearance of any such conflict.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates of California Bar Associations recommend that legislation be sponsored to amend Code of Civil Procedure Section 116.940 as follows:

- 1 §116.940.
- 2 (a) Except as otherwise provided in this section or in rules adopted by the Judicial
- 3 Council, which are consistent with the requirements of this section, the characteristics of
- 4 the small claims advisory service required by Section 116.260 shall be determined by each
- 5 county in accordance with local needs and conditions.
- 6 (b) Each advisory service shall provide the following services:
- 7 (1) Individual personal advisory services, in person or by telephone, and by any
- 8 other means reasonably calculated to provide timely and appropriate assistance. The topics
- 9 covered by individual personal advisory services shall include, but not be limited to,
- 10 preparation of small claims court filings, procedures, including procedures related to the
- 11 conduct of the hearing, and information on the collection of small claims court judgments.

12 (2) Recorded telephone messages may be used to supplement the individual
13 personal advisory services, but shall not be the sole means of providing advice available in
14 the county.

15 (3) Adjacent counties may provide advisory services jointly.

16 (c) In any county in which the number of small claims actions filed annually is
17 1,000 or less as averaged over the immediately preceding two fiscal years, the county may
18 elect to exempt itself from the requirements set forth in subdivision (b). This exemption
19 shall be formally noticed through the adoption of a resolution by the board of supervisors.
20 If a county so exempts itself, the county shall nevertheless provide the following minimum
21 advisory services in accordance with rules adopted by the Judicial Council:

22 (1) Recorded telephone messages providing general information relating to small
23 claims actions filed in the county shall be provided during regular business hours.

24 (2) Small claims information booklets shall be provided in the court clerk's office
25 of each superior court, the county administrator's office, other appropriate county offices,
26 and in any other location that is convenient to prospective small claims litigants in the
27 county.

28 (d) The advisory service shall operate in conjunction and cooperation with the
29 small claims division, and shall be administered so as to avoid the existence or appearance
30 of a conflict of interest between the individuals providing the advisory services and any
31 party to a particular small claims action or any judicial officer deciding small claims
32 actions. The advisory service shall not be located in, or provided by, a District Attorney's
33 office.

34 (e) Advisers may be volunteers, and shall be members of the State Bar, law
35 students, paralegals, or persons experienced in resolving minor disputes, and shall be
36 familiar with small claims court rules and procedures. Advisers may not appear in court as
37 an advocate for any party.

38 (f) Advisers, including independent contractors, other employees, and volunteers
39 have the immunity conferred by Section 818.9 of the Government Code with respect to
40 advice provided as a public service on behalf of a court or county to small claims litigants
41 and potential litigants under this chapter.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: National Lawyers Guild: Los Angeles Chapter

STATEMENT OF REASONS:

Existing Law: The existing law requires that counties provide small claims advisory services to the public, and further requires that the services be administered in a manner that avoids creating the existence or appearance of a conflict of interest. However, the existing law does not specify any situation that would create a real or apparent conflict of interest.

This Resolution: Would modify existing law by prohibiting District Attorneys' offices from providing or housing small claims advisory services.

The Problem: In most counties, the small claims advisor is part of the court or a county department of consumer affairs. However, in rare instances (e.g., Ventura County), the small claims advisor is located within the District Attorney's office. This may occur, for example, when the District Attorney has significant political clout with the county board of supervisors, and seeks to have the funding allocated for the small claims advisor (a portion of all small claims court filing fees within the county) directed to the Office of the District Attorney.

Locating the small claims advisor in a District Attorney's office creates a particular problem when the small claims litigant is a current or former criminal defendant and does not feel comfortable seeking assistance in the office that is or was prosecuting him or her.

IMPACT STATEMENT:

This proposed resolution affects Code of Civil Procedure Section 116.260, Government Code Section 818.9 and Rule 3.2120 of the California Rules of Court.

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