

RESOLUTION 11-04-2010

DIGEST

Legal Referral Services in Unlawful Detainer Actions

Amends Code of Civil Procedure section 1161.2 to include non-profit bar associations that are authorized lawyer referral service providers on an unlawful detainer notice.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 1161.2 to include non-profit bar associations that are authorized lawyer referral service providers on an unlawful detainer notice. This resolution should be approved in principle as it will give lower-income individuals more options to find a lawyer if and when they are served with an unlawful detainer notice.

Currently, Section 1161.2 requires that, when a notice of an unlawful detainer action is mailed to a defendant, the name and number of the local county bar association, as well as the name and number of offices that provide legal services to low-income individuals in the county where the action is pending, are to be set forth on the notice. This is to provide such individuals with opportunities to connect with an attorney for legal advice on their case. However, the statute, as currently written, presumes that a county has only one bar association, or only one association that provides legal referral services. This is not always true. If a county has other bar associations that provide referrals to low-income individuals, there is no reason why such information should not be provided to the people who need it. Moreover, the resolution does not mandate that these other bar associations be listed on the notice; it simply allows for it as an option.

Providing individuals with more opportunities to get legal advice when faced with an unlawful detainer action is a positive thing. This resolution accomplishes that goal.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend CCP section 1161.2 to read as follows:

- 1 §1161.2
- 2 (a) The clerk may allow access to limited civil case records filed under this
- 3 chapter, including the court file, index, and register of actions, only as follows:
- 4 (1) To a party to the action, including a party's attorney.
- 5 (2) To any person who provides the clerk with the names of at least one plaintiff
- 6 and one defendant and the address of the premises, including the apartment or unit number,
- 7 if any.

8 (3) To a resident of the premises who provides the clerk with the name of one of
9 the parties or the case number and shows proof of residency.

10 (4) To any person by order of the court, which may be granted ex parte, on a
11 showing of good cause.

12 (5) To any other person 60 days after the complaint has been filed, unless a
13 defendant prevails in the action within 60 days of the filing of the complaint, in which case
14 the clerk may not allow access to any court records in the action, except as provided in
15 paragraphs (1) to (4), inclusive.

16 (b) For purposes of this section, "good cause" includes, but is not limited to, the
17 gathering of newsworthy facts by a person described in Section 1070 of the Evidence
18 Code. It is the intent of the Legislature that a simple procedure be established to request the
19 ex parte order described in subdivision (a).

20 (c) Upon the filing of any case so restricted, the court clerk shall mail notice to
21 each defendant named in the action. The notice shall be mailed to the address provided in
22 the complaint. The notice shall contain a statement that an unlawful detainer complaint
23 (eviction action) has been filed naming that party as a defendant, and that access to the
24 court file will be delayed for 60 days except to a party, an attorney for one of the parties, or
25 any other person who (1) provides to the clerk the names of at least one plaintiff and one
26 defendant in the action and provides to the clerk the address, including any applicable
27 apartment, unit, or space number, of the subject premises, or (2) provides to the clerk the
28 name of one of the parties in the action or the case number and can establish through
29 proper identification that he or she lives at the subject premises. The notice shall also
30 contain a statement that access to the court index, register of actions, or other records is not
31 permitted until 60 days after the complaint is filed, except pursuant to an order upon a
32 showing of good cause therefor. The notice shall contain on its face the name and
33 telephone number of the county bar association, or any non profit bar association within
34 the county, duly authorized by the State Bar of California as a lawyer referral provider,
35 and the name and telephone number of an office or offices funded by the federal Legal
36 Services Corporation or qualified legal services projects that receive funds distributed
37 pursuant to Section 6216 of the Business and Professions Code, that provide legal services
38 to low-income persons in the county in which the action is filed. The notice shall state that
39 these numbers may be called for legal advice regarding the case. The notice shall be
40 issued between 24 and 48 hours of the filing of the complaint, excluding weekends and
41 holidays. One copy of the notice shall be addressed to "all occupants" and mailed
42 separately to the subject premises. The notice shall not constitute service of the summons
43 and complaint.

44 (d) Notwithstanding any other provision of law, the court shall charge an
45 additional fee of fifteen dollars (\$15) for filing a first appearance by the plaintiff. This fee
46 shall be added to the uniform filing fee for actions filed under this chapter.

47 (e) This section does not apply to a case that seeks to terminate a mobilehome
48 park tenancy if the statement of the character of the proceeding in the caption of the
49 complaint clearly indicates that the complaint seeks termination of a mobilehome park
50 tenancy.

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

PROPONENT: Beverly Hills Bar Association.

STATEMENT OF REASONS

Existing Rule: Existing rules do not allow a bar association that is located within the county and that is duly authorized by the State Bar of California as a lawyer referral service provider, to be listed if it is not the county bar association. This resolution would allow the listing of any metropolitan bar association, located within the county that is duly authorized by the State Bar of California as a lawyer referral service provider.

This Resolution: This resolution would include bar associations within the county, who offers Lawyer Referral Services to be listed as an agency that provides legal services to low-income persons.

The Problem: The statute specifically limits the listings of referrals in unlawful detainer cases to ‘the county bar association,’ Where there are bar associations in addition to the county bar association, the applicable current law favors one bar association over others. In addition to favoring one organization over another, the interests of the public are unnecessarily limited. The law, as stated, reduces the opportunities for members of the public in need to obtain information regarding resources that could benefit them. In light of these difficult economic times it is unfortunate that Bar associations that offer referral services to the low income do not fall under this statute. The law must be amended so that all Bar associations can provide unlawful detainer legal services to the members of the public in need.

IMPACT STATEMENT

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

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