

RESOLUTION 04-05-2016

DIGEST

Small Claims: Service of Counterclaim by Mail

Amends Code of Civil Procedure section 116.360 to allow a small claims counterclaim to be served by mail.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 116.360 to read as follows:

§116.360

- 1 (a) The defendant may file a claim against the plaintiff in the same action in an amount
2 not to exceed the jurisdictional limits stated in Sections 116.220, 116.221, and 116.231. The
3 claim need not relate to the same subject or event as the plaintiff's claim.
- 4 (b) The defendant's claim shall be filed ~~and served~~ in the manner provided for filing ~~and~~
5 ~~servng~~ a claim of the plaintiff under Sections 116.330 ~~and 116.340~~. The defendant's claim shall
6 be served either in the manner provided for service of a claim under Section 116.330 or 116.340
7 or defendant may cause the claim to be deposited in the U.S. Mail, postage pre-paid, to the name
8 and address of the plaintiff as stated in the claim with a completed Proof of Service.
- 9 (c) The defendant shall cause a copy of the claim and order to be served on the plaintiff at
10 least five days before the hearing date, unless the defendant was served 10 days or less before the
11 hearing date, in which event the defendant shall cause a copy of the defendant's claim and order
12 to be served on the plaintiff at least one day before the hearing date.

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

PROPOSER: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: A cross-claim in a small claims matter is required to be served in the same manner as the original claim (i.e., certified mail by the clerk of the court, personal service or substituted service). Even though the plaintiff is already in the action, there is no provision for service by regular mail. These heightened forms of service are unnecessary since the cross-claim is only authorized against the plaintiff who is already a party in the action.

The Solution: This resolution would allow a defendant to mail serve a cross-claim to the plaintiff in the address stated in plaintiff's claim.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 116.360 to allow a small claims counterclaim to be served by mail. This resolution should be approved in principle because service by mail is efficient and would not prejudice the plaintiff who has already appeared in the case.

Service by mail is recognized as a reliable means of service. Further, service by mail is more efficient and less time consuming than requiring a cross-complainant to determine and comply with the method of service used by the plaintiff in a case. Although personal service may be the most reliable means of service, current law does not require that counterclaims be personally served (unless that was how the plaintiff served it), and it is often less efficient for parties than mail service because personal service may require a small claims party to find transportation and suffer delays from road congestion.