

## RESOLUTION 04-03-2016

### DIGEST

#### Small Claims Court: Attorney's Fees on Appeal

Amends Code of Civil Procedure section 116.780 to increase the maximum award of attorney's fees on appeal from a small claims judgment from \$150 to \$1000.

### TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 116.780 to read as follows:

#### §116.780

- 1           (a) The judgment of the superior court after a hearing on appeal is final and not  
2           appealable.
- 3           (b) Article 6 (commencing with Section 116.610) on judgments of the small claims court  
4           applies to judgments of the superior court after a hearing on appeal, except as provided in  
5           subdivision (c).
- 6           (c) For good cause and where necessary to achieve substantial justice between the parties,  
7           the superior court may award a party to an appeal reimbursement of (1) attorney's fees actually  
8           and reasonably incurred in connection with the appeal, not exceeding ~~one hundred fifty dollars~~  
9           (\$150) one thousand dollars (\$1,000), and (2) actual loss of earnings and expenses of  
10           transportation and lodging actually and reasonably incurred in connection with the appeal, not  
11           exceeding one hundred fifty dollars (\$150).

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

**PROPONENT:** Bar Association of Northern San Diego County.

### STATEMENT OF REASONS

The Problem: The amount of attorney's fees which may be awarded in an appeal from a Small Claims Court judgment set out Code of Civil Procedure section 116.780 has not been amended since 1991. The amount of attorney's fees which may be awarded is \$150. This amount is less than the hourly rate of most attorneys in today's market, even the most novice. Setting the attorney's fees that may be awarded on an appeal at such an unreasonably low level discourages attorneys from assisting parties in small claims appeals. Having attorney representation facilitates efficient handling of these cases on the Superior Court calendar, which hears these appeals. Recently in *Dorsey v. Superior Court* (2015) 241 Cal.App.4th 583, the Fourth District Court of Appeal ruled that Section 116.780 superseded contractual attorney fee provision. (*Id.*, at p. 844.) The Court noted that attorney's fees in small claims appeals are subject to "fairness and equitable considerations," which serves as a restriction on "uncapped" attorney's fees awards. (*Id.*, at p. 586-587.) Thus, the increase in the legislative cap on fees would still be subject to these requirements, and not result in any additional burden on the small claims process.

The Solution: This Resolution would increase the amount of attorney's fees that could be awarded in a Small Claims appeal to \$1,000. Even though \$1,000 would likely only cover a few hours of attorney time in handling the appeal, it would nonetheless encourage attorneys to provide assistance on small claims appeals.

**IMPACT STATEMENT**

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

**CURRENT OR PRIOR RELATED LEGISLATION:** Code of Civil Procedure section 116.780 was amended in 2011 to eliminate an obsolete code reference. No change was made to the dollar limitation for an award of fees. This Resolution was proposed and approved in principle by the Conference in 2008 (Resolution 06-01-08).

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**RESPONSIBLE FLOOR DELEGATE:** Mary V.J. Cataldo

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**RESOLUTIONS COMMITTEE RECOMMENDATION**

The CCBA's Resolutions Committee recommended Disapproval of this resolution. The full Conference rejected that recommendation and approved the resolution.

History:

Similar to Resolution 06-01-2008, which was approved in principle.