

RESOLUTION 04-04-2016

DIGEST

Small Claims Court: Attorneys’ Fees Recoverable in an Appeal Without Merit

Amends Code of Civil Procedure section 116.790 to increase the amount of attorneys’ fees recoverable in a small claims appeal that is without substantial merit from \$1000 to \$3000.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 116.790 to read as follows:

§116.790

1 If the superior court finds that the appeal was without substantial merit and not based on
2 good faith, but was intended to harass or delay the other party, or to encourage the other party to
3 abandon the claim, the court may award the other party (a) attorney's fees actually and
4 reasonably incurred in connection with the appeal, not exceeding ~~one~~ three thousand dollars
5 (~~\$1,000-~~ \$3,000), and (b) any actual loss of earnings and any expenses of transportation and
6 lodging actually and reasonably incurred in connection with the appeal, not exceeding one
7 thousand dollars (\$1,000), following a hearing on the matter.

(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 where an appeal has been brought without substantial justification and not based on good faith has not been amended since its enactment in 1990. The amount of attorney’s fees which may be awarded when a bad faith showing is made is limited to \$1,000. This amount is substantially less than fees incurred for the required showing of bad faith, even for the most novice attorney. Setting the attorney’s fees that may be awarded on an appeal which requires the additional showing of bad faith 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.

The Solution: This Resolution would increase the maximum amount of attorney’s fees which may be awarded by the Superior Court on an appeal from a Small Claims Court Judgment where there is a showing of that the appeal was with substantial merit and not based on good faith, from \$1,000 to \$3,000. Even though \$3,000 would likely only cover a few hours of attorney time in handling an appeal that carries the addition burden of a bad faith showing, it would nonetheless encourage attorneys to provide assistance on small claims 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.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Code of Civil Procedure section 116.790 was amended in 1991 to clarify certain language. No change was made to the dollar limitation for an award of fees. This Resolution is related to proposed amendment to Code of Civil Procedure section 116.780.

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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.