

Memorandum 2000-83**Unnecessary Procedural Differences Between Limited
and Unlimited Civil Cases (Draft Recommendation)**

At the October meeting, the Commission considered comments on its tentative recommendation on *Elimination of Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases*. This is one of several projects in the study of civil procedure after trial court unification that the Commission is jointly conducting with the Judicial Council. A draft recommendation incorporating revisions approved at the October meeting is attached for the Commission's review. This memorandum reports on the status of discussions at the Judicial Council regarding this proposal. It also discusses two points that the Commission still needs to resolve:

- (1) How to revise Government Code Section 72055 (first filing fee in limited civil case) to conform to the proposed amendments of Code of Civil Procedure Sections 425.10 and 425.11 (pleading personal injury and wrongful death damages).
- (2) Whether the proposed amendment of the provision on waiver of a jury trial (Code Civ. Proc. § 631) should be revised to incorporate a new suggestion.

The Commission will not be able to approve a final recommendation at the December meeting, because the Judicial Council will not decide its position on the provisions on undertakings (Code Civ. Proc. §§ 489.220, 720.160, 720.260) until next year (the parts of the Commission's proposal relating to these provisions have been omitted from the attached draft). It may be possible, however, to put the remainder of the proposal in close to final form. Ideally, the Commission would submit a joint report with the Judicial Council, instead of a separate recommendation. Thus, if the Commission is satisfied with the attached draft (with whatever revisions are approved at the December meeting), further revisions may still be necessary to achieve a joint report.

(A letter from Judge Ronald Sabraw (then Chair of the Civil and Small Claims Advisory Committee of the Judicial Council) is also attached to this memorandum as an exhibit. This letter formally reports the views of his

committee, which were orally summarized for the Commission at the October meeting and taken into account at that time.)

STATUS OF THE PROPOSAL AT THE JUDICIAL COUNCIL

The Policy Coordination and Liaison Committee (“Policy Committee”) of the Judicial Council will be meeting on December 14 to consider this project, as well as other matters. Staff from the Administrative Office of the Courts (“AOC”) plan to recommend that the Policy Committee approve the following proposed reforms:

- The provisions on pleading personal injury and wrongful death damages (Code Civ. Proc. §§ 425.10, 425.11) should be amended as previously approved by the Commission. (See pages 3-6, 16-17 of the attached draft.) A conforming revision should be made in Government Code Section 72055 as discussed below.
- The provision on waiver of a jury trial (Code Civ. Proc. § 631) should be amended as previously approved by the Commission, with one revision as discussed below.
- The provision on satisfaction of judgment (Code Civ. Proc. § 685.030) should be amended as previously approved by the Commission. (See pages 9-10, 18-19 of the attached draft.)
- The provision on filing a confession of judgment (Code Civ. Proc. § 1134) should be amended as previously approved by the Commission. (See pages 10-12, 19-20 of the attached draft.)
- A provision on implied authority in limited and unlimited civil cases (proposed Code Civ. Proc. § 89) should be added as previously approved by the Commission. (See pages 12-13, 16 of the attached draft.)

By the time the Commission considers this memorandum, we should know the Policy Committee’s position on these points. If the Policy Committee approves the proposed reforms, it will recommend to the Judicial Council that the Council sponsor these proposals in January.

AOC staff do not plan to present any of the proposed reforms relating to undertakings (Code Civ. Proc. §§ 489.220, 720.160, 720.260) to the Policy Committee on December 14. Those proposals are still being considered by other Judicial Council committees. It is not yet clear whether the Judicial Council will take a position on them before the Commission’s meeting scheduled for February 1-2, 2001.

PLEADING PERSONAL INJURY AND WRONGFUL DEATH DAMAGES:
CONFORMING REVISION OF GOVERNMENT CODE SECTION 72055

Under Code of Civil Procedure Section 425.10, if a plaintiff demands recovery of money or damages, the complaint must state the amount of the demand. In an action brought in superior court for personal injury or wrongful death, however, the complaint may not include the amount of the demand, except in a limited civil case. Instead, another statute (Code Civ. Proc. § 425.11) provides that the amount of the demand in such an action is to be stated in a separate notice of the claimed damages.

The tentative recommendation proposed that these special rules for pleading personal injury and wrongful death damages be revised to apply in all actions for personal injury or wrongful death, regardless of the jurisdictional classification of the case.

Previous Action

The Court Executives Advisory Committee and the Presiding Judges Advisory Committee of the Judicial Council recommended approval of the proposed amendments of Code of Civil Procedure Sections 425.10 and 425.11. These committees further recommended that a conforming revision be made in Government Code Section 72055, which provides in pertinent part:

72055. The total fee for filing of the first paper in a limited civil case, shall be ninety dollars (\$90), except that in cases where the amount demanded, excluding attorney's fees and costs, is ten thousand dollars (\$10,000) or less, the fee shall be eighty-three dollars (\$83). *The amount of the demand shall be stated on the first page of the paper immediately below the caption.*

....

(Emphasis added.) A conforming revision is necessary because the requirement that the amount of the demand in a limited civil case be “stated on the first page of the paper immediately below the caption” would conflict with the Commission’s proposed Code of Civil Procedure Section 425.10(b), which states that in an action for personal injury or wrongful death “the amount demanded shall not be stated but the caption shall comply with Section 422.30.”

The Judicial Council’s Civil and Small Claims Advisory Committee (“Civil and Small Claims Advisory Committee”) also recommended approval of the proposed revisions of Code of Civil Procedure Sections 425.10 and 425.11, and

revision of Government Code Section 72055. Specifically, the committee proposed that Section 72055 be revised to (1) set a uniform \$85 fee for filing the first paper in a limited civil case, instead of a \$90 fee for some limited civil cases and an \$83 fee for other limited civil cases, and (2) delete the requirement that the amount of the demand “be stated on the first page of the paper immediately below the caption.”

At the October meeting, the Commission decided that a conforming revision of Government Code Section 72055 was necessary but did not decide how the provision should be conformed. The Commission requested further analysis of whether the fee differential (\$90 versus \$83) between larger and smaller limited civil cases should be preserved, or should be eliminated as proposed by the Civil and Small Claims Advisory Committee. (October Minutes, p. 9.)

Research and Analysis

Research on Government Code Section 72055 shows that the differentiation between larger and smaller limited civil cases is of recent origin. Until 1992, the fee for filing the first paper in a civil case in municipal court was set by the board of supervisors, but Government Code Section 72055 limited this fee to a maximum of either \$40 or \$29, depending on whether a fee was collected for the court reporter fund. 1983 Cal. Stat. ch. 969, § 10. In 1992, Section 72055 was amended to establish a uniform \$80 fee for filing the first paper in a civil case in municipal court. 1992 Cal. Stat. ch. 696, § 73. Not until 1997 was the amount of the fee linked to the amount demanded. In that year the Legislature enacted the Lockyer-Isenberg Trial Court Funding Act, which made major reforms relating to trial court funding but also amended Section 72055. Effective January 1, 1998, the fee for filing the first paper in a civil case in municipal court was raised to \$83 where the demand is \$10,000 or less and \$90 where the demand exceeds \$10,000. 1997 Cal. Stat. ch. 850, § 37. To accommodate trial court unification, the provision was further amended the following year, to apply to limited civil cases rather than municipal court cases. 1998 Cal. Stat. ch. 931, § 315.

The staff has not been able to learn why the provision was amended to distinguish between cases based on the amount of the demand. The bill analyses for the Lockyer-Isenberg Trial Court Funding Act understandably focus on other, more crucial aspects of that legislation. Although the Judicial Council supported the Lockyer-Isenberg Trial Court Funding Act, AOC staff have not been able to

provide any specific information about the reasoning underlying the amendment of Section 72055.

AOC staff have reported, however, that differentiating between limited civil cases where the demand is \$10,000 or less, and limited civil cases where the demand exceeds \$10,000, has created problems. The increased complexity makes it more difficult for court clerks to determine what fee is due and harder for the AOC to develop forms that clearly identify what fee should be charged. Trial court unification has exacerbated these problems, because in a unified superior court the clerks collect filing fees for unlimited civil cases (for which the initial filing fee is \$185), as well as for both categories of limited civil cases.

Recommendation

Amending Section 72055 to set a uniform \$85 fee for filing the first paper in a limited civil case would alleviate the administrative burdens and potential for confusion in applying the statute. According to AOC staff, such an amendment probably would also be revenue-neutral, neither increasing nor decreasing the revenue of the courts. (AOC staff is still investigating this point, but data obtained thus far support the \$85 amount. We will alert the Commission if the Policy Committee reaches a different conclusion based on new information at its meeting on December 14.)

Thus, it seems advisable to amend Section 72055 as proposed by the Civil and Small Claims Advisory Committee:

Gov't Code § 72055 (amended). First filing fee in limited civil case

SEC. 10. Section 72055 of the Government Code is amended to read:

72055. (a) The total fee for filing of the first paper in a limited civil case, case shall be ~~ninety dollars (\$90), except that in cases where the amount demanded, excluding attorney's fees and costs, is ten thousand dollars (\$10,000) or less, the fee shall be eighty-three dollars (\$83). The amount of the demand shall be stated on the first page of the paper immediately below the caption~~ eighty-five dollars (\$85).

(b) This section applies to the initial complaint, petition, or application, and any papers transmitted from another court on the transfer of a civil action or proceeding, but does not include documents filed pursuant to Section 491.150, 704.750, or 708.160 of the Code of Civil Procedure.

(c) The term "total fee" as used in this section and Section 72056 includes any amount allocated to the Judges' Retirement Fund pursuant to Section 72056.1, any automation fee imposed pursuant

to Section 68090.7, any construction fee imposed pursuant to Section 76238, and the law library fee established pursuant to Article 2 (commencing with Section 6320) of Chapter 5 of Division 3 of the Business and Professions Code. The term “total fee” as used in Section 72056 includes any dispute resolution fee imposed pursuant to Section 470.3 of the Business and Professions Code. The term “total fee” as used in this section also includes any dispute resolution fee imposed pursuant to Section 470.3 of the Business and Professions Code, but the board of supervisors of each county may exclude any portion of this dispute resolution fee from the term “total fee.”

(d) The fee shall be waived in any action for damages against a defendant, based upon the defendant’s commission of a felony offense, upon presentation to the clerk of the court of a certified copy of the abstract of judgment of conviction of the defendant of the felony giving rise to the claim for damages. If the plaintiff would have been entitled to recover those fees from the defendant had they been paid, the court may assess the amount of the waived fees against the defendant and order the defendant to pay that sum to the county.

The amendment would delete the requirement that the amount of the demand be stated on the first page of the first paper immediately below the caption. This requirement would no longer be necessary, because the amount of the demand would no longer affect the amount due under the statute. Eliminating it would also eliminate the conflict with proposed Section 425.10(b), which states that the amount demanded in action for personal injury or wrongful death shall not be stated in the complaint.

The staff suggests the following Comment:

Comment. For purposes of simplification, Section 72055 is amended to establish a uniform filing fee for filing the first paper in a limited civil case, regardless of the amount of the demand. Formerly, the amount of the fee depended on whether the demand exceeded \$10,000, or was \$10,000 or less. 1998 Cal. Stat. ch. 931, § 315; see also 1992 Cal. Stat. ch. 696, § 73; 1997 Cal. Stat. ch. 850, § 37.

Section 72055 is further amended to delete the requirement that the amount of the demand be stated on the first page of the first paper immediately below the caption. This requirement is no longer necessary, because the amount of the demand no longer affects the amount due under the statute. To permit differentiation between limited and unlimited civil cases, however, a plaintiff in a limited civil case is still required to state in the caption that the case is a limited civil case. Code Civ. Proc. § 422.30 (caption).

Technical changes are also made for conformity with preferred drafting style.

The proposed amendment and Comment are shown in brackets at pages 20-21 of the attached draft. The staff has also inserted a discussion of this reform in the preliminary part in brackets, and referred to it (in brackets) in the summary of the proposal, the introduction, and the discussion of pleading requirements for personal injury and wrongful death cases. (See pages 3, 6 at n. 28, and 13-15 of the attached draft.)

Are these revisions acceptable to the Commission?

WAIVER OF JURY (CODE CIV. PROC. § 631)

Code of Civil Procedure Section 631 governs waiver of a jury trial. The tentative recommendation proposed several reforms of subdivision (b), which addresses waiver induced by a party's reliance on another party's jury demand.

Previous Action

On considering the proposed reforms, three Judicial Council committees (the Court Executives Advisory Committee, the Presiding Judges Advisory Committee, and the Civil and Small Claims Advisory Committee) recommended that an in-depth study of jury waivers be conducted. At the October meeting, the Commission considered whether the reforms proposed in the tentative recommendation should be delayed pending completion of such an in-depth study. The Commission decided that the proposal should go forward but should be revised in certain respects. (October Minutes, pp. 9-11.) The attached draft incorporates those revisions (see pp. 6-8, 17-18).

New Developments

After the October meeting, Commission staff asked AOC staff to explore whether the Judicial Council would support the amendment proposed in the attached draft as an interim step pending further study of jury waivers. AOC staff presented this issue to the Civil and Small Claims Advisory Committee, which recommended approval of the proposed amendment with one revision. AOC staff plan to seek the Policy Committee's approval of the proposal as revised by the Civil and Small Claims Advisory Committee.

Revision Suggested By the Civil and Small Claims Advisory Committee

The revision suggested by the Civil and Small Claims Advisory Committee relates to the time period for requesting a jury trial after a party who has previously requested a jury waives the right to a jury. As the Commission proposes to revise it, Section 631(b) would read:

(b) If a jury is demanded by a party and the party, prior to trial, by announcement or by operation of law, waives a trial by jury, then that party shall promptly notify all other parties of the waiver, in writing or in open court. Each party adverse to the party who waived the trial by jury has five days after notice of the waiver is given to file and serve a demand for a trial by jury and to deposit any advance jury fees that are then due. If the party who waived a trial by jury does not promptly notify all other parties of the waiver, any other party, or the clerk or judge, may provide notice of the waiver, but is not required to do so. Where more than one notice of the waiver is given to a party, the five-day period to file and serve a demand for a trial by jury and to deposit advance jury fees commences on giving of the first notice.

The proposed Comment would state in pertinent part that the amendment

clarifies that the party who waives a jury after demanding one is responsible for providing notice of the waiver. If that party fails to provide notice of the waiver as required, another party (or the clerk or judge) is permitted but not required to provide the notice instead. Failure to provide timely notice may be grounds for a continuance or other remedial action. See *Leslie v. Roe*, 52 Cal. App. 3d 686, 688, 125 Cal. Rptr. 157 (1975).

Finally, the amendment provides that the time period for demanding a jury trial and depositing jury fees runs from the date of giving notice rather than from the date of receiving notice. This is intended to facilitate proof of whether a jury demand is timely. For extension of the five-day period where notice is given by mail or Express Mail, see Section 1013.

The Civil and Small Claims Advisory Committee would revise the last sentence of proposed Section 631(b) such that where more than one notice of a jury waiver is given to a party, “the five-day period to file and serve a demand for a trial by jury and to deposit advance jury fees commences on giving of the first last notice, but expires not later than the date and time of trial.”

Analysis and Recommendation

The effect of the suggested revision would be to lengthen, sometimes quite dramatically, the five-day period for requesting a jury following notice of a jury waiver, but only in cases where more than one notice of a jury waiver is given. For example, suppose a lawsuit involves three parties: Party A, Party B, and Party C. Party A initially requests a jury but later waives this right. Party A notifies the other parties of the waiver. Neither Party B nor Party C request a jury trial within five days after Party A gives this notice. Much later (perhaps months or even years later), Party B sends Party C a second notice of Party A's waiver (perhaps at the urging of Party C). Under the approach suggested by the Civil and Small Claims Advisory Committee, Party C could request a jury within five days from when Party B sent out the second notice, even though Party C received Party A's notice long ago and Party B did not send out the second notice until shortly before trial.

This does not make sense. The court and the parties should know well in advance of trial whether to plan for a jury trial or a bench trial. If the five-day period for requesting a jury following a jury waiver is inadequate, that should be addressed by lengthening the period in all circumstances, not just where a party is given more than one notice of a jury waiver. Importantly, Section 631(d) permits a court (in its discretion upon just terms) to allow a trial by jury despite failure to timely request a jury.

Commission staff discussed this matter with AOC staff, seeking to understand the reasoning behind the revision suggested by the Civil and Small Claims Advisory Committee. AOC staff pointed out that the committee may have been focusing on successive jury waivers following jury demands, not multiple notices of the same jury waiver. In other words, the committee may have been considering the situation where:

- (1) Party A requests a jury trial but later waives that right.
- (2) Party B requests a jury trial within 5 days after Party A gives notice of Party A's jury waiver.
- (3) Party C relies on Party B's jury demand.
- (4) Party B ultimately decides to waive a jury.

That is not the situation that the Commission intended to address in the last sentence of proposed Section 631(b). **We could help prevent such confusion by**

clarifying that the sentence applies where a party is given more than one notice of the same jury waiver:

(b) If a jury is demanded by a party and the party, prior to trial, by announcement or by operation of law, waives a trial by jury, then that party shall promptly notify all other parties of the waiver, in writing or in open court. Each party adverse to the party who waived the trial by jury has five days after notice of the waiver is given to file and serve a demand for a trial by jury and to deposit any advance jury fees that are then due. If the party who waived a trial by jury does not promptly notify all other parties of the waiver, any other party, or the clerk or judge, may provide notice of the waiver, but is not required to do so. Where more than one notice of the same waiver is given to a party, the five-day period to file and serve a demand for a trial by jury and to deposit advance jury fees commences on giving of the first notice.

In addition, the Comment could be revised to discuss successive jury waivers following jury demands:

[The amendment] clarifies that the party who waives a jury after demanding one is responsible for providing notice of the waiver. If that party fails to provide notice of the waiver as required, another party (or the clerk or judge) is permitted but not required to provide the notice instead. Failure to provide timely notice may be grounds for a continuance or other remedial action. See *Leslie v. Roe*, 52 Cal. App. 3d 686, 688, 125 Cal. Rptr. 157 (1975).

Where a party is given multiple notices of the same jury waiver, the five-day period to demand a jury is triggered by the first notice. Where more than one jury demand is made and later waived, notice of each waiver is required. For example, suppose:

- (1) Party A requests a jury trial but later waives that right.
- (2) Party B requests a jury trial within five days after Party A gives notice of Party A's jury waiver.
- (3) Party C relies on Party B's jury demand.
- (4) Party B ultimately decides to waive a jury.

Under Section 631(b), Party B must notify the other parties of Party B's jury waiver and Party C has five days from the giving of that notice within which to demand a jury trial. (For guidance on whether Party A may request a jury despite Party A's previous jury waiver, see Section 631(d); *Taylor v. Union Pac. R.R. Corp.*, 16 Cal. 3d 893, 549 P.2d 855, 130 Cal. Rptr. 23 (1976); *Simmons v. Prudential Life Ins. Co.*, 123 Cal. App. 3d 833, 836, 177 Cal. Rptr. 37 (1981).)

Finally, the amendment provides that the time period for demanding a jury trial and depositing jury fees runs from the date

of giving notice rather than from the date of receiving notice. This is intended to facilitate proof of whether a jury demand is timely. For extension of the five-day period where notice is given by mail or Express Mail, see Section 1013.

The staff also considered whether the time period to demand a jury should expire “not later than the date and time of trial.” Perhaps inadvertently, the Civil and Small Claims Advisory Committee would insert such a limitation in the last sentence of proposed Section 631(b), but would not do so in the second sentence of the provision, which also refers to the five-day period to demand a jury. **The staff is not inclined to insert such a limitation in either place.** A party should not be deprived of a jury trial simply because an opponent waives a jury on the eve of trial and the party is unable to deposit the necessary jury fees on such short notice. The right to a jury trial is of constitutional dimension and should not lightly be denied. See *Bishop v. Anderson*, 101 Cal. App. 3d 821, 823, 161 Cal. Rptr. 884 (1980). Where a jury waiver occurs on the eve of trial, the court has case management tools to address the situation (e.g., granting a continuance and imposing sanctions). See *Leslie v. Roe*, 52 Cal. App. 3d 686, 688, 125 Cal. Rptr. 157 (1975). It does not seem necessary to deprive parties of a reasonable opportunity to demand a jury and deposit the required fees.

Respectfully submitted,

Barbara S. Gaal
Staff Counsel

Judicial Council of California

HON. RONALD M. GEORGE
*Chief Justice of California
Chair of the Judicial Council*

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Law Revision Commission
RECEIVED

October 3, 2000

OCT - 6 2000

File: J-1320

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303-4739
Attention: Ms. Barbara Gaal, Staff Counsel

Re: Proposed Legislation Relating to the Three-Track Study
(Revision of Civil Procedure in Light of Court Unification)

Dear Commission Members:

I am writing as chair of the Civil and Small Claims Advisory Committee of the Judicial Council of California. The purpose of this letter is to inform you of the Committee's views on the Commission's Tentative Recommendation relating to the *Elimination of Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases* (July 2000). The views expressed in this letter are those of the Committee and not those of the Judicial Council which has not considered the matter.

At its meeting on September 28, 2000, the Civil and Small Claims Advisory Committee considered the legislative proposals presented in the Tentative Recommendation. The Committee recommended approval of the proposed amendments to Code of Civil Procedure sections 425.10 and 425.11 (item #1, pleading amount of damages). However, the Committee noted that the proposed amendment to section 425.10, which would extend the prohibition on stating the amount of damages demanded in personal injury and wrongful death cases to limited civil cases, was inconsistent with Government Code section 72055. The second sentence of section 72055 requires the amount of the demand to be stated on the first page of the first paper filed in a limited civil case. The Committee recommends amending Government Code section 72055 to remove the inconsistency by deleting the second sentence. (In addition, the Committee's proposed amendment to Government Code section 72055 would change the fee for filing the first paper in all limited civil cases to \$85, thereby eliminating the fee difference

between cases demanding more than \$10,000 and those demanding \$10,000 or less.)

The Committee approved proposed new Code of Civil Procedure section 89 (item #7, statutory interpretation). The Committee's response to the proposed amendment to Code of Civil Procedure section 685.030 (item #4, satisfaction of judgment) was also generally favorable.

The Committee approved other legislative proposals in the Tentative Recommendation, with certain changes. The Committee generally approved the proposed amendment to Code of Civil Procedure section 1134 (item #6, confession of judgment), but recommends changing the amount of the fee from \$15 to \$10. The Committee agreed that the provisions on undertakings (Code Civ. Proc., §§ 489.220, 720.160, 720.260) (items #2 and #5) should be amended, but recommends that the statutes also be revised to give the court discretion to raise or lower the amount of the undertaking in all three sections.

Finally, the Committee referred the proposal regarding waiver of jury trial (Code Civ. Proc., § 631, item #3) to its Case Management Subcommittee for further review. The proposal was previously considered by the Committee at its meeting on August 29, 2000. At that meeting, the Committee approved the concept that limited and unlimited civil cases should not be treated differently in provisions on jury waiver. As an interim measure, the Committee has recommended language in proposed rule 222.1(b) of the California Rules of Court that follows the current language of Code of Civil Procedure section 631(b). Further amendments to the rule, statute, or both will be considered by the Case Management Subcommittee.

Thank you for your attention to these matters. I hope that the Committee's comments have been helpful. The Civil and Small Claims Advisory Committee looks forward to working with the Law Revision Commission in the future on areas of common interest and concern.

Sincerely,



Hon. Ronald M. Sabraw, Chair
Civil and Small Claims Advisory
Committee

cc: Hon. Wayne L. Peterson, Chair, Trial Court Presiding Judges Advisory Committee

#J-1320

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft RECOMMENDATION

Unnecessary Procedural Differences
Between Limited and Unlimited Civil Cases

December 2000

California Law Revision Commission
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Palo Alto, CA 94303-4739
650-494-1335 FAX: 650-494-1827

SUMMARY OF RECOMMENDATION

1 To identify opportunities for simplification, the California Law Revision
2 Commission reviewed statutes that differentiate between limited and unlimited
3 civil cases. The Commission recommends the following reforms:

4 (1) The same rules for pleading damages should apply in all actions for
5 personal injury or wrongful death, regardless of the jurisdictional
6 classification of the case. Code Civ. Proc. §§ 425.10, 425.11.

7 (2) The distinction between attachment undertakings in limited and
8 unlimited civil cases should be eliminated, and the amount of the initial
9 undertaking increased to \$10,000. Code Civ. Proc. § 489.220.

10 (3) The statutory protection regarding waiver of a jury demand should be
11 extended to limited civil cases. Code Civ. Proc. § 631.

12 (4) The clerk of court should be permitted to record a satisfaction of
13 judgment where there is an interest deficit of \$10 or less in an unlimited
14 civil case, not just in a limited civil case. Code Civ. Proc. § 685.030.

15 (5) The differentiation between limited and unlimited civil cases as to the
16 amount of a creditor's undertaking where there is a third party claim
17 should be eliminated. Code Civ. Proc. §§ 720.160, 720.260.

18 (6) The same filing fee should be required for all confessions of judgment,
19 regardless of the size of the claim. Code Civ. Proc. § 1134.

20 (7) A provision on statutory interpretation should be added to negate any
21 implied limitation on court authority in limited and unlimited civil
22 cases. Proposed Code Civ. Proc. § 89.

23 [(8) The same filing fee should be required for the first paper in all limited
24 civil cases, regardless of the size of the demand. Gov't Code § 72055.]

25 This recommendation was prepared pursuant to Government Code Section
26 70219.

ELIMINATION OF UNNECESSARY PROCEDURAL DIFFERENCES BETWEEN LIMITED AND UNLIMITED CIVIL CASES

1 The California codes include provisions that distinguish between limited civil
2 cases and unlimited civil cases. In some instances, this complexity may not be
3 necessary. To simplify and improve civil procedure, the California Law Revision
4 Commission recommends elimination of some of the procedural distinctions
5 between limited and unlimited civil cases.

B A C K G R O U N D

6 On June 2, 1998, California voters approved a constitutional amendment
7 providing for trial court unification on a county-by-county basis.¹ At that time,
8 each county had a superior court and one or more municipal courts.² These courts
9 heard different types of cases and used different procedures.³ The ballot measure
10 provided for unification of the superior and municipal courts in a county on a
11 majority vote of the superior court judges and a majority vote of the municipal
12 court judges within the county.⁴

13 Numerous statutory revisions were necessary to implement trial court
14 unification. At the direction of the Legislature,⁵ the Law Revision Commission
15 reviewed the codes and drafted extensive implementing legislation.⁶ The statutory
16 revisions⁷ were narrowly limited to generally preserve existing procedures but
17 make them workable in the context of unification.⁸

18 To that end, the term “limited civil case” was introduced to refer to civil actions
19 traditionally within the jurisdiction of the municipal court,⁹ and the term

1. 1996 Cal. Stat. res. ch. 36 (“SCA 4”), which appeared on the ballot as Proposition 220.

2. Former Cal. Const. art. VI, §§ 4, 5. Justice courts were previously eliminated. 1994 Cal. Stat. res. ch. 113 (“SCA 7”) (Proposition 191, approved by the voters Nov. 8, 1994, operative Jan. 1, 1995).

3. See, e.g., former Cal. Const. art. VI, § 10 (“Superior courts have original jurisdiction in all causes except those given by statute to other trial courts”); former Code Civ. Proc. §§ 86 (civil cases within original jurisdiction of municipal court), 91 (economic litigation procedures in municipal court). See also Code Civ. Proc. § 85 Comment.

4. Cal. Const. art. VI, § 5(e).

5. 1997 Cal. Stat. res. ch. 102; see also 1998 Cal. Stat. res. ch. 91.

6. *Trial Court Unification: Revision of Codes* (hereafter *Revision of Codes*), 28 Cal. L. Revision Comm’n Reports 51 (1998); see also *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999 (Senate Bill 210)*, 29 Cal. L. Revision Comm’n Reports 657 (1999). This assignment followed an earlier legislative assignment in which the Commission made recommendations on the constitutional revisions necessary to implement trial court unification. See *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm’n Reports 1 (1994); *Trial Court Unification: Transitional Provisions for SCA 3*, 24 Cal. L. Revision Comm’n Reports 627 (1994).

7. 1998 Cal. Stat. ch. 931; see also 1999 Cal. Stat. ch. 344.

8. *Revision of Codes*, *supra* note 6, at 60.

9. *Id.* at 64-65; see also Cal. Code Civ. Proc. § 85 & Comment.

1 “unlimited civil case” was introduced to refer to civil actions traditionally within
2 the jurisdiction of the superior court.¹⁰ Provisions prescribing municipal court
3 procedures were revised to apply to limited civil cases;¹¹ provisions prescribing
4 traditional superior court procedures were revised to apply to unlimited civil
5 cases.¹²

6 The Law Revision Commission recommended, however, that the procedural
7 distinctions between limited civil cases and unlimited civil cases be reviewed to
8 identify opportunities for simplification.¹³ The Legislature directed the
9 Commission and the Judicial Council to jointly undertake this work, as well as to
10 reexamine other aspects of civil procedure in light of trial court unification.¹⁴

METHODOL OGY

11 Statutory provisions using the terms “limited civil case” or “unlimited civil case”
12 were identified through computer searches. Of the provisions identified, many
13 simply state that a particular type of action is a limited civil case.¹⁵ A few are
14 definitional or otherwise fundamental provisions.¹⁶ Still other provisions establish
15 procedural distinctions between limited and unlimited civil cases, but are being
16 dealt with in another context.¹⁷

17 Staff from the Commission and the Administrative Office of the Courts
18 (“AOC”) analyzed the remaining provisions, assessing whether the distinctions
19 between limited and unlimited civil cases should be eliminated, and whether the
20 provisions should be revised in other respects. The Commission then reviewed the

10. Code Civ. Proc. § 88 & Comment.

11. See, e.g., Code Civ. Proc. § 91 & Comment; see also *Revision of Codes*, *supra* note 6, at 64-65.

12. See, e.g., Code Civ. Proc. § 564.

13. *Revision of Codes*, *supra* note 6, at 82-83.

14. Gov’t Code § 70219. A consultative panel of experts has been selected to assist in this endeavor. The panel consists of Prof. Walter Heiser (University of San Diego School of Law), Prof. Deborah Hensler (Stanford Law School), Prof. Richard Marcus (Hastings College of Law), Hon. William Schwarzer, ret. (U.S.D.C., N. Dist. Cal.), Prof. William Slomanson (Thomas Jefferson Law School), and Prof. Keith Wingate (Hastings College of Law). Others who have assisted with this study include Prof. J. Clark Kelso (McGeorge School of Law), Prof. David Jung (Hastings College of Law), and Larry Sipes (President Emeritus, National Center for State Courts).

15. See Civ. Code §§ 798.61, 1719, 3342.5; Code Civ. Proc. §§ 86, 86.1, 1710.20; Food & Agric. Code §§ 7581, 12647, 27601, 31503, 31621, 52514, 53564; Gov’t Code §§ 53069.4, 53075.6, 53075.61; Pub. Util. Code § 5411.5; Veh. Code §§ 9872.1, 10751, 14607.6, 40230, 40256.

16. See Code Civ. Proc. §§ 32.5 (“jurisdictional classification” defined), 85 (limited civil cases), 85.1 (original jurisdiction in limited civil case), 87 (rules applicable to small claims case), 88 (“unlimited civil case” defined), 403.030 (reclassification of limited civil case by cross-complaint), 403.040 (motion for reclassification), 422.30 (caption); Gov’t Code § 910 (contents of claim against governmental entity); Welf. & Inst. Code § 742.16(l) (jurisdiction of judge of juvenile court in restitution hearing).

17. These include provisions relating to appellate jurisdiction, appointment of receiver, court reporters and electronic recording, economic litigation procedures, filing and transmittal fees, judicial arbitration, relief awardable, and writ jurisdiction. See Commission Staff Memorandum 2000-54, Attachment pp. 5-7.

1 staff recommendations.¹⁸ Having studied the provisions, the Law Revision
2 Commission recommends reforms in the following areas:¹⁹

- 3 • Pleading personal injury and wrongful death damages
- 4 • Undertaking to obtain writ of attachment or protective order
- 5 • Waiver of jury
- 6 • Satisfaction of judgment
- 7 • Undertaking of creditor in case of third party claim
- 8 • Confession of judgment
- 9 • Implied court authority in limited and unlimited civil cases
- 10 [• Filing fee for the first paper in a limited civil case]

11 Each topic is addressed in order below.

12 It should be noted that this statutory review and simplification effort is prompted
13 by unification of the trial courts. The trial courts in Kings County have not yet
14 unified.²⁰ However, the simplifications recommended here are limited to those that
15 will work well and will modestly improve court procedures, regardless of whether
16 the courts in a county have unified.

17 PLEADING PERSONAL INJURY AND WRONGFUL DEATH
18 DAMAGES (CODE CIV. PROC. §§ 425.10, 425.11)

19 Under Code of Civil Procedure Section 425.10, if a plaintiff demands recovery
20 of money or damages, the complaint must state the amount of the demand. In an
21 action brought in superior court for personal injury or wrongful death, however,
22 the complaint may not include the amount of the demand, except in a limited civil
23 case:

24 425.10. A complaint or cross-complaint shall contain both of the following:

25 (a) A statement of the facts constituting the cause of action, in ordinary and
26 concise language.

27 (b) A demand for judgment for the relief to which the pleader claims to be
28 entitled. If the recovery of money or damages be demanded, the amount thereof
29 shall be stated, unless the action is brought in the superior court to recover actual
30 or punitive damages for personal injury or wrongful death, in which case the
31 amount thereof shall not be stated, except in a limited civil case.

18. The Judicial Council is undertaking its own review of the staff recommendations.

19. These are recommendations of the Commission only. They do not reflect official positions of the Judicial Council, the AOC, or AOC staff.

20. Kings County is seeking preclearance of trial court unification under the Voting Rights Act.

1 It is natural to ask whether there is a good reason for distinguishing between
2 limited and unlimited cases in pleading damages for personal injury or wrongful
3 death.

4 The Legislature first enacted the statutory prohibition on pleading damages for
5 personal injury or wrongful death in 1974.²¹ The California Medical Association
6 supported the legislation, which addressed a concern that inflated claims in
7 multimillion dollar malpractice lawsuits tend to attract sensational media coverage
8 and unfairly cast physicians in a bad light.²²

9 The provision presents due process and fairness issues, because it does not put
10 the defendant on notice of the extent of potential liability. Those issues are
11 addressed in Code of Civil Procedure Section 425.11,²³ which provides for a
12 separate notice of the claimed damages:

13 425.11. (a) As used in this section:

14 (1) "Complaint" includes a cross-complaint.

15 (2) "Plaintiff" includes a cross-complainant.

16 (3) "Defendant" includes a cross-defendant.

17 (b) When a complaint is filed in an action in the superior court to recover
18 damages for personal injury or wrongful death, the defendant may at any time
19 request a statement setting forth the nature and amount of damages being sought,
20 except in a limited civil case. The request shall be served upon the plaintiff, who
21 shall serve a responsive statement as to the damages within 15 days. In the event
22 that a response is not served, the party, on notice to the plaintiff, may petition the
23 court in which the action is pending to order the plaintiff to serve a responsive
24 statement.

25 (c) If no request is made for the statement referred to in subdivision (a), the
26 plaintiff shall serve the statement on the defendant before a default may be taken.

27 (d) The statement referred to in subdivision (b) shall be served in the following
28 manner:

29 (1) If a party has not appeared in the action, the statement shall be served in the
30 same manner as a summons.

31 (2) If a party has appeared in the action, the statement shall be served upon his
32 or her attorney, or upon the party if he or she has appeared without an attorney, in
33 the manner provided for service of a summons or in the manner provided by
34 Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

35 (e) The statement referred to in subdivision (b) may be combined with the
36 statement described in Section 425.115.

21. See 1974 Cal. Stat. ch. 1481 (amending Code Civ. Proc. § 425.10).

22. See *Review of Selected 1974 California Legislation*, 6 Pac. L. J. 216-17 (1975); Schwab v. Rondel Homes, Inc., 53 Cal. 3d 428, 808 P.2d 226, 280 Cal. Rptr. 83 (1991).

23. See also Code Civ. Proc. § 425.115, which requires a similar statement as to punitive damages. The Judicial Council has developed an official form for statements prepared pursuant to Sections 425.11 and 425.115. See Code Civ. Proc. § 425.12; Judicial Council form 982(a)(24).

1 A default judgment in a case governed by this section may not exceed the amount
2 that the plaintiff claims in the statement of damages.²⁴

3 Like the prohibition on pleading damages, the requirement of a separate notice
4 of damages does not apply in a limited civil case.²⁵ To the Commission's
5 knowledge, the reason for excluding such cases from the special pleading rules is
6 nowhere expressly stated. It is likely, however, that the concern about grossly
7 inflated damage claims is less acute in a limited civil case than in an unlimited
8 civil case, because the maximum amount in controversy in a limited civil case is
9 \$25,000.²⁶

10 It does not appear productive to consider eliminating the prohibition on pleading
11 damages or the requirement of a separate notice of damages in an unlimited case
12 for personal injury or wrongful death. These special rules are politically based.
13 There is no indication that those who obtained their enactment are dissatisfied with
14 the rules. Although the rules have received some criticism from other sources,²⁷ it
15 is unlikely that they could be eliminated.

24. Code Civ. Proc. §§ 580, 585. The same rule does not apply in a contested case. The plaintiff may recover damages proved in excess of the amount stated, just as if the prayer for relief were in the complaint. See, e.g., *Damele v. Mack Trucks, Inc.*, 219 Cal. App. 3d 29, 267 Cal. Rptr. 197 (1990).

25. Before unification, those provisions were limited to an action in superior court. See *Revision of Codes*, *supra* note 6, at 182-83.

26. Code Civ. Proc. § 85. Despite the \$25,000 maximum, the defendant in a limited civil case is entitled as a matter of fundamental fairness to know the amount claimed by the plaintiff. See, e.g., *Janssen v. Luu*, 57 Cal. App. 4th 274, 66 Cal. Rptr. 2d 838 (1997).

27. The Judicial Council opposed enactment of the provision in 1974, raising questions "as to its efficacy as well as to its constitutionality." *Review of Selected 1974 California Legislation*, 6 Pac. L. J. 216-17 (1975). Justice Mosk sharply criticized the statute in a 1991 dissent:

Ultimately, the solution to this problem lies with the Legislature. The procedural hurdles to recovery now greatly outweigh the Legislature's apparent concern about the embarrassment to personal injury defendants of adverse publicity stemming from a lawsuit with a prayer for monumental damages. [Citations omitted.]

A statutory scheme that forbids a party to provide useful information — a form of compulsory silence — and that creates anomalous results of the type reached today urgently needs reexamination. Moreover, in a newsworthy case a lawyer or party can always call a press conference and trumpet the claim to the heavens, or at least to the terrestrial media. Thus not only are sections 425.10 and 425.11 bad law and bad policy, they are an ineffective means of implementing the Legislature's apparent intent. Nor can they be made effective: I cannot conceive of legislation that could constitutionally prevent plaintiffs with sensational personal injury damage claims from announcing those claims in any forum whatsoever.

Schwab v. Rondel Homes, Inc., 53 Cal. 3d 428, 808 P.2d 226, 280 Cal. Rptr. 83 (1991) (Mosk, J., dissenting).

The statutory scheme has been revised since these criticisms were advanced. 1979 Cal. Stat. ch. 778, § 2; 1993 Cal. Stat. ch. 456, § 2; 1995 Cal. Stat. ch. 796, § 2. It is unclear to what extent dissatisfaction with the statute persists. A current treatise explains:

The statement of damages requirement makes entry of default more complicated: If defendant does not respond to the summons and complaint, plaintiff must go back and *re-serve* defendant with the statement of damages *before* seeking entry of default — i.e., double service may be required!

R. Weil & I. Brown, Jr., *California Practice Guide: Civil Procedure Before Trial*, *Pleading* § 6:288, at 6-60.3 (1999) (emphasis in original). The authors advise practitioners to attach the statement of damages to the summons if there is a likelihood of default.

1 What about the converse? In an effort to attain consistency between limited and
2 unlimited civil cases, should pleadings in limited civil cases be conformed to
3 pleadings in unlimited cases? The pleadings would not include the amount of
4 damages claimed in a personal injury or wrongful death case, but a statement by
5 the plaintiff would be provided on demand. Of course, consistency between
6 limited and unlimited cases in this respect would simultaneously create internal
7 inconsistency among pleadings in various types of limited civil cases.

8 But for the practitioner, as well as for judges, it is probably better to have the
9 same pleading rules for personal injury and wrongful death cases, regardless of the
10 jurisdictional classification of the case as limited or unlimited. Moreover, if the
11 jurisdictional amounts are increased in the future, some of the same policy
12 concerns about inflated claims in unlimited civil cases might surface in limited
13 civil cases. For these reasons, the proposed law would revise Sections 425.10 and
14 425.11 to conform the pleading requirements for all personal injury and wrongful
15 death cases.²⁸ Regardless of the jurisdictional classification of the case, the
16 prohibition on pleading damages and the requirement of a separate notice of
17 damages would apply.

UNDERTAKING FOR WRIT OF ATTACHMENT OR PROTECTIVE
ORDER (CODE CIV. PROC. § 489.220)

18 [This discussion has been omitted because the Judicial Council is still studying
19 this topic and the Commission staff is still preparing revisions discussed at the
20 October meeting.]

WAIVER OF JURY (CODE CIV. PROC. § 631)

21 Code of Civil Procedure Section 631 governs waiver of a jury trial. Subdivision
22 (b) addresses waiver induced by a party's reliance on another party's jury demand.
23 It prescribes a procedure for protection of a party who has detrimentally relied on
24 another party's demand:

25 In a superior court action, other than a limited civil case, if a jury is demanded
26 by either party in the memorandum to set the cause for trial and the party, prior to
27 trial, by announcement or by operation of law, waives a trial by jury, then all
28 adverse parties shall have five days following the receipt of notice of the waiver to
29 file and serve a demand for a trial by jury and to deposit any advance jury fees
30 that are then due.

28. Code of Civil Procedure Sections 425.115 (statement of punitive damages) and 425.12 (Judicial Council forms for statements of damages) would not require revision. [A conforming revision of Government Code Section 72055 is necessary, because that provision requires that the amount of the demand in a limited civil case be stated on the first page of the first paper immediately below the caption. See "Filing Fee for First Paper in a Limited Civil Case" *infra*.]

1 This language was added to the statute in 1941 to overturn case law holding that
2 a party who relies on an adverse party's jury demand is not entitled to a jury if the
3 demand is withdrawn or abandoned.²⁹ As the court explained in *DeCastro v. Row*,
4 the 1941 amendment "eliminated such a harsh rule."³⁰ The amendment's "purpose
5 and philosophy was to permit a party to rely on another party's demand and
6 deposit of fees."³¹

7 It is not clear why the 1941 legislation cured the problem only as to cases in
8 superior court, and not as to cases in other courts. The reference in subdivision (b)
9 to superior court cases was revised in 1998 to exclude limited civil cases, in order
10 to accommodate trial court unification.³² But the policy supporting this limitation
11 was not reexamined.³³

12 The limitation to superior court cases was criticized immediately on enactment.
13 In *The Work of the 1941 California Legislature*,³⁴ Professor Stanley Howell
14 observes:

15 This amendment apparently takes care of the situation in actions in superior
16 courts, where the difficulty probably was more acute due to the procedure
17 followed in such courts in setting cases for trial. However, the same difficulty can
18 arise in an action in any court and it is to be regretted that the remedial
19 amendment under discussion was limited to superior courts.

20 The Commission is not aware of any policy basis for distinguishing between
21 limited and unlimited civil cases on this point. In fact, California Rule of Court
22 521 (made applicable to limited civil cases in superior court by Rule 709) provides
23 the same type of protection for limited civil cases that the statute provides for
24 unlimited civil cases.³⁵

29. See *Dunham v. Reichlin*, 217 Cal. 289, 291, 18 P.2d 664 (1933); *Estate of Miller*, 16 Cal. App. 2d 154, 158-59, 60 P.2d 498 (1936).

30. 223 Cal. App. 2d 547, 36 Cal. Rptr. 53 (1963).

31. *Id.* at 561.

32. *Revision of Codes*, *supra* note 6, at 192-193.

33. See "Background" *supra*.

34. 15 So. Cal. L. Rev. 1, 14-15 (1941).

35. Rule 521 currently provides:

521. If a jury is demanded by either party in the memorandum to set a civil case for trial and such party thereafter by announcement or by operation of law waives a trial by jury, any and all adverse party or parties shall be given 10 days' written notice by the clerk of the court of such waiver. Such adverse party or parties shall have not exceeding five days immediately following the receipt of such notice of waiver, within which to file and serve a demand for a trial by jury and deposit advance jury fees for the first day's trial whenever such deposit is required by law. If it is impossible for the clerk of the court to give such 10 days' notice by reason of the trial date, or if for any cause such notice is not given, the trial of said action shall be continued by the court for a sufficient length of time to enable the giving of such notice by the clerk of the court to such adverse party.

The requirement that the court clerk give 10 days' notice of the waiver parallels a provision found in the statute from 1941 until 1988. Under a proposed rule change (effective January 1, 2001), Rule 521 would be

1 521. If a jury is demanded by either party in the memorandum to set a civil case
2 for trial and such party thereafter by announcement or by operation of law waives
3 a trial by jury, any and all adverse party or parties shall be given 10 days' written
4 notice by the clerk of the court of such waiver. Such adverse party or parties shall
5 have not exceeding five days immediately following the receipt of such notice of
6 waiver, within which to file and serve a demand for a trial by jury and deposit
7 advance jury fees for the first day's trial whenever such deposit is required by
8 law. If it is impossible for the clerk of the court to give such 10 days' notice by
9 reason of the trial date, or if for any cause such notice is not given, the trial of said
10 action shall be continued by the court for a sufficient length of time to enable the
11 giving of such notice by the clerk of the court to such adverse party.

12 This complexity is unnecessary. For purposes of simplification, the statute should
13 be revised to cover both limited and unlimited civil cases, and the rule should be
14 eliminated.

15 The statute should also be revised to delete the reference to the memorandum to
16 set the cause for trial (commonly known as the "at-issue memorandum"). That
17 reference may be obsolete, because in many cases an at-issue memorandum is no
18 longer required.³⁶ Moreover, the reference is unnecessary. The purpose of the
19 provision is to provide statutory protections where one party has relied on another
20 party's jury demand. There is no need to state the manner in which the demand
21 was made.

22 Finally, the statute should specify that the party who waives a jury after
23 demanding one is responsible for promptly notifying all other parties of the
24 waiver. As a leading treatise points out, the provision is currently silent on who is
25 to provide the notice.³⁷ Previously, the court clerk was required to notify the
26 parties.³⁸ This requirement was deleted from the statute in 1988,³⁹ but still applies
27 to limited civil cases pursuant to court rule.⁴⁰ To conserve court resources in both
28 limited and unlimited civil cases, the proposed law would place the burden of
29 providing notice on the party whose action creates the need for notice.⁴¹ If that
30 party fails to provide notice of the waiver as required, other parties (or the clerk or
31 judge) would be permitted but not required to provide the notice instead, so that
32 they can promptly ascertain whether to plan for a jury trial.

repealed and new Rule 222.1, which would track the language of the statute but apply to limited civil cases, would be adopted.

36. See R. Weil & I. Brown, Jr., *California Practice Guide: Civil Procedure Before Trial, Case Management and Trial Setting* §§ 12:101-12:103, p. 12(I)-36 (2000) (at-issue memorandum not required in cases subject to case management, but may still be required in cases exempt from case management).

37. See *id.* at § 12:321, p. 12(I)-67.

38. 1941 Cal. Stat. ch. 1191, § 1.

39. 1988 Cal. Stat. ch. 10, §§ 2, 3.

40. Cal. R. Ct. 521, 709.

41. Failure to provide timely notice may be grounds for a continuance other remedial action. See *Leslie v. Roe*, 52 Cal. App. 3d 686, 688, 125 Cal. Rptr. 157 (1975).

SATISFACTION OF JUDGMENT (CODE CIV. PROC. § 685.030)

1 In 1991, the satisfaction of judgment statute was amended to allow entry of a
2 satisfaction in cases in which the only amount left unsatisfied is an interest deficit
3 of less than \$10.⁴² This rule initially applied only in municipal court.⁴³ As
4 presently worded to reflect trial court unification, Code of Civil Procedure Section
5 685.030(e) applies only in a limited civil case:

6 In a limited civil case, the clerk of a court may enter in the Register of Actions a
7 writ of execution on a money judgment as returned wholly satisfied when the
8 judgment amount, as specified on the writ, is fully collected and only an interest
9 deficit of no more than ten dollars (\$10) exists, due to automation of the continual
10 daily interest accrual calculation.

11 The proposal to amend the satisfaction of judgment statute to permit the clerk to
12 ignore a trivial interest deficit in a municipal court case was sponsored by the
13 Administrative Office of the Municipal Courts, which explained the need for the
14 proposal as follows:

15 Section 685.030(a)(2) currently provides that interest continues to accrue on
16 money judgments until the date the levying officer actually receives the proceeds.
17 Since there is often turnaround time of 2-3 days between the service of the writ
18 and the actual receipt of the proceeds by the levying officer, the amount stated on
19 the writ is often understated by the daily interest amount which continues to
20 accrue during the turnaround period. In these instances, the clerk's office is unable
21 to record in the Register of Actions that the judgment is fully satisfied. Some
22 persistent judgment creditors have returned to the clerk's office seeking the
23 additional interest owing on the writ, which is typically under \$10. This statute
24 causes additional workload for the clerk's office with minimal benefit to the
25 judgment creditor.⁴⁴

26 The sponsor limited the proposal to municipal court cases because "judgments in
27 superior court are substantially higher and the daily interest accruing is much
28 greater."⁴⁵

29 The amount of a judgment is irrelevant, however, so long as all that remains
30 unpaid is an interest deficit of \$10 or less.⁴⁶ Because that situation could arise in a

42. 1991 Cal. Stat. ch. 1090, § 4.5.

43. *Id.*

44. Memorandum from Kiri Torre, County Municipal Court Administrator, to Claude L. Van Marter, Ass't County Administrator (Jan. 25, 1991). This memorandum is in the Assembly Judiciary Committee's file on Assembly Bill 1484 (1991 Cal. Stat. ch. 1090), which is kept at State Archives. The explanation in the memorandum is repeated almost verbatim in the Senate Judiciary Committee analysis (July 16, 1991) and the Senate Floor analysis (Aug. 29, 1991) of the legislation.

45. Memorandum from Kiri Torre, County Municipal Court Administrator, to Claude L. Van Marter, Ass't County Administrator (Jan. 25, 1991). For the location of this memorandum, see *supra* note 44.

46. Letter from Anthony Pisciotta, California State Sheriffs' Ass'n to Irene Ishizaka, Assembly Judiciary Committee (June 5, 1991). This letter is in the Assembly Judiciary Committee's file on Assembly Bill 1484 (1991 Cal. Stat. ch. 1090), which is kept at State Archives.

1 superior court case as well as in a municipal court case, the California State
2 Sheriffs' Association suggested that the proposal "cover all money judgment civil
3 writs issued from both municipal and Superior Courts."⁴⁷

4 The legislative history does not disclose why the Legislature did not adopt that
5 approach. The answer may relate more to the timing of the legislative process than
6 to the substance of the suggestion. The proposal to amend the satisfaction of
7 judgment statute was part of the Assembly Judiciary Committee's 1991 omnibus
8 civil practice bill. It was one of the last provisions added to the bill,⁴⁸ so the
9 suggestion to extend the proposal to superior court cases may not have received as
10 much consideration as it would have if the suggestion were made earlier in the
11 legislative process.

12 In any case, the underlying policy of Section 685.030(e) seems to be that where
13 the amount outstanding on a judgment is trivial (\$10 or less) and the deficit
14 appears to relate to calculation of interest, it is wasteful to expend further effort to
15 collect on the judgment and the matter should be considered closed. This policy
16 would appear to apply equally in a limited as in an unlimited civil case in superior
17 court. Absent a need for a difference in treatment, the statute should be amended to
18 permit the clerk to record a judgment as satisfied whenever the principal is fully
19 paid and only an interest deficit of \$10 or less remains, regardless of the
20 jurisdictional classification of the case.

UNDERTAKING OF CREDITOR IN CASE OF THIRD PARTY CLAIM (CODE CIV. PROC. §§ 720.160, 720.260)

21 [This discussion has been omitted because the Judicial Council is still studying
22 this topic and the Commission staff is still preparing revisions discussed at the
23 October meeting.]

CONFESSION OF JUDGMENT (CODE CIV. PROC. § 1134)

24 Code of Civil Procedure Section 1134 establishes fees for filing a confession of
25 judgment that differ depending on the jurisdictional classification of the case. The
26 filing fee is \$15 except in a limited civil case, in which case the filing fee is \$10.⁴⁹

47. *Id.*

48. It was amended into the bill on July 10, 1991, just before the bill was heard in the Senate Judiciary Committee.

49. The statute provides:

1134. In all courts the statement must be filed with the clerk of the court in which the judgment is to be entered, who must endorse upon it, and enter a judgment of the court for the amount confessed with the costs hereinafter set forth. At the time of filing, the plaintiff shall pay as court costs that shall become a part of the judgment the following fees: fifteen dollars (\$15) or in a limited civil case ten dollars (\$10). No fee shall be collected from the defendant. No fee shall be paid by the clerk of the court in which a confession of judgment is filed for the law library fund nor for services of any

1 The drafting of this provision is anomalous, since technically speaking it cannot
2 be said that a confession of judgment in an amount of \$25,000 or less is “in a
3 limited civil case,” no case ever having been filed. Before 1998, the statute
4 provided a lower fee in municipal and justice courts; the 1998 substitution of the
5 reference to a “limited civil case” was made to accommodate trial court
6 unification.⁵⁰ At a minimum, this section requires correction to refer to a fee of
7 \$10 where the amount confessed does not exceed \$25,000.

8 However, this appears to be an instance where procedures may be simplified and
9 unified, without substantial loss. The \$5 fee differential depending on whether a
10 judgment is over or under \$25,000 could easily be eliminated. It is not clear why
11 there should be a differential at all, because the work of the court clerk in
12 endorsing and entering judgment is the same, regardless of amount.

13 Historically, the \$15 fee was charged in superior court and the \$10 fee was
14 charged in municipal court. While it is possible there once was a fiscal justification
15 for this differential, the actual costs now involved to process the filing of a
16 confession of judgment are independent of the jurisdictional classification of the
17 case.

18 As a matter of policy, there may be a sentiment that in a smaller case, the costs
19 charged against the parties should remain proportionately smaller. When the fee
20 structure was enacted in 1872, the differential may have been significant. At that
21 time, there was a proliferation of trial courts, including district courts, county
22 courts, and justice courts. The general fee for filing a confession of judgment at
23 that time was \$10; in justice courts the fee was \$3.⁵¹ The equivalents in current
24 dollars would be about \$135 and \$40.⁵²

25 That fee structure remained unchanged for 85 years until the 1950s, when the
26 fees were changed to \$10 in superior court, \$9 in municipal court, and \$5 in justice
27 court.⁵³ In the 1970s the fees were raised to what they are today (\$15 in superior
28 court and \$10 in municipal court).⁵⁴ The \$5 difference in filing fees in today’s
29 dollars is so small that it is not worth maintaining.

30 While a lower fee in smaller cases may be viewed as a populist measure, this is
31 illusory. The law on confessions of judgment has evolved to the point that as a

court reporter. The statement and affidavit, with the judgment endorsed thereon, becomes the judgment roll.

The affidavit mentioned in the last sentence of the provision evidently refers to the defendant’s verification by oath required by Code of Civil Procedure Section 1133.

50. *Revision of Codes*, *supra* note 6, at 217.

51. 1872 Code Civ. Proc. §§ 1134, 1135.

52. These amounts were determined using “The Inflation Calculator” found at <<http://www.westegg.com/inflation/>>, a website created and maintained by S. Morgan Friedman, as modified Jan. 19, 2000.

53. 1957 Cal. Stat. ch. 1982, §§ 1, 2.

54. 1974 Cal. Stat. ch. 1285, § 1; 1975 Cal. Stat. ch. 766, § 1; 1977 Cal. Stat. ch. 1257, § 37. The justice court filing fee was increased to \$10 (1977 Cal. Stat. ch. 1257, § 37) and then eliminated when the justice court was abolished in 1995.

1 practical matter the confession of judgment is no longer of any use for small
2 claims. A confession of judgment is not valid unless an attorney representing the
3 defendant signs a certificate that the attorney has examined the proposed judgment
4 and has advised the defendant with respect to the waiver of rights and defenses
5 under the confession of judgment procedure and has advised the defendant to
6 utilize the confession of judgment procedure.⁵⁵ The cost of obtaining the
7 attorney's certificate renders the confession of judgment procedure practically
8 useless for the small claim.⁵⁶ Whether the filing fee were \$15 as opposed to \$10
9 would make no difference, because the cost of the attorney's certificate, not the
10 nominal filing fee, is prohibitive for small claims.

11 In the interest of simplicity, the Commission recommends elimination of the
12 filing fee differential, and adoption of a standard \$15 filing fee for all confessions
13 of judgment.⁵⁷ Because an attorney's certificate is now a prerequisite to entry of a
14 confession of judgment, the proposed amendment of Section 1134 would also
15 require that the certificate be made part of the judgment roll.

IMPLIED COURT AUTHORITY IN LIMITED AND UNLIMITED CIVIL CASES

16 Some statutes expressly relate to court authority in a limited civil case or an
17 unlimited civil case. For example, Code of Civil Procedure Section 402.5 permits
18 a unified superior court to transfer a limited civil case to another branch or location
19 of that court:⁵⁸

20 402.5. The superior court in a county in which there is no municipal court may
21 transfer a limited civil case to another branch or location of the superior court in
22 the same county.

23 The provision is silent as to transfer of an unlimited civil case. Thus, it might be
24 interpreted, by negative implication, to mean that a unified superior court is not
25 permitted to transfer an unlimited civil case to another branch or location of that
26 court. Similarly, if a statute confers authority in an unlimited civil case, it might be
27 inferred merely from the existence of the statute that the court lacks such authority
28 in a limited civil case.

55. Code Civ. Proc. § 1132.

56. See *Recommendation Relating to Confessions of Judgment*, 15 Cal. L. Revision Comm'n Reports 1053 (1980).

57. The real question, perhaps, is whether the \$15 fee ought to be increased to a more realistic level. It can be argued that the fee ought to be kept low, to encourage the parties to proceed without resort to court processes other than enforcement. In any event, assessing the merits of increasing the fee is beyond the scope of the current project, which is to simplify procedures under unification.

58. Similarly, Code of Civil Procedure Section 116.620 provides for payment of a small claims judgment in installments.

1 Such interpretations may be wholly unwarranted. For example, Section 402.5
2 was added in 1998 to implement trial court unification.⁵⁹ The purpose of the
3 provision was to underscore that unification would not undercut existing authority
4 to transfer a traditional municipal court case (now known as a limited civil case)
5 within a county:

6 In specified circumstances, existing law allows transfer of a case from one
7 municipal court to another municipal court in the same county. In a county with a
8 unified superior court, there are no municipal court districts; the proposed law
9 would preserve the ability of the court to transfer a case from one location to
10 another location within the county.⁶⁰

11 The provision was not intended to imply anything, one way or the other, about a
12 superior court's authority to transfer a traditional superior court case (now known
13 as an unlimited civil case) from one location to another within the county.

14 To guard against improper negative inferences under circumstances such as
15 these, a provision should be added to the Code of Civil Procedure clarifying that
16 the existence of a statute relating to the authority of the court in a limited civil case
17 does not, by itself, imply that the same authority does or does not exist in an
18 unlimited civil case. The provision should further direct that the existence of a
19 statute relating to the authority of the court in an unlimited civil case does not, by
20 itself, imply that the same authority does or does not exist in a limited civil case.

21 [FILING FEE FOR FIRST PAPER IN A LIMITED CIVIL CASE

22 Government Code Section 72055 specifies the fee for filing the first paper in a
23 limited civil case. The amount of the fee depends on the amount of the demand:

24 72055. The total fee for filing of the first paper in a limited civil case, shall be
25 ninety dollars (\$90), except that in cases where the amount demanded, excluding
26 attorney's fees and costs, is ten thousand dollars (\$10,000) or less, the fee shall be
27 eighty-three dollars (\$83). The amount of the demand shall be stated on the first
28 page of the paper immediately below the caption.

29

30 It is appropriate to examine whether the seven dollar difference (\$90 versus \$83)
31 between the fee where the demand exceeds \$10,000, and the fee where the demand
32 is \$10,000 or less, is warranted.⁶¹

59. 1998 Cal. Stat. ch. 931, § 68; see *Revision of Codes*, *supra* note 6, at 71, 181.

60. *Revision of Codes*, *supra* note 6, at 71 (footnotes omitted).

61. This issue arose in the context of this study because Government Code Section 72055 as presently drafted would conflict with the Commission's proposed amendment of Code of Civil Procedure Section 425.10 (the requirement that the amount of the demand be stated on the first page of the first pleading in a limited civil case would conflict with the proposal to extend the prohibition on pleading personal injury or wrongful death damages to a limited civil case). See "Pleading Personal Injury and Wrongful Death Damages" *supra*. Other issues relating to simplification of filing fees are being studied in other contexts.

1 The differentiation between larger and smaller limited civil cases is of recent
2 origin. Until 1992, the fee for filing the first paper in a civil case in municipal
3 court was set by the board of supervisors, but Government Code Section 72055
4 limited this fee to a maximum of either \$40 or \$29, depending on whether a fee
5 was collected for the court reporter fund.⁶² In 1992, the statute was amended to
6 establish a uniform \$80 fee for filing the first paper in a civil case in municipal
7 court.⁶³ Not until 1997 was the amount of the fee linked to the amount demanded.
8 In that year the Legislature enacted the Lockyer-Isenberg Trial Court Funding Act,
9 which made major reforms relating to trial court funding but also amended Section
10 72055. Effective January 1, 1998, the fee for filing the first paper in a civil case in
11 municipal court was raised to \$83 where the demand is \$10,000 or less and \$90
12 where the demand exceeds \$10,000.⁶⁴ To accommodate trial court unification, the
13 provision was further amended the following year, to apply to limited civil cases
14 rather than municipal court cases.⁶⁵

15 It is not clear why the provision was amended to distinguish between cases
16 based on the amount of the demand. The bill analyses for the Lockyer-Isenberg
17 Trial Court Funding Act focus on more significant aspects of that legislation and
18 do not address this point.

19 Court personnel have reported, however, that differentiating between limited
20 civil cases where the demand is \$10,000 or less, and limited civil cases where the
21 demand exceeds \$10,000, creates problems. The increased complexity makes it
22 more difficult for court clerks to determine what fee is due and harder for the
23 Judicial Council and Administrative Office of the Courts to develop forms that
24 clearly identify what fee should be charged. Trial court unification has exacerbated
25 these problems, because in a unified superior court the clerks collect filing fees for
26 unlimited civil cases (for which the initial filing fee is \$185),⁶⁶ as well as for both
27 categories of limited civil cases.

28 Amending Section 72055 to set a uniform fee for filing the first paper in a
29 limited civil case would alleviate the administrative burdens and potential for
30 confusion in applying the statute. According to the Administrative Office of the
31 Courts, if the fee were set at \$85 such an amendment probably would also be
32 revenue-neutral, neither increasing nor decreasing the revenue of the courts.

33 The statute should be further amended to delete the requirement that the amount
34 of the demand be stated on the first page of the first paper immediately below the
35 caption. If the same filing fee were charged for all limited civil cases, that
36 requirement would no longer necessary, because the amount of the demand would

62. 1983 Cal. Stat. ch. 969, § 10.

63. 1992 Cal. Stat. ch. 696, § 73.

64. 1997 Cal. Stat. ch. 850, § 37.

65. 1998 Cal. Stat. ch. 931, § 315; see also *Revision of Codes*, *supra* note 6, at 377-78.

66. Gov't Code § 26820.4.

1 no longer affect the amount due under the statute.⁶⁷ To permit differentiation
2 between limited and unlimited civil cases, however, a plaintiff in a limited civil
3 case would still required to state in the caption that the case is a limited civil
4 case.⁶⁸]

67. Eliminating the requirement that the demand be stated on the first page of the first pleading in a limited civil case would also eliminate the conflict between Government Code Section 72055 and the proposal to extend Code of Civil Procedure Section 425.10's prohibition on pleading personal injury or wrongful death damages to a limited civil case. See notes 28, 61 *supra*.

68. Code Civ. Proc. § 422.30.

PROPOSED LEGISLATION

1 **Code Civ. Proc. § 89 (added). Implied authority in limited and unlimited civil cases**

2 SECTION 1. Section 89 is added to the Code of Civil Procedure, to read:

3 89. (a) The existence of a statute relating to the authority of the court in a limited
4 civil case does not, by itself, imply that the same authority does or does not exist
5 in an unlimited civil case.

6 (b) The existence of a statute relating to the authority of the court in an unlimited
7 civil case does not, by itself, imply that the same authority does or does not exist
8 in a limited civil case.

9 **Comment.** Section 89 is added to provide guidance in interpreting statutory provisions that
10 expressly authorize particular conduct in a limited civil case but are silent as to an unlimited civil
11 case, or vice versa. See, e.g., Section 402.5 (transfer of limited civil case).

12 **Code Civ. Proc. § 425.10 (amended). Contents of complaint**

13 SEC. 2. Section 425.10 of the Code of Civil Procedure is amended to read:

14 425.10. A complaint or cross-complaint shall contain both of the following:

15 (a) A statement of the facts constituting the cause of action, in ordinary and
16 concise language.

17 (b) A demand for judgment for the relief to which the pleader claims to be
18 entitled. If the recovery of money or damages ~~be is~~ demanded, the amount thereof
19 demanded shall be stated, unless the action is brought ~~in the superior court~~ to
20 recover actual or punitive damages for personal injury or wrongful death, in which
21 case the amount thereof demanded shall not be stated, ~~except in a limited civil case~~
22 but the caption shall comply with Section 422.30.

23 **Comment.** Section 425.10 is amended to conform the pleading requirements in limited and
24 unlimited civil cases. In an action for personal injury or wrongful death, the amount demanded
25 should not be stated in the complaint, but if the case is a limited civil case the caption of the
26 complaint must identify it as such as required by Section 422.30. Technical changes are also
27 made for conformity with preferred drafting style.

28 **Code Civ. Proc. § 425.11 (amended). Statement of damages**

29 SEC. 3. Section 425.11 of the Code of Civil Procedure is amended to read:

30 425.11. (a) As used in this section:

31 (1) “Complaint” includes a cross-complaint.

32 (2) “Plaintiff” includes a cross-complainant.

33 (3) “Defendant” includes a cross-defendant.

34 (b) When a complaint is filed in an action ~~in the superior court~~ to recover
35 damages for personal injury or wrongful death, the defendant may at any time
36 request a statement setting forth the nature and amount of damages being sought,
37 ~~except in a limited civil case.~~ The request shall be served upon the plaintiff, who
38 shall serve a responsive statement as to the damages within 15 days. In the event
39 that a response is not served, the party defendant, on notice to the plaintiff, may

1 petition the court in which the action is pending to order the plaintiff to serve a
2 responsive statement.

3 (c) If no request is made for the statement referred to in subdivision (a), the
4 plaintiff shall serve the statement on the defendant before a default may be taken.

5 (d) The statement referred to in subdivision (b) shall be served in the following
6 manner:

7 (1) If a party has not appeared in the action, the statement shall be served in the
8 same manner as a summons.

9 (2) If a party has appeared in the action, the statement shall be served upon ~~his or~~
10 ~~her~~ the party's attorney, or upon the party if ~~he or she~~ the party has appeared
11 without an attorney, in the manner provided for service of a summons or in the
12 manner provided by Chapter 5 (commencing with Section 1010) of Title 14 of Part
13 2.

14 (e) The statement referred to in subdivision (b) may be combined with the
15 statement described in Section 425.115.

16 **Comment.** Section 425.11 is amended to conform to the pleading requirements of limited and
17 unlimited civil cases. See Section 425.10. Technical changes are also made for conformity with
18 preferred drafting style.

19 **Code Civ. Proc. § 489.220 (amended). Undertaking for writ of attachment or protective**
20 **order**

21 [This amendment has been omitted because the Judicial Council is still studying
22 this topic.]

23 **Code Civ. Proc. § 631 (amended). Waiver of trial by jury**

24 SEC. 5. Section 631 of the Code of Civil Procedure is amended to read:

25 631. (a) Trial by jury may be waived by the several parties to an issue of fact in
26 any of the following ways:

27 (1) By failing to appear at the trial.

28 (2) By written consent filed with the clerk or judge.

29 (3) By oral consent, in open court, entered in the minutes or docket.

30 (4) By failing to announce that a jury is required, at the time the cause is first set
31 for trial, if it is set upon notice or stipulation, or within five days after notice of
32 setting if it is set without notice or stipulation.

33 (5) By failing to deposit with the clerk, or judge, advance jury fees 25 days prior
34 to the date set for trial, except in unlawful detainer actions where the fees shall be
35 deposited at least five days prior to the date set for trial, or as provided by
36 subdivision (b). An advance jury fee deposited pursuant to this paragraph may not
37 exceed a total of one hundred fifty dollars (\$150).

38 (6) By failing to deposit with the clerk or judge, promptly after the impanelment
39 of the jury, a sum equal to the mileage or transportation (if allowed by law) of the
40 jury accrued up to that time.

1 (7) By failing to deposit with the clerk or judge, at the beginning of the second
2 and each succeeding day's session a sum equal to one day's fees of the jury, and
3 the mileage or transportation, if any.

4 ~~(b) In a superior court action, other than a limited civil case, if~~ If a jury is
5 demanded by either party in the memorandum to set the cause for trial a party and
6 the party, prior to trial, by announcement or by operation of law, waives a trial by
7 jury, then all adverse parties shall have five days following receipt of the notice of
8 the waiver that party shall promptly notify all other parties of the waiver, in
9 writing or in open court. Each party adverse to the party who waived the trial by
10 jury has five days after notice of the waiver is given to file and serve a demand for
11 a trial by jury and to deposit any advance jury fees that are then due. If the party
12 who waived a trial by jury does not promptly notify all other parties of the waiver,
13 any other party, or the clerk or judge, may provide notice of the waiver, but is not
14 required to do so. Where more than one notice of the waiver is given to a party, the
15 five-day period to file and serve a demand for a trial by jury and to deposit
16 advance jury fees commences on giving of the first notice.

17 (c) When the party who has demanded trial by jury either (1) waives the trial
18 upon or after the assignment for trial to a specific department of the court, or upon
19 or after the commencement of the trial, or (2) fails to deposit the fees as provided
20 in paragraph (6) of subdivision (a), trial by jury shall be waived by the other party
21 by either failing promptly to demand trial by jury before the judge in whose
22 department the waiver, other than for the failure to deposit the fees, was made, or
23 by failing promptly to deposit the fees described in paragraph (6) of subdivision
24 (a).

25 (d) The court may, in its discretion upon just terms, allow a trial by jury although
26 there may have been a waiver of a trial by jury.

27 **Comment.** Subdivision (b) of Section 631 is amended to apply to both limited and unlimited
28 civil cases. This codifies existing law. See Cal. R. Ct. 521, 709. For limited civil cases, see
29 Section 85 & Comment. For unlimited civil cases, see Section 88. For waiver of a jury in a
30 criminal case, see Cal. Const. art. I, § 16.

31 Subdivision (b) is also amended to delete the reference to the memorandum to set the cause for
32 trial. The reference is unnecessary and may also be obsolete because in many cases an at-issue
33 memorandum is no longer required. See R. Weil & I. Brown, Jr., *California Practice Guide: Civil*
34 *Procedure Before Trial, Case Management and Trial Setting* § 12:101, at 12(I)-36 (2000).

35 As amended, subdivision (b) also clarifies that the party who waives a jury after demanding one
36 is responsible for providing notice of the waiver. If that party fails to provide notice of the waiver
37 as required, another party (or the clerk or judge) is permitted but not required to provide the
38 notice instead. Failure to provide timely notice may be grounds for a continuance or other
39 remedial action. See *Leslie v. Roe*, 52 Cal. App. 3d 686, 688, 125 Cal. Rptr. 157 (1975).

40 Finally, the amendment provides that the time period for demanding a jury trial and depositing
41 jury fees runs from the date of giving notice rather than from the date of receiving notice. This is
42 intended to facilitate proof of whether a jury demand is timely. For extension of the five-day
43 period where notice is given by mail or Express Mail, see Section 1013.

44 **Code Civ. Proc. § 685.030 (amended). Satisfaction of judgment**

45 SEC. 6. Section 685.030 of the Code of Civil Procedure is amended to read:

1 685.030. (a) If a money judgment is satisfied in full pursuant to a writ under this
2 title, interest ceases to accrue on the judgment:

3 (1) If the proceeds of collection are paid in a lump sum, on the date of levy.

4 (2) If the money judgment is satisfied pursuant to an earnings withholding order,
5 on the date and in the manner provided in Section 706.024 or Section 706.028.

6 (3) In any other case, on the date the proceeds of sale or collection are actually
7 received by the levying officer.

8 (b) If a money judgment is satisfied in full other than pursuant to a writ under
9 this title, interest ceases to accrue on the date the judgment is satisfied in full.

10 (c) If a money judgment is partially satisfied pursuant to a writ under this title or
11 is otherwise partially satisfied, interest ceases to accrue as to the part satisfied on
12 the date the part is satisfied.

13 (d) For the purposes of subdivisions (b) and (c), the date a money judgment is
14 satisfied in full or in part is the earliest of the following times:

15 (1) The date satisfaction is actually received by the judgment creditor.

16 (2) The date satisfaction is tendered to the judgment creditor or deposited in
17 court for the judgment creditor.

18 (3) The date of any other performance that has the effect of satisfaction.

19 (e) ~~In a limited civil case, the~~ The clerk of a court may enter in the Register of
20 Actions a writ of execution on a money judgment as returned wholly satisfied
21 when the judgment amount, as specified on the writ, is fully collected and only an
22 interest deficit of no more than ten dollars (\$10) exists, due to automation of the
23 continual daily interest accrual calculation.

24 **Comment.** Subdivision (e) of Section 685.030 is amended to eliminate the difference in
25 treatment between limited and unlimited civil cases.

26 For the register of actions in superior court, see Gov't Code §§ 69845, 69845.5. For the register
27 of actions in municipal court, see Code Civ. Proc. §§ 1052, 1052.1.

28 **Code Civ. Proc. § 720.160 (amended). Undertaking by creditor where third party claims**
29 **ownership or possession**

30 [This amendment has been omitted because the Judicial Council is still studying
31 this topic.]

32 **Code Civ. Proc. § 720.260 (amended). Undertaking by creditor where third party claims**
33 **security interest or lien**

34 [This amendment has been omitted because the Judicial Council is still studying
35 this topic.]

36 **Code Civ. Proc. § 1134 (amended). Entry of judgment**

37 SEC. 9. Section 1134 of the Code of Civil Procedure is amended to read:

38 1134. ~~In all courts the~~ (a) The statement required by Section 1133 must be filed
39 with the clerk of the court in which the judgment is to be entered, who must
40 endorse upon it, and enter a judgment of the court for the amount confessed with
41 the costs ~~hereinafter set forth~~ provided in subdivision (b).

1 (b) At the time of filing, the plaintiff shall pay as court costs that shall become a
2 part of the judgment ~~the following fees: a fee of fifteen dollars (\$15) or in a limited~~
3 ~~civil case ten dollars (\$10).~~ No fee shall be collected from the defendant. No fee
4 shall be paid by the clerk of the court in which a confession of judgment is filed
5 for the law library fund nor for services of any court reporter.

6 (c) The statement and affidavit, with the judgment endorsed thereon, together
7 with the certificate filed pursuant to Section 1132, becomes the judgment roll.

8 **Comment.** Section 1134 is amended to divide the section into subdivisions and to eliminate the
9 \$10 filing fee for a limited civil case. Under this amendment, the filing fee is \$15 regardless of
10 the jurisdictional classification of the case.

11 The reference to “all courts” in subdivision (a) is deleted as obsolete. It derived from an era
12 when a confession of judgment might have been entered in any of several courts, depending on
13 the amount of the judgment and the jurisdiction of the court. *Cf.* Section 1132(a) (“Such judgment
14 may be entered in any court having jurisdiction for like amounts”).

15 The attorney’s certificate is made part of the judgment roll in subdivision (c). The certificate is
16 a prerequisite to entry of judgment and must be filed with the defendant’s written and verified
17 statement. Section 1132(b).

18 **[Gov’t Code § 72055 (amended). First filing fee in limited civil case**

19 SEC. 10. Section 72055 of the Government Code is amended to read:

20 72055. (a) The total fee for filing of the first paper in a limited civil case, case
21 shall be ninety dollars (\$90), except that in cases where the amount demanded,
22 excluding attorney’s fees and costs, is ten thousand dollars (\$10,000) or less, the
23 fee shall be eighty-three dollars (\$83). The amount of the demand shall be stated
24 on the first page of the paper immediately below the caption eighty-five dollars
25 (\$85).

26 (b) This section applies to the initial complaint, petition, or application, and any
27 papers transmitted from another court on the transfer of a civil action or
28 proceeding, but does not include documents filed pursuant to Section 491.150,
29 704.750, or 708.160 of the Code of Civil Procedure.

30 (c) The term “total fee” as used in this section and Section 72056 includes any
31 amount allocated to the Judges’ Retirement Fund pursuant to Section 72056.1, any
32 automation fee imposed pursuant to Section 68090.7, any construction fee
33 imposed pursuant to Section 76238, and the law library fee established pursuant to
34 Article 2 (commencing with Section 6320) of Chapter 5 of Division 3 of the
35 Business and Professions Code. The term “total fee” as used in Section 72056
36 includes any dispute resolution fee imposed pursuant to Section 470.3 of the
37 Business and Professions Code. The term “total fee” as used in this section also
38 includes any dispute resolution fee imposed pursuant to Section 470.3 of the
39 Business and Professions Code, but the board of supervisors of each county may
40 exclude any portion of this dispute resolution fee from the term “total fee.”

41 (d) The fee shall be waived in any action for damages against a defendant, based
42 upon the defendant’s commission of a felony offense, upon presentation to the
43 clerk of the court of a certified copy of the abstract of judgment of conviction of
44 the defendant of the felony giving rise to the claim for damages. If the plaintiff

1 would have been entitled to recover those fees from the defendant had they been
2 paid, the court may assess the amount of the waived fees against the defendant and
3 order the defendant to pay that sum to the county.

4 **Comment.** For purposes of simplification, Section 72055 is amended to establish a uniform
5 filing fee for filing the first paper in a limited civil case, regardless of the amount of the demand.
6 Formerly, the amount of the fee depended on whether the demand exceeded \$10,000, or was
7 \$10,000 or less. 1998 Cal. Stat. ch. 931, § 315; see also 1992 Cal. Stat. ch. 696, § 73; 1997 Cal.
8 Stat. ch. 850, § 37.

9 Section 72055 is further amended to delete the requirement that the amount of the demand be
10 stated on the first page of the first paper immediately below the caption. This requirement is no
11 longer necessary, because the amount of the demand no longer affects the amount due under the
12 statute. To permit differentiation between limited and unlimited civil cases, however, a plaintiff in
13 a limited civil case is still required to state in the caption that the case is a limited civil case. Code
14 Civ. Proc. § 422.30 (caption).

15 Technical changes are also made for conformity with preferred drafting style.]