

# CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

## Trial Court Unification: Revision of Code of Civil Procedure

July 1997

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN November 21, 1997.**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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## SUMMARY OF TENTATIVE RECOMMENDATION

This tentative recommendation proposes revisions of the Code of Civil Procedure to implement trial court unification under SCA 4. This is one of a series of tentative recommendations on statutory revisions necessitated by trial court unification. It is anticipated that the Law Revision Commission will issue a final recommendation, and legislation will be introduced, in the 1998 legislative session to implement SCA 4. The legislation would be contingent on voter approval of SCA 4.

This tentative recommendation was prepared pursuant to Resolution Chapter 102 of the Statutes of 1997.



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1 TRIAL COURT UNIFICATION:  
2 REVISION OF CODE OF CIVIL PROCEDURE

3 BACKGROUND

4 **Trial Court Unification Under SCA 4**

5 Senate Constitutional Amendment 4 (Lockyer) was enacted as Resolution  
6 Chapter 36 of the Statutes of 1996.<sup>1</sup> It provides for unification of the municipal  
7 and superior courts in a county on a vote of a majority of the municipal court  
8 judges and a majority of the superior court judges in that county.<sup>2</sup>

9 The measure is currently scheduled to be on the ballot in a statewide election on  
10 June 9, 1998.<sup>3</sup> If it is approved by the voters, it will become operative the day after  
11 the election.<sup>4</sup> The measure includes a number of provisions that are self-  
12 executing,<sup>5</sup> and other provisions that apply only on unification of the municipal  
13 and superior courts in a county.<sup>6</sup>

14 **Role and Methodology of Law Revision Commission**

15 Both the self-executing provisions and the other provisions of SCA 4 require  
16 conforming or implementing legislation. The Legislature has directed the Law  
17 Revision Commission to report recommendations “pertaining to statutory changes  
18 that may be necessitated by court unification.”<sup>7</sup> This assignment follows an earlier

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1. A copy of the measure is attached as Appendix 1.

2. Proposed Cal. Const. art. VI, § 5(e).

3. 1996 Cal. Stat. ch. 333, § 2(i).

4. Cal. Const. art. XVIII, § 4.

5. The measure contains a number of constitutional revisions that will apply regardless of whether the courts in any county ever elect to unify. These include:

(1) Creation of an appellate division in the superior court. Cal. Const. art. VI, § 4.

(2) Changes in structure of Judicial Council. Cal. Const. art. VI, § 6.

(3) Protection of the appellate jurisdiction of the courts of appeal in causes of a type within that jurisdiction on June 30, 1995. Cal. Const. art. VI, § 11(a).

(4) Delegation of the appellate jurisdiction of the superior court to causes prescribed by statute. Cal. Const. art. VI, § 11(b).

(5) Change in the date of an election to fill a superior court vacancy (to the next general election after the second January following the vacancy). Cal. Const. art. VI, § 16(c).

6. Provisions contingent on unification within a county include:

(1) Composition of Judicial Council. Cal. Const. art. VI, § 6.

(2) Composition of Commission on Judicial Performance. Cal. Const. art. VI, § 8.

(3) Election of judges in unified counties. Cal. Const. art. VI, § 16(b)(1).

(4) Transitional provisions for unification. Cal. Const. art. VI, § 23.

7. 1997 Cal. Stat. res. ch. 102.



1 legislative assignment in which the Commission made recommendations on the  
2 constitutional revisions necessary to implement trial court unification.<sup>8</sup>

3 The Commission engaged the services of the Institute for Legislative Practice  
4 and its director, Professor Clark Kelso of McGeorge Law School, to prepare initial  
5 drafts of suggested code revisions. The initial drafts are reviewed by the Judicial  
6 Council, which established working groups for this purpose, and are revised  
7 appropriately before being considered by the Law Revision Commission. The  
8 Commission will issue a series of tentative recommendations, which will be  
9 publicized and circulated for comment before the Commission adopts its final  
10 recommendations for code revision.

11 It is the intention of the Commission to submit its recommendations to the  
12 Governor and Legislature by the beginning of the 1998 legislative session, for  
13 enactment at that session. To this end, the Commission will narrowly limit its  
14 recommendations to generally preserve existing procedures for the types of cases  
15 they now govern.

### 16 **Drafting Conventions**

17 Any legislation introduced is likely to include not only changes necessitated by  
18 SCA 4, but also unrelated technical revisions requested by Legislative Counsel.<sup>9</sup>  
19 To highlight the SCA 4 changes for those who have occasion to review them, the  
20 Commission's tentative recommendations will not include technical revisions  
21 unrelated to SCA 4.<sup>10</sup>

22 The drafts do, however, delete existing statutory references to justice courts.  
23 Justice courts have been eliminated from California's judicial structure,<sup>11</sup> but the  
24 statutes have not been revised to account for this.<sup>12</sup>

### 25 **1997 Legislation**

26 The proposed statutory revisions in this tentative recommendation are directed  
27 to California law in effect during 1997, and do not take into account legislation  
28 pending or enacted in the 1997 legislative session. A number of statutes will  
29 require further revision, if the legislation affecting them is enacted.<sup>13</sup> The  
30 Commission intends to review these statutes and propose appropriate adjustments

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8. 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).

9. For example, Legislative Counsel habitually expunges the word "such" from the text of all statutes.

10. Gender-neutral language is adopted throughout, however.

11. 1994 Cal. Stat. res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994).

12. Statutory references to the justice court office of constable are likewise corrected in the proposed law.

13. See, e.g., SB 150 (Kopp), relating to criminal restitution, and AB 233 (Escutia & Pringle), relating to trial court funding.

1 before submitting a final recommendation to the Governor and Legislature in  
2 1998.

### 3 CODE OF CIVIL PROCEDURE

#### 4 **Differentiating Among Superior Court Civil Causes**

5 On unification of the trial courts in a county, all causes will be within the  
6 original jurisdiction of the superior court. It will, however, be necessary to  
7 differentiate among superior court causes to preserve economic litigation  
8 procedures, local appeals, filing fees, and other procedural distinctions for matters  
9 that traditionally have been within the municipal court's jurisdiction. The  
10 alternative, treating all causes in the same manner as traditional superior court  
11 causes, would be impractical for a number of reasons, including the prospect of  
12 swamping trial and appellate court resources.

13 The statutes could differentiate among civil causes simply by referring to causes  
14 that would be within the jurisdiction of the municipal court if the courts in a  
15 county had not unified. But this approach is predicated on the assumption that  
16 municipal courts in some counties will exist indefinitely. The approach also makes  
17 it necessary to refer to statutes applicable in another county to determine  
18 jurisdiction issues in a unified court. In the long run, all courts may be unified, at  
19 which time further statutory revision would be necessary.

20 A preferable approach is to identify causes that are traditionally within the  
21 municipal court jurisdiction and deal with them directly. In the proposed  
22 legislation, these causes are listed in new Section 85 of the Code of Civil  
23 Procedure and are identified as "limited cases." In a county in which the courts  
24 have not unified, the municipal court would have jurisdiction of limited cases. In a  
25 county in which the courts have unified, the superior court would have original  
26 jurisdiction of limited cases, but such cases would be governed by economic  
27 litigation procedures, local appeal, filing fees, and the other procedural distinctions  
28 that characterize these causes in a municipal court.

#### 29 **Appellate Jurisdiction of Court of Appeal**

30 SCA 4 provides that the courts of appeal have appellate jurisdiction when  
31 superior courts have original jurisdiction "in causes of a type within the appellate  
32 jurisdiction of the courts of appeal on June 30, 1995" and in other causes  
33 prescribed by statute.<sup>14</sup> The effect of this provision is to perpetuate the court of  
34 appeal jurisdiction as it existed on June 30, 1995, but allow for expansion of the  
35 court of appeal jurisdiction.

36 The provision presents a number of challenges, including ascertaining what it  
37 means to be a cause "of a type" within the court of appeal jurisdiction, keeping the  
38 legal community aware of the historical jurisdiction of the court of appeal, and  
39 dealing with pending appeals on the operative date of SCA 4 in causes of a type

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<sup>14</sup>. Proposed Cal. Const. art. VI, § 11(a).

1 that were not within the appellate jurisdiction of the court of appeal on June 30,  
2 1995.

3 The proposed legislation resolves these issues through a statutory grant of  
4 appellate jurisdiction to the court of appeal in cases within the original jurisdiction  
5 of the superior court, excluding limited cases (cases historically within the original  
6 jurisdiction of the municipal courts). Statutory expansion of court of appeal  
7 jurisdiction is allowed under SCA 4<sup>15</sup> and provides a ready means of determining  
8 the extent of the appellate jurisdiction of the court of appeal. The statutory grant of  
9 jurisdiction is also consistent with the intent of SCA 4: to preserve the appellate  
10 jurisdiction of the court of appeal in cases historically within the original  
11 jurisdiction of the superior court.

### 12 **Appellate Division of Superior Court**

13 *Creation of appellate division.* SCA 4 creates an appellate division in each  
14 superior court.<sup>16</sup> The appellate division is similar to the existing appellate  
15 department, but is intended to have greater autonomy so that it can exercise a true  
16 review function in a unified superior court.<sup>17</sup> SCA 4 creates appellate divisions in  
17 all superior courts, regardless of whether the trial courts in the county have  
18 unified.

19 *Appellate jurisdiction of appellate division.* Under existing law, the appellate  
20 jurisdiction of the superior court is defined by causes “that arise in municipal  
21 courts in their counties.”<sup>18</sup> SCA 4 would delete this provision, simply leaving the  
22 appellate jurisdiction of superior courts to statute.<sup>19</sup> The proposed legislation  
23 would make clear that the appellate jurisdiction of the appellate division covers  
24 limited cases — causes traditionally within the original jurisdiction of municipal  
25 courts, regardless of whether the courts in a county have unified.<sup>20</sup>

26 *Appointments to appellate division.* SCA 4 requires the Chief Justice to assign  
27 judges to the appellate division for specified terms pursuant to rules, not  
28 inconsistent with statute, adopted by the Judicial Council to promote the  
29 independence of the appellate division.<sup>21</sup> The provision

30 requires adoption of court rules intended to foster independence of judges serving  
31 in the appellate division. Rules may set forth relevant factors to be used in making  
32 appointments to the appellate division, such as length of service as a judge,

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15. Proposed Cal. Const. art. VI, § 11(a) (“and in other causes prescribed by statute”).

16. Proposed Cal. Const. art. VI, § 4.

17. Assignments to the appellate division are made by the Chief Justice for specified terms and pursuant to rules (not inconsistent with statute) adopted by the Judicial Council to promote the independence of the appellate division.

18. Cal. Const. art. VI, § 11.

19. Proposed Cal. Const. art. VI, § 11(b).

20. The appellate jurisdiction of the appellate division would also include an appeal in a misdemeanor or infraction case. See *Tentative Recommendation, Trial Court Unification: Revision of Penal Code*, Cal. L. Revision Comm’n (September 1997), at §§ 691 (misdemeanor or infraction case), 1466 (appeals).

21. Proposed Cal. Const. art. VI, § 4.

1 reputation within the unified court, and degree of separateness of the appellate  
2 division workload from the judge’s regular assignments (e.g., a superior court  
3 judge who routinely handles large numbers of misdemeanors might ordinarily not  
4 serve in the appellate division). Review by a panel of judges might include judges  
5 assigned from another county in appropriate circumstances, or even by a panel of  
6 appellate division judges from different superior courts who sit in turn in each of  
7 the superior courts in the “circuit.”<sup>22</sup>

8 To effectuate this intent, the proposed law does not attempt to specify terms or  
9 conditions, but leaves the Judicial Council freedom to adopt appropriate rules and  
10 leaves the Chief Justice broad discretion in making appointments.

### 11 **Small Claims**

12 *Organizational structure.* The small claims division of the municipal court is  
13 colloquially referred to as the small claims “court.”<sup>23</sup> The colloquial usage is  
14 common and convenient; the proposed law sanctions this usage, while making the  
15 statutes technically correct by referring to the “division”. In a county in which the  
16 municipal and superior courts have unified, the small claims court is a division of  
17 the superior court rather than a division of the municipal court.

18 *Appeals.* The current appeal route for a small claim is a new trial in the superior  
19 court, a court of higher jurisdiction.<sup>24</sup> Upon unification of the municipal and  
20 superior courts in a county, the superior court will include the small claims  
21 division and will not be a court of higher jurisdiction. SCA 4 addresses this matter  
22 by providing for a rehearing in the superior court by a judge other than the judge  
23 who originally heard the case, except as provided by statute to the contrary.<sup>25</sup> The  
24 proposed law preserves the scheme of SCA 4: A hearing before a new judicial  
25 officer, with legal representation,<sup>26</sup> is a sufficient review opportunity for the  
26 litigants without being a substantial burden on judicial resources.

### 27 **Transitional Issues in Pending Causes**

28 On the operative date of unification, there will be causes pending in the  
29 municipal court, as well as new causes that are statutorily within the jurisdiction of  
30 the municipal court. SCA 4 includes transitional provisions that address these  
31 matters.<sup>27</sup> The proposed law makes the constitutional transitional provisions more  
32 accessible to attorneys and others by repeating them in statutes.<sup>28</sup>

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22. *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm’n Reports 1, 77 (1994).

23. The statutes also frequently refer to it as a “court” rather than as a division of the municipal court. Cf. Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure (Small Claims Court).

24. Code Civ. Proc. §§ 116.710, 116.770.

25. Proposed Cal. Const. art. VI, § 23(c)(6).

26. Code Civ. Proc. § 116.770(c).

27. Proposed Cal. Const. art. VI, § 23(c)(4)-(5).

28. See Appendix 2: SCA 4 Implementing Legislation (General Provisions).

1 **Other Issues**

2 A few noteworthy issues are highlighted in the attached draft by the mechanism  
3 of a Note following selected sections of the draft.<sup>29</sup>

4 **ISSUES IN JUDICIAL ADMINISTRATION**  
5 **APPROPRIATE FOR FUTURE STUDY**

6 In the process of preparing proposed statutory revisions to implement trial court  
7 unification, the Commission has noted the following issues in judicial  
8 administration that may be appropriate for future study:

- 9 (1) Jurisdictional limits for economic litigation procedures.  
10 (2) Jurisdictional limits for small claims cases.  
11 (3) Obsolete provisions of the Code of Civil Procedure relating to pilot  
12 projects.<sup>30</sup>

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<sup>29</sup>. See, e.g., proposed Code Civil Proc §§ 116.250, 395.9, 396a, 422.30.

<sup>30</sup>. E.g., Code Civ. Proc. §§ 221, 1012.5.

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APPENDIX 1: TEXT OF SCA 4

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 1995-96 Regular Session commencing on the fifth day of December, 1994, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First — That Section 16 of Article I thereof is amended to read:

SEC. 16. Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes ~~in municipal or justice court~~ other than causes within the appellate jurisdiction of the court of appeal the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court.

In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a misdemeanor is charged, the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court.

Second — That Section 1 of Article VI thereof is amended to read:

SEC. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, and municipal courts. ~~All courts,~~ all of which are courts of record.

Third — That Section 4 of Article VI thereof is amended to read:

SEC. 4. In each county there is a superior court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each superior court. If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court.

~~The county clerk is an ex officio clerk of the superior court in the county.~~

In each superior court there is an appellate division. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.

Fourth — That Section 5 of Article VI thereof is amended to read:

SEC. 5. (a) Each county shall be divided into municipal court districts as provided by statute, but a city may not be divided into more than one district. Each



1 municipal court shall have one or more judges. Each municipal court district shall  
2 have no fewer than 40,000 residents; provided that each county shall have at least  
3 one municipal court district. The number of residents shall be determined as  
4 provided by statute.

5 (b) On the operative date of this subdivision, all existing justice courts shall  
6 become municipal courts, and the number, qualifications, and compensation of  
7 judges, officers, attaches, and employees shall continue until changed by the  
8 Legislature. Each judge of a part-time municipal court is deemed to have agreed to  
9 serve full time and shall be available for assignment by the Chief Justice for the  
10 balance of time necessary to comprise a full-time workload.

11 (c) The Legislature shall provide for the organization and prescribe the  
12 jurisdiction of municipal courts. It shall prescribe for each municipal court the  
13 number, qualifications, and compensation of judges, officers, and employees.

14 (d) Notwithstanding subdivision (a), any city in San Diego County may be  
15 divided into more than one municipal court district if the Legislature determines  
16 that unusual geographic conditions warrant such division.

17 (e) Notwithstanding subdivision (a), the municipal and superior courts shall be  
18 unified upon a majority vote of superior court judges and a majority vote of  
19 municipal court judges within the county. In those counties, there shall be only a  
20 superior court.

21 Fifth — That Section 6 of Article VI thereof is amended to read:

22 SEC. 6. The Judicial Council consists of the Chief Justice and one other judge of  
23 the Supreme Court, 3 judges of courts of appeal, 5 judges of superior courts, ~~and 5~~  
24 judges of municipal courts, 2 nonvoting court administrators, and such other  
25 nonvoting members as determined by the voting membership of the council, each  
26 appointed by the Chief Justice for a 2-year 3-year term pursuant to procedures  
27 established by the council; 4 members of the State Bar appointed by its governing  
28 body for 2-year 3-year terms; and one member of each house of the Legislature  
29 appointed as provided by the house. Vacancies in the memberships on the Judicial  
30 Council otherwise designated for municipal court judges shall be filled by judges  
31 of the superior court in the case of appointments made when fewer than 10  
32 counties have municipal courts.

33 Council membership terminates if a member ceases to hold the position that  
34 qualified the member for appointment. A vacancy shall be filled by the appointing  
35 power for the remainder of the term.

36 The council may appoint an Administrative Director of the Courts, who serves  
37 at its pleasure and performs functions delegated by the council or the Chief  
38 Justice, other than adopting rules of court administration, practice and procedure.

39 To improve the administration of justice the council shall survey judicial  
40 business and make recommendations to the courts, make recommendations  
41 annually to the Governor and Legislature, adopt rules for court administration,

1 practice and procedure, ~~not inconsistent with statute~~, and perform other functions  
2 prescribed by statute. The rules adopted shall not be inconsistent with statute.

3 The Chief Justice shall seek to expedite judicial business and to equalize the  
4 work of judges. The Chief Justice may provide for the assignment of any judge to  
5 another court but only with the judge's consent if the court is of lower jurisdiction.  
6 A retired judge who consents may be assigned to any court.

7 Judges shall report to the ~~Judicial Council~~ council as the Chief Justice directs  
8 concerning the condition of judicial business in their courts. They shall cooperate  
9 with the council and hold court as assigned.

10 Sixth — That Section 8 of Article VI thereof is amended to read:

11 SEC. 8. (a) The Commission on Judicial Performance consists of one judge of a  
12 court of appeal, one judge of a superior court, and one judge of a municipal court,  
13 each appointed by the Supreme Court; 2 members of the State Bar of California  
14 who have practiced law in this State for 10 years, each appointed by the governor;  
15 and 6 citizens who are not judges, retired judges, or members of the State Bar of  
16 California, 2 of whom shall be appointed by the Governor, 2 by the Senate  
17 Committee on Rules, and 2 by the Speaker of the Assembly.

18 Except as provided in ~~subdivision (b)~~ subdivisions (b) and (c), all terms are for 4  
19 years. No member shall serve more than 2 4-year terms, or for more than a total of  
20 10 years if appointed to fill a vacancy. A vacancy in the membership on the  
21 Commission on Judicial Performance otherwise designated for a municipal court  
22 judge shall be filled by a judge of the superior court in the case of an appointment  
23 made when fewer than 10 counties have municipal courts.

24 (b) Commission membership terminates if a member ceases to hold the position  
25 that qualified the member for appointment. A vacancy shall be filled by the  
26 appointing power for the remainder of the term. A member whose term has  
27 expired may continue to serve until the vacancy has been filled by the appointing  
28 power. Appointing powers may appoint members who are already serving on the  
29 commission prior to March 1, 1995, to a single 2-year term, but may not appoint  
30 them to an additional term thereafter.

31 ~~(b)~~ (c) To create staggered terms among the members of the Commission on  
32 Judicial Performance, the following members shall be appointed, as follows:

33 (1) Two members appointed by the Supreme Court to a term commencing  
34 March 1, 1995, shall each serve a term of 2 years and may be reappointed to one  
35 full term.

36 (2) One attorney appointed by the Governor to a term commencing March 1,  
37 1995, shall serve a term of 2 years and may be reappointed to one full term.

38 (3) One citizen member appointed by the Governor to a term commencing  
39 March 1, 1995, shall serve a term of 2 years and may be reappointed to one full  
40 term.



1 (4) One member appointed by the Senate Committee on Rules to a term  
2 commencing March 1, 1995, shall serve a term of 2 years and may be reappointed  
3 to one full term.

4 (5) One member appointed by the Speaker of the Assembly to a term  
5 commencing March 1, 1995, shall serve a term of 2 years and may be reappointed  
6 to one full term.

7 (6) All other members shall be appointed to full 4-year terms commencing  
8 March 1, 1995.

9 Seventh — That Section 10 of Article VI thereof is amended to read:

10 SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges  
11 have original jurisdiction in habeas corpus proceedings. Those courts also have  
12 original jurisdiction in proceedings for extraordinary relief in the nature of  
13 mandamus, certiorari, and prohibition. The appellate division of the superior court  
14 has original jurisdiction in proceedings for extraordinary relief in the nature of  
15 mandamus, certiorari, and prohibition directed to the superior court in causes  
16 subject to its appellate jurisdiction.

17 Superior courts have original jurisdiction in all other causes except those given  
18 by statute to other trial courts.

19 The court may make such comment on the evidence and the testimony and  
20 credibility of any witness as in its opinion is necessary for the proper  
21 determination of the cause.

22 Eighth — That Section 11 of Article VI thereof is amended to read:

23 SEC. 11. (a) The Supreme Court has appellate jurisdiction when judgment of  
24 death has been pronounced. With that exception courts of appeal have appellate  
25 jurisdiction when superior courts have original jurisdiction in causes of a type  
26 within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in  
27 other causes prescribed by statute. When appellate jurisdiction in civil causes is  
28 determined by the amount in controversy, the Legislature may change the  
29 appellate jurisdiction of the courts of appeal by changing the jurisdictional amount  
30 in controversy.

31 ~~Superior courts have appellate jurisdiction in causes prescribed by statute that~~  
32 ~~arise in municipal courts in their counties.~~

33 (b) Except as provided in subdivision (a), the appellate division of the superior  
34 court has appellate jurisdiction in causes prescribed by statute.

35 (c) The Legislature may permit appellate courts exercising appellate jurisdiction  
36 to take evidence and make findings of fact when jury trial is waived or not a  
37 matter of right.

38 Ninth — That Section 16 of Article VI thereof is amended to read:

39 SEC. 16. (a) Judges of the Supreme Court shall be elected at large and judges of  
40 courts of appeal shall be elected in their districts at general elections at the same

1 time and places as the Governor. Their terms are 12 years beginning the Monday  
2 after January 1 following their election, except that a judge elected to an unexpired  
3 term serves the remainder of the term. In creating a new court of appeal district or  
4 division the Legislature shall provide that the first elective terms are 4, 8, and 12  
5 years.

6 ~~(b) Judges of other~~ (1) In counties in which there is no municipal court, judges  
7 of superior courts shall be elected in their counties at general elections except as  
8 otherwise necessary to meet the requirements of federal law. In the latter case the  
9 Legislature, by two-thirds vote of the membership of each house thereof, with the  
10 advice of judges within the affected court, may provide for their election by the  
11 system prescribed in subdivision (d), or by any other arrangement. The Legislature  
12 may provide that an unopposed incumbent's name not appear on the ballot.

13 (2) In counties in which there is one or more municipal court districts, judges of  
14 superior and municipal courts shall be elected in their counties or districts at  
15 general elections. The Legislature may provide that an unopposed incumbent's  
16 name not appear on the ballot.

17 (c) Terms of judges of superior courts are 6 years beginning the Monday after  
18 January 1 following their election. A vacancy shall be filled by election to a full  
19 term at the next general election after the second January 1 following the vacancy,  
20 but the Governor shall appoint a person to fill the vacancy temporarily until the  
21 elected judge's term begins.

22 (d) Within 30 days before August 16 preceding the expiration of the judge's  
23 term, a judge of the Supreme Court or a court of appeal may file a declaration of  
24 candidacy to succeed to the office presently held by the judge. If the declaration is  
25 not filed, the Governor before September 16 shall nominate a candidate. At the  
26 next general election, only the candidate so declared or nominated may appear on  
27 the ballot, which shall present the question whether the candidate shall be elected.  
28 The candidate shall be elected upon receiving a majority of the votes on the  
29 question. A candidate not elected may not be appointed to that court but later may  
30 be nominated and elected.

31 The Governor shall fill vacancies in those courts by appointment. An appointee  
32 holds office until the Monday after January 1 following the first general election at  
33 which the appointee had the right to become a candidate or until an elected judge  
34 qualifies. A nomination or appointment by the Governor is effective when  
35 confirmed by the Commission on Judicial Appointments.

36 Electors of a county, by majority of those voting and in a manner the Legislature  
37 shall provide, may make this system of selection applicable to judges of superior  
38 courts.

39 Tenth — That Section 23 is added to Article VI thereof, to read:

40 SEC. 23. (a) The purpose of the amendments to Sections 1, 4, 5, 6, 8, 10, 11, and  
41 16, of this article, and the amendments to Section 16 of Article I, approved at the  
42 November 5, 1996, general election is to permit the Legislature to provide for the

1 abolition of the municipal courts and unify their operations within the superior  
2 courts. Notwithstanding Section 8 of Article IV, the implementation of, and  
3 orderly transition under, the provisions of the measure adding this section may  
4 include urgency statutes that create or abolish offices or change the salaries, terms,  
5 or duties of offices, or grant franchises or special privileges, or create vested rights  
6 or interests, where otherwise permitted under this Constitution.

7 (b) When the superior and municipal courts within a county are unified, the  
8 judgeships in each municipal court in that county are abolished and the previously  
9 selected municipal court judges shall become judges of the superior court in that  
10 county. The term of office of a previously selected municipal court judge is not  
11 affected by taking office as a judge of the superior court. The 10-year membership  
12 or service requirement of Section 15 does not apply to a previously selected  
13 municipal court judge. Pursuant to Section 6, the Judicial Council may prescribe  
14 appropriate education and training for judges with regard to trial court unification.

15 (c) Except as provided by statute to the contrary, in any county in which the  
16 superior and municipal courts become unified, the following shall occur  
17 automatically in each preexisting superior and municipal court:

18 (1) Previously selected officers, employees, and other personnel who serve the  
19 court become the officers and employees of the superior court.

20 (2) Preexisting court locations are retained as superior court locations.

21 (3) Preexisting court records become records of the superior court.

22 (4) Pending actions, trials, proceedings, and other business of the court become  
23 pending in the superior court under the procedures previously applicable to the  
24 matters in the court in which the matters were pending.

25 (5) Matters of a type previously within the appellate jurisdiction of the superior  
26 court remain within the jurisdiction of the appellate division of the superior court.

27 (6) Matters of a type previously subject to rehearing by a superior court judge  
28 remain subject to rehearing by a superior court judge, other than the judge who  
29 originally heard the matter.

30 (7) Penal Code procedures that necessitate superior court review of, or action  
31 based on, a ruling or order by a municipal court judge shall be performed by a  
32 superior court judge other than the judge who originally made the ruling or order.

33 Eleventh — That if any provision of this measure or its application to any  
34 person or circumstance is held invalid, the invalidity does not affect other  
35 provisions or applications of this measure that can be given effect without the  
36 invalid provision or application, and to this end the provisions of this measure are  
37 severable.

1 APPENDIX 2: SCA 4 IMPLEMENTING LEGISLATION (GENERAL  
2 PROVISIONS)

3 Gov't Code §§ 70200-70214 (added). The Unified Superior Courts

4 CHAPTER 5.1. UNIFICATION OF MUNICIPAL AND SUPERIOR COURTS

5 Article 1. Unification Voting Procedure

6 § 70200. Unification voting procedure provided in this article

7 70200. (a) The municipal and superior courts in a county shall be unified on a  
8 majority vote of superior court judges and a majority vote of municipal court  
9 judges in the county, pursuant to the procedure provided in this article.

10 (b) The vote shall be conducted by the Judicial Council or, if authorized by the  
11 Judicial Council, the county's registrar of voters.

12 (c) The Judicial Council may adopt rules not inconsistent with this article for the  
13 conduct of the vote, including but not limited to rules governing the frequency of  
14 vote calls, manner of voting, duration of the voting period, and selection of the  
15 operative date of unification.

16 **Comment.** Section 70200 reiterates authority provided in Constitution Article VI, Section 5(e),  
17 for unification of the municipal and superior courts in a county. The implementation of the  
18 unification procedure is vested in the Legislature by Constitution Article VI, Section 23 (purpose  
19 of constitutional amendment is to permit Legislature to provide for unification).

20 For the operative date of a vote for unification, see Section 70203.

21 § 70201. Conduct of vote

22 70201. (a) A vote of the judges in a county for unification shall be called by the  
23 Judicial Council on application of the presiding judge of the superior court in the  
24 county or on application of a majority of the judges of the municipal court or a  
25 majority of the judges of the superior court in the county.

26 (b) The vote shall be taken 30 days after it is called.

27 (c) A judge is eligible to vote if the judge is serving in the court pursuant to an  
28 election or appointment under Section 16 of Article VI of the California  
29 Constitution at the time the vote is taken.

30 (d) The ballot shall be in substantially the following form:

31 "Shall the municipal and superior courts in the County of [name county] be  
32 unified on [specify date]? [Yes] [No]"

33 **Comment.** Section 70201 does not specify a manner of voting (e.g., secret ballot). This matter  
34 is left to Judicial Council rules. See Section 70200(c).

35 § 70202. Certification of results

36 70202. (a) The Judicial Council or registrar of voters shall certify the results of a  
37 vote to unify the municipal courts and the superior courts in a county.

1 (b) Unification of the municipal and superior courts in a county requires an  
2 affirmative vote of a majority of all superior court judges in the county eligible to  
3 vote and a majority of all municipal court judges in the county eligible to vote.

4 (c) On certification, a vote in favor of unification of the municipal and superior  
5 courts in a county is final and may not be rescinded or revoked by a subsequent  
6 vote.

7 **Comment.** In the case of a vote against unification of the municipal and superior courts in a  
8 county, Section 70201 does not preclude a later vote in favor of unification, subject to Judicial  
9 Council rules governing the frequency of vote calls. See Section 70200(c).

10 **§ 70203. Operative date of unification**

11 70203. Unification of the municipal and superior courts in a county shall occur  
12 on the earlier of the date specified in the unification vote or 180 days following  
13 certification of the vote for unification.

14 Article 2. Transitional Provisions for Unification

15 **§ 70210. Transitional rules of court**

16 70210. The Judicial Council shall adopt rules of court not inconsistent with  
17 statute for:

18 (a) The orderly conversion of proceedings pending in municipal courts to  
19 proceedings in superior courts, and for proceedings commenced in superior courts  
20 on and after the date the municipal and superior courts in a county are unified.

21 (b) Selection of persons to coordinate implementation activities for the  
22 unification of municipal courts with superior courts in a county, including:

23 (1) Selection of a presiding judge for the unified superior court.

24 (2) Selection of a court executive officer for the unified superior court.

25 (3) Appointment of court committees or working groups to assist the presiding  
26 judge and court executive officer in implementing unification.

27 (c) The authority of the presiding judge, in conjunction with the court executive  
28 officer and appropriate individuals or working groups of the unified superior court,  
29 to act on behalf of the court to implement unification.

30 (d) Preparation and submission of a written personnel plan to the judges of a  
31 unified superior court for adoption.

32 (e) Preparation of any necessary local court rules that shall, on the date the  
33 municipal and superior courts in a county are unified, be the rules of the unified  
34 superior court.

35 (f) Other necessary activities to facilitate the transition to a unified superior  
36 court.

37 **Comment.** Section 70210 mandates that the Judicial Council adopt rules of court to coordinate  
38 and guide the trial courts in effectively implementing trial court unification.

39 Subdivision (a) provides generally that the rules will ensure the orderly conversion of  
40 proceedings in the unified superior court as of the date the municipal and superior courts in a  
41 county are unified.

1 Subdivision (b) provides for the selection of the presiding judge, court executive officer, and  
2 appropriate committees or working groups to assist the presiding judge. The method of selection,  
3 and the specific duties and authorities for each will be set forth in the rules, as is currently the  
4 case in existing Rules 204, 205, 207, 532.5, 532.6, and 573 of the California Rules of Court. This  
5 preserves the balance of power that currently exists between the legislature and the judiciary.

6 Subdivision (c) is intended to encourage the presiding judge to work closely with the court  
7 executive officer and court committees or other working groups to implement unification  
8 decisions.

9 Subdivision (d) provides that the courts will develop and adopt a personnel plan. The section  
10 parallels Rule 205(11).

11 Subdivision (e) provides for local rule adoption. As under current practice, the Judicial Council  
12 will determine which procedural issues shall be addressed by local rule and which by statewide  
13 rule.

14 Examples of issues that may be addressed by rule of court under subdivision (f) include the  
15 development of informational programs for the public and the Bar about unification, and  
16 education and training programs for judicial officers and court staff to facilitate the effective  
17 transition to a unified court.

### 18 § 70211. Conversion of judgeships

19 70211. When the municipal and superior courts in a county are unified:

20 (a) The judgeships in each municipal court in that county are abolished and the  
21 previously selected municipal court judges become judges of the superior court in  
22 that county. Until revised by statute, the total number of judgeships in the unified  
23 superior court shall equal the previously authorized number of judgeships in the  
24 municipal court and superior court combined.

25 (b) The term of office of a previously selected municipal court judge is not  
26 affected by taking office as a judge of the superior court.

27 (c) The 10-year membership or service requirement of Section 15 of Article VI  
28 of the California Constitution does not apply to a previously selected municipal  
29 court judge.

30 **Comment.** Section 70211 restates the first three sentences of Constitution Article VI, Section  
31 23(b), with the addition in subdivision (a) of a provision maintaining the total number of  
32 judgeships in the county. The Legislature prescribes the number of judges. Cal. Const. art. VI, §§  
33 4, 5.

34 The references in this section to a “previously selected” judge includes selection by election or  
35 by appointment to fill a vacancy. *Cf. Trial Court Unification: Constitutional Revision (SCA 3)*, 24  
36 Cal. L. Revision Comm’n Reports 1, 82 (1994) (Article VI, § 23(b) Comment).

### 37 § 70212. Transitional provisions

38 70212. In a county in which the municipal and superior courts become unified,  
39 the following shall occur automatically in each preexisting municipal and superior  
40 court:

41 (a) Previously selected officers, employees, and other personnel who serve the  
42 court become the officers and employees of the superior court.

43 (b) Preexisting court locations are retained as superior court locations.

44 (c) Preexisting court records become records of the superior court.



1 (d) Pending actions, trials, proceedings, and other business of the court become  
2 pending in the superior court under the procedures previously applicable to the  
3 matters in the court in which the matters were pending.

4 (e) Matters of a type previously subject to rehearing by a superior court judge  
5 remain subject to rehearing by a superior court judge, other than the judge who  
6 originally heard the matter.

7 (f) Penal Code procedures that necessitate superior court review of, or action  
8 based on, a ruling or order by a municipal court judge shall be performed by a  
9 superior court judge other than the judge who originally made the ruling or order.

10 (g) Subpoenas, summons of jurors, and other process issued by the court shall be  
11 enforceable by the superior court.

12 **Comment.** Subdivisions (a)-(f) of Section 70212 restate Constitution Article VI, Section 23(c).  
13 Although embodied in the Constitution, these provisions are subject to variation by statute. See  
14 Cal. Const. art. VI, § 23(c) (introductory clause).

15 Subdivision (g) makes clear that process issued by a municipal court remains enforceable by  
16 the superior court after unification.

17 **§ 70213. Provisions relating to municipal court**

18 70213. (a) In a county in which the municipal and superior courts become  
19 unified, until revised by the Judicial Council, forms for proceedings within the  
20 jurisdiction of municipal courts may be used as if the proceedings were in a  
21 municipal court.

22 (b) The Judicial Council may adopt rules resolving any problem that may arise  
23 in the conversion of statutory references from the municipal court to the superior  
24 court in a county in which the municipal and superior courts become unified.

25 **§ 70214. Preclearance under Voting Rights Act**

26 70214. The Attorney General shall, to the extent required by the preclearance  
27 provisions of the federal Voting Rights Act, 42 U.S.C. § 1973 *et seq.*, seek to  
28 obtain preclearance of Section 16(b)(1) of Article VI of the California Constitution  
29 as it applies in a county in which the courts are unified pursuant to Section 5(e) of  
30 Article VI of the California Constitution.

31 **Comment.** Section 70214 vests preclearance duties in the Attorney General. See 42 U.S.C. §  
32 1973c (preclearance submission by state's chief legal officer); Cal. Const. art. V, § 13 (Attorney  
33 General state's chief law officer).

34 **Operative date**

35 This act shall become operative only upon the adoption by the voters of Senate  
36 Constitutional Amendment 4 of the 1995-96 Regular Session of the Legislature, in  
37 which event it shall become operative at the same time as Senate Constitutional  
38 Amendment 4.

1 **Urgency clause**

2 This act is an urgency statute necessary for the immediate preservation of the  
3 public peace, health, or safety within the meaning of Article IV of the Constitution  
4 and shall go into immediate effect. The facts constituting the necessity are:

5 Senate Constitutional Amendment 4 of the 1995-96 Regular Session of the  
6 Legislature, if approved by the voters, would change the appellate jurisdiction of  
7 the courts and would enable the municipal and superior courts in a county to unify.  
8 It is necessary that implementing measures be taken immediately so that an  
9 orderly transition of the court system will occur.





PROPOSED LEGISLATION

**Code Civ. Proc. § 38 (added). Judicial districts**

SEC. \_\_\_\_\_. Section 38 is added to the Code of Civil Procedure, to read:

38. Unless the provision or context otherwise requires, a reference in a statute to a judicial district means:

(a) As it relates to a court of appeal, the court of appeal district.

(b) As it relates to a superior court, the county.

(c) As it relates to a municipal court, the municipal court district.

**Comment.** Section 38 is intended for drafting convenience. Court of appeal districts and municipal court districts are constitutionally mandated. See Cal. Const. art. VI, §§ 3, 5. Superior court districts do not exist except in Los Angeles County. See Gov't Code §§ 69640-69650.

By operation of this section, in a county in which the superior and municipal courts have unified, a statutory reference to a judicial district means the county rather than a former municipal court district. This general rule is subject to exceptions. See, e.g., Gov't Code § 71042.5 (preservation of judicial districts for purpose of publication).

**Code Civ. Proc. § 77 (amended). Appellate division**

SEC. \_\_\_\_\_. Section 77 of the Code of Civil Procedure is amended to read:

77. (a) In every county and city and county, there is an appellate ~~department~~ division of the superior court consisting of three judges or, when the ~~Chairperson of the Judicial Council~~ Chief Justice finds it necessary, four judges.

~~(1) In a county with three or fewer judges of the superior court, the appellate department shall consist of those judges, one of whom shall be designated as presiding judge by the Chairperson of the Judicial Council, and an additional judge or judges as designated by the Chairperson of the Judicial Council. Each additional judge shall be a judge of the superior court of another county or a judge retired from the superior court or court of higher jurisdiction in this state.~~

~~(2) In a county with four or more judges of the superior court, the appellate department shall consist of judges of that court designated by the Chairperson of the Judicial Council, who shall also designate one of the judges as the presiding judge of the department. judges. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence and quality of each appellate division. Each judge assigned to the appellate division of a superior court shall be a judge of that court, a judge of the superior court of another county, or a judge retired from the superior court or a court of higher jurisdiction in this state. The Chief Justice shall designate one of the judges of each appellate division as the presiding judge of the division.~~

~~(b) In an appellate department with four judges, In each appellate division, no more than three judges shall participate in a hearing or decision. The presiding judge of the department division shall designate the three judges who shall participate.~~

1 (c) In addition to their other duties, the judges designated as members of the  
2 appellate ~~department~~ division of the superior court shall serve for the period  
3 specified in the order of designation. Whenever a judge is designated to serve in  
4 the appellate ~~department~~ division of the superior court of a county other than the  
5 county in which such judge was elected or appointed as a superior court judge, or  
6 if ~~he the judge~~ is retired, in a county other than the county in which ~~he resides, he~~  
7 ~~the judge resides, the judge~~ shall receive from the county to which ~~he is designated~~  
8 ~~his the judge is designated~~ expenses for travel, board, and lodging. If the judge is  
9 out of ~~his the judge's~~ county overnight or longer, by reason of the designation,  
10 such judge shall be paid a per diem allowance in lieu of expenses for board and  
11 lodging in the same amounts as are payable for such purposes to justices of the  
12 Supreme Court under the rules of the State Board of Control. In addition, a retired  
13 judge shall receive from the state and the county to which ~~he the judge~~ is  
14 designated, for the time so served, amounts equal to that which ~~he the judge~~ would  
15 have received from each if ~~he the judge~~ had been assigned to the superior court of  
16 the county.

17 (d) The concurrence of two judges of the appellate ~~department~~ division of the  
18 superior court shall be necessary to render the decision in every case in, and to  
19 transact any other business except such that may be done at chambers by the  
20 presiding judge of, ~~such department the division~~. The presiding judge shall  
21 convene ~~such department at such times as may be the division as necessary~~. ~~He~~  
22 ~~The presiding judge~~ shall also supervise its business and transact such thereof as  
23 may be done at chambers.

24 (e) ~~Every appellate department under this section shall have jurisdiction on~~  
25 ~~appeal from the municipal and justice courts within the county or city and county~~  
26 ~~in all cases in which an appeal may be taken to the superior court as is now or may~~  
27 ~~hereafter be provided by law, except such appeals as require a retrial in the~~  
28 ~~superior court. The powers of each appellate department shall be the same as are~~  
29 ~~now or may hereafter be provided by law or rule of the Judicial Council relating to~~  
30 ~~appeals to the superior courts. The appellate division of the superior court has~~  
31 jurisdiction on appeal from the following courts, in all cases in which an appeal  
32 may be taken to the superior court or the appellate division of the superior court as  
33 provided by law, except where the appeal is a retrial in the superior court:

34 (1) The municipal courts within the county.

35 (2) The superior court in a county in which there is no municipal court.

36 (f) The powers of the appellate ~~department~~ division shall be the same as are now  
37 or may hereafter be provided by law or rule of the Judicial Council relating to  
38 appeals to the appellate division of the superior courts.

39 (g) The Judicial Council ~~may shall~~ promulgate rules, not inconsistent with  
40 law, governing to promote the independence of, and govern the practice and  
41 procedure and the disposition of the business of ~~such appellate departments, or of~~  
42 each class thereof, the appellate division.

1 (h) A reference in any other statute to the appellate department of the superior  
2 court means the appellate division of the superior court.

3 **Comment.** Section 77 is amended to accommodate unification of the municipal and superior  
4 courts in a county. Cal. Const. art. VI, § 5(e).

5 Subdivision (a) requires adoption of court rules intended to promote the independence and  
6 quality of judges serving in the appellate division. See Cal. Const. art. VI, § 4 (expressly  
7 recognizing the goal of promoting the independence of the appellate division). Rules may provide  
8 relevant factors to be used in making appointments to the appellate division, such as length of  
9 service as a judge, reputation within the unified court, and degree of separateness of the appellate  
10 division workload from the judge's regular assignments (e.g., a superior court judge who  
11 routinely handles large numbers of misdemeanors might ordinarily not serve in the appellate  
12 division). Review by a panel of judges might include judges assigned from another county in  
13 appropriate circumstances, or even by a panel of appellate division judges from different superior  
14 courts who sit in turn in each of the superior courts in the "circuit."

15 Subdivision (b) continues the rule that the appellate division sits in panels of three. A judge  
16 may not participate in appellate review of any proceeding that the judge tried or heard. Section  
17 170.1(7)(b).

18 Subdivision (e) is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1,  
19 5(b). It is also amended to specify the jurisdiction of the appellate division in a unified superior  
20 court. For guidance on which civil cases are subject to the appellate jurisdiction of the appellate  
21 division, see Section 904.2 (taking appeal in limited case) and Constitution Article VI, Section  
22 11.

23 Section 77 is amended throughout to replace references to the appellate department with  
24 references to the appellate division, and to replace references to the Chairperson of the Judicial  
25 Council with references to the Chief Justice. This is consistent with the terminology used in  
26 Constitution Article VI, Sections 4, 10, and 11.

### 27 **Code Civ. Proc. § 85 (repealed). Money judgments**

28 SEC. \_\_\_\_\_. Section 85 of the Code of Civil Procedure is repealed.

29 ~~85. If the judgment or order in a municipal court or justice court in any action or~~  
30 ~~proceeding in which the defendant has appeared is for the payment of money by~~  
31 ~~the defendant, the defendant shall pay the same immediately or at any time and~~  
32 ~~upon such terms and conditions, including installment payments, which the court~~  
33 ~~may prescribe. The court may amend the terms and conditions for payment of the~~  
34 ~~judgment or order at any time to provide for installment payments for good cause~~  
35 ~~upon motion by a party and notice to all affected parties, regardless of the nature~~  
36 ~~of the underlying debt and regardless whether the moving party appeared before~~  
37 ~~entry of such judgment or order. In any determination regarding the imposition of~~  
38 ~~terms and conditions upon the payment of the judgment, the court shall consider~~  
39 ~~any factors which would be relevant to the determination of a claim for exemption~~  
40 ~~pursuant to Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9~~  
41 ~~of Part 2 or the examination of a debtor pursuant to Article 2 (commencing with~~  
42 ~~Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2.~~

43 **Comment.** Former Section 85 is continued in Section 582.5 without substantive change,  
44 except that Section 582.5 refers to limited cases instead of cases brought in municipal court.

1 **Code Civ. Proc. §§ 85-85.1 (added). Limited cases**

2 SEC. \_\_\_\_\_. Chapter 5.1 (commencing with Section 85) is added to Title 1 of  
3 Part 1 of the Code of Civil Procedure, to read:

4 **CHAPTER 5.1. LIMITED CASES**

5 **Article 1. Jurisdiction in Limited Cases**

6 **Code Civ. Proc. § 85 (added). Limited cases**

7 85. An action or special proceeding shall be treated as a limited case if all of the  
8 following conditions are satisfied, and, notwithstanding any statute that classifies  
9 an action or special proceeding as a limited case, an action or special proceeding  
10 shall not be treated as a limited case unless all of the following conditions are  
11 satisfied:

12 (a) The amount in controversy does not exceed twenty-five thousand dollars  
13 (\$25,000). As used in this section, “amount in controversy” means the amount of  
14 the demand, or the recovery sought, or the value of the property, or the amount of  
15 the lien, which is in controversy in the action, exclusive of attorney fees, interest,  
16 and costs.

17 (b) The relief sought is a type that may be granted in a limited case.

18 (c) The relief sought, whether in the complaint, a cross-complaint, or otherwise,  
19 is exclusively of a type described in one or more statutes that classify an action or  
20 special proceeding as a limited case or that provide that an action or special  
21 proceeding is within the original jurisdiction of the municipal court, including, but  
22 not limited to, the following provisions:

23 Civil Code Section 798.61

24 Civil Code Section 1719

25 Civil Code Section 3342.5

26 Code of Civil Procedure Section 86

27 Code of Civil Procedure Section 86.1

28 Code of Civil Procedure Section 1710.20

29 Food and Agricultural Code Section 7581

30 Food and Agricultural Code Section 12647

31 Food and Agricultural Code Section 27601

32 Food and Agricultural Code Section 31503

33 Food and Agricultural Code Section 31621

34 Food and Agricultural Code Section 52514

35 Food and Agricultural Code Section 53564

36 Government Code Section 53069.4

37 Government Code Section 53075.6

38 Government Code Section 53075.61

39 Public Utilities Code Section 5411.5

40 Vehicle Code Section 9872.1

- 1 Vehicle Code Section 10751
- 2 Vehicle Code Section 14607.6
- 3 Vehicle Code Section 40230
- 4 Vehicle Code Section 40256

5 **Comment.** Section 85 is added to accommodate unification of the municipal and superior  
 6 courts in a county. Cal. Const. art. VI, § 5(e). It facilitates differentiation among civil cases for  
 7 purposes such as determining original jurisdiction in a county in which there is a municipal court  
 8 (see Section 85.1), applying economic litigation procedures (see Section 91), and defining  
 9 appellate jurisdiction (see Section 904.5).

10 The amount in controversy requirement of subdivision (a) derives from the \$25,000  
 11 jurisdictional limit that applied to the municipal courts. *See, e.g.*, 2 B. Witkin, California  
 12 Procedure *Courts* § 249, at 323-25 (4th ed. 1996). Now, a case is a limited case and subject to the  
 13 procedures for a limited case only if the amount in controversy is \$25,000 or less. The last  
 14 sentence of subdivision (a), defining “amount in controversy,” continues the former second  
 15 sentence of Section 91 without change. For discussion of calculating amounts in controversy in  
 16 cases involving multiple causes, see R. Weil & I. Brown, Jr., California Practice Guide: Civil  
 17 Procedure Before Trial, *Jurisdiction and Venue* §§ 3:97-3:111, at 3-22 to 3-24 (1997); 2 B.  
 18 Witkin, California Procedure *Jurisdiction* §§ 38-44, at 582-86 (4th ed. 1996).

19 Subdivision (b) reflects and preserves limitations on the types of equitable relief awardable in a  
 20 municipal court. See Section 580 & Comment. Where a money judgment for \$25,000 or less  
 21 would fully resolve a dispute and there is no need for a declaration of future rights, the case is a  
 22 limited case despite a prayer for declaratory relief. See *Cardellini v. Casey*, 181 Cal. App. 3d 389,  
 23 396 (1986).

24 Subdivision (c) continues the effect of former law, under which each county had one or more  
 25 municipal courts and a superior court. Causes like those now listed in subdivision (c) were within  
 26 the original jurisdiction of the municipal court and subject to procedures now applicable to a  
 27 limited case. Where a cause within the original jurisdiction of the municipal court was properly  
 28 joined with one within the original jurisdiction of the superior court, the entire case would be  
 29 tried in the superior court. *See, e.g.*, *Wiggins v. Washington Nat’l Life Ins. Co.*, 246 Cal. App. 2d  
 30 840, 847-48, 55 Cal. Rptr. 129 (1966) (“from the moment defendant filed its cross-complaint for  
 31 declaratory relief in the instant action the municipal court lost jurisdiction over the cause and was  
 32 obliged to suspend further proceedings in the action and transfer it to the superior court”);  
 33 *Armstrong v. Transcontinental Land & Water Co.*, 134 Cal. App. 2d Supp. 889, 285 P.2d 1031  
 34 (1955) (joinder of equitable cross-complaint compelled transfer of entire action to superior court).  
 35 Subdivision (c) continues that policy by requiring that relief in a limited case be exclusively of a  
 36 type described in one or more of the listed provisions, or an unlisted provision if the provision  
 37 classifies the case as a limited case or places the case within the original jurisdiction of the  
 38 municipal court. *See, e.g.*, Section 688.010 (enforcement of state tax liability pursuant to warrant  
 39 or notice of levy). If another type of cause is joined, the procedures for a limited case do not  
 40 apply.

41 See Sections 22 (action defined), 23 (special proceeding defined).

42 **Code Civ. Proc. § 85.1 (added). Original jurisdiction**

43 85.1. Except as otherwise provided by statute, the municipal court, or the  
 44 superior court in a county in which there is no municipal court, has original  
 45 jurisdiction in a limited case.

46 **Comment.** Section 85.1 is added to accommodate unification of the municipal and superior  
 47 courts in a county. Cal. Const. art. VI, § 5(e). This section limits the original jurisdiction of the  
 48 superior court in a county in which there is a municipal court. See Cal. Const. art. VI, § 10.  
 49 Although Section 85.1 states the general rule, in some circumstances the municipal and superior



1 courts may have concurrent jurisdiction. See, e.g., Section 688.010 (enforcement of state tax  
2 liability pursuant to warrant or notice of levy).

3 **Code Civ. Proc. § 86 (amended) Miscellaneous limited cases**

4 SEC. \_\_\_\_\_. Section 86 of the Code of Civil Procedure is amended to read:

5 86. (a) ~~Each municipal and justice court has original jurisdiction of civil cases~~  
6 ~~and proceedings as follows~~ The following civil cases and proceedings are limited  
7 cases:

8 (1) ~~In all cases~~ Cases at law in which the demand, exclusive of interest, or the  
9 value of the property in controversy amounts to twenty-five thousand dollars  
10 (\$25,000) or less, ~~except. This paragraph does not apply to~~ cases which involve  
11 the legality of any tax, impost, assessment, toll, or municipal fine, ~~except the~~  
12 ~~courts have jurisdiction in~~ actions to enforce payment of delinquent unsecured  
13 personal property taxes if the legality of the tax is not contested by the defendant.

14 (2) ~~In actions~~ Actions for dissolution of partnership where the total assets of the  
15 partnership do not exceed twenty-five thousand dollars (\$25,000); ~~in~~ actions of  
16 interpleader where the amount of money or the value of the property involved  
17 does not exceed twenty-five thousand dollars (\$25,000).

18 (3) ~~In actions~~ Actions to cancel or rescind a contract when the relief is sought in  
19 connection with an action to recover money not exceeding twenty-five thousand  
20 dollars (\$25,000) or property of a value not exceeding twenty-five thousand  
21 dollars (\$25,000), paid or delivered under, or in consideration of, the contract; ~~in~~  
22 actions to revise a contract where the relief is sought in an action upon the contract  
23 if ~~the court otherwise has jurisdiction of the action~~ otherwise is a limited case.

24 (4) ~~In all proceedings~~ Proceedings in forcible entry or forcible or unlawful  
25 detainer where the whole amount of damages claimed is twenty-five thousand  
26 dollars (\$25,000) or less.

27 (5) ~~In all actions~~ Actions to enforce and foreclose liens on personal property  
28 where the amount of the liens is twenty-five thousand dollars (\$25,000) or less.

29 (6) ~~In all actions~~ Actions to enforce and foreclose liens of mechanics,  
30 materialmen, artisans, laborers, and of all other persons to whom liens are given  
31 under the provisions of Chapter 2 (commencing with Section 3109) of Title 15 of  
32 Part 4 of Division 3 of the Civil Code, or to enforce and foreclose an assessment  
33 lien on a common interest development as defined in Section 1351 of the Civil  
34 Code, where the amount of the liens is twenty-five thousand dollars (\$25,000) or  
35 less. However, where an action to enforce the lien is ~~pending in a municipal or~~  
36 ~~justice court, and~~ affects property which is also affected by a similar ~~action~~  
37 ~~pending in a superior court~~ pending action that is not a limited case, or where the  
38 total amount of the liens sought to be foreclosed against the same property ~~by~~  
39 ~~action or actions in a municipal or justice court~~ aggregates an amount in excess of  
40 twenty-five thousand dollars (\$25,000), the action is not a limited case, and if the  
41 action is pending in a municipal court, the municipal or justice court in which any  
42 such action, or actions, is, or are, pending, upon motion of any interested party, the

1 municipal court shall order the action or actions pending therein transferred to the  
2 proper superior court. Upon the making of the order, the same proceedings shall  
3 be taken as are provided by Section 399 with respect to the change of place of  
4 trial.

5 (7) ~~In actions~~ Actions for declaratory relief when brought pursuant to either of  
6 the following:

7 (A) By way of cross-complaint as to a right of indemnity with respect to the  
8 relief demanded in the complaint or a cross-complaint in an action or proceeding  
9 ~~otherwise within the jurisdiction of the municipal or justice court that is otherwise~~  
10 a limited case.

11 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and  
12 client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of  
13 Division 3 of the Business and Professions Code, where the amount in controversy  
14 is twenty-five thousand dollars (\$25,000) or less.

15 (8) ~~To~~ Actions to issue temporary restraining orders and preliminary injunctions,  
16 to take accounts, and to appoint receivers where necessary to preserve the property  
17 or rights of any party to ~~an action of which the court has jurisdiction a limited~~  
18 case; to appoint a receiver and to make any order or perform any act, pursuant to  
19 Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments)  
20 in a limited case; to determine title to personal property seized in ~~an action~~  
21 pending in such court a limited case.

22 (9) ~~In all actions~~ Actions under Article 3 (commencing with Section 708.210) of  
23 Chapter 6 of Division 2 of Title 9 of Part 2 for the recovery of an interest in  
24 personal property or to enforce the liability of the debtor of a judgment debtor  
25 where the interest claimed adversely is of a value not exceeding twenty- five  
26 thousand dollars (\$25,000) or the debt denied does not exceed twenty-five  
27 thousand dollars (\$25,000).

28 (10) ~~In all arbitration-related~~ Arbitration-related petitions filed pursuant to either  
29 of the following:

30 (A) Pursuant to Article 2 (commencing with Section 1292) of Chapter 5 of Title  
31 9 of Part 3, except for uninsured motorist arbitration proceedings in accordance  
32 with Section 11580.2 of the Insurance Code, if the petition is filed before the  
33 arbitration award becomes final and the matter to be resolved by arbitration is  
34 ~~within the jurisdiction of the municipal or justice court a limited case~~ under  
35 paragraphs (1) to (9), inclusive, of subdivision (a) or ~~the petition if the petition is~~  
36 filed after the arbitration award becomes final and the amount of the award and all  
37 other rulings, pronouncements, and decisions made in the award are within ~~the~~  
38 jurisdiction of the municipal or justice court under paragraphs (1) to (9), inclusive,  
39 of subdivision (a).

40 (B) To confirm, correct, or vacate a fee arbitration award between an attorney  
41 and client that is binding or has become binding, pursuant to Article 13  
42 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and



1 Professions Code, where the arbitration award is twenty-five thousand dollars  
2 (\$25,000) or less.

3 ~~(b) Each municipal and justice court has jurisdiction of cases in equity as~~  
4 ~~follows~~ The following cases in equity are limited cases:

5 (1) ~~In all cases~~ Cases to try title to personal property when the amount involved  
6 is not more than twenty-five thousand dollars (\$25,000).

7 (2) ~~In all cases~~ Cases when equity is pleaded as a defensive matter in any case  
8 ~~otherwise properly pending in a municipal or justice court that is otherwise a~~  
9 ~~limited case.~~

10 (3) ~~To~~ Cases to vacate a judgment or order of such ~~municipal or justice~~ court  
11 obtained in a limited case through extrinsic fraud, mistake, inadvertence, or  
12 excusable neglect.

13 ~~(c) In any action that is otherwise within its jurisdiction, the court may impose~~  
14 ~~liability whether the theory upon which liability is sought to be imposed involves~~  
15 ~~legal or equitable principles.~~

16 ~~(d) Changes in the jurisdictional ceilings made by amendments to this section at~~  
17 ~~the 1977-78 Regular Session or the 1985-86 Regular Session of the Legislature~~  
18 ~~shall not constitute a basis for the transfer to another court of any case pending at~~  
19 ~~the time such changes become operative.~~

20 **Comment.** Section 86 is amended to accommodate unification of the municipal and superior  
21 courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of the  
22 justice court. Cal. Const. art. VI, §§ 1, 5(b).

23 The matters listed in subdivisions (a) and (b) are not limited cases if the amount in controversy  
24 exceeds \$25,000. See Section 85. Formerly, each county had one or more municipal courts and a  
25 superior court, and the matters listed in Section 86 were within the original jurisdiction of the  
26 municipal court, unless the amount in controversy exceeded \$25,000. A limited case is equivalent  
27 to a matter within the original jurisdiction of the municipal court under former law, so  
28 subdivisions (a) and (b) as amended continue the effect of former law. See Section 85 (limited  
29 cases) & Comment.

30 Former subdivision (c) is continued without substantive change in Section 580 (relief  
31 awardable in civil causes).

32 Former subdivision (d) is deleted as obsolete.

33 **Code Civ. Proc. § 86.1 (amended). Long-Term Care, Health, Safety, and Security Act**

34 SEC. \_\_\_\_\_. Section 86.1 of the Code of Civil Procedure is amended to read:

35 86.1. ~~In addition to Section 86, each municipal and justice court has original~~  
36 ~~jurisdiction of civil cases and proceedings in actions~~ An action brought pursuant to  
37 the Long-Term Care, Health, Safety, and Security Act of 1973 (Chapter 2.4  
38 (commencing with Section 1417) of Division 2 of the Health and Safety Code) is a  
39 limited case if civil penalties are not sought or amount to twenty-five thousand  
40 dollars (\$25,000) or less. These actions An action brought in a municipal court  
41 may be transferred to the superior court for consolidation with any other citation  
42 enforcement action pending in that court, on the motion of either party.

43 **Comment.** Section 86.1 is amended to accommodate unification of the municipal and superior  
44 courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of the  
45 justice court. Cal. Const. art. VI, §§ 1, 5(b).

1 An action pursuant to the Long-Term Care, Health, Safety, and Security Act of 1973 is not a  
2 limited case if the amount in controversy exceeds \$25,000. See Section 85 (limited cases).  
3 Formerly, each county had one or more municipal courts and a superior court, and an action  
4 pursuant to the Long-Term Care, Health, Safety, and Security Act of 1973 was within the original  
5 jurisdiction of the municipal court, unless the amount in controversy exceeded \$25,000. A limited  
6 case is equivalent to a matter within the original jurisdiction of the municipal court under former  
7 law, so Section 86.1 as amended continues the effect of former law. See Section 85 & Comment.

8 **Code Civ. Proc. § 87 (repealed). Corporation as party**

9 SEC. \_\_\_\_\_. Section 87 of the Code of Civil Procedure is repealed.

10 ~~87. Where a corporation is a party in the municipal or justice court it may appear~~  
11 ~~through a director, an officer, or an employee, whether or not such person is an~~  
12 ~~attorney at law.~~

13 **Comment.** Section 87 is repealed as an unconstitutional intrusion on the power of a court to set  
14 minimum standards for who may appear in court on behalf of a corporation. *Merco Construction*  
15 *Engineers, Inc. v. Municipal Court*, 21 Cal. 3d 724, 581 P.2d 636, 147 Cal. Rptr. 631 (1978)  
16 (When “the matter at issue involves minimum standards for engaging in the practice of law, it is  
17 this court and not the Legislature which is final policy maker.”). *See also Say & Say, Inc. v.*  
18 *Ebershoff*, 20 Cal. App. 3d 1759, 25 Cal. Rptr. 2d 703, 709 (1993) (“A corporation can never  
19 appear in this or the superior court in civil or criminal litigation except in limited circumstances in  
20 some small claims litigation in propria persona.”); *Albion River Watershed Protection Ass’n v.*  
21 *Department of Forestry & Fire Protection*, 20 Cal. App. 3d 34, 24 Cal. Rptr. 2d 341, 343 (1993)  
22 (“It is settled that an unincorporated association must be represented by a person licensed in this  
23 state to practice law.”); *Clean Air Transport Systems v. San Mateo County Transit Dist.*, 198 Cal.  
24 App. 3d 576, 578-79, 243 Cal. Rptr. 799 (1988) (“A lay person who purports to represent a  
25 corporation is engaged in the unlawful practice of law.”).

26 ☞ **Note.** Section 87 is being repealed rather than relocated because it has been held  
27 unconstitutional.

28 **Article 2 heading (commencing with Section 90) (amended)**

29 SEC. \_\_\_\_\_. The heading of Article 2 (commencing with Section 90) of Chapter  
30 5 of Title 1 of Part 1 of the Code of Civil Procedure is amended to read:

31 Article 2. Economic Litigation for Municipal and  
32 Justice Courts Limited Cases

33 **Comment.** The heading “Article 2. Economic Litigation for Municipal and Justice Courts” is  
34 amended to accommodate unification of the municipal and superior courts in a county. Cal.  
35 Const. art. VI, § 5(e). It is also amended to reflect elimination of the justice court. Cal. Const. art.  
36 VI, §§ 1, 5(b).

37 New Chapter 5.1 (“Limited Cases”) (commencing with Section 85) of Title 1 of Part 1 is now  
38 divided into two articles: “Article 1. Jurisdiction in Limited Cases” (commencing with Section  
39 85) and “Article 2. Economic Litigation for Limited Cases.”

40 **Code Civ. Proc. § 91 (amended). Application of economic litigation procedures**

41 SEC. \_\_\_\_\_. Section 91 of the Code of Civil Procedure is amended to read:

42 91. (a) Except as otherwise provided in this section, the provisions of this article  
43 apply to every ~~municipal and justice court civil action, including cases submitted~~

1 ~~to arbitration or on the arbitration hearing list, pending in the municipal and justice~~  
2 ~~courts, on or after July 1, 1983, in which the amount in controversy is twenty five~~  
3 ~~thousand dollars (\$25,000) or less. “Amount in controversy” means the amount of~~  
4 ~~the demand, or the recovery sought, or the value of the property, or the amount of~~  
5 ~~the lien, which is in controversy in the action, exclusive of attorney fees, interest,~~  
6 ~~and costs. These provisions also apply to any action transferred to a municipal or~~  
7 ~~justice court by reason of lack of jurisdiction in the court in which it was filed~~  
8 ~~limited case.~~

9 (b) The provisions of this article do not apply to any action under Chapter 5A  
10 5.5 (commencing with Section 116.110) or any proceeding under Chapter 4  
11 (commencing with Section 1159) of Title 3 of Part 3.

12 (c) Any action may, upon noticed motion, be withdrawn from the provisions of  
13 this article, upon a showing that it is impractical to prosecute or defend the action  
14 within the limitations of these provisions.

15 ~~(d) Special demurrers, motions to strike, and requests for discovery, pending or~~  
16 ~~determined prior to July 1, 1983, shall be subject to the law in effect on June 30,~~  
17 ~~1983.~~

18 **Comment.** Subdivision (a) of Section 91 is amended to accommodate unification of the  
19 municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect  
20 elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

21 Formerly, each county had one or more municipal courts and a superior court, and economic  
22 litigation procedures applied to cases tried in the municipal courts. Now, the matters formerly  
23 triable in those courts are classified as limited cases. See Section 85 (limited cases) & Comment.  
24 By making economic litigation procedures applicable to limited cases, Section 91 continues the  
25 effect of former law. The former second sentence of subdivision (a), defining “amount in  
26 controversy,” is continued without substantive change in Section 85.

27 Subdivision (b) is amended to delete the reference to former Chapter 5A (commencing with  
28 Section 116), which has been repealed. Instead, subdivision (b) now refers to Chapter 5.5  
29 (commencing with Section 116.110), which contains the current small claims provisions.

30 Subdivision (d) is deleted as obsolete.

31 **Code Civ. Proc. § 116.120 (amended). Legislative findings and declaration**

32 SEC. \_\_\_\_\_. Section 116.120 of the Code of Civil Procedure is amended to read:  
33 116.120. The Legislature hereby finds and declares as follows:

34 (a) Individual minor civil disputes are of special importance to the parties and of  
35 significant social and economic consequence collectively.

36 (b) In order to resolve minor civil disputes expeditiously, inexpensively, and  
37 fairly, it is essential to provide a judicial forum accessible to all parties directly  
38 involved in resolving these disputes.

39 (c) The small claims divisions of ~~municipal and justice courts~~ have been  
40 established to provide a forum to resolve minor civil disputes, and for that reason  
41 constitute a fundamental element in the administration of justice and the protection  
42 of the rights and property of individuals.

43 (d) The small claims divisions of ~~justice and municipal courts~~, the provisions of  
44 this chapter, and the rules of the Judicial Council regarding small claims actions

1 shall operate to ensure that the convenience of parties and witnesses who are  
2 individuals shall prevail, to the extent possible, over the convenience of any other  
3 parties or witnesses.

4 **Comment.** Section 116.120 is amended to accommodate unification of the municipal and  
5 superior courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of  
6 the justice court. Cal. Const. art. VI, §§ 1, 5(b).

7 **Code Civ. Proc. § 116.210 (amended). Small claims division**

8 SEC. \_\_\_\_\_. Section 116.210 of the Code of Civil Procedure is amended to read:

9 116.210. In each ~~justice court and each municipal court~~ and each superior court  
10 in a county in which there is no municipal court, there shall be a small claims  
11 division. The small claims division may be known as the small claims court.

12 **Comment.** Section 116.210 is amended to accommodate unification of the municipal and  
13 superior courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of  
14 the justice court. Cal. Const. art. VI, §§ 1, 5(b).

15 Section 116.210 is also amended to expressly authorize continued colloquial use of the name  
16 “small claims court,” even though the small claims division is not a separate court.

17 **Code Civ. Proc. § 116.231 (amended). Limitation on number of actions filed each year**

18 SEC. \_\_\_\_\_. Section 116.231 of the Code of Civil Procedure is amended to read:

19 116.231. (a) Except as provided in subdivision (d), no person may file more than  
20 two small claims actions in which the amount demanded exceeds two thousand  
21 five hundred dollars (\$2,500), anywhere in the state in any calendar year.

22 (b) Except as provided in subdivision (d), if the amount demanded in any small  
23 claims action exceeds two thousand five hundred dollars (\$2,500), the party  
24 making the demand shall file a declaration under penalty of perjury attesting to the  
25 fact that not more than two small claims actions in which the amount of the  
26 demand exceeded two thousand five hundred dollars (\$2,500) have been filed by  
27 that party in this state within the calendar year.

28 (c) The Legislature finds and declares that the pilot project conducted under the  
29 authority of Chapter 1196 of the Statutes of 1991 demonstrated the efficacy of the  
30 removal of the limitation on the number of actions public entities may file in the  
31 small claims ~~courts~~ divisions on claims exceeding two thousand five hundred  
32 dollars (\$2,500).

33 (d) The limitation on the number of filings exceeding two thousand five hundred  
34 dollars (\$2,500) does not apply to filings where the claim does not exceed five  
35 thousand dollars (\$5,000) which are filed by a city, county, city and county, school  
36 district, county office of education, community college district, local district, or  
37 any other local public entity. If any small claims action is filed by a city, county,  
38 city and county, school district, county office of education, community college  
39 district, local district, or any other local public entity pursuant to this section, and  
40 the defendant informs the court either in advance of the hearing by written notice  
41 or at the time of the hearing, that he or she is represented in the action by legal  
42 counsel, the action shall be transferred to ~~the municipal court~~ out of the small

1 claims division to an appropriate division of the court. A city, county, city and  
2 county, school district, county office of education, community college district,  
3 local district, or any other local public entity may not file a claim within the small  
4 claims division if the amount of the demand exceeds five thousand dollars  
5 (\$5,000).

6 **Comment.** Section 116.231 is amended to accommodate unification of the municipal and  
7 superior courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to refer more precisely  
8 to the small claims division. See Section 116.210 & Comment.

9 **Code Civ. Proc. § 116.250 (amended). Court sessions**

10 SEC. \_\_\_\_\_. Section 116.250 of the Code of Civil Procedure is amended to read:

11 116.250. (a) Sessions of the small claims ~~court~~ division may be scheduled at any  
12 time and on any day, including Saturdays, but excluding other judicial holidays.  
13 They may also be scheduled at any public building within the judicial district,  
14 including places outside the courthouse.

15 (b) Each small claims division of a municipal court with four or more judicial  
16 officers, and each small claims division of a superior court with eight or more  
17 judicial officers, shall conduct at least one night session or Saturday session each  
18 month. The term “session” includes, but is not limited to, a proceeding conducted  
19 by a member of the State Bar acting as a mediator or referee.

20 **Comment.** Section 116.250 is amended to accommodate unification of the municipal and  
21 superior courts in a county. Cal. Const. art. VI, § 5(e). For guidance in applying Section 116.250,  
22 see Section 38 (judicial districts) & Comment.

23 Section 116.250 is also amended to refer more precisely to the small claims division. See  
24 Section 116.210 & Comment.

25 ☞ **Note.** The amendment of subdivision (b) refers to a “small claims division of a superior court  
26 with eight or more judicial officers.” Is a unified superior court with eight or more judicial  
27 officers equivalent to a “municipal court with four or more judicial officers”? Would another  
28 number be more appropriate?

29 **Code Civ. Proc. § 116.760 (amended). Filing fee**

30 SEC. \_\_\_\_\_. Section 116.760 of the Code of Civil Procedure is amended to read:

31 116.760. (a) The appealing party shall pay the same superior court filing fee that  
32 is required for an appeal of a ~~civil action from a justice or municipal court~~ limited  
33 case.

34 (b) A party who does not appeal shall not be charged any fee for filing any  
35 document ~~in the superior court~~ relating to the appeal.

36 **Comment.** Section 116.760 is amended to accommodate unification of the municipal and  
37 superior courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of  
38 the justice court. Cal. Const. art. VI, §§ 1, 5(b).

39 Under subdivision (a), the fee for appealing from a small claims judgment is the same as the  
40 fee for an appeal to the appellate division of the superior court, which is specified in Section  
41 26824 of the Government Code.

42 Subdivision (b) is amended to reflect relocation of the small claims division from the municipal  
43 court to the superior court in a county in which the municipal and superior courts unify their  
44 operations. Because the small claims division is in the same court that hears small claims appeals,



1 subdivision (b) extends only to documents relating to the appeal, not to all documents filed in  
2 superior court.

3 **Code Civ. Proc. § 116.770 (amended). Hearing de novo**

4 SEC. \_\_\_\_\_. Section 116.770 of the Code of Civil Procedure is amended to read:

5 116.770. (a) The appeal to the superior court shall consist of a new hearing  
6 before a judicial officer other than the judicial officer who heard the action in the  
7 small claims division.

8 (b) The hearing on an appeal to the superior court shall be conducted informally.  
9 The pretrial discovery procedures described in subdivision (a) of Section 2019 are  
10 not permitted, no party has a right to a trial by jury, and no tentative decision or  
11 statement of decision is required.

12 (c) Article 5 (commencing with Section 116.510) on hearings in the small  
13 claims ~~court~~ division applies in hearings on appeal in the superior court, except  
14 that attorneys may participate.

15 (d) The scope of the hearing shall include the claims of all parties who were  
16 parties to the small claims action at the time the notice of appeal was filed. The  
17 hearing shall include the claim of a defendant which was heard in the small claims  
18 ~~court~~ division.

19 (e) The clerk of the superior court shall schedule the hearing for the earliest  
20 available time and shall mail written notice of the hearing to the parties at least 14  
21 days prior to the time set for the hearing.

22 (f) The Judicial Council may prescribe by rule the practice and procedure on  
23 appeal and the time and manner in which the record on appeal shall be prepared  
24 and filed.

25 **Comment.** Section 116.770 is amended to accommodate unification of the municipal and  
26 superior courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to refer more precisely  
27 to the small claims division. See Section 116.210 & Comment.

28 **Code Civ. Proc. § 116.940 (amended). Advisory services**

29 SEC. \_\_\_\_\_. Section 116.940 of the Code of Civil Procedure is amended to read:

30 116.940. (a) Except as otherwise provided in this section or in rules adopted by  
31 the Judicial Council, the characteristics of the small claims advisory service  
32 required by Section 116.260 shall be determined by each county in accordance  
33 with local needs and conditions.

34 (b) Each advisory service shall provide the following services:

35 (1) Individual personal advisory services, in person or by telephone, and by any  
36 other means reasonably calculated to provide timely and appropriate assistance.

37 (2) Recorded telephone messages may be used to supplement the individual  
38 personal advisory services, but shall not be the sole means of providing advice  
39 available in the county.

40 (3) Adjacent counties may provide advisory services jointly.

41 (c) In any county in which the number of small claims actions filed annually is  
42 1,000 or less as averaged over the immediately preceding two fiscal years, the

1 county may elect to exempt itself from the requirements set forth in subdivision  
2 (b). This exemption shall be formally noticed through the adoption of a resolution  
3 by the board of supervisors. If a county so exempts itself, the county shall  
4 nevertheless provide the following minimum advisory services in accordance with  
5 rules adopted by the Judicial Council:

6 (1) Recorded telephone messages providing general information relating to  
7 small claims actions filed in the county shall be provided during regular business  
8 hours.

9 (2) Small claims information booklets shall be provided in ~~each municipal and~~  
10 ~~justice court clerk's office, the court clerk's office of each municipal court, the~~  
11 court clerk's office of each superior court in a county in which there is no  
12 municipal court, the county administrator's office, other appropriate county  
13 offices, and in any other location that is convenient to prospective small claims  
14 litigants in the county.

15 (d) The advisory service shall operate in conjunction and cooperation with the  
16 small claims division, and shall be administered so as to avoid the existence or  
17 appearance of a conflict of interest between the individuals providing the advisory  
18 services and any party to a particular small claims action or any judicial officer  
19 deciding small claims actions.

20 (e) Advisors may be volunteers, and shall be members of the State Bar, law  
21 students, paralegals, or persons experienced in resolving minor disputes, and shall  
22 be familiar with small claims ~~court~~ division rules and procedures. Advisors shall  
23 not appear in court as an advocate for any party.

24 (f) Advisors and other court employees and volunteers have the immunity  
25 conferred by Section 818.9 of the Government Code with respect to advice  
26 provided under this chapter.

27 **Comment.** Section 116.940 is amended to accommodate unification of the municipal and  
28 superior courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of  
29 the justice court, Cal. Const. art. VI, §§ 1, 5(b), and refer more precisely to the small claims  
30 division, see Section 116.210 & Comment.

31 **Code Civ. Proc. § 116.950 (amended). Advisory committee; operation of section**

32 SEC. \_\_\_\_\_. Section 116.950 of the Code of Civil Procedure is amended to read:

33 116.950. (a) This section shall become operative only if the Department of  
34 Consumer Affairs determines that sufficient private or public funds are available  
35 in addition to the funds available in the department's current budget to cover the  
36 costs of implementing this section.

37 (b) There shall be established an advisory committee, constituted as set forth in  
38 this section, to study small claims practice and procedure, with particular attention  
39 given to the improvement of procedures for the enforcement of judgments.

40 (c) The members of the advisory committee shall serve without compensation,  
41 but shall be reimbursed for expenses actually and necessarily incurred by them in  
42 the performance of their duties. The advisory committee shall report its findings  
43 and recommendations to the Judicial Council and the Legislature.

1 (d) The advisory committee shall be composed as follows:

2 (1) The Attorney General or a representative.

3 (2) Two consumer representatives from consumer groups or agencies, appointed  
4 by the Secretary of the State and Consumer Services Agency.

5 (3) One representative appointed by the Speaker of the Assembly and one  
6 representative appointed by the President pro Tempore of the Senate.

7 (4) Two representatives, appointed by the Board of Governors of the State Bar.

8 (5) Two representatives of the business community, appointed by the Secretary  
9 of the Trade and Commerce Agency.

10 (6) Six judges of the municipal court ~~or justice court~~, or of the superior court in  
11 a county in which there is no municipal court, who have had extensive experience  
12 as judges of small claims court ~~division~~, appointed by the Judicial Council.

13 (7) One representative appointed by the Governor.

14 (8) Two clerks of the court, appointed by the Judicial Council.

15 (e) Staff assistance to the advisory committee shall be provided by the  
16 Department of Consumer Affairs, with the assistance of the Judicial Council, as  
17 needed.

18 **Comment.** Section 116.950 is amended to accommodate unification of the municipal and  
19 superior courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of  
20 the justice court, Cal. Const. art. VI, §§ 1, 5(b), and refer more precisely to the small claims  
21 division see Section 116.210 & Comment.

22 **Code Civ. Proc. § 199.2 (amended). Placer County jurors**

23 SEC. \_\_\_\_\_. Section 199.2 of the Code of Civil Procedure is amended to read:

24 199.2 (a) In Placer County, prospective jurors residing in the Tahoe Division of  
25 the Placer County Municipal Court, ~~except as otherwise provided in this section,~~  
26 shall only be included in trial court venires for sessions of the superior court held  
27 within that division. ~~However, each~~ If there is no municipal court in Placer  
28 County, prospective jurors residing in the area encompassed by the former Tahoe  
29 Division of the Placer County Municipal Court, shall only be included in trial  
30 court venires for sessions of the superior court held within that area.

31 (b) Notwithstanding subdivision (a) each prospective juror residing in the county  
32 Placer County shall be given the opportunity to elect to serve on juries with  
33 respect to trials held anywhere in the county in accordance with the rules of the  
34 superior court, which shall afford to each eligible resident of the county an  
35 opportunity for selection as a trial jury venireman. Additionally, nothing in this  
36 section shall preclude the superior or municipal court, in its discretion, from  
37 ordering a countywide venire in the interest of justice.

38 **Comment.** Section 199.2 is amended to accommodate unification of the municipal and  
39 superior courts in a county. Cal. Const. art. VI, § 5(e).

40 **Code Civ. Proc. § 199.3 (amended). Nevada County jurors**

41 SEC. \_\_\_\_\_. Section 199.3 of the Code of Civil Procedure is amended to read:



1 199.3. (a) In Nevada County, prospective jurors residing in the Truckee Division  
2 of the Nevada County Municipal Court, ~~except as otherwise provided in this~~  
3 ~~section~~, shall only be included in trial court venires of divisions of the superior  
4 court located within the Truckee Division of the Nevada County Municipal Court  
5 during the months of November, December, January, and February. ~~However,~~  
6 ~~each~~ If there is no municipal court in Nevada County, then during the months of  
7 November, December, January, and February, prospective jurors residing in the  
8 area encompassed by the former Truckee Division of the Nevada County  
9 Municipal Court, shall only be included in trial court venires for sessions of the  
10 superior court held within that area.

11 (b) Notwithstanding subdivision (a), each prospective juror residing in ~~the~~  
12 ~~Truckee Division of the Nevada County Municipal Court~~ Nevada County shall be  
13 given the opportunity to elect to serve on juries with respect to trials at other  
14 locations during those months in accordance with the rules of the superior court,  
15 which shall afford to each eligible resident of the county an opportunity for  
16 selection as a trial jury venireman. Additionally, nothing in this section shall  
17 preclude the superior court, in its discretion, from ordering a countywide venire in  
18 the interest of justice during any time of the year.

19 **Comment.** Section 199.3 is amended to accommodate unification of the municipal and  
20 superior courts in a county. Cal. Const. art. VI, § 5(e).

21 **Code Civ. Proc. § 200 (amended). Jury pool**

22 SEC. \_\_\_\_\_. Section 200 of the Code of Civil Procedure is amended to read:

23 200. Except in Alameda County, when authorized by local superior court rules,  
24 a municipal ~~or justice~~ court district pursuant to duly adopted court rule may use  
25 the same juror pool as that summoned for use in the superior court. Persons so  
26 selected for jury service in those municipal ~~or justice~~ courts need not be residents  
27 of the judicial district. In Los Angeles County, the municipal courts, if any, shall  
28 use the same jury pool as that summoned for use in the superior court.

29 **Comment.** Section 200 is amended to accommodate unification of the municipal and superior  
30 courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of the  
31 justice court. Cal. Const. art. VI, §§ 1, 5(b).

32 **Code Civ. Proc. § 274c (amended). Official reporters of municipal courts**

33 SEC. \_\_\_\_\_. Section 274c of the Code of Civil Procedure is amended to read:

34 274c. Official reporters of a municipal ~~or justice~~ court, ~~or any one of them~~, court  
35 or of a superior court in a limited case or in a misdemeanor or infraction case,  
36 must, at the request of either party or of the court in a civil proceeding, or on the  
37 order of the court in a criminal action or proceeding, take down in shorthand all  
38 the testimony, the objections made, the rulings of the court, the exceptions taken,  
39 all arraignments, pleas and sentences of defendants in criminal cases, the  
40 arguments of the prosecuting attorney to the jury, and all statements and remarks  
41 made and oral instructions given by the judge; and if directed by the court, or  
42 requested by either party, must, within such reasonable time after the trial of such

1 case as the court may designate, write out the same, or such specific portions  
2 thereof as may be requested, in plain and legible longhand, or by typewriter, or  
3 other printing machine, and certify to the same as being correctly reported and  
4 transcribed, and when directed by the court, file the same with the clerk of the  
5 court.

6 **Comment.** Section 274c is amended to accommodate unification of the municipal and superior  
7 courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of the  
8 justice court. Cal. Const. art. VI, §§ 1, 5(b).

9 See Section 85 (limited cases) & Comment; Penal Code § 691 (misdemeanor or infraction  
10 case).

11 **Code Civ. Proc. § 395.9 (added). Misclassification as limited case or otherwise**

12 SEC. \_\_\_\_\_. Section 395.9 is added to the Code of Civil Procedure, to read:

13 395.9. (a) In a county in which there is no municipal court, if the caption of the  
14 complaint or petition erroneously states or fails to state, pursuant to Section  
15 422.30, that the action or proceeding is a limited case, the action or proceeding  
16 shall not be dismissed, except as provided in Section 399.5 or subdivision (b)(1) of  
17 Section 581, but shall, on the application of either party, or on the court's own  
18 motion, be reclassified as a limited case or otherwise. The action or proceeding  
19 shall then be prosecuted as if it had been so commenced, all prior proceedings  
20 being saved. If summons is served prior to the reclassification of the action or  
21 proceeding, as to any defendant, so served, who has not appeared in the action or  
22 proceeding, the time to answer or otherwise plead shall date from service upon  
23 that defendant of written notice of the reclassification.

24 (b) If an action or proceeding is commenced as a limited case or otherwise  
25 pursuant to Section 422.30, and it later appears from the verified pleadings, or at  
26 the trial, or hearing, that the determination of the action or proceeding, or of a  
27 cross-complaint, will necessarily involve the determination of questions  
28 inconsistent with that classification, the court must reclassify the case.

29 (c) An action or proceeding which is reclassified under the provisions of this  
30 section shall be deemed to have been commenced at the time the complaint or  
31 petition was initially filed, not at the time of reclassification.

32 (d) Nothing in this section shall be construed to preclude or affect the right to  
33 amend the pleadings as provided in this code.

34 (e) Nothing in this section shall be construed to require the superior court to  
35 reclassify any action or proceeding because the judgment to be rendered, as  
36 determined at the trial or hearing, is one which might have been rendered in a  
37 limited case.

38 (f) In any case where the erroneous classification is due solely to an excess in  
39 the amount of the demand, the excess may be remitted and the action may  
40 continue as a limited case.

41 (g) Upon the making of an order for reclassification, proceedings shall be had as  
42 provided in Section 399.5 of this code. Unless the court ordering the  
43 reclassification otherwise directs, the costs and fees of those proceedings, and

1 other costs and fees of reclassifying the case, are to be paid by the party filing the  
2 pleading that raised the question inconsistent with the original classification.

3 **Comment.** Section 395.9 is added to accommodate unification of the municipal and superior  
4 courts in a county. Cal. Const. art. VI, § 5(e). It parallels and preserves the policy of Section 396,  
5 which governs transfer of a case filed in a court that lacks jurisdiction. In a unified superior court,  
6 misclassifying a case as a limited case (and thus invoking the procedures applicable to a limited  
7 case) is akin to erroneously suing in municipal court instead of the superior court in a county with  
8 a municipal court.

9 See Section 85 (limited cases) & Comment. For further guidance on procedures for challenging  
10 a caption stating, or failing to state, that an action or proceeding is a limited case, see Section  
11 430.10 (objection to complaint or cross-complaint).

12 ☞ **Note.** Section 395.9 and the other provisions in this draft relating to misclassification of a case  
13 in a unified court (Sections 399.5, 400, 422.30, 430.10, and 430.80) track existing provisions on  
14 lack of jurisdiction. Because lack of jurisdiction is a very fundamental defect, it can be raised at  
15 any time, by a variety of means. The Law Revision Commission solicits input on whether similar  
16 treatment is appropriate for misclassification of a case in a unified court.

17 **Code Civ. Proc. § 396a (amended). Statement of jurisdictional facts**

18 SEC. \_\_\_\_\_. Section 396a of the Code of Civil Procedure is amended to read:

19 396a. ~~In all actions and proceedings commenced in a justice or municipal court~~  
20 ~~which are~~ In a limited case that is subject to the provisions of Sections 1812.10  
21 and 2984.4 of the Civil Code, or subdivision (b) of Section 395 of the Code of  
22 Civil Procedure, or is an action or proceeding for an unlawful detainer as defined  
23 in Section 1161 of the Code of Civil Procedure, plaintiff shall state facts in the  
24 complaint, verified by ~~his~~ the plaintiff's oath, or the oath of ~~his~~ the plaintiff's  
25 attorney, or in an affidavit of the plaintiff or of ~~his~~ the plaintiff's attorney filed  
26 with the complaint, showing that the action has been commenced in the proper  
27 court for the trial of such action or proceeding, and showing that the action is  
28 subject to the provisions of Sections 1812.10 and 2984.4 of the Civil Code or  
29 subdivision (b) of Section 395 of the Code of Civil Procedure, or is an action for  
30 an unlawful detainer. When such affidavit is filed with the complaint, a copy  
31 thereof must be served with the summons. Except as herein provided, if such  
32 complaint or affidavit be not so filed, no further proceedings shall be had in the  
33 action or proceeding, except to dismiss the same without prejudice. However, the  
34 court may, on such terms as may be just, permit such affidavit to be filed  
35 subsequent to the filing of the complaint, and a copy of such affidavit shall be  
36 served on the defendant and the time to answer or otherwise plead shall date from  
37 such service. If it appears from such complaint or affidavit, or otherwise, that the  
38 court in which such action or proceeding is commenced is not the proper court for  
39 the trial thereof, the court in which such action or proceeding is commenced, or a  
40 judge thereof, shall, whenever such fact appears, transfer it to such proper court,  
41 on its own motion, or on motion of the defendant, unless the defendant consents in  
42 writing, or in open court (such consent in open court being entered in the minutes  
43 or docket of the court), to the keeping of the action or proceeding in the court  
44 where commenced. If such consent be given, the action or proceeding may

1 continue in the court where commenced. Notwithstanding the provisions of  
2 Section 1801.1 and subdivision (f) of Section 2983.7 of the Civil Code that  
3 consent may be given by a defendant who is represented by counsel at the time the  
4 consent is given, and where an action or proceeding is subject to the provisions of  
5 subdivision (b) of Section 395 of the Code of Civil Procedure or is for an unlawful  
6 detainer, that consent may only be given by a defendant who is represented by  
7 counsel at the time the consent is given. In any such case where the transfer of the  
8 action or proceeding is ordered under the provisions of this paragraph, if summons  
9 is served prior to the filing of such action or proceeding in the court to which it is  
10 transferred, as to any defendant, so served, who has not appeared in the action or  
11 proceeding, the time to answer or otherwise plead shall date from service upon  
12 such defendant of written notice of such filing.

13 When it appears from such complaint or affidavit of the plaintiff that the court in  
14 which such action or proceeding is commenced is a proper court for the trial  
15 thereof, all proper proceedings may be had, and the action or proceeding may be  
16 tried therein; provided, however, that in such case a motion for a transfer of the  
17 action or proceeding may be made as in other cases, within the time, upon the  
18 grounds, and in the manner provided in this title, and if upon such motion it  
19 appears that such action or proceeding is not pending in the proper court, or should  
20 for other cause be transferred, the same shall be ordered transferred as provided in  
21 this title.

22 When any such action or proceeding is ordered transferred as herein provided,  
23 proceedings shall be had, and the costs and fees shall be paid, as provided in  
24 Sections 398 and 399 of this code.

25 **Comment.** Section 396a is amended to accommodate unification of the municipal and superior  
26 courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of the  
27 justice court. Cal. Const. art. VI, §§ 1, 5(b). Formerly, each county had one or more municipal  
28 courts and a superior court, and Section 396a applied to matters commenced in the municipal  
29 courts. A limited case is equivalent to a matter within the original jurisdiction of the municipal  
30 court under former law, so Section 396a as amended continues the effect of former law.

31 ☞ **Note.** In a unified county, venue can be challenged on the basis that the suit should have been  
32 brought in another county, but not on the basis that the suit should have been brought elsewhere  
33 within the same county. Please consider whether the proposed amendment effectively preserves  
34 the policy of Section 396a in light of that change.

35 **Code Civ. Proc. § 399.5 (added). Reclassification as limited case pursuant to Section 395.9**

36 SEC. \_\_\_\_\_. Section 399.5 is added to the Code of Civil Procedure, to read:

37 399.5. (a) Where an order is made for reclassification of an action or proceeding  
38 pursuant to Section 395.9, the clerk shall refile the case as reclassified upon  
39 satisfaction of both of the following conditions:

40 (1) Costs and fees have been paid in accordance with Section 395.9.

41 (2) Either the time within which to file a petition for writ of mandate pursuant to  
42 Section 400 has expired and no writ has been filed, or a writ has been filed and a  
43 judgment denying the writ has become final.

1 (b) If the costs and fees have not been paid in accordance with Section 395.9  
2 within five days after service of notice of the order for reclassification, then any  
3 party interested in the case, regardless of whether that person is named in the  
4 complaint, may pay the costs and fees, and the clerk shall refile the case as if the  
5 costs and fees had been paid in accordance with Section 395.9. The costs and fees  
6 shall then be a proper item of costs of the party paying them, recoverable if that  
7 party prevails in the action or proceeding. Otherwise, the costs and fees shall be  
8 offset against and deducted from the amount, if any, awarded to the person  
9 responsible for the costs and fees under Section 395.9, in the event that party  
10 prevails in the action or proceeding.

11 (c) The cause of action shall not be further prosecuted in any court until the  
12 costs and fees of reclassifying the case are paid. If those costs and fees are not paid  
13 within 30 days after service of notice of an order for reclassification, or if a copy  
14 of a petition for writ of mandate pursuant to Section 400 is filed in the trial court,  
15 then within 30 days after notice of finality of the order for reclassification, the  
16 court on a duly noticed motion by any party may dismiss the action without  
17 prejudice to the cause on the condition that no other action on the cause may be  
18 commenced in another court before the costs and fees are paid. When a petition  
19 for writ of mandate does not result in a stay of proceedings, the time for payment  
20 of those costs and fees is 60 days after service of the notice of the order.

21 (d) At the time of refileing the case as reclassified, the clerk shall mail notice to  
22 all parties who have appeared in the action or proceeding, stating the date on  
23 which refileing occurred and the number assigned to the case as refiled.

24 (e) The court shall have and exercise over the refiled action or proceeding the  
25 same authority as if the action or proceeding had been originally commenced as  
26 reclassified, all prior proceedings being saved. The court may require whatever  
27 amendment of the pleadings, filing and service of amended, additional, or  
28 supplemental pleadings, or giving of notice, as may be necessary for the proper  
29 presentation and determination of the action or proceeding as reclassified.

30 **Comment.** Section 399.5 is added to accommodate unification of the municipal and superior  
31 courts in a county. Cal. Const. art. VI, § 5(e). Cal. Const. art. VI, § 5(e). It parallels and preserves  
32 the policy of Section 399, which specifies the procedure for transferring a case from one court to  
33 another. In a unified superior court, misclassifying a case as a limited case (and thus invoking the  
34 procedures applicable to a limited case) is akin to erroneously suing in municipal court instead of  
35 the superior court in a county with a municipal court.

36 See Section 85 (limited cases) & Comment. For guidance on procedures for challenging a  
37 caption stating, or failing to state, that an action or proceeding is a limited case, see Sections  
38 395.9 (misclassification as limited case or otherwise), 430.10 (objection to complaint or cross-  
39 complaint). See also Section 430.80 (failure to object to pleading).

40 **Code Civ. Proc. § 400 (amended). Petition for writ of mandate**

41 SEC. \_\_\_\_\_. Section 400 of the Code of Civil Procedure is amended to read:

42 400. When an order is made by the superior court granting or denying a motion  
43 to change the place of trial or an application to reclassify an action or proceeding  
44 pursuant to Section 395.9, the party aggrieved by such order may, within 20 days



1 after service of a written notice of the order, petition the court of appeal for the  
 2 district in which the court granting or denying the motion is situated for a writ of  
 3 mandate requiring trial of the case in the proper court or proper classification of  
 4 the action or proceeding pursuant to Section 395.9. The superior court may, for  
 5 good cause, and prior to the expiration of the initial 20-day period, extend the time  
 6 for one additional period not to exceed 10 days. The petitioner shall file a copy of  
 7 such petition in the trial court immediately after the petition is filed in the court of  
 8 appeal. The court of appeal may stay all proceedings in the case, pending  
 9 judgment on the petition becoming final. The clerk of the court of appeal shall file  
 10 with the clerk of the trial court, a copy of any final order or final judgment  
 11 immediately after such order or judgment becomes final.

12 **Comment.** Section 400 is amended to accommodate unification of the municipal and superior  
 13 courts in a county. Cal. Const. art. VI, § 5(e). In a unified superior court, misclassifying a case as  
 14 a limited case (and thus invoking the procedures applicable to a limited case) is akin to  
 15 erroneously suing in municipal court instead of the superior court in a county with a municipal  
 16 court. For guidance on the procedure for reviewing a transfer from superior court to municipal  
 17 court or vice versa, see *Yousafzai v. Hyundai Motor America*, 22 Cal. App. 4th 920, 925, 27 Cal.  
 18 Rptr. 2d 569 (1994) (“An examination of the language of the present version of sections 396, 399,  
 19 and 400 makes it clear the Legislature intends a writ procedure rather than an appeal as the  
 20 appropriate vehicle for review of transfer orders such as the one entered in this case.”).

21 See Section 85 (limited cases) & Comment. For guidance on procedures for challenging a  
 22 caption stating, or failing to state, that a case is a limited case, see Sections 395.9  
 23 (misclassification as limited case or otherwise), 430.10 (objection to complaint or cross-  
 24 complaint). See also Section 430.80 (failure to object to pleading).

25 **Code Civ. Proc. § 422.30 (amended). Caption**

26 SEC. \_\_\_\_\_. Section 422.30 of the Code of Civil Procedure is amended to read:

27 422.30. (a) Every pleading shall contain a caption setting forth:

28 (a) (1) The name of the court and county, and, in municipal ~~and justice~~ courts,  
 29 the name of the judicial district, in which the action is brought; and

30 (b) (2) The title of the action.

31 (b) In a limited case in a county in which there is no municipal court, the caption  
 32 shall state that the case is a limited case.

33 **Comment.** Section 422.30 is amended to accommodate unification of the municipal and  
 34 superior courts in a county. Cal. Const. art. VI, § 5(e). Subdivision (b) facilitates identification of  
 35 limited cases in a county in which the municipal and superior courts have unified their operations  
 36 in the superior court. See Section 85 (limited cases) & Comment. For guidance on procedures for  
 37 challenging a caption stating, or failing to state, that an action or proceeding is a limited case, see  
 38 Sections 395.9 (misclassification as limited case or otherwise), 430.10 (objection to complaint or  
 39 cross-complaint). See also Section 430.80 (failure to object to pleading).

40 Section 422.30 is also amended to reflect the elimination of the justice court. Cal. Const. art.  
 41 VI, §§ 1, 5(b).

42 ☞ **Note.** Section 422.30(b) would only require an affirmative act in a limited case. Please  
 43 consider whether it would be appropriate to require an affirmative act to classify other cases as  
 44 well, and whether a statement in the caption (as opposed to a declaration, a paragraph of a  
 45 pleading, a combination of such methods, or some other approach) is sufficient.

1 **Code Civ. Proc. § 430.10 (amended). Objection to complaint or cross-complaint.**

2 SEC. \_\_\_\_\_. Section 430.10 of the Code of Civil Procedure is amended to read:  
3 430.10. The party against whom a complaint or cross-complaint has been filed  
4 may object, by demurrer or answer as provided in Section 430.30, to the pleading  
5 on any one or more of the following grounds:

6 (a) The court has no jurisdiction of the subject of the cause of action alleged in  
7 the pleading.

8 (b) The person who filed the pleading does not have the legal capacity to sue.

9 (c) There is another action pending between the same parties on the same cause  
10 of action.

11 (d) There is a defect or misjoinder of parties.

12 (e) The pleading does not state facts sufficient to constitute a cause of action.

13 (f) The pleading is uncertain. As used in this subdivision, “uncertain” includes  
14 ambiguous and unintelligible.

15 (g) In an action founded upon a contract, it cannot be ascertained from the  
16 pleading whether the contract is written, is oral, or is implied by conduct.

17 (h) No certificate was filed as required by Section 411.35.

18 (i) No certificate was filed as required by Section 411.36.

19 (j) The caption of the complaint or cross-complaint erroneously states or fails to  
20 state, pursuant to Section 422.30, that the action or proceeding is a limited case.

21 **Comment.** Section 430.10 is amended to accommodate unification of the municipal and  
22 superior courts in a county. Cal. Const. art. VI, § 5(e).

23 See Section 85 (limited cases) & Comment. For further guidance on procedures for challenging  
24 a caption stating, or failing to state, that an action or proceeding is a limited case, see Section  
25 395.9 (misclassification as limited case or otherwise). See also Sections 399.5 (reclassification as  
26 limited case pursuant to Section 395.9), 400 (petition for writ of mandate).

27 **Code Civ. Proc. § 430.80 (amended). Failure to object to pleading**

28 SEC. \_\_\_\_\_. Section 430.80 of the Code of Civil Procedure is amended to read:

29 430.80. (a) If the party against whom a complaint or cross-complaint has been  
30 filed fails to object to the pleading, either by demurrer or answer, that party is  
31 deemed to have waived the objection unless it is an objection that the court has no  
32 jurisdiction of the subject of the cause of action alleged in the pleading, an  
33 objection that the complaint or cross-complaint erroneously states or fails to state,  
34 pursuant to Section 422.30, that the action or proceeding is a limited case, or an  
35 objection that the pleading does not state facts sufficient to constitute a cause of  
36 action.

37 (b) If the party against whom an answer has been filed fails to demur thereto,  
38 that party is deemed to have waived the objection unless it is an objection that the  
39 answer does not state facts sufficient to constitute a defense.

40 **Comment.** Section 430.80 is amended to accommodate unification of the municipal and  
41 superior courts in a county. Cal. Const. art. VI, § 5(e). In a unified superior court, misclassifying a  
42 case as a limited case (and thus invoking the procedures applicable to a limited case) is akin to  
43 erroneously suing in municipal court instead of the superior court in a county with a municipal  
44 court.



1 See Section 85 (limited cases) & Comment. For guidance on procedures for challenging a  
2 caption stating, or failing to state, that an action or proceeding is a limited case, see Sections  
3 395.9 (misclassification as limited case or otherwise), 430.10 (objection to complaint or cross-  
4 complaint). See also Sections 399.5 (reclassification as limited case pursuant to Section 395.9),  
5 400 (petition for writ of mandate).

6 **Code Civ. Proc. § 489.220 (amended). Amount of undertaking**

7 SEC. \_\_\_\_\_. Section 489.220 of the Code of Civil Procedure is amended to read:  
8 489.220. (a) Except as provided in subdivision (b), the amount of an undertaking  
9 filed pursuant to this article shall be two thousand five hundred dollars (\$2,500) in  
10 ~~an action in the municipal or justice court a limited case~~, and seven thousand five  
11 hundred dollars (\$7,500) ~~in an action in the superior court otherwise~~.

12 (b) If, upon objection to the undertaking, the court determines that the probable  
13 recovery for wrongful attachment exceeds the amount of the undertaking, it shall  
14 order the amount of the undertaking increased to the amount it determines to be  
15 the probable recovery for wrongful attachment if it is ultimately determined that  
16 the attachment was wrongful.

17 **Comment.** Section 489.220 is amended to accommodate unification of the municipal and  
18 superior courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of  
19 the justice court. Cal. Const. art. VI, §§ 1, 5(b). Formerly, each county had one or more municipal  
20 courts and a superior court, and Section 489.220 required an undertaking of \$2,500 for an action  
21 in municipal court and \$7,500 for an action in superior court. A limited case is equivalent to a  
22 matter within the original jurisdiction of the municipal court, so Section 489.220 as amended  
23 continues the effect of former law. See Section 85 (limited cases) & Comment.

24 **Code Civ. Proc. § 580 (amended). Relief awardable**

25 SEC. \_\_\_\_\_. Section 580 of the Code of Civil Procedure is amended to read:  
26 580. (a) The relief granted to the plaintiff, if there is no answer, cannot exceed  
27 that which he or she shall have demanded in his or her complaint or in the  
28 statement required by Section 425.11; but in any other case the court may grant  
29 the plaintiff any relief consistent with the case made by the complaint and  
30 embraced within the issue. The court may impose liability, regardless of whether  
31 the theory upon which liability is sought to be imposed involves legal or equitable  
32 principles.

33 (b) Notwithstanding subdivision (a), the following types of relief may not be  
34 granted in a limited case:

35 (1) Relief exceeding twenty-five thousand dollars (\$25,000), exclusive of  
36 attorney fees, interest, and costs.

37 (2) A permanent injunction.

38 (3) A determination of title to real property.

39 (4) Enforcement of an order under the Family Code.

40 (5) Declaratory relief, except as authorized by Section 86.

41 **Comment.** Section 580 is amended to accommodate unification of the municipal and superior  
42 courts in a county. Cal. Const. art. VI, § 5(e).

43 The last sentence of subdivision (a) continues former Section 86(c) without substantive change.

1 Subdivision (b)(1) makes explicit that although the jurisdiction of a unified superior court  
 2 includes matters in which the amount in controversy exceeds \$25,000, the court cannot grant  
 3 substantive relief exceeding \$25,000 in a limited case. Formerly, each county had one or more  
 4 municipal courts and a superior court, and the jurisdictional limit of the municipal courts  
 5 constrained the relief awardable in matters tried in those courts. *See Stokus v. Marsh*, 217 Cal.  
 6 App. 3d 647, 653, 266 Cal. Rptr. 90 (1990) (“we view the jurisdictional limit of Code of Civil  
 7 Procedure section 86 as applying to the substantive judgment and not the award of costs,  
 8 including reasonable attorneys’ fees”); *Bakkebo v. Municipal Court*, 124 Cal. App. 3d 229, 177  
 9 Cal. Rptr. 239 (1981) (“Since the substantive demand is the touchstone of jurisdiction it follows  
 10 that if the recovery on that demand is within the jurisdiction of the municipal court, that court  
 11 retains jurisdiction to award costs and attorney fees even though those items, when added to the  
 12 substantive portion of the judgment, aggregate an amount in excess of the jurisdictional limit.”);  
 13 *see also* Section 396 (“In any case where the lack of jurisdiction is due solely to an excess in the  
 14 amount of the demand, the excess may be remitted and the action may continue in the court  
 15 where it is pending.”). A limited case is equivalent to a matter within the original jurisdiction of  
 16 the municipal court under former law, so Section 580(b)(1) as amended continues and codifies  
 17 the effect of former law.

18 Similarly, subdivisions (b)(1)-(b)(4) reflect and preserve limitations on the types of equitable  
 19 relief awardable in a municipal court. *See R. Weil & I Brown, Jr., California Practice Guide:*  
 20 *Civil Procedure Before Trial, Jurisdiction and Venue* §§ 3:12-3:18.1, at 3-6 to 3-7 (1997). *See*  
 21 *also St. James Church of Christ Holiness v. Superior Court*, 135 Cal. App. 2d 352, 362, 287 P.2d  
 22 387 (1955) (municipal court lacks jurisdiction to grant permanent injunction); *Pasadena*  
 23 *Investment Co. v. Peerless Casualty Co.*, 134 Cal. App. 2d Supp. 902, 286 P.2d 1014 (1955)  
 24 (municipal court lacks jurisdiction to grant declaratory relief). On enforcement of orders under  
 25 the Family Code, *see* Family Code Sections 200, 290; *In re Marriage of Lackey*, 143 Cal. App. 3d  
 26 698, 191 Cal. Rptr. 309 (1983).

27 **Code Civ. Proc. § 582.5 (added). Judgment for payment of money**

28 SEC. \_\_\_\_\_. Section 582.5 is added to the Code of Civil Procedure, to read:

29 582.5. In a limited case in which the defendant has appeared, if the judgment or  
 30 order is for the payment of money by the defendant, the defendant shall pay the  
 31 judgment immediately or at any time and upon terms and conditions, including  
 32 installment payments, that the court may prescribe. The court may amend the  
 33 terms and conditions for payment of the judgment or order at any time to provide  
 34 for installment payments for good cause upon motion by a party and notice to all  
 35 affected parties, regardless of the nature of the underlying debt and regardless  
 36 whether the moving party appeared before entry of the judgment or order. In any  
 37 determination regarding the imposition of terms and conditions upon the payment  
 38 of the judgment, the court shall consider any factors that would be relevant to the  
 39 determination of a claim for exemption pursuant to Chapter 4 (commencing with  
 40 Section 703.010) of Division 2 of Title 9 of Part 2 or the examination of a debtor  
 41 pursuant to Article 2 (commencing with Section 708.110) of Chapter 6 of Division  
 42 2 of Title 9.

43 **Comment.** Section 582.5 continues former Section 85 without substantive change, except that  
 44 former Section 85 referred to the municipal courts, whereas Section 582.5 pertains to a limited  
 45 case. A limited case is equivalent to a matter within the original jurisdiction of the municipal  
 46 court under former law, so Section 582.5 as amended continues the effect of former law. *See*  
 47 Section 85 (limited cases) & Comment.

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

2 SEC. \_\_\_\_\_. Section 685.030 of the Code of Civil Procedure is amended to read:  
3 685.030. (a) If a money judgment is satisfied in full pursuant to a writ under this  
4 title, interest ceases to accrue on the judgment:

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

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

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

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

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

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

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

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

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

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

26 **Comment.** Subdivision (e) of Section 685.030 is amended to accommodate unification of the  
27 municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect  
28 elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b). A limited case is equivalent to a  
29 matter within the original jurisdiction of the municipal court under former law, so Section  
30 685.030 as amended continues the effect of former law. See Section 85 (limited cases) &  
31 Comment.

32 **Code Civ. Proc. § 720.160 (amended). Undertaking by creditor**

33 SEC. \_\_\_\_\_. Section 720.160 of the Code of Civil Procedure is amended to read:

34 720.160. (a) If the creditor files with the levying officer an undertaking that  
35 satisfies the requirements of this section within the time allowed under subdivision  
36 (b) of Section 720.140:

37 (1) The levying officer shall execute the writ in the manner provided by law  
38 unless the third person files an undertaking to release the property pursuant to  
39 Chapter 6 (commencing with Section 720.610).

40 (2) After sale, payment, or delivery of the property pursuant to the writ, the  
41 property is free of all claims of the third person for which the creditor has given  
42 the undertaking.

1 (b) Subject to Sections 720.770 and 996.010, unless the creditor elects to file an  
2 undertaking in a larger amount, the amount of the undertaking filed by the creditor  
3 under this section shall be in the amount of:

4 ~~(1) If the action is pending or the judgment was entered in the superior court,~~  
5 ~~seven~~ Except as provided in paragraph (2), ~~seven~~ thousand five hundred dollars  
6 (\$7,500), or twice the amount of the execution lien as of the date of levy or other  
7 enforcement lien as of the date it was created, whichever is the lesser amount.

8 (2) ~~If the action is pending or the judgment was entered in a municipal or justice~~  
9 ~~court,~~ In a limited case, two thousand five hundred dollars (\$2,500), or twice the  
10 amount of the execution lien as of the date of levy or other enforcement lien as of  
11 the date it was created, whichever is the lesser amount.

12 (c) An undertaking given by the creditor under this chapter shall:

13 (1) Be made in favor of the third person.

14 (2) Indemnify the third person against any loss, liability, damages, costs, and  
15 attorney's fees, incurred by reason of the enforcement proceedings.

16 (3) Be conditioned on a final judgment that the third person owns or has the  
17 right of possession of the property.

18 (d) If the creditor is a public entity exempt from giving an undertaking, the  
19 public entity shall, in lieu of filing the undertaking, file with the levying officer a  
20 notice stating that the public entity opposes the claim of the third person. When so  
21 filed, the notice is deemed to satisfy the requirement of this section that an  
22 undertaking be filed.

23 **Comment.** Section 720.160 is amended to accommodate unification of the municipal and  
24 superior courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of  
25 the justice court. Cal. Const. art. VI, §§ 1, 5(b). Formerly, each county had one or more municipal  
26 courts and a superior court, and Section 720.160 required an undertaking of \$2,500 for an action  
27 in municipal court and \$7,500 for an action in superior court. A limited case is equivalent to a  
28 matter within the original jurisdiction of the municipal court under former law, so Section  
29 720.160 as amended continues the effect of former law. See Section 85 (limited cases) &  
30 Comment.

31 **Code Civ. Proc. § 720.260 (amended). Undertaking by creditor**

32 SEC. \_\_\_\_\_. Section 720.260 of the Code of Civil Procedure is amended to read:

33 720.260. (a) If the creditor within the time allowed under subdivision (b) of  
34 Section 720.240 either files with the levying officer an undertaking that satisfies  
35 the requirements of this section and a statement that satisfies the requirements of  
36 Section 720.280 or makes a deposit with the levying officer of the amount claimed  
37 under Section 720.230:

38 (1) The levying officer shall execute the writ in the manner provided by law  
39 unless, in a case where the creditor has filed an undertaking, the secured party or  
40 lienholder files an undertaking to release the property pursuant to Chapter 6  
41 (commencing with Section 720.610).

1 (2) After sale, payment, or delivery of the property pursuant to the writ, the  
2 property is free of all claims or liens of the secured party or lienholder for which  
3 the creditor has given the undertaking or made the deposit.

4 (b) Subject to Sections 720.770 and 996.010, unless the creditor elects to file an  
5 undertaking in a larger amount, the amount of the undertaking filed by the creditor  
6 under this section shall be in the amount of:

7 ~~(1) If the action is pending or the judgment was entered in the superior court,~~  
8 ~~seven~~ Except as provided in paragraph (2), seven thousand five hundred dollars  
9 (\$7,500), or twice the amount of the execution lien as of the date of levy or other  
10 enforcement lien as of the date it was created, whichever is the lesser amount.

11 ~~(2) If the action is pending or the judgment was entered in a municipal or justice~~  
12 ~~court,~~ In a limited case, two thousand five hundred dollars (\$2,500), or twice the  
13 amount of the execution lien as of the date of levy or other enforcement lien as of  
14 the date it was created, whichever is the lesser amount.

15 (c) An undertaking given by the creditor under this chapter shall:

16 (1) Be made in favor of the secured party or lienholder.

17 (2) Indemnify the secured party or lienholder against any loss, liability,  
18 damages, costs, and attorney's fees, incurred by reason of the enforcement  
19 proceedings.

20 (3) Be conditioned on a final judgment that the security interest or lien of the  
21 third person is entitled to priority over the creditor's lien.

22 (d) If the creditor is a public entity exempt from giving an undertaking, the  
23 public entity shall, in lieu of filing the undertaking, file with the levying officer a  
24 notice stating that the public entity opposes the claim of the third person. When so  
25 filed, the notice is deemed to satisfy the requirement of this section that an  
26 undertaking be filed.

27 **Comment.** Section 720.260 is amended to accommodate unification of the municipal and  
28 superior courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of  
29 the justice court. Cal. Const. art. VI, §§ 1, 5(b). Formerly, each county had one or more municipal  
30 courts and a superior court, and Section 720.260 required an undertaking of \$2,500 for an action  
31 in municipal court and \$7,500 for an action in superior court. A limited case is equivalent to a  
32 matter within the original jurisdiction of the municipal court under former law, so Section  
33 720.160 as amended continues the effect of former law. See Section 85 (limited cases) &  
34 Comment.

35 **Code Civ. Proc. § 904.1 (amended). Taking appeal**

36 SEC. \_\_\_\_\_. Section 904.1 of the Code of Civil Procedure is amended to read:

37 904.1. (a) ~~An~~ Except as provided in Sections 904.2 and 904.5, an appeal may be  
38 taken ~~from a superior court to the court of appeal~~ in the following cases:

39 (1) From a judgment, except (A) an interlocutory judgment, other than as  
40 provided in paragraphs (8), (9), and (11), (B) a judgment of contempt which is  
41 made final and conclusive by Section 1222, or (C) ~~a judgment on appeal from a~~  
42 ~~municipal court or a justice court or a small claims court, or (D) a judgment~~  
43 granting or denying a petition for issuance of a writ of mandamus or prohibition



1 directed to a municipal court or ~~a justice court~~ the superior court in a county in  
2 which there is no municipal court or the judge or judges thereof which relates to a  
3 matter pending in the municipal or ~~justice~~ superior court. However, an appellate  
4 court may, in its discretion, review a judgment granting or denying a petition for  
5 issuance of a writ of mandamus or prohibition, or a judgment or order for the  
6 payment of monetary sanctions, upon petition for an extraordinary writ.

7 (2) From an order made after a judgment made appealable by paragraph (1).

8 (3) From an order granting a motion to quash service of summons or granting a  
9 motion to stay or dismiss the action on the ground of inconvenient forum.

10 (4) From an order granting a new trial or denying a motion for judgment  
11 notwithstanding the verdict.

12 (5) From an order discharging or refusing to discharge an attachment or granting  
13 a right to attach order.

14 (6) From an order granting or dissolving an injunction, or refusing to grant or  
15 dissolve an injunction.

16 (7) From an order appointing a receiver.

17 (8) From an interlocutory judgment, order, or decree, hereafter made or entered  
18 in an action to redeem real or personal property from a mortgage thereof, or a lien  
19 thereon, determining the right to redeem and directing an accounting.

20 (9) From an interlocutory judgment in an action for partition determining the  
21 rights and interests of the respective parties and directing partition to be made.

22 (10) From an order made appealable by the provisions of the Probate Code or  
23 the Family Code.

24 (11) From an interlocutory judgment directing payment of monetary sanctions  
25 by a party or an attorney for a party if the amount exceeds five thousand dollars  
26 (\$5,000).

27 (12) From an order directing payment of monetary sanctions by a party or an  
28 attorney for a party if the amount exceeds five thousand dollars (\$5,000).

29 (b) Sanction orders or judgments of five thousand dollars (\$5,000) or less  
30 against a party or an attorney for a party may be reviewed on an appeal by that  
31 party after entry of final judgment in the main action, or, at the discretion of the  
32 court of appeal, may be reviewed upon petition for an extraordinary writ.

33 **Comment.** Section 904.1 is amended to accommodate unification of the municipal and  
34 superior courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of  
35 the justice court. Cal. Const. art. VI, §§ 1, 5(b).

36 For guidance on what constitutes a limited case, see Section 85 & Comment.

37 Paragraph (a)(1)(C), which made nonreviewable “a judgment on appeal from municipal court  
38 or a justice court or a small claims court,” is deleted as unnecessary, because the introductory  
39 clause of Section 904.1 as amended already excludes those matters from its coverage.

40 **Code Civ. Proc. § 904.2 (amended). Taking appeal in limited case**

41 SEC. \_\_\_\_\_. Section 904.2 of the Code of Civil Procedure is amended to read:

42 904.2. An appeal in a limited case may be taken ~~from a municipal or justice~~  
43 ~~court~~ to the appellate division of the superior court in the following cases:

1 (a) From a judgment, except (1) an interlocutory judgment, or (2) a judgment of  
2 contempt which is made final and conclusive by Section 1222.

3 (b) From an order made after a judgment made appealable by subdivision (a).

4 (c) From an order changing or refusing to change the place of trial.

5 (d) From an order granting a motion to quash service of summons or granting a  
6 motion to stay or dismiss the action on the ground of inconvenient forum.

7 (e) From an order granting a new trial or denying a motion for judgment  
8 notwithstanding the verdict.

9 (f) From an order discharging or refusing to discharge an attachment or granting  
10 a right to attach order.

11 (g) From an order granting or dissolving an injunction, or refusing to grant or  
12 dissolve an injunction.

13 (h) From an order appointing a receiver.

14 (i) ~~From a judgment of the small claims court.~~

15 **Comment.** Section 904.2 is amended to accommodate unification of the municipal and  
16 superior courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of  
17 the justice court. Cal. Const. art. VI, §§ 1, 5(b).

18 For guidance on what constitutes a limited case, see Section 85 & Comment.

19 Subdivision (i) is deleted because review of a judgment of the small claims division is  
20 governed by Sections 116.710-116.795.

21 **Code Civ. Proc. § 904.5 (amended). Small claims appeals**

22 SEC. \_\_\_\_\_. Section 904.5 of the Code of Civil Procedure is amended to read:

23 904.5. Appeals from the small claims division of a ~~justice or~~ municipal or  
24 superior court shall be governed by the Small Claims Act (Chapter 5.5  
25 (commencing with Section 116.110) of Title 1 of Part 1).

26 **Comment.** Section 904.5 is amended to accommodate unification of the municipal and  
27 superior courts in a county. It is also amended to reflect elimination of the justice court. Cal.  
28 Const. art. VI, §§ 1, 5(b).

29 **Code Civ. Proc. § 911 (amended). Transfer from appellate division to court of appeal**

30 SEC. \_\_\_\_\_. Section 911 of the Code of Civil Procedure is amended to read:

31 911. A court of appeal may order any case on appeal ~~within the original~~  
32 ~~jurisdiction of the municipal and justice courts~~ to the superior court in its district  
33 transferred to it for hearing and decision as provided by rules of the Judicial  
34 Council when the superior court certifies, or the court of appeal determines, that  
35 such transfer appears necessary to secure uniformity of decision or to settle  
36 important questions of law.

37 No case in which there is a right on appeal to a trial anew in the superior court  
38 shall be transferred pursuant to this section before a decision in such case becomes  
39 final therein.

40 A court to which any case is transferred pursuant to this section shall have  
41 similar power to review any matter and make orders and judgments as the  
42 appellate division of the superior court would have in such case, except that if the  
43 case was tried anew in the superior court, the reviewing court of appeal shall have



1 similar power to review any matter and make orders and judgments as it has in a  
2 case ~~within the original jurisdiction of the superior court~~ appealed pursuant to  
3 Section 904.1.

4 **Comment.** Section 911 is amended to accommodate unification of the municipal and superior  
5 courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of the  
6 justice court. Cal. Const. art. VI, §§ 1, 5(b).

7 Section 911 applies to appeals taken to the appellate division of the superior court (see Section  
8 904.2 (taking appeal in limited case) and to appeals taken to the superior court where the appeal is  
9 in the form of a trial de novo (see, e.g., Section 116.770 (small claims appeals)).

10 **Code Civ. Proc. § 1033 (amended). Small recovery**

11 SEC. \_\_\_\_\_. Section 1033 of the Code of Civil Procedure is amended to read:

12 1033. (a) ~~In the superior court, costs~~ Costs or any portion of claimed costs shall  
13 be as determined by the court in its discretion in a case other than a limited case  
14 in accordance with Section 1034 where the prevailing party recovers a judgment that  
15 could have been rendered in a ~~court of lesser jurisdiction~~ a limited case.

16 (b) ~~In a municipal or justice court, when~~ When a prevailing plaintiff in a limited  
17 case recovers less than the amount prescribed by law as the maximum limitation  
18 upon the jurisdiction of the small claims ~~court~~ division, the following shall apply:

19 (1) When the party could have brought the action in the small claims ~~court~~  
20 division but did not do so, the court may, in its discretion, allow or deny costs to  
21 the prevailing party, or may allow costs in part in any amount as it deems proper.

22 (2) When the party could not have brought the action in the small claims ~~court~~  
23 division, costs and necessary disbursements shall be limited to the actual cost of  
24 the filing fee, the actual cost of service of process, and, when otherwise  
25 specifically allowed by law, reasonable attorney fees. However, those costs shall  
26 only be awarded to the plaintiff if the court is satisfied that prior to the  
27 commencement of the action, the plaintiff informed the defendant in writing of the  
28 intended legal action against the defendant and that legal action could result in a  
29 judgment against the defendant which would include the costs and necessary  
30 disbursements allowed by this paragraph.

31 **Comment.** Section 1033 is amended to accommodate unification of the municipal and superior  
32 courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of the  
33 justice court, Cal. Const. art. VI, §§ 1, 5(b), and to refer more precisely to the small claims  
34 division, see Section 116.210 & Comment.

35 For guidance on what constitutes a limited case, see Section 85 & Comment.

36 **Code Civ. Proc. § 1060 (amended). Declaration of rights and duties**

37 SEC. \_\_\_\_\_. Section 1060 of the Code of Civil Procedure is amended to read:

38 1060. Any person interested under a written instrument, excluding a will or a  
39 trust, or under a contract, or who desires a declaration of his or her rights or duties  
40 with respect to another, or in respect to, in, over or upon property, or with respect  
41 to the location of the natural channel of a watercourse, may, in cases of actual  
42 controversy relating to the legal rights and duties of the respective parties, bring an  
43 original action or cross-complaint in the superior court or in the municipal or

1 justice court to the extent allowed pursuant to Article 1 (commencing with Section  
2 86 85) of Chapter 5 5.1 of Title 1 of Part 1 for a declaration of his or her rights and  
3 duties in the premises, including a determination of any question of construction  
4 or validity arising under the instrument or contract. He or she may ask for a  
5 declaration of rights or duties, either alone or with other relief; and the court may  
6 make a binding declaration of these rights or duties, whether or not further relief is  
7 or could be claimed at the time. The declaration may be either affirmative or  
8 negative in form and effect, and the declaration shall have the force of a final  
9 judgment. The declaration may be had before there has been any breach of the  
10 obligation in respect to which said declaration is sought.

11 **Comment.** Section 1060 is amended to accommodate unification of the municipal and superior  
12 courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect the elimination of the  
13 justice court. Cal. Const. art. VI, §§ 1, 5(b).

14 **Code Civ. Proc. § 1068 (amended). Courts authorized to grant writ of review**

15 SEC. \_\_\_\_\_. Section 1068 of the Code of Civil Procedure is amended to read:

16 1068. (a) A writ of review may be granted by any court, except a municipal or  
17 justice court, when an inferior tribunal, board, or officer, exercising judicial  
18 functions, has exceeded the jurisdiction of such tribunal, board, or officer, and  
19 there is no appeal, nor, in the judgment of the court, any plain, speedy, and  
20 adequate remedy.

21 (b) The appellate division of the superior court may grant a writ of review  
22 directed to the superior court in a limited case.

23 **Comment.** Section 1068 is amended to accommodate unification of the municipal and superior  
24 courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of the  
25 justice court. Cal. Const. art. VI, §§ 1, 5(b).

26 Subdivision (b) implements Constitution Article VI, Section 10. For guidance on what  
27 constitutes a limited case, see Section 85 & Comment.

28 **Code Civ. Proc. § 1085 (amended). Courts authorized to grant writ of mandate**

29 SEC. \_\_\_\_\_. Section 1085 of the Code of Civil Procedure is amended to read:

30 1085. It (a) A writ of mandate may be issued by any court, except a municipal or  
31 justice court, to any inferior tribunal, corporation, board, or person, to compel the  
32 performance of an act which the law specially enjoins, as a duty resulting from an  
33 office, trust, or station; or to compel the admission of a party to the use and  
34 enjoyment of a right or office to which he the party is entitled, and from which he  
35 the party is unlawfully precluded by such inferior tribunal, corporation, board or  
36 person.

37 (b) The appellate division of the superior court may grant a writ of mandate  
38 directed to the superior court in a limited case.

39 **Comment.** Section 1085 is amended to accommodate unification of the municipal and superior  
40 courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of the  
41 justice court. Cal. Const. art. VI, §§ 1, 5(b).

42 Subdivision (b) implements Constitution Article VI, Section 10. For guidance on what  
43 constitutes a limited case, see Section 85 & Comment.

1 **Code Civ. Proc. § 1103 (amended). Courts authorized to grant writ of prohibition**

2 SEC. \_\_\_\_\_. Section 1103 of the Code of Civil Procedure is amended to read:

3 1103. ~~It~~ (a) A writ of prohibition may be issued by any court, except municipal  
4 ~~or justice~~ courts, to an inferior tribunal or to a corporation, board, or person, in all  
5 cases where there is not a plain, speedy, and adequate remedy in the ordinary  
6 course of law. It is issued upon the verified petition of the person beneficially  
7 interested.

8 (b) The appellate division of the superior court may grant a writ of prohibition  
9 directed to the superior court in a limited case.

10 **Comment.** Section 1103 is amended to accommodate unification of the municipal and superior  
11 courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of the  
12 justice court. Cal. Const. art. VI, §§ 1, 5(b).

13 Subdivision (b) implements Constitution Article VI, Section 10. For guidance on what  
14 constitutes a limited case, see Section 85 & Comment.

15 **Code Civ. Proc. § 1134 (amended). Judgment and costs**

16 SEC. \_\_\_\_\_. Section 1134 of the Code of Civil Procedure is amended to read:

17 1134. In all courts the statement must be filed with the clerk of the court in  
18 which the judgment is to be entered, who must endorse upon it, and enter a  
19 judgment of such court for the amount confessed with the costs hereinafter set  
20 forth. At the time of filing, the plaintiff shall pay as court costs which shall  
21 become a part of the judgment the following fees: ~~in superior courts~~ fifteen dollars  
22 (\$15) ~~and in municipal courts and justice courts~~ or in a limited case ten dollars  
23 (\$10). No fee shall be collected from the defendant. No fee shall be paid by the  
24 clerk of the court in which said confession of judgment is filed for the law library  
25 fund nor for services of any court reporter. The statement and affidavit, with the  
26 judgment endorsed thereon, becomes the judgment roll.

27 **Comment.** Section 1134 is amended to accommodate unification of the municipal and superior  
28 courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of the  
29 justice court. Cal. Const. art. VI, §§ 1, 5(b).

30 For guidance on what constitutes a limited case, see Section 85 & Comment.

31 **Code Civ. Proc. § 1161.2 (amended). Case court records**

32 SEC. \_\_\_\_\_. Section 1161.2 of the Code of Civil Procedure is amended to read:

33 1161.2. (a) Except as provided in subdivision (g), in any case filed under this  
34 chapter ~~in municipal court~~ as a limited case, the court clerk shall not allow access  
35 to the court file, index, register of actions, or other court records until 60 days  
36 following the date the complaint is filed, except pursuant to an ex parte court order  
37 upon a showing of good cause therefor by any person including, but not limited to,  
38 a newspaper publisher. However, the clerk of the court shall allow access to the  
39 court file to a party in the action, an attorney of a party in the action, or any other  
40 person who (1) provides to the clerk the names of at least one plaintiff, one  
41 defendant, and the address, including the apartment, unit, or space number, if  
42 applicable, of the subject premises, or (2) provides to the clerk the name of one of

1 the parties or the case number and can establish through proper identification that  
2 he or she resides at the subject premises.

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

7 (c) Except as provided in subdivision (g), upon the filing of any case so  
8 restricted, the court clerk shall mail notice to each defendant named in the action.  
9 The notice shall be mailed to the address provided in the complaint. The notice  
10 shall contain a statement that an unlawful detainer complaint (eviction action) has  
11 been filed naming that party as a defendant, and that access to the court file will be  
12 delayed for 60 days except to a party, an attorney for one of the parties, or any  
13 other person who (1) provides to the clerk the names of at least one plaintiff and  
14 one defendant in the action and provides to the clerk the address, including any  
15 applicable apartment, unit, or space number, of the subject premises, or (2)  
16 provides to the clerk the name of one of the parties in the action or the case  
17 number and can establish through proper identification that he or she lives at the  
18 subject premises. The notice shall also contain a statement that access to the court  
19 index, register of actions, or other records is not permitted until 60 days after the  
20 complaint is filed, except pursuant to an ex parte order upon a showing of good  
21 cause therefor. The notice shall contain on its face the name and phone number of  
22 the county bar association and the name and phone number of an office funded by  
23 the federal Legal Services Corporation which provides legal services to low-  
24 income persons in the county in which the action is filed. The notice shall state  
25 that these numbers may be called for legal advice regarding the case. The notice  
26 shall be issued between 24 and 48 hours of the filing of the complaint, excluding  
27 weekends and holidays. One copy of the notice shall be addressed to “all  
28 occupants” and mailed separately to the subject premises. The notice shall not  
29 constitute service of the summons and complaint.

30 (d) Notwithstanding any other provision of law, the court shall, upon adoption of  
31 a resolution by the board of supervisors requiring such a fee, charge an additional  
32 fee for filing a first appearance by the plaintiff in an amount equal in the aggregate  
33 to the actual cost of complying with this section, but which shall not exceed a  
34 maximum of four dollars (\$4). This fee shall be included as part of the total filing  
35 fee for actions filed under this chapter. Any such board resolution in effect on  
36 January 1, 1994, shall remain in effect until it is repealed.

37 (e) A municipal court or the superior court in a county in which there is no  
38 municipal court, after consultation with local associations of rental property  
39 owners, tenant groups, and providers of legal services to tenants, may exempt  
40 itself from the operation of this section upon a finding that unscrupulous eviction  
41 defense services are not a substantial problem in the judicial district. The court  
42 shall review the finding every 12 months. An exempt court shall not charge the  
43 additional fee authorized in subdivision (d).

1 (f) The Judicial Council shall examine the extent to which requests for access to  
2 files pursuant to an ex parte order under subdivision (a) are granted or denied, and  
3 if denied, the reason for the denial of access.

4 (g) This section shall not apply to a case which seeks to terminate a mobilehome  
5 park tenancy if the statement of the character of the proceeding in the caption of  
6 the complaint clearly indicates that the complaint seeks termination of a  
7 mobilehome park tenancy.

8 **Comment.** Section 1161.2 is amended to accommodate unification of the municipal and  
9 superior courts in a county. Cal. Const. art. VI, § 5(e). Formerly, each county had one or more  
10 municipal courts and a superior court, and subdivision (a) referred to an unlawful detainer case  
11 filed in a municipal court. A limited case is equivalent to a matter within the original jurisdiction  
12 of the municipal court under former law, so Section 1161.2 as amended continues the effect of  
13 former law. See Section 85 (limited cases) & Comment.

14 For guidance in applying subdivision (e), see Section 38 (judicial districts) & Comment.

15 **Code Civ. Proc. § 1710.20 (amended). Filing of application**

16 SEC. \_\_\_\_\_. Section 1710.20 of the Code of Civil Procedure is amended to read:

17 1710.20. (a) ~~The~~ In a county in which there is a municipal court, the application  
18 shall be filed in a municipal or justice court in all cases in which the sister state  
19 judgment amounts to twenty-five thousand dollars (\$25,000) or less—and. The  
20 application shall be filed in a superior court in all other cases.

21 (b) Subject to the power of the court to transfer proceedings under this chapter  
22 pursuant to Title 4 (commencing with Section 392) of Part 2, the proper county for  
23 the filing of an application is any of the following:

24 (1) The county in which any judgment debtor resides; or

25 (2) If no judgment debtor is a resident, any county in this state.

26 (c) A case in which the sister state judgment amounts to twenty-five thousand  
27 dollars (\$25,000) or less is a limited case.

28 **Comment.** Section 1710.20 is amended to accommodate unification of the municipal and  
29 superior courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of  
30 the justice court. Cal. Const. art. VI, §§ 1, 5(b).

31 See Section 85 (limited cases) & Comment.

1 APPELLATE DIVISION CONFORMING REVISIONS

2 **Code Civ. Proc. § 170.7 (amended). Judge serving on appellate division**

3 SEC. \_\_\_\_\_. Section 170.7 of the Code of Civil Procedure is amended to read:

4 170.7. Section 170.6 does not apply to a judge designated or assigned to serve  
5 on the appellate ~~department~~ division of a superior court in ~~his~~ the judge's capacity  
6 as a judge of ~~such department~~ that division.

7 **Comment.** Section 170.7 is amended to refer more precisely to the appellate division. See Cal.  
8 Const. art. VI, § 4.

1 JUSTICE COURT CONFORMING REVISIONS

2 **Heading of Chapter 5 (commencing with Section 81) (amended)**

3 SEC \_\_\_\_\_. The heading of Chapter 5 (commencing with Section 81) of Title 1  
4 of Part 1 of the Code of Civil Procedure is amended to read:

5 CHAPTER 5. MUNICIPAL COURTS AND JUSTICE COURTS

6 **Comment.** The heading “Chapter 5. Municipal Courts and Justice Courts” is amended to  
7 reflect the elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

8 **Heading of Article 1 (commencing with Section 81) (amended)**

9 SEC \_\_\_\_\_. The heading of Article 1 (commencing with Section 81) of Chapter 5  
10 of Title 1 of Part 1 of the Code of Civil Procedure is repealed.

11 ~~ARTICLE 1. GENERAL PROVISIONS~~

12 **Comment.** The heading “Article 1. General Provisions” is repealed as unnecessary.

13 **Code Civ. Proc. § 82 (amended). Effect of establishing municipal court**

14 SEC. \_\_\_\_\_. Section 82 of the Code of Civil Procedure is amended to read:

15 82. The establishment of a municipal court, ~~or justice court,~~ in a county, or city  
16 and county, or the determination of the jurisdiction of ~~such courts~~ a municipal  
17 court by the Legislature, shall not affect, alter or diminish the previously existing  
18 jurisdiction of the superior court of any county, or city and county, other than that  
19 of the county, or city and county, wherein such municipal ~~or justice~~ court is  
20 established.

21 **Comment.** Section 82 is amended to reflect the elimination of the justice court. Cal. Const. art.  
22 VI, §§ 1, 5(b).

23 **Code Civ. Proc. § 83 (repealed). Concurrent jurisdiction**

24 SEC. \_\_\_\_\_. Section 83 of the Code of Civil Procedure is repealed.

25 ~~83. The jurisdiction of municipal and justice courts is the same and concurrent.~~

26 **Comment.** Section 83 is repealed to reflect the elimination of the justice court. Cal. Const. art.  
27 VI, §§ 1, 5(b).

28 **Code Civ. Proc. § 84 (amended). Process**

29 SEC. \_\_\_\_\_. Section 84 of the Code of Civil Procedure is amended to read:

30 84. The process of municipal courts ~~and justice courts~~ shall extend throughout  
31 the State.

32 **Comment.** Section 84 is amended to reflect the elimination of the justice court. Cal. Const. art.  
33 VI, §§ 1, 5(b).

34 **Code Civ. Proc. § 88 (repealed). Clerks of justice courts**

35 SEC. \_\_\_\_\_. Section 88 of the Code of Civil Procedure is repealed.



1     ~~88. Clerks of justice courts, in addition to the other powers conferred upon them~~  
2 ~~by law, shall have power to administer and certify oaths to affidavits, and all~~  
3 ~~papers, documents or instruments used in, or in connection with, the civil actions~~  
4 ~~or proceedings in such justice courts and to issue summons and other writs and~~  
5 ~~notices in civil actions in said courts in the name of the judge before whom the~~  
6 ~~same is pending or out of whose court the same is issued.~~

7     **Comment.** Section 88 is repealed to reflect the elimination of the justice court. Cal. Const. art.  
8 VI, §§ 1, 5(b).

9     **Code Civ. Proc. § 89 (repealed). Issuance of papers in blank**

10     SEC. \_\_\_\_\_. Section 89 of the Code of Civil Procedure is repealed.

11     ~~89. The summons, execution, and every other paper made or issued by a judge~~  
12 ~~of a justice court, except a subpoena, must be issued without a blank left to be~~  
13 ~~filled by another, otherwise it is void.~~

14     **Comment.** Section 89 is repealed to reflect the elimination of the justice court. Cal. Const. art.  
15 VI, §§ 1, 5(b).

16     **Code Civ. Proc. § 134 (amended). Court closure on judicial holidays**

17     SEC. \_\_\_\_\_. Section 134 of the Code of Civil Procedure is amended to read:

18     134. (a) Except as provided in subdivision (c), the courts shall be closed for the  
19 transaction of judicial business on judicial holidays for all but the following  
20 purposes:

21     (1) To give, upon their request, instructions to a jury when deliberating on their  
22 verdict.

23     (2) To receive a verdict or discharge a jury.

24     (3) For the conduct of arraignments and the exercise of the powers of a  
25 magistrate in a criminal action, or in a proceeding of a criminal nature.

26     (4) For the conduct of Saturday small claims ~~court~~ division sessions pursuant to  
27 the Small Claims Act set forth in Chapter 5.5 (commencing with Section 116.110).

28     (b) Injunctions and writs of prohibition may be issued and served on any day.

29     (c) In any superior, ~~municipal, or justice~~ or municipal court, one or more  
30 departments of the court may remain open and in session for the transaction of any  
31 business which may come before the department in the exercise of the civil or  
32 criminal jurisdiction of the court, or both, on a judicial holiday or at any hours of  
33 the day or night, or both, as the judges of the court prescribe.

34     (d) The fact that a court is open on a judicial holiday shall not make that day a  
35 nonholiday for purposes of computing the time required for the conduct of any  
36 proceeding nor for the performance of any act. Any paper lodged with the court at  
37 a time when the court is open pursuant to subdivision (c), shall be filed by the  
38 court on the next day which is not a judicial holiday, if the document meets  
39 appropriate criteria for filing.

40     **Comment.** Section 134 is amended to reflect the elimination of the justice court. Cal. Const.  
41 art. VI, §§ 1, 5(b). It is also amended to refer more precisely to the small claims division. See  
42 Section 116.210 & Comment.

1 **Code Civ. Proc. § 166 (amended). Judges of municipal and superior courts**

2 SEC. \_\_\_\_\_. Section 166 of the Code of Civil Procedure is amended to read:

3 166. (a) The judge or judges of the superior, ~~municipal and justice~~ and  
4 municipal courts may, in chambers, in the matters within the jurisdiction of their  
5 respective courts:

6 (1) Grant all orders and writs which are usually granted in the first instance upon  
7 an ex parte application, and hear and dispose of those orders and writs, appoint  
8 referees, require and receive inventories and accounts to be filed, order notice of  
9 settlement of supplemental accounts, suspend the powers of personal  
10 representatives, guardians, or conservators in the cases allowed by law, appoint  
11 special administrators, grant letters of temporary guardianship or conservatorship,  
12 approve or reject claims, and direct the issuance from the court of all writs and  
13 process necessary in the exercise of their powers in matters of probate.

14 (2) Hear and determine all motions made pursuant to Section 657 or 663.

15 (3) Hear and determine all uncontested actions, proceedings, demurrers,  
16 motions, petitions, applications, and other matters pending before the court other  
17 than actions for dissolution of marriage, for legal separation, or for a judgment of  
18 nullity of the marriage, and except also applications for confirmation of sale of  
19 real property in probate proceedings.

20 (4) Hear and determine motions to tax costs of enforcing a judgment.

21 (5) Approve bonds and undertakings.

22 (b) A judge may, out of court, anywhere in the state, exercise all the powers and  
23 perform all the functions and duties conferred upon a judge as contradistinguished  
24 from the court, or which a judge may exercise or perform in chambers.

25 **Comment.** Section 166 is amended to reflect the elimination of the justice court. Cal. Const.  
26 art. VI, §§ 1, 5(b).

27 **Code Civ. Proc. § 170.5 (amended). Definitions**

28 SEC. \_\_\_\_\_. Section 170.5 of the Code of Civil Procedure is amended to read:

29 170.5. For the purposes of Sections 170 to 170.5, inclusive, the following  
30 definitions apply:

31 (a) “Judge” means judges of the ~~justice, municipal,~~ municipal and superior  
32 courts, and court commissioners and referees.

33 (b) “Financial interest” means ownership of more than a 1 percent legal or  
34 equitable interest in a party, or a legal or equitable interest in a party of a fair  
35 market value in excess of one thousand five hundred dollars (\$1,500), or a  
36 relationship as director, advisor or other active participant in the affairs of a party,  
37 except as follows:

38 (1) Ownership in a mutual or common investment fund that holds securities is  
39 not a “financial interest” in those securities unless the judge participates in the  
40 management of the fund.

41 (2) An office in an educational, religious, charitable, fraternal, or civic  
42 organization is not a “financial interest” in securities held by the organization.

1 (3) The proprietary interest of a policyholder in a mutual insurance company, or  
2 a depositor in a mutual savings association, or a similar proprietary interest, is a  
3 “financial interest” in the organization only if the outcome of the proceeding could  
4 substantially affect the value of the interest.

5 (c) “Officer of a public agency” does not include a Member of the Legislature or  
6 a state or local agency official acting in a legislative capacity.

7 (d) The third degree of relationship shall be calculated according to the civil law  
8 system.

9 (e) “Private practice of law” includes a fee for service, retainer, or salaried  
10 representation of private clients or public agencies, but excludes lawyers as full-  
11 time employees of public agencies or lawyers working exclusively for legal aid  
12 offices, public defender offices, or similar nonprofit entities whose clientele is by  
13 law restricted to the indigent.

14 (f) “Proceeding” means the action, case, cause, motion, or special proceeding to  
15 be tried or heard by the judge.

16 (g) “Fiduciary” includes any executor, trustee, guardian, or administrator.

17 **Comment.** Section 170.5 is amended to reflect the elimination of the justice court. Cal. Const.  
18 art. VI, §§ 1, 5(b).

19 **Code Civ. Proc. § 170.6 (amended). Prejudice against party or attorney**

20 SEC. \_\_\_\_\_. Section 170.6 of the Code of Civil Procedure is amended to read:

21 170.6. (1) No judge, court commissioner, or referee of any superior, ~~municipal~~  
22 ~~or justice or municipal~~ court of the State of California shall try any civil or  
23 criminal action or special proceeding of any kind or character nor hear any matter  
24 ~~therein~~ which involves a contested issue of law or fact when it shall be established  
25 as hereinafter provided that the judge or court commissioner is prejudiced against  
26 any party or attorney or the interest of any party or attorney appearing in the action  
27 or proceeding.

28 (2) Any party to or any attorney appearing in any such action or proceeding may  
29 establish this prejudice by an oral or written motion without notice supported by  
30 affidavit or declaration under penalty of perjury or an oral statement under oath  
31 that the judge, court commissioner, or referee before whom the action or  
32 proceeding is pending or to whom it is assigned is prejudiced against any such  
33 party or attorney or the interest of the party or attorney so that the party or attorney  
34 cannot or believes that he or she cannot have a fair and impartial trial or hearing  
35 before the judge, court commissioner, or referee. Where the judge, other than a  
36 judge assigned to the case for all purposes, court commissioner, or referee  
37 assigned to or who is scheduled to try the cause or hear the matter is known at  
38 least 10 days before the date set for trial or hearing, the motion shall be made at  
39 least five days before that date. If directed to the trial of a cause where there is a  
40 master calendar, the motion shall be made to the judge supervising the master  
41 calendar not later than the time the cause is assigned for trial. If directed to the  
42 trial of a cause which has been assigned to a judge for all purposes, the motion

1 shall be made to the assigned judge or to the presiding judge by a party within 10  
2 days after notice of the all purpose assignment, or if the party has not yet appeared  
3 in the action, then within 10 days after the appearance. If the court in which the  
4 action is pending is authorized to have no more than one judge and the motion  
5 claims that the duly elected or appointed judge of that court is prejudiced, the  
6 motion shall be made before the expiration of 30 days from the date of the first  
7 appearance in the action of the party who is making the motion or whose attorney  
8 is making the motion. In no event shall any judge, court commissioner, or referee  
9 entertain the motion if it be made after the drawing of the name of the first juror,  
10 or if there be no jury, after the making of an opening statement by counsel for  
11 plaintiff, or if there is no such statement, then after swearing in the first witness or  
12 the giving of any evidence or after trial of the cause has otherwise commenced. If  
13 the motion is directed to a hearing (other than the trial of a cause), the motion shall  
14 be made not later than the commencement of the hearing. In the case of trials or  
15 hearings not herein specifically provided for, the procedure herein specified shall  
16 be followed as nearly as may be. The fact that a judge, court commissioner, or  
17 referee has presided at or acted in connection with a pretrial conference or other  
18 hearing, proceeding or motion prior to trial and not involving a determination of  
19 contested fact issues relating to the merits shall not preclude the later making of  
20 the motion provided for herein at the time and in the manner hereinbefore  
21 provided.

22 A motion under this paragraph may be made following reversal on appeal of a  
23 trial court's decision if the trial judge in the prior proceeding is assigned to  
24 conduct a new trial on the matter. The motion shall be made within 60 days after  
25 the party or the party's attorney has been notified of the assignment.

26 (3) If the motion is duly presented and the affidavit or declaration under penalty  
27 of perjury is duly filed or such oral statement under oath is duly made, thereupon  
28 and without any further act or proof, the judge supervising the master calendar, if  
29 any, shall assign some other judge, court commissioner, or referee to try the cause  
30 or hear the matter. In other cases, the trial of the cause or the hearing of the matter  
31 shall be assigned or transferred to another judge, court commissioner, or referee of  
32 the court in which the trial or matter is pending or, if there is no other judge, court  
33 commissioner, or referee of the court in which the trial or matter is pending, the  
34 Chairman of the Judicial Council shall assign some other judge, court  
35 commissioner, or referee to try the cause or hear the matter as promptly as  
36 possible. Under no circumstances shall a party or attorney be permitted to make  
37 more than one such motion in any one action or special proceeding pursuant to this  
38 section; and in actions or special proceedings where there may be more than one  
39 plaintiff or similar party or more than one defendant or similar party appearing in  
40 the action or special proceeding, only one motion for each side may be made in  
41 any one action or special proceeding.

42 (4) Unless required for the convenience of the court or unless good cause is  
43 shown, a continuance of the trial or hearing shall not be granted by reason of the

1 making of a motion under this section. If a continuance is granted, the cause or  
2 matter shall be continued from day to day or for other limited periods upon the  
3 trial or other calendar and shall be reassigned or transferred for trial or hearing as  
4 promptly as possible.

5 (5) Any affidavit filed pursuant to this section shall be in substantially the  
6 following form:

7  
8 (Here set forth court and cause)

9  
10  
11 State of California, ) PEREMPTORY  
12 ) ss. CHALLENGE  
13 County of )  
14

15 \_\_\_\_\_, being duly sworn, deposes and says: That he or she is a party  
16 (or attorney for a party) to the within action (or special proceeding). That  
17 \_\_\_\_\_ the judge, court commissioner, or referee before whom the trial of  
18 the (or a hearing in the) aforesaid action (or special proceeding) is pending (or to  
19 whom it is assigned), is prejudiced against the party (or his or her attorney) or the  
20 interest of the party (or his or her attorney) so that affiant cannot or believes that  
21 he or she cannot have a fair and impartial trial or hearing before the judge, court  
22 commissioner, or referee.  
23

24 \_\_\_\_\_  
25  
26 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
27 19\_\_\_\_.

28  
29 (Clerk or notary public or other  
30 officer administering oath)  
31

32 (6) Any oral statement under oath or declaration under penalty of perjury made  
33 pursuant to this section shall include substantially the same contents as the  
34 affidavit above.

35 (7) Nothing in this section shall affect or limit the provisions of Section 170 and  
36 Title 4, Part 2, of this code and this section shall be construed as cumulative  
37 thereto.

38 (8) If any provision of this section or the application to any person or  
39 circumstance is held invalid, that invalidity shall not affect other provisions or  
40 applications of the section which can be given effect without the invalid provision  
41 or application and to this end the provisions of this section are declared to be  
42 severable.

1 **Comment.** Subdivision (1) of Section 170.6 is amended to reflect the elimination of the justice  
2 court. Cal. Const. art. VI, §§ 1, 5(b).

3 **Code Civ. Proc. § 179 (amended). Taking and certifying acknowledgments, affidavits or**  
4 **depositions**

5 SEC. \_\_\_\_\_. Section 179 of the Code of Civil Procedure is amended to read:

6 179. Each of the justices of the Supreme Court and of any court of appeal and  
7 the judges of the superior courts, shall have power in any part of the state, and  
8 every municipal court judge and ~~judge of a justice court~~ shall have power within  
9 the county or city and county in which he the judge is elected or appointed, to take  
10 and certify:

11 1. The proof and acknowledgment of a conveyance of real property, or of any  
12 other written instrument.

13 2. The acknowledgment of satisfaction of a judgment of any court.

14 3. An affidavit or deposition to be used in this state.

15 **Comment.** Section 179 is amended to reflect the elimination of the justice court. Cal. Const.  
16 art. VI, §§ 1, 5(b).

17 **Code Civ. Proc. § 194 (amended). Definitions**

18 SEC. \_\_\_\_\_. Section 194 of the Code of Civil Procedure is amended to read:

19 194. The following definitions govern the construction of this chapter:

20 (a) “County” means any county or any coterminous city and county.

21 (b) “Court” means the superior, ~~municipal, and justice~~ and municipal courts of  
22 this state, and includes, when the context requires, any judge of the court.

23 (c) “Deferred jurors” are those prospective jurors whose request to reschedule  
24 their service to a more convenient time is granted by the jury commissioner.

25 (d) “Excused jurors” are those prospective jurors who are excused from service  
26 by the jury commissioner for valid reasons based on statute, state or local court  
27 rules, and policies.

28 (e) “Juror pool” means the group of prospective qualified jurors appearing for  
29 assignment to trial jury panels.

30 (f) “Jury of inquest” is a body of persons summoned from the citizens before the  
31 sheriff, coroner, or other ministerial officers, to inquire of particular facts.

32 (g) “Master list” means a list of names randomly selected from the source lists.

33 (h) “Potential juror” means any person whose name appears on a source list.

34 (i) “Prospective juror” means a juror whose name appears on the master list.

35 (j) “Qualified juror” means a person who meets the statutory qualifications for  
36 jury service.

37 (k) “Qualified juror list” means a list of qualified jurors.

38 (l) “Random” means that which occurs by mere chance indicating an unplanned  
39 sequence of selection where each juror’s name has substantially equal probability  
40 of being selected.

41 (m) “Source list” means a list used as a source of potential jurors.



1 (n) “Summons list” means a list of prospective or qualified jurors who are  
2 summoned to appear or to be available for jury service.

3 (o) “Trial jurors” are those jurors sworn to try and determine by verdict a  
4 question of fact.

5 (p) “Trial jury” means a body of persons selected from the citizens of the area  
6 served by the court and sworn to try and determine by verdict a question of fact.

7 (q) “Trial jury panel” means a group of prospective jurors assigned to a  
8 courtroom for the purpose of voir dire.

9 **Comment.** Subdivision (b) of Section 194 is amended to reflect the elimination of the justice  
10 court. Cal. Const. art. VI, §§ 1, 5(b).

11 **Code Civ. Proc. § 195 (amended). Jury commissioners**

12 SEC. \_\_\_\_\_. Section 195 of the Code of Civil Procedure is amended to read:

13 195. (a) In each county, there shall be one jury commissioner who shall be  
14 appointed by, and serve at the pleasure of, a majority of the judges of the superior  
15 court. In any county where there is a superior court administrator or executive  
16 officer, that person shall serve as ex officio jury commissioner. The person so  
17 appointed shall serve as jury commissioner for all trial courts within the county. In  
18 any municipal or justice court district in the county, a majority of the judges may  
19 appoint the clerk/administrator to select jurors for their court pursuant to this  
20 chapter. In any court jurisdiction where any person other than a court  
21 administrator or clerk/administrator is serving as jury commissioner on the  
22 effective date of this section, that person shall continue to so serve at the pleasure  
23 of a majority of the judges of the appointing court.

24 (b) Except where the superior court administrator or executive officer serves as  
25 ex officio jury commissioner, the jury commissioner’s salary shall be set by joint  
26 action of the board of supervisors and a majority of the superior court judges. Any  
27 jury commissioner may, whenever the business of court requires, and with consent  
28 of the board of supervisors, appoint deputy jury commissioners. Salaries and  
29 benefits of such deputies shall be fixed in the same manner as salaries and benefits  
30 of other court employees.

31 (c) The jury commissioner shall be primarily responsible for managing the jury  
32 system under the general supervision of the court in conformance with the purpose  
33 and scope of this act. He or she shall have authority to establish policies and  
34 procedures necessary to fulfill this responsibility.

35 **Comment.** Section 195 is amended to reflect the elimination of the justice court. Cal. Const.  
36 art. VI, §§ 1, 5(b).

37 **Code Civ. Proc. § 215 (amended). Fees and mileage for jurors**

38 SEC. \_\_\_\_\_. Section 215 of the Code of Civil Procedure is amended to read:

39 215. Unless a higher fee is provided for each day’s attendance by county or city  
40 and county ordinance, the fee for jurors in the superior, ~~municipal, and justice~~ and  
41 municipal courts, in civil and criminal cases, is five dollars (\$5) a day for each  
42 day’s attendance as a juror. Unless a higher rate of mileage is otherwise provided



1 by statute or by county or city and county ordinance, jurors in the superior,  
2 ~~municipal, and justice and municipal~~ courts shall be reimbursed for mileage at the  
3 rate of fifteen cents (\$0.15) per mile for each mile actually traveled in attending  
4 court as a juror, in going only.

5 (b) In criminal cases, the board of supervisors of each county shall make  
6 sufficient appropriations for the payment of the fees provided for in this section.

7 **Comment.** Subdivision (a) of Section 215 is amended to reflect the elimination of the justice  
8 court. Cal. Const. art. VI, §§ 1, 5(b).

9 **Code Civ. Proc. § 217 (amended). Jurors in criminal cases**

10 SEC. \_\_\_\_\_. Section 217 of the Code of Civil Procedure is amended to read:

11 217. In criminal cases only, while the jury is kept together, either during the  
12 progress of the trial or after their retirement for deliberation, the court may direct  
13 the sheriff or marshal to provide the jury with suitable and sufficient food and  
14 lodging, or other reasonable necessities. In the superior, ~~municipal, and justice and~~  
15 municipal courts, the expenses incurred under the provisions of this section shall  
16 be charged against the county or city and county in which the court is held. All  
17 those expenses shall be paid on the order of the court.

18 **Comment.** Section 217 is amended to reflect the elimination of the justice court. Cal. Const.  
19 art. VI, §§1, 5(b).

20 **Code Civ. Proc. § 234 (amended). Alternate jurors**

21 SEC. \_\_\_\_\_. Section 234 of the Code of Civil Procedure is amended to read:

22 234. Whenever, in the opinion of a judge of a superior, ~~municipal, or justice or~~  
23 municipal court about to try a civil or criminal action or proceeding, the trial is  
24 likely to be a protracted one, or upon stipulation of the parties, the court may cause  
25 an entry to that effect to be made in the minutes of the court and thereupon,  
26 immediately after the jury is impaneled and sworn, the court may direct the calling  
27 of one or more additional jurors, in its discretion, to be known as “alternate  
28 jurors.”

29 These alternate jurors shall be drawn from the same source, and in the same  
30 manner, and have the same qualifications, as the jurors already sworn, and shall be  
31 subject to the same examination and challenges. However, each side, or each  
32 defendant, as provided in Section 231, shall be entitled to as many peremptory  
33 challenges to the alternate jurors as there are alternate jurors called.

34 The alternate jurors shall be seated so as to have equal power and facilities for  
35 seeing and hearing the proceedings in the case, and shall take the same oath as the  
36 jurors already selected, and shall, unless excused by the court, attend at all times  
37 upon the trial of the cause in company with the other jurors, but shall not  
38 participate in deliberation unless ordered by the court, and for a failure to do so are  
39 liable to be punished for contempt.

40 They shall obey the orders of and be bound by the admonition of the court, upon  
41 each adjournment of the court; but if the regular jurors are ordered to be kept in  
42 the custody of the sheriff or marshal during the trial of the cause, the alternate

1 jurors shall also be kept in confinement with the other jurors; and upon final  
2 submission of the case to the jury, the alternate jurors shall be kept in the custody  
3 of the sheriff or marshal who shall not suffer any communication to be made to  
4 them except by order of the court, and shall not be discharged until the original  
5 jurors are discharged, except as provided in this section.

6 If at any time, whether before or after the final submission of the case to the  
7 jury, a juror dies or becomes ill, or upon other good cause shown to the court is  
8 found to be unable to perform his or her duty, or if a juror requests a discharge and  
9 good cause appears therefor, the court may order the juror to be discharged and  
10 draw the name of an alternate, who shall then take his or her place in the jury box,  
11 and be subject to the same rules and regulations as though he or she has been  
12 selected as one of the original jurors.

13 All laws relative to fees, expenses, and mileage or transportation of jurors shall  
14 be applicable to alternate jurors, except that in civil cases the sums for fees and  
15 mileage or transportation need not be deposited until the judge directs alternate  
16 jurors to be impaneled.

17 **Comment.** Section 234 is amended to reflect the elimination of the justice court. Cal. Const.  
18 art. VI, §§ 1, 5(b).

19 **Code Civ. Proc. § 392 (amended). Real property actions**

20 SEC. \_\_\_\_\_. Section 392 of the Code of Civil Procedure is amended to read:

21 392. (1) Subject to the power of the court to transfer actions and proceedings as  
22 provided in this title, the county in which the real property, which is the subject of  
23 the action, or some part thereof, is situated, is the proper county for the trial of the  
24 following actions:

25 (a) For the recovery of real property, or of an estate or interest therein, or for the  
26 determination in any form, of such right or interest, and for injuries to real  
27 property;

28 (b) For the foreclosure of all liens and mortgages on real property.

29 (2) The proper court for the trial of any such action, in the county hereinabove  
30 designated as the proper county, shall be determined as follows: If there is a  
31 municipal ~~or~~ justice court having jurisdiction of the subject matter of the action,  
32 established in the city and county or judicial district in which the real property  
33 which is the subject of the action, or some part thereof, is situated, such court is  
34 the proper court for the trial of such action; otherwise any court in such county  
35 having jurisdiction of the subject matter of the action, is a proper court for the trial  
36 thereof.

37 **Comment.** Section 392 is amended to reflect the elimination of the justice court. Cal. Const.  
38 art. VI, §§ 1, 5(b).

39 **Code Civ. Proc. § 393 (amended). Action for penalty or forfeiture or against public officer**

40 SEC. \_\_\_\_\_. Section 393 of the Code of Civil Procedure is amended to read:

1 393. (1) Subject to the power of the court to transfer actions and proceedings as  
2 provided in this title, the county in which the cause, or some part thereof, arose, is  
3 the proper county for the trial of the following actions:

4 (a) For the recovery of a penalty or forfeiture imposed by statute; except, that  
5 when it is imposed for an offense committed on a lake, river, or other stream of  
6 water, situated in two or more counties, the action may be tried in any county  
7 bordering on such lake, river, or stream, and opposite to the place where the  
8 offense was committed;

9 (b) Against a public officer or person especially appointed to execute ~~his~~ duties  
10 the duties of a public officer, for an act done by ~~him~~ the officer or person in virtue  
11 of ~~his~~ the office; or against a person who, by ~~his~~ the officer's command or in ~~his~~  
12 the officer's aid, does anything touching the duties of such officer.

13 (2) The proper court for the trial of any such action, in the county hereinabove  
14 designated as the proper county, shall be determined as follows: If there is a  
15 municipal ~~or justice~~ court, having jurisdiction of the subject matter of the action,  
16 established in the city and county or judicial district in which the cause, or some  
17 part thereof, arose, such court is the proper court for the trial of such action;  
18 otherwise, any court in such county, having jurisdiction of the subject matter of  
19 the action, is a proper court for the trial thereof. In the case of offenses committed  
20 on a lake, river, or stream, hereinabove mentioned, the court, having jurisdiction  
21 of the subject matter of the action, nearest to the place where such offense was  
22 committed, in any county mentioned in subdivision 1 of this section, is a proper  
23 court for the trial of the action.

24 **Comment.** Section 393 is amended to reflect the elimination of the justice court. Cal. Const.  
25 art. VI, § 5(b).

26 **Code Civ. Proc. § 395 (amended). Actions generally**

27 SEC. \_\_\_\_\_. Section 395 of the Code of Civil Procedure is amended to read:

28 395. (a) Except as otherwise provided by law and subject to the power of the  
29 court to transfer actions or proceedings as provided in this title, the county in  
30 which the defendants or some of them reside at the commencement of the action is  
31 the proper county for the trial of the action. If the action is for injury to person or  
32 personal property or for death from wrongful act or negligence, either the county  
33 where the injury occurs or the injury causing death occurs or the county in which  
34 the defendants, or some of them reside at the commencement of the action, shall  
35 be a proper county for the trial of the action. In a proceeding for dissolution of  
36 marriage, the county in which either the petitioner or respondent has been a  
37 resident for three months next preceding the commencement of the proceeding is  
38 the proper county for the trial of the proceeding. In a proceeding for nullity of  
39 marriage or legal separation of the parties, the county in which either the petitioner  
40 or the respondent resides at the commencement of the proceeding is the proper  
41 county for the trial of the proceeding. In a proceeding to enforce an obligation of  
42 support under Section 3900 of the Family Code, the county in which the child

1 resides is the proper county for the trial of the action. In a proceeding to establish  
2 and enforce a foreign judgment or court order for the support of a minor child, the  
3 county in which the child resides is the proper county for the trial of the action.  
4 Subject to subdivision (b), when a defendant has contracted to perform an  
5 obligation in a particular county, either the county where the obligation is to be  
6 performed or in which the contract in fact was entered into or the county in which  
7 the defendant or any such defendant resides at the commencement of the action  
8 shall be a proper county for the trial of an action founded on that obligation, and  
9 the county in which the obligation is incurred shall be deemed to be the county in  
10 which it is to be performed unless there is a special contract in writing to the  
11 contrary. If none of the defendants reside in the state or if residing in the state and  
12 the county in which they reside is unknown to the plaintiff, the action may be tried  
13 in any county which the plaintiff may designate in his or her complaint, and, if the  
14 defendant is about to depart from the state, the action may be tried in any county  
15 where either of the parties reside or service is made. If any person is improperly  
16 joined as a defendant or has been made a defendant solely for the purpose of  
17 having the action tried in the county or judicial district where he or she resides, his  
18 or her residence shall not be considered in determining the proper place for the  
19 trial of the action.

20 (b) Subject to the power of the court to transfer actions or proceedings as  
21 provided in this title, in an action arising from an offer or provision of goods,  
22 services, loans or extensions of credit intended primarily for personal, family or  
23 household use, other than an obligation described in Section 1812.10 or Section  
24 2984.4 of the Civil Code, or an action arising from a transaction consummated as a  
25 proximate result of an unsolicited telephone call made by a seller engaged in the  
26 business of consummating transactions of that kind, the county in which the buyer  
27 or lessee in fact signed the contract, the county in which the buyer or lessee  
28 resided at the time the contract was entered into, or the county in which the buyer  
29 or lessee resides at the commencement of the action is the proper county for the  
30 trial thereof.

31 (c) If within the county there is a municipal ~~or justice~~ court having jurisdiction  
32 of the subject matter established, in the cases mentioned in subdivision (a), in the  
33 judicial district in which the defendant or any defendant resides, in which the  
34 injury to person or personal property or the injury causing death occurs, or, in  
35 which the obligation was contracted to be performed or, in cases mentioned in  
36 subdivision (b), in the judicial district which the buyer or lessee resides, in which  
37 the buyer or lessee in fact signed the contract, in which the buyer or lessee resided  
38 at the time the contract was entered into, or in which the buyer or lessee resides at  
39 the commencement of the action, then that court is the proper court for the trial of  
40 the action. Otherwise, any municipal ~~or justice~~ court in the county having  
41 jurisdiction of the subject matter is a proper court for the trial thereof.

42 (d) Any provision of an obligation described in subdivision (b) or (c) waiving  
43 those subdivisions is void and unenforceable.

1       **Comment.** Section 395 is amended to reflect the elimination of the justice court. Cal. Const.  
2 art. VI, §§ 1, 5(b).

3       **Code Civ. Proc. § 396 (amended). Court without jurisdiction**

4       SEC. \_\_\_\_\_. Section 396 of the Code of Civil Procedure is amended to read:

5       396. If an action or proceeding is commenced in a court which lacks jurisdiction  
6 of the subject matter thereof, as determined by the complaint or petition, if there is  
7 a court of this state which has such jurisdiction, the action or proceeding shall not  
8 be dismissed (except as provided in Section 399, and subdivision 1 of Section 581)  
9 but shall, on the application of either party, or on the court's own motion, be  
10 transferred to a court having jurisdiction of the subject matter which may be  
11 agreed upon by the parties, or, if they do not agree, to a court having such  
12 jurisdiction which is designated by law as a proper court for the trial or  
13 determination thereof, and it shall thereupon be entered and prosecuted in the  
14 court to which it is transferred as if it had been commenced therein, all prior  
15 proceedings being saved. In any such case, if summons is served prior to the filing  
16 of the action or proceeding in the court to which it is transferred, as to any  
17 defendant, so served, who has not appeared in the action or proceeding, the time to  
18 answer or otherwise plead shall date from service upon such defendant of written  
19 notice of filing of such action or proceeding in the court to which it is transferred.

20       If an action or proceeding is commenced in or transferred to a court which has  
21 jurisdiction of the subject matter thereof as determined by the complaint or  
22 petition, and it thereafter appears from the verified pleadings, or at the trial, or  
23 hearing, that the determination of the action or proceeding, or of a cross-  
24 complaint, will necessarily involve the determination of questions not within the  
25 jurisdiction of the court, in which the action or proceeding is pending, the court,  
26 whenever such lack of jurisdiction appears, must suspend all further proceedings  
27 therein and transfer the action or proceeding and certify the pleadings (or if the  
28 pleadings be oral, a transcript of the same), and all papers and proceedings therein  
29 to a court having jurisdiction thereof which may be agreed upon by the parties, or,  
30 if they do not agree, to a court having such jurisdiction which is designated by law  
31 as a proper court for the trial or determination thereof.

32       An action or proceeding which is transferred under the provisions of this section  
33 shall be deemed to have been commenced at the time the complaint or petition was  
34 filed in the court from which it was originally transferred.

35       Nothing herein shall be construed to preclude or affect the right to amend the  
36 pleadings as provided in this code.

37       Nothing herein shall be construed to require the superior court to transfer any  
38 action or proceeding because the judgment to be rendered, as determined at the  
39 trial or hearing, is one which might have been rendered by a municipal or justice  
40 court in the same county or city and county.

1 In any case where the lack of jurisdiction is due solely to an excess in the  
2 amount of the demand, the excess may be remitted and the action may continue in  
3 the court where it is pending.

4 Upon the making of an order for such transfer, proceedings shall be had as  
5 provided in Section 399 of this code, the costs and fees thereof, and of filing the  
6 case in the court to which transferred, to be paid by the party filing the pleading in  
7 which the question outside the jurisdiction of the court appears unless the court  
8 ordering the transfer shall otherwise direct.

9 **Comment.** Section 396 is amended to reflect the elimination of the justice court. Cal. Const.  
10 art. VI, §§ 1, 5(b).

11 **Code Civ. Proc. § 402 (amended). Transfer for convenience of municipal court**

12 SEC. \_\_\_\_\_. Section 402 of the Code of Civil Procedure is amended to read:

13 402. The presiding judge of a municipal ~~or justice~~ court district, may order, for  
14 the convenience of the court, that any case pending trial be transferred to a  
15 contiguous municipal ~~or justice~~ court district in the same county if the presiding  
16 judge in the district to which the case is proposed to be transferred consents to the  
17 transfer and notice thereof is given to the parties or their attorneys at least 10 days  
18 in advance of the date fixed for trial.

19 No fees shall be charged for the transfer of any case pursuant to this section.

20 **Comment.** Section 402 is amended to reflect the elimination of the justice court. Cal. Const.  
21 art. VI, §§ 1, 5(b).

22 **Code Civ. Proc. § 422.20 (repealed). Justice court pleadings**

23 SEC. \_\_\_\_\_. Section 422.20 of the Code of Civil Procedure is repealed.

24 ~~422.20. The rules of pleading in justice courts shall be the same as the rules of~~  
25 ~~pleading in municipal courts.~~

26 **Comment.** Section 422.20 is repealed to reflect the elimination of the justice court. Cal. Const.  
27 art. VI, §§ 1, 5(b).

28 **Code Civ. Proc. § 575 (amended). Promulgation of rules by Judicial Council**

29 SEC. \_\_\_\_\_. Section 575 of the Code of Civil Procedure is amended to read:

30 575. The Judicial Council may promulgate rules governing pretrial conferences,  
31 and the time, manner and nature thereof, in civil cases at issue, or in one or more  
32 classes thereof, in the superior, ~~municipal, and justice and municipal~~ courts.

33 **Comment.** Section 575 is amended to reflect the elimination of the justice court. Cal. Const.  
34 art. VI, §§ 1, 5(b).

35 **Code Civ. Proc. § 575.1 (amended). Local rules**

36 SEC. \_\_\_\_\_. Section 575.1 of the Code of Civil Procedure is amended to read:

37 575.1. (a) The presiding judge of each superior, ~~municipal, and justice and~~  
38 municipal court may prepare, with the assistance of appropriate committees of the  
39 court, proposed local rules designed to expedite and facilitate the business of the  
40 court. The rules need not be limited to those actions on the civil active list, but



1 may provide for the supervision and judicial management of actions from the date  
2 they are filed. Rules prepared pursuant to this section shall be submitted for  
3 consideration to the judges of the court and, upon approval by a majority of the  
4 judges, the judges shall have the proposed rules published and submitted to the  
5 local bar and others, as specified by the Judicial Council, for consideration and  
6 recommendations.

7 (b) After a majority of the judges have officially adopted the rules, 61 copies or  
8 a greater number as specified by Judicial Council rule, shall be filed with the  
9 Judicial Council as required by Section 68071 of the Government Code. The  
10 Judicial Council shall deposit a copy of each rule and amendment with each  
11 county law library or county clerk where it shall be made available for public  
12 examination. The local rules shall also be published for general distribution in  
13 accordance with rules adopted by the Judicial Council. Each court shall make its  
14 local rules available for inspection and copying in every location of the court that  
15 generally accepts filing of papers. The court may impose a reasonable charge for  
16 copying the rules and may impose a reasonable page limit on copying. The rules  
17 shall be accompanied by a notice indicating where a full set of the rules may be  
18 purchased.

19 (c) If a judge of a court adopts a rule which applies solely to cases in that  
20 judge's courtroom, or a particular branch or district of a court adopts a rule that  
21 applies solely to cases in that particular branch or district of a court, the court shall  
22 publish these rules as part of the general publication of rules required by the  
23 California Rules of Court. The court shall organize the rules so that rules on a  
24 common subject, whether individual, branch, district, or courtwide appear  
25 sequentially. Individual judges' rules and branch and district rules are local rules  
26 of court for purposes of this section and for purposes of the adoption, publication,  
27 comment, and filing requirements set forth in the Judicial Council rules applicable  
28 to local court rules.

29 **Comment.** Section 575.1 is amended to reflect the elimination of the justice court. Cal. Const.  
30 art. VI, §§ 1, 5(b).

31 **Code Civ. Proc. § 581d (amended). Dismissal**

32 SEC. \_\_\_\_\_. Section 581d of the Code of Civil Procedure is amended to read:

33 581d. A written dismissal of an action shall be entered in the clerk's register and  
34 is effective for all purposes when so entered. All dismissals ordered by the court  
35 shall be in the form of a written order signed by the court and filed in the action  
36 and such orders when so filed shall constitute judgments and be effective for all  
37 purposes, and the clerk ~~in superior, municipal, and justice courts~~ shall note such  
38 judgments in ~~his~~ the register of actions in the case.

39 **Comment.** Section 581d is amended to reflect the elimination of the justice court. Cal. Const.  
40 art. VI, §§ 1, 5(b).

41 **Code Civ. Proc. § 594 (amended). Bringing issues to trial or hearing**

42 SEC. \_\_\_\_\_. Section 594 of the Code of Civil Procedure is amended to read:

1 594. (a) In superior, ~~municipal, and justice~~ and municipal courts, either party  
2 may bring an issue to trial or to a hearing, and, in the absence of the adverse party,  
3 unless the court, for good cause, otherwise directs, may proceed with ~~his~~ the case  
4 and take a dismissal of the action, or a verdict, or judgment, as the case may  
5 require; provided, however, if the issue to be tried is an issue of fact, proof shall  
6 first be made to the satisfaction of the court that the adverse party has had 15 days'  
7 notice of such trial or five days' notice of such trial in an unlawful detainer action  
8 as specified in subdivision (b). If the adverse party has served notice of trial upon  
9 the party seeking the dismissal, verdict, or judgment at least five days prior to the  
10 trial, the adverse party shall be deemed to have had such notice.

11 (b) The notice to the adverse party required by subdivision (a) shall be served by  
12 mail on all the parties by the clerk of the court not less than 20 days prior to the  
13 date set for trial. In an unlawful detainer action where notice is served by mail  
14 such service shall be mailed not less than 10 days prior to the date set for trial. If  
15 notice is not served by the clerk as required by this subdivision, it may be served  
16 by mail by any party on the adverse party not less than 15 days prior to the date set  
17 for trial, and in an unlawful detainer action where notice is served by mail such  
18 service shall be mailed not less than 10 days prior to the date set for trial. The time  
19 provisions of Section 1013 shall not serve to extend the notice of trial  
20 requirements under this subdivision for unlawful detainer actions. If notice is  
21 served by the clerk, proof thereof may be made by introduction into evidence of  
22 the clerk's certificate pursuant to subdivision (3) of Section 1013a or other  
23 competent evidence. If notice is served by a party, proof may be made by  
24 introduction into evidence of an affidavit or certificate pursuant to subdivision (1)  
25 or (2) of Section 1013a or other competent evidence. The provisions of this  
26 subdivision are exclusive.

27 **Comment.** Section 594 is amended to reflect the elimination of the justice court. Cal. Const.  
28 art. VI, §§ 1, 5(b).

29 **Code Civ. Proc. § 628 (amended). Entry upon receipt of verdict**

30 SEC. \_\_\_\_\_. Section 628 of the Code of Civil Procedure is amended to read:

31 628. In superior, ~~municipal, and justice~~ and municipal courts, upon receipt of a  
32 verdict, an entry must be made in the minutes of the court, specifying the time of  
33 trial, the names of the jurors and witnesses, and setting out the verdict at length;  
34 and where special verdict is found, either the judgment rendered thereon, or if the  
35 case be reserved for argument or further consideration, the order thus reserving it.

36 **Comment.** Section 628 is amended to reflect the elimination of the justice court. Cal. Const.  
37 art. VI, §§ 1, 5(b).

38 **Code Civ. Proc. § 632 (amended). Statement of decision**

39 SEC. \_\_\_\_\_. Section 632 of the Code of Civil Procedure is amended to read:

40 632. In superior, ~~municipal, and justice~~ and municipal courts, upon the trial of a  
41 question of fact by the court, written findings of fact and conclusions of law shall  
42 not be required. The court shall issue a statement of decision explaining the factual

1 and legal basis for its decision as to each of the principal controverted issues at  
2 trial upon the request of any party appearing at the trial. The request must be made  
3 within 10 days after the court announces a tentative decision unless the trial is  
4 concluded within one calendar day or in less than eight hours over more than one  
5 day in which event the request must be made prior to the submission of the matter  
6 for decision. The request for a statement of decision shall specify those  
7 controverted issues as to which the party is requesting a statement of decision.  
8 After a party has requested such a statement, any party may make proposals as to  
9 the content of the statement of decision.

10 The statement of decision shall be in writing, unless the parties appearing at trial  
11 agree otherwise; however, when the trial is concluded within one calendar day or  
12 in less than 8 hours over more than one day, the statement of decision may be  
13 made orally on the record in the presence of the parties.

14 **Comment.** Section 632 is amended to reflect the elimination of the justice court. Cal. Const.  
15 art. VI, §§ 1, 5(b).

16 **Code Civ. Proc. § 655 (amended). Application of article to municipal and superior courts**

17 SEC. \_\_\_\_\_. Section 655 of the Code of Civil Procedure is amended to read:

18 655. The provisions of this article apply to superior, ~~municipal, or justice courts~~  
19 or municipal courts.

20 **Comment.** Section 655 is amended to reflect the elimination of the justice court. Cal. Const.  
21 art. VI, §§ 1, 5(b).

22 **Code Civ. Proc. § 668 (amended). Judgment book**

23 SEC. \_\_\_\_\_. Section 668 of the Code of Civil Procedure is amended to read:

24 668. Except as provided in Section 668.5, the clerk of the superior, ~~municipal,~~  
25 ~~and justice court~~ and municipal court, must keep, with the records of the court, a  
26 book called the “judgment book,” in which judgments must be entered.

27 **Comment.** Section 668 is amended to reflect the elimination of the justice court. Cal. Const.  
28 art. VI, §§ 1, 5(b).

29 **Code Civ. Proc. § 670 (amended). Judgment roll**

30 SEC. \_\_\_\_\_. Section 670 of the Code of Civil Procedure is amended to read:

31 670. In superior, ~~municipal, and justice~~ and municipal courts, the following  
32 papers, without being attached together, shall constitute the judgment roll:

33 (a) In case the complaint is not answered by any defendant, the summons, with  
34 the affidavit or proof of service; the complaint; the request for entry of default  
35 with a memorandum indorsed thereon that the default of the defendant in not  
36 answering was entered, and a copy of the judgment; if defendant has appeared by  
37 demurrer, and the demurrer has been overruled, then notice of the overruling  
38 thereof served on defendant’s attorney, together with proof of the service; and in  
39 case the service so made is by publication, the affidavit for publication of  
40 summons, and the order directing the publication of summons.

1 (b) In all other cases, the pleadings, all orders striking out any pleading in whole  
2 or in part, a copy of the verdict of the jury, the statement of decision of the court,  
3 or finding of the referee, and a copy of any order made on demurrer, or relating to  
4 a change of parties, and a copy of the judgment; if there are two or more  
5 defendants in the action, and any one of them has allowed judgment to pass  
6 against him or her by default, the summons, with proof of its service, on the  
7 defendant, and if the service on the defaulting defendant be by publication, then  
8 the affidavit for publication, and the order directing the publication of the  
9 summons.

10 **Comment.** Section 670 is amended to reflect the elimination of the justice court. Cal. Const.  
11 art. VI, §§ 1, 5(b).

12 **Code Civ. Proc. § 688.010 (amended). Jurisdiction**

13 SEC. \_\_\_\_\_. Section 688.010 of the Code of Civil Procedure is amended to read:  
14 688.010. For the purpose of the remedies provided under this article, jurisdiction  
15 is conferred upon any of the following courts:

16 (a) The superior court, regardless whether the municipal ~~or justice~~ court also has  
17 jurisdiction under subdivision (b).

18 (b) The municipal ~~or justice~~ court if (1) the amount of liability sought to be  
19 collected does not exceed the jurisdictional amount of the court and (2) the legality  
20 of the liability being enforced is not contested by the person against whom  
21 enforcement is sought.

22 **Comment.** Section 688.010 is amended to reflect elimination of the justice court. Cal. Const.  
23 art. VI, §§ 1, 5(b).

24 **Code Civ. Proc. § 912 (amended). Certification to trial court of result on appeal**

25 SEC. \_\_\_\_\_. Section 912 of the Code of Civil Procedure is amended to read:  
26 912. Upon final determination of an appeal by the reviewing court, the clerk of  
27 the court shall remit to the trial court a certified copy of the judgment or order of  
28 the reviewing court and of its opinion, if any. The clerk of the trial court, ~~or the~~  
29 ~~judge, if there be no clerk, shall file such~~ shall file the certified copy of the  
30 judgment and opinion of the reviewing court, shall attach the same to the judgment  
31 roll if the appeal was from a judgment, and shall enter a note of the judgment of  
32 the reviewing court stating whether the judgment or order appealed from has been  
33 affirmed, reversed or modified, in the margin of the original entry of such  
34 judgment or order, and also in the register of actions or docket.

35 **Comment.** Section 912 is amended to reflect the elimination of the justice court. Cal. Const.  
36 art. VI, §§ 1, 5(b), (e), 10.

37 The amendment deletes the clause authorizing the judge to substitute for the clerk if there be no  
38 clerk. That provision is obsolete because every municipal and superior court has a clerk.  
39 Additionally, judges have authority to perform any act that court clerks are allowed to perform.  
40 Section 167.

41 **Code Civ. Proc. § 1052 (amended). Register of civil actions in municipal court**

42 SEC. \_\_\_\_\_. Section 1052 of the Code of Civil Procedure is amended to read:

1 1052. The clerk of a municipal ~~or justice~~ court may keep among the records of  
2 the court a register of civil actions in which shall be entered the title of the action  
3 commenced in that court, with brief notes under it, from time to time, of all papers  
4 filed and proceedings had therein.

5 **Comment.** Section 1052 is amended to reflect the elimination of the justice court. Cal. Const.  
6 art. VI, §§ 1, 5(b).

7 **Code Civ. Proc. § 1052.5 (amended). Alternative methods of keeping register of actions**

8 SEC. \_\_\_\_\_. Section 1052.5 of the Code of Civil Procedure is amended to read:

9 1052.5. In lieu of maintaining a register of actions as described in Section 1052,  
10 the clerk of the municipal ~~or justice~~ court may maintain a register of actions by  
11 means of photographing, microphotographing, or mechanically or electronically  
12 storing the whole content of all papers and records, or any portion thereof, as will  
13 constitute a memorandum, necessary to the keeping of a register of actions so long  
14 as the completeness and chronological sequence of the register are not disturbed.

15 All such reproductions shall be placed in convenient, accessible files, and  
16 provision shall be made for preserving, examining, and using them.

17 Any photograph, microphotograph, or photocopy which is made pursuant to this  
18 section shall be made in such manner and on such paper as will comply with the  
19 minimum standards of quality approved therefor by the National Bureau of  
20 Standards.

21 **Comment.** Section 1052.5 is amended to reflect the elimination of the justice court. Cal.  
22 Const. art. VI, §§ 1, 5(b).

23 **Code Civ. Proc. § 1141.12 (amended). Arbitration**

24 SEC. \_\_\_\_\_. Section 1141.12 of the Code of Civil Procedure is amended to read:

25 1141.12. (a) In each superior court in which arbitration may be had pursuant to  
26 subdivision (a) or (b) of Section 1141.11, upon stipulation of the parties, any at-  
27 issue civil actions shall be submitted to arbitration regardless of the amount in  
28 controversy.

29 (b) In all other superior, ~~municipal, and justice~~ and municipal courts, the Judicial  
30 Council shall provide by rule for a uniform system of arbitration of the following  
31 causes:

32 (i) Any cause upon stipulation of the parties, and

33 (ii) Upon filing of an election by the plaintiff, any cause in which the plaintiff  
34 agrees that the arbitration award shall not exceed the amount in controversy as  
35 specified in Section 1141.11.

36 (c) Any election by a plaintiff shall be filed no sooner than the filing of the at-  
37 issue memorandum, and no later than 90 days before trial, or at a later time if  
38 permitted by the court.

39 **Comment.** Section 1141.12 is amended to reflect the elimination of the justice court. Cal.  
40 Const. art. VI, §§ 1, 5(b).

1 **Code Civ. Proc. § 1775.1 (amended). Definitions**

2 SEC. \_\_\_\_\_. Section 1775.1 of the Code of Civil Procedure is amended to read:

3 1775.1. (a) As used in this title:

4 (1) “Court” means a superior court, ~~municipal court, or justice~~ or municipal  
5 court.

6 (2) “Mediation” means a process in which a neutral person or persons facilitate  
7 communication between the disputants to assist them in reaching a mutually  
8 acceptable agreement.

9 (b) Unless otherwise specified in this title or ordered by the court, any act to be  
10 performed by a party may also be performed by his or her counsel of record.

11 **Comment.** Section 1775.1 is amended to reflect the elimination of the justice court. Cal.  
12 Const. art. VI, §§ 1, 5(b).

13 **Code Civ. Proc. § 2015.3 (amended). Certificate of sheriff, marshal, or court clerk**

14 SEC. \_\_\_\_\_. Section 2015.3 of the Code of Civil Procedure is amended to read:

15 2015.3. The certificate of a sheriff, marshal, or the clerk of the superior,  
16 ~~municipal, or justice~~ or municipal court, has the same force and effect as his or her  
17 affidavit.

18 **Comment.** Section 2015.3 is amended to reflect the elimination of the justice court. Cal.  
19 Const. art. VI, §§ 1, 5(b).



SMALL CLAIMS REVISIONS

**Heading of Chapter 5.5 (commencing with Section 116.110) (amended)**

SEC. \_\_\_\_\_. The heading of Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure is amended to read:

**CHAPTER 5.5 SMALL CLAIMS COURT DIVISION**

**Comment.** The heading “Chapter 5.5 Small Claims Court” is amended to refer more precisely to the small claims division. See Section 116.210 & Comment.

**Code Civ. Proc. § 116.220 (amended). Jurisdiction**

SEC. \_\_\_\_\_. Section 116.220 of the Code of Civil Procedure is amended to read:

116.220. (a) The small claims ~~court~~ division shall have jurisdiction in the following actions:

(1) Except as provided in subdivisions (c), (e), and (f), for recovery of money, if the amount of the demand does not exceed five thousand dollars (\$5,000).

(2) Except as provided in subdivisions (c), (e), and (f), to enforce payment of delinquent unsecured personal property taxes in an amount not to exceed five thousand dollars (\$5,000), if the legality of the tax is not contested by the defendant.

(3) To issue the writ of possession authorized by Sections 1861.5 and 1861.10 of the Civil Code if the amount of the demand does not exceed five thousand dollars (\$5,000).

(4) To confirm, correct, or vacate a fee arbitration award not exceeding five thousand dollars (\$5,000) between an attorney and client that is binding or has become binding, or to conduct a hearing de novo between an attorney and client after nonbinding arbitration of a fee dispute involving no more than five thousand dollars (\$5,000) in controversy, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code.

(b) In any action seeking relief authorized by subdivision (a), the court may grant equitable relief in the form of rescission, restitution, reformation, and specific performance, in lieu of, or in addition to, money damages. The court may issue a conditional judgment. The court shall retain jurisdiction until full payment and performance of any judgment or order.

(c) Notwithstanding subdivision (a), the small claims ~~court~~ division shall have jurisdiction over a defendant guarantor who is required to respond based upon the default, actions, or omissions of another, only if the demand does not exceed two thousand five hundred dollars (\$2,500).

(d) In any case in which the lack of jurisdiction is due solely to an excess in the amount of the demand, the excess may be waived, but any waiver shall not become operative until judgment.

1 (e) Notwithstanding subdivision (a), in any action filed by a plaintiff  
2 incarcerated in a Department of Corrections facility or a Youth Authority facility,  
3 the small claims ~~court~~ division shall have jurisdiction over a defendant only if the  
4 plaintiff has alleged in the complaint that he or she has exhausted his or her  
5 administrative remedies against that department, including compliance with  
6 Sections 905.2 and 905.4 of the Government Code. The final administrative  
7 adjudication or determination of the plaintiff's administrative claim by the  
8 department may be attached to the complaint at the time of filing in lieu of that  
9 allegation.

10 (f) In any action governed by subdivision (e), if the plaintiff fails to provide  
11 proof of compliance with the requirements of subdivision (e) at the time of trial,  
12 the judicial officer shall, at his or her discretion, either dismiss the action or  
13 continue the action to give the plaintiff an opportunity to provide such proof.

14 (g) For purposes of this section, "department" includes an employee of a  
15 department against whom a claim has been filed under this chapter arising out of  
16 his or her duties as an employee of that department.

17 **Comment.** Section 116.220 is amended to refer more precisely to the small claims division.  
18 See Section 116.210 & Comment.

19 **Code Civ. Proc. § 116.320 (amended). Commencement of action**

20 SEC. \_\_\_\_\_. Section 116.320 of the Code of Civil Procedure is amended to read:

21 116.320. (a) A plaintiff may commence an action in the small claims ~~court~~  
22 division by filing a claim under oath with the clerk of the small claims ~~court~~  
23 division in person or by mail.

24 (b) The claim form shall be a simple nontechnical form approved or adopted by  
25 the Judicial Council. The claim form shall set forth a place for (1) the name and  
26 address of the defendant, if known; (2) the amount and the basis of the claim; (3)  
27 that the plaintiff, where possible, has demanded payment and, in applicable cases,  
28 possession of the property; (4) that the defendant has failed or refused to pay, and,  
29 where applicable, has refused to surrender the property; and (5) that the plaintiff  
30 understands that the judgment on his or her claim will be conclusive and without a  
31 right of appeal.

32 (c) The form or accompanying instructions shall include information that the  
33 plaintiff (1) may not be represented by an attorney, (2) has no right of appeal, and  
34 (3) may ask the court to waive fees for filing and serving the claim on the ground  
35 that the plaintiff is unable to pay them, using the forms approved by the Judicial  
36 Council for that purpose.

37 **Comment.** Section 116.320 is amended to refer more precisely to the small claims division.  
38 See Section 116.210 & Comment.

39 **Code Civ. Proc. § 116.390 (amended). Transfer of claims**

40 SEC. \_\_\_\_\_. Section 116.390 of the Code of Civil Procedure is amended to read:

41 116.390. (a) If a defendant has a claim against a plaintiff that exceeds the  
42 jurisdictional limits stated in Sections 116.220 and 116.231, and the claim relates

1 to the contract, transaction, matter, or event which is the subject of the plaintiff's  
2 claim, the defendant may commence an action against the plaintiff in a court of  
3 competent jurisdiction and request the small claims ~~court~~ division to transfer the  
4 small claims action to that court.

5 (b) The defendant may make the request by filing with the small claims ~~court~~  
6 division in which the plaintiff commenced the action, at or before the time set for  
7 the hearing of that action, a declaration stating the facts concerning the  
8 defendant's action against the plaintiff with a true copy of the complaint so filed  
9 by the defendant against the plaintiff and the sum of one dollar (\$1) for a  
10 transmittal fee. The defendant shall cause a copy of the declaration and complaint  
11 to be personally delivered to the plaintiff at or before the time set for the hearing  
12 of the small claims action.

13 (c) In ruling on a motion to transfer, the small claims ~~court~~ division may do any  
14 of the following: (1) render judgment on the small claims case prior to the transfer;  
15 (2) not render judgment and transfer the small claims case; (3) refuse to transfer  
16 the small claims case on the grounds that the ends of justice would not be served.  
17 If the small claims action is transferred prior to judgment, both actions shall be  
18 tried together in the transferee court.

19 (d) When the small claims ~~court~~ division orders the action transferred, it shall  
20 transmit all files and papers to the transferee court.

21 (e) The plaintiff in the small claims action shall not be required to pay to the  
22 clerk of the transferee court any transmittal, appearance, or filing fee unless the  
23 plaintiff appears in the transferee court, in which event the plaintiff shall be  
24 required to pay the filing fee and any other fee required of a defendant in the  
25 transferee court. However, if the transferee court rules against the plaintiff in the  
26 action filed in that court, the court may award to the defendant in that action the  
27 costs incurred as a consequence of the transfer, including attorney's fees and filing  
28 fees.

29 **Comment.** Section 116.390 is amended to refer more precisely to the small claims division.  
30 See Section 116.210 & Comment.

31 **Code Civ. Proc. § 116.420 (amended). Assigned claims**

32 SEC. \_\_\_\_\_. Section 116.420 of the Code of Civil Procedure is amended to read:  
33 116.420. (a) No claim shall be filed or maintained in a small claims ~~court~~  
34 division by the assignee of the claim.

35 (b) This section does not prevent the filing or defense of an action in the small  
36 claims ~~court~~ division by (1) a trustee in bankruptcy in the exercise of the trustee's  
37 duties as trustee, or (2) by the holder of a security agreement, retail installment  
38 contract, or lien contract subject to the Unruh Act (Chapter 1 (commencing with  
39 Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code) or the  
40 Automobile Sales Finance Act (Chapter 2b (commencing with Section 2981) of  
41 Title 14 of Part 4 of Division 3 of the Civil Code), purchased by the holder for the

1 holder's portfolio of investments, provided that the holder is not an assignee for  
2 the purpose of collection.

3 (c) This section does not prevent the filing in a small claims ~~court~~ division by a  
4 local government which is self-insured for purposes of workers' compensation and  
5 is seeking subrogation pursuant to Section 3852 of the Labor Code.

6 **Comment.** Section 116.420 is amended to refer more precisely to the small claims division.  
7 See Section 116.210 & Comment.

8 **Code Civ. Proc. § 116.531 (amended). Experts**

9 SEC. \_\_\_\_\_. Section 116.531 of the Code of Civil Procedure is amended to read:

10 116.531. Nothing in this article shall prevent a representative of an insurer or  
11 other expert in the matter before the small claims ~~court~~ division from rendering  
12 assistance to a party in the litigation except during the conduct of the hearing,  
13 either before or after the commencement of the action, unless otherwise prohibited  
14 by law; nor shall anything in this article prevent those individuals from testifying  
15 to facts of which they have personal knowledge and about which they are  
16 competent to testify.

17 **Comment.** Section 116.531 is amended to refer more precisely to the small claims division.  
18 See Section 116.210 & Comment.

19 **Code Civ. Proc. § 116.540 (amended). Who may appear**

20 SEC. \_\_\_\_\_. Section 116.540 of the Code of Civil Procedure is amended to read:

21 116.540. (a) Except as permitted by this section, no individual other than the  
22 plaintiff and the defendant may take part in the conduct or defense of a small  
23 claims action.

24 (b) A corporation may appear and participate in a small claims action only  
25 through a regular employee, or a duly appointed or elected officer or director, who  
26 is employed, appointed, or elected for purposes other than solely representing the  
27 corporation in the small claims ~~court~~ division.

28 (c) A party who is not a corporation or a natural person may appear and  
29 participate in a small claims action only through a regular employee, or a duly  
30 appointed or elected officer or director, or in the case of a partnership, a partner,  
31 engaged for purposes other than solely representing the party in the small claims  
32 ~~court~~ division.

33 (d) If a party is an individual doing business as a sole proprietorship, the party  
34 may appear and participate in a small claims action by a representative and  
35 without personally appearing if both of the following conditions are met:

36 (1) The claim can be proved or disputed by evidence of an account that  
37 constitutes a business record as defined in Section 1271 of the Evidence Code, and  
38 there is no other issue of fact in the case.

39 (2) The representative is a regular employee of the party for purposes other than  
40 solely representing the party in small claims actions and is qualified to testify to  
41 the identity and mode of preparation of the business record.

1 (e) A plaintiff is not required to personally appear, and may submit declarations  
2 to serve as evidence supporting his or her claim or allow another individual to  
3 appear and participate on his or her behalf, if (1) the plaintiff is serving on active  
4 duty in the United States armed forces outside this state, (2) the plaintiff was  
5 assigned to his or her duty station after his or her claim arose, (3) the assignment is  
6 for more than six months, (4) the representative is serving without compensation,  
7 and (5) the representative has appeared in small claims actions on behalf of others  
8 no more than four times during the calendar year. The defendant may file a claim  
9 in the same action in an amount not to exceed the jurisdictional limits stated in  
10 Sections 116.220 and 116.231.

11 (f) A party incarcerated in a county jail, a Department of Corrections facility, or  
12 a Youth Authority facility is not required to personally appear, and may submit  
13 declarations to serve as evidence supporting his or her claim, or may authorize  
14 another individual to appear and participate on his or her behalf if that individual  
15 is serving without compensation and has appeared in small claims actions on  
16 behalf of others no more than four times during the calendar year.

17 (g) A defendant who is a nonresident owner of real property may defend against  
18 a claim relating to that property without personally appearing by (1) submitting  
19 written declarations to serve as evidence supporting his or her defense, (2)  
20 allowing another individual to appear and participate on his or her behalf if that  
21 individual is serving without compensation and has appeared in small claims  
22 actions on behalf of others no more than four times during the calendar year, or (3)  
23 taking the action described in both (1) and (2).

24 (h) A party who is an owner of rental real property may appear and participate in  
25 a small claims action through a property agent under contract with the owner to  
26 manage the rental of that property, if (1) the owner has retained the property agent  
27 principally to manage the rental of that property and not principally to represent  
28 the owner in the small claims court division, and (2) the claim relates to the rental  
29 property.

30 (i) At the hearing of a small claims action, the court shall require any individual  
31 who is appearing as a representative of a party under subdivisions (b) to (h),  
32 inclusive, to file a declaration stating (1) that the individual is authorized to appear  
33 for the party, and (2) the basis for that authorization. If the representative is  
34 appearing under subdivision (b), (c), (d), or (h), the declaration also shall state that  
35 the individual is not employed solely to represent the party in the small claims  
36 court division. If the representative is appearing under subdivision (e), (f), or (g),  
37 the declaration also shall state that the representative is serving without  
38 compensation, and has appeared in small claims actions on behalf of others no  
39 more than four times during the calendar year.

40 (j) A husband or wife who sues or who is sued with his or her spouse may  
41 appear and participate on behalf of his or her spouse if (1) the claim is a joint  
42 claim, (2) the represented spouse has given his or her consent, and (3) the court  
43 determines that the interests of justice would be served.

1 (k) If the court determines that a party cannot properly present his or her claim  
2 or defense and needs assistance, the court may in its discretion allow another  
3 individual to assist that party.

4 (l) Nothing in this section shall operate or be construed to authorize an attorney  
5 to participate in a small claims action except as expressly provided in Section  
6 116.530.

7 **Comment.** Section 116.540 is amended to refer more precisely to the small claims division.  
8 See Section 116.210 & Comment.

9 **Code Civ. Proc. § 116.541 (amended). Department of Corrections and Department of the**  
10 **Youth Authority**

11 SEC. \_\_\_\_\_. Section 116.541 of the Code of Civil Procedure is amended to read:

12 116.541. (a) Notwithstanding Section 116.540 or any other provision of law, the  
13 Department of Corrections or the Department of the Youth Authority may appear  
14 and participate in a small claims action through a regular employee, who is  
15 employed or appointed for purposes other than solely representing that department  
16 in the small claims court division.

17 (b) Where the Department of Corrections or the Department of the Youth  
18 Authority is named as a defendant in the small claims court division, the  
19 representative of the department is not required to personally appear to challenge  
20 the plaintiff's compliance with the pleading requirements and may submit  
21 pleadings or declarations to assert that challenge.

22 (c) At the hearing of a small claims action, the court shall require any individual  
23 who is appearing as a representative of the Department of Corrections or the  
24 Department of the Youth Authority under subdivision (a) to file a declaration  
25 stating (1) that the individual is authorized to appear for the party, (2) the basis for  
26 that authorization, and (3) that the individual is not employed solely to represent  
27 the party in the small claims court division.

28 (d) Nothing in this section shall operate or be construed to authorize an attorney  
29 to participate in a small claims action except as expressly provided in Section  
30 116.530.

31 (e) For purposes of this section, all references to the Department of Corrections  
32 or the Department of the Youth Authority include an employee thereof against  
33 whom a claim has been filed under this chapter arising out of his or her duties as  
34 an employee of that department.

35 **Comment.** Section 116.541 is amended to refer more precisely to the small claims division.  
36 See Section 116.210 & Comment.

37 **Code Civ. Proc. § 116.550 (amended). Interpreters**

38 SEC. \_\_\_\_\_. Section 116.550 of the Code of Civil Procedure is amended to read:

39 116.550. (a) If the court determines that a party does not speak or understand  
40 English sufficiently to comprehend the proceedings or give testimony, and needs  
41 assistance in so doing, the court may permit another individual (other than an  
42 attorney) to assist that party.



1 (b) Each small claims court division shall make a reasonable effort to maintain  
2 and make available to the parties a list of interpreters who are able and willing to  
3 aid parties in small claims actions either for no fee, or for a fee which is  
4 reasonable considering the nature and complexity of the claims. The list shall  
5 include interpreters for all languages that require interpretation before the court, as  
6 determined by the court in its discretion and in view of the court's experience.

7 (c) Failure to maintain a list of interpreters, or failure to include an interpreter  
8 for a particular language, shall not invalidate any proceedings before the court.

9 (d) If a court interpreter or other competent interpreter is not available to aid a  
10 party in a small claims action, at the first hearing of the case the court shall  
11 postpone the hearing one time only to allow the party the opportunity to obtain  
12 another individual (other than an attorney) to assist that party. Any additional  
13 continuances shall be at the discretion of the court.

14 **Comment.** Section 116.550 is amended to refer more precisely to the small claims division.  
15 See Section 116.210 & Comment.

16 **Code Civ. Proc. § 116.610 (amended). Judgment**

17 SEC. \_\_\_\_\_. Section 116.610 of the Code of Civil Procedure is amended to read:

18 116.610. (a) The small claims court division shall give judgment for damages, or  
19 equitable relief, or both damages and equitable relief, within the jurisdictional  
20 limits stated in Sections 116.220 and 116.231, and may make such orders as to  
21 time of payment or otherwise as the court deems just and equitable for the  
22 resolution of the dispute.

23 (b) The court may, at its discretion or on request of any party, continue the  
24 matter to a later date in order to permit and encourage the parties to attempt  
25 resolution by informal or alternative means.

26 (c) The judgment shall include a determination whether the judgment resulted  
27 from a motor vehicle accident on a California highway caused by the defendant's  
28 operation of a motor vehicle, or by the operation by some other individual, of a  
29 motor vehicle registered in the defendant's name.

30 (d) If the defendant has filed a claim against the plaintiff, or if the judgment is  
31 against two or more defendants, the judgment, and the statement of decision if one  
32 is rendered, shall specify the basis for and the character and amount of the liability  
33 of each of the parties, including, in the case of multiple judgment debtors, whether  
34 the liability of each is joint or several.

35 (e) If specific property is referred to in the judgment, whether it be personal or  
36 real, tangible or intangible, the property shall be identified with sufficient detail to  
37 permit efficient implementation or enforcement of the judgment.

38 (f) In an action against several defendants, the court may, in its discretion,  
39 render judgment against one or more of them, leaving the action to proceed against  
40 the others, whenever a several judgment is proper.

41 (g) The prevailing party is entitled to the costs of the action, including the costs  
42 of serving the order for the appearance of the defendant.

1 (h) When the court renders judgment, the clerk shall promptly deliver or mail  
2 notice of entry of the judgment to the parties, and shall execute a certificate of  
3 personal delivery or mailing and place it in the file.

4 (i) The notice of entry of judgment shall be on a form approved or adopted by  
5 the Judicial Council.

6 **Comment.** Section 116.610 is amended to refer more precisely to the small claims division.  
7 See Section 116.210 & Comment.

8 **Code Civ. Proc. § 116.720 (amended). Failure of plaintiff to appear at hearing**

9 SEC. \_\_\_\_\_. Section 116.720 of the Code of Civil Procedure is amended to read:

10 116.720. (a) A plaintiff who did not appear at the hearing in the small claims  
11 ~~court~~ division may file a motion to vacate the judgment with the clerk of the small  
12 claims ~~court~~ division. The motion shall be filed within 30 days after the clerk has  
13 mailed notice of entry of the judgment to the parties.

14 (b) The clerk shall schedule the hearing on the motion to vacate for a date no  
15 earlier than 10 days after the clerk has mailed written notice of the date, time, and  
16 place of the hearing to the parties.

17 (c) Upon a showing of good cause, the small claims ~~court~~ division may grant the  
18 motion. If the defendant is not present, the court shall hear the motion in the  
19 defendant's absence.

20 (d) If the motion is granted, and if all parties are present and agree, the court  
21 may hear the case without rescheduling it. If the defendant is not present, the judge  
22 or clerk shall reschedule the case and give notice in accordance with Section  
23 116.330.

24 **Comment.** Section 116.720 is amended to refer more precisely to the small claims division.  
25 See Section 116.210 & Comment.

26 **Code Civ. Proc. § 116.730 (amended). Failure of defendant to appear at hearing**

27 SEC. \_\_\_\_\_. Section 116.730 of the Code of Civil Procedure is amended to read:

28 116.730. (a) A defendant who did not appear at the hearing in the small claims  
29 ~~court~~ division may file a motion to vacate the judgment with the clerk of the small  
30 claims ~~court~~ division. The motion shall be filed within 30 days after the clerk has  
31 mailed notice of entry of the judgment to the parties.

32 (b) The defendant shall appear at any hearing on the motion, or submit written  
33 justification for not appearing together with a declaration in support of the motion.

34 (c) Upon a showing of good cause, the court may grant the motion to vacate the  
35 judgment. If the plaintiff is not present, the court shall hear the motion in the  
36 plaintiff's absence.

37 (d) If the motion is granted, and if all parties are present and agree, the court  
38 may hear the case without rescheduling it. If the plaintiff is not present, the judge  
39 or clerk shall reschedule the case and give notice in accordance with Section  
40 116.330.

41 (e) If the motion is denied, the defendant may appeal to the superior court only  
42 on the denial of the motion to vacate the judgment. The defendant shall file the

1 notice of appeal with the clerk of the small claims ~~court~~ division within 10 days  
2 after the small claims ~~court~~ division has mailed or delivered notice of the court's  
3 denial of the motion to vacate the judgment.

4 (f) If the superior court determines that the defendant's motion to vacate the  
5 judgment should have been granted, the superior court may hear the claims of all  
6 parties without rescheduling the matter, provided that all parties are present and  
7 the defendant has previously complied with this article, or may order the case  
8 transferred to the small claims ~~court~~ division for a hearing.

9 **Comment.** Section 116.730 is amended to refer more precisely to the small claims division.  
10 See Section 116.210 & Comment.

11 **Code Civ. Proc. § 116.740 (amended). Defective service on defendant**

12 SEC. \_\_\_\_\_. Section 116.740 of the Code of Civil Procedure is amended to read:

13 116.740. (a) If the defendant was not properly served as required by Section  
14 116.330 or 116.340 and did not appear at the hearing in the small claims ~~court~~  
15 division, the defendant may file a motion to vacate the judgment with the clerk of  
16 the small claims ~~court~~ division. The motion shall be accompanied by a supporting  
17 declaration, and shall be filed within 180 days after the defendant discovers or  
18 should have discovered that judgment was entered against the defendant.

19 (b) The court may order that the enforcement of the judgment shall be  
20 suspended pending a hearing and determination of the motion to vacate the  
21 judgment.

22 (c) Upon a showing of good cause, the court may grant the motion to vacate the  
23 judgment. If the plaintiff is not present, the court shall hear the motion in the  
24 plaintiff's absence.

25 (d) Subdivisions (d), (e), and (f) of Section 116.730 apply to any motion to  
26 vacate a judgment.

27 **Comment.** Section 116.740 is amended to refer more precisely to the small claims division.  
28 See Section 116.210 & Comment.

29 **Code Civ. Proc. § 116.750 (amended). Notice of appeal**

30 SEC. \_\_\_\_\_. Section 116.750 of the Code of Civil Procedure is amended to read:

31 116.750. (a) An appeal from a judgment in a small claims action is taken by  
32 filing a notice of appeal with the clerk of the small claims ~~court~~ division.

33 (b) A notice of appeal shall be filed not later than 30 days after the clerk has  
34 delivered or mailed notice of entry of the judgment to the parties. A notice of  
35 appeal filed after the 30-day period is ineffective for any purpose.

36 (c) The time for filing a notice of appeal is not extended by the filing of a  
37 request to correct a mistake or by virtue of any subsequent proceedings on that  
38 request, except that a new period for filing notice of appeal shall begin on the  
39 delivery or mailing of notice of entry of any modified judgment.

40 **Comment.** Section 116.750 is amended to refer more precisely to the small claims division.  
41 See Section 116.210 & Comment.

1 **Code Civ. Proc. § 116.780 (amended). Judgment on appeal**

2 SEC. \_\_\_\_\_. Section 116.780 of the Code of Civil Procedure is amended to read:

3 116.780. (a) The judgment of the superior court after a hearing on appeal is final  
4 and not appealable.

5 (b) Article 6 (commencing with Section 116.610) on judgments of the small  
6 claims ~~court~~ division applies to judgments of the superior court after a hearing on  
7 appeal, except as provided in subdivisions (c) and (d).

8 (c) For good cause and where necessary to achieve substantial justice between  
9 the parties, the superior court may award a party to an appeal reimbursement of (1)  
10 attorney's fees actually and reasonably incurred in connection with the appeal, not  
11 exceeding one hundred fifty dollars (\$150), and (2) actual loss of earnings and  
12 expenses of transportation and lodging actually and reasonably incurred in  
13 connection with the appeal, not exceeding one hundred fifty dollars (\$150).

14 (d) Upon the expiration of 10 days following the completion of the appeal  
15 process, the superior court shall order the appeal and any judgment transferred to  
16 the small claims ~~court~~ division in which the action was originally filed for  
17 purposes of enforcement and other proceedings under Article 8 (commencing with  
18 Section 116.810) of this chapter.

19 **Comment.** Section 116.780 is amended to refer more precisely to the small claims division.  
20 See Section 116.210 & Comment.

21 **Code Civ. Proc. § 116.795 (amended). Failure to appear or delayed hearing**

22 SEC. \_\_\_\_\_. Section 116.795 of the Code of Civil Procedure is amended to read:

23 116.795. (a) The superior court may dismiss the appeal if the appealing party  
24 does not appear at the hearing or if the appeal is not heard within one year from  
25 the date of filing the notice of appeal with the clerk of the small claims ~~court~~  
26 division.

27 (b) Upon dismissal of an appeal by the superior court, the small claims ~~court~~  
28 division shall thereafter have the same jurisdiction as if no appeal had been filed.

29 **Comment.** Section 116.795 is amended to refer more precisely to the small claims division.  
30 See Section 116.210 & Comment.

31 **Code Civ. Proc. § 116.810 (amended). Suspension of enforcement during time for appeal**

32 SEC. \_\_\_\_\_. Section 116.810 of the Code of Civil Procedure is amended to read:

33 116.810. (a) Enforcement of the judgment of a small claims ~~court~~ division,  
34 including the issuance or recording of any abstract of the judgment, is  
35 automatically suspended, without the filing of a bond by the defendant, until the  
36 expiration of the time for appeal.

37 (b) If an appeal is filed as provided in Article 7 (commencing with Section  
38 116.710), enforcement of the judgment of the small claims ~~court~~ division is  
39 suspended unless (1) the appeal is dismissed by the superior court pursuant to  
40 Section 116.795, or (2) the superior court determines that the small claims ~~court~~  
41 division properly denied the defendant's motion to vacate filed under Section

1 116.730 or 116.740. In either of those events, the judgment of the small claims  
2 ~~court~~ division may be enforced.

3 (c) The scope of the suspension of enforcement under this section and, unless  
4 otherwise ordered, of any suspension of enforcement ordered by the court, shall  
5 include any enforcement procedure described in Title 9 (commencing with Section  
6 680.010) of Part 2 and in Sections 674 and 1174.

7 **Comment.** Section 116.810 is amended to refer more precisely to the small claims division.  
8 See Section 116.210 & Comment.

9 **Code Civ. Proc. § 116.820 (amended). Enforcement of judgment**

10 SEC. \_\_\_\_\_. Section 116.820 of the Code of Civil Procedure is amended to read:

11 116.820. (a) The judgment of a small claims ~~court~~ division may be enforced as  
12 provided in Title 9 (commencing with Section 680.010) of Part 2 and in Sections  
13 674 and 1174 on the enforcement of judgments of other courts. A judgment of the  
14 superior court after a hearing on appeal, and after transfer to the small claims ~~court~~  
15 division under subdivision (d) of Section 116.780, may be enforced like other  
16 judgments of the small claims ~~court~~ division, as provided in Title 9 (commencing  
17 with Section 680.010) of Part 2 and in Sections 674 and 1174 on the enforcement  
18 of judgments of other courts.

19 (b) Fees as provided in Sections 26828, 26830, and 26834 of the Government  
20 Code shall be charged and collected by the clerk for the issuance of a writ of  
21 execution, an order of examination of a judgment debtor, or an abstract of  
22 judgment.

23 (c) The prevailing party in any action subject to this chapter is entitled to the  
24 costs of enforcing the judgment and accrued interest.

25 **Comment.** Section 116.820 is amended to refer more precisely to the small claims division.  
26 See Section 116.210 & Comment.

27 **Code Civ. Proc. § 116.840 (amended). Payment to judgment creditor or court**

28 SEC. \_\_\_\_\_. Section 116.840 of the Code of Civil Procedure is amended to read:

29 116.840. (a) At the option of the judgment debtor, payment of the judgment may  
30 be made either (1) to the judgment creditor in accordance with Section 116.850, or  
31 (2) to the court in which the judgment was entered in accordance with Section  
32 116.860.

33 (b) The small claims ~~court~~ division may order entry of satisfaction of judgment  
34 in accordance with subdivisions (c) and (d) of Section 116.850, or subdivision (b)  
35 of Section 116.860.

36 **Comment.** Section 116.840 is amended to refer more precisely to the small claims division.  
37 See Section 116.210 & Comment.

38 **Code Civ. Proc. § 116.930 (amended). Information on rules and procedures**

39 SEC. \_\_\_\_\_. Section 116.930 of the Code of Civil Procedure is amended to read:

40 116.930. (a) Each small claims division shall provide in each courtroom in  
41 which small claims actions are heard a current copy of a publication describing

1 small claims ~~court~~ division law and the procedures that are applicable in the small  
2 claims ~~courts~~ divisions, including the law and procedures that apply to the  
3 enforcement of judgments. The Small Claims Court and Consumer Law California  
4 Judge’s Bench Book developed by the California Center for Judicial Education  
5 and Research is illustrative of a publication that satisfies the requirement of this  
6 subdivision.

7 (b) Each small claims division may formulate and distribute to litigants and the  
8 public a manual on small claims ~~court~~ division rules and procedures. The manual  
9 shall explain how to complete the necessary forms, how to determine the proper  
10 court in which small claims actions may be filed, how to present and defend  
11 against claims, how to appeal, how to enforce a judgment, how to protect property  
12 that is exempt from execution, and such other matters that the court deems  
13 necessary or desirable.

14 (c) If the Department of Consumer Affairs determines there are sufficient  
15 private or public funds available in addition to the funds available within the  
16 department’s current budget, the department, in cooperation with the Judicial  
17 Council, shall prepare a manual or information booklet on small claims ~~court~~  
18 division rules and procedures. The department shall distribute copies to the general  
19 public and to each small claims division.

20 (d) If funding is available, the Judicial Council, in cooperation with the  
21 Department of Consumer Affairs, shall prepare and distribute to each judge who  
22 sits in a small claims ~~court~~ division a bench book describing all state and federal  
23 consumer protection laws reasonably likely to apply in small claims actions.

24 **Comment.** Section 116.930 is amended to refer more precisely to the small claims division.  
25 See Section 116.210 & Comment.

26 **Code Civ. Proc. § 391 (amended). Definitions**

27 SEC. \_\_\_\_\_. Section 391 of the Code of Civil Procedure is amended to read:

28 391. As used in this title, the following terms have the following meanings:

29 (a) “Litigation” means any civil action or proceeding, commenced, maintained  
30 or pending in any state or federal court.

31 (b) “Vexatious litigant” means a person who does any of the following:

32 (1) In the immediately preceding seven-year period has commenced, prosecuted,  
33 or maintained in propria persona at least five litigations other than in a small  
34 claims ~~court~~ division that have been (i) finally determined adversely to the person  
35 or (ii) unjustifiably permitted to remain pending at least two years without having  
36 been brought to trial or hearing.

37 (2) After a litigation has been finally determined against the person, repeatedly  
38 relitigates or attempts to relitigate, in propria persona, either (i) the validity of the  
39 determination against the same defendant or defendants as to whom the litigation  
40 was finally determined or (ii) the cause of action, claim, controversy, or any of the  
41 issues of fact or law, determined or concluded by the final determination against



1 the same defendant or defendants as to whom the litigation was finally  
2 determined.

3 (3) In any litigation while acting in propria persona, repeatedly files  
4 unmeritorious motions, pleadings, or other papers, conducts unnecessary  
5 discovery, or engages in other tactics that are frivolous or solely intended to cause  
6 unnecessary delay.

7 (4) Has previously been declared to be a vexatious litigant by any state or  
8 federal court of record in any action or proceeding based upon the same or  
9 substantially similar facts, transaction, or occurrence.

10 (c) “Security” means an undertaking to assure payment, to the party for whose  
11 benefit the undertaking is required to be furnished, of the party’s reasonable  
12 expenses, including attorney’s fees and not limited to taxable costs, incurred in or  
13 in connection with a litigation instituted, caused to be instituted, or maintained or  
14 caused to be maintained by a vexatious litigant.

15 (d) “Plaintiff” means the person who commences, institutes or maintains a  
16 litigation or causes it to be commenced, instituted or maintained, including an  
17 attorney at law acting in propria persona.

18 (e) “Defendant” means a person (including corporation, association, partnership  
19 and firm or governmental entity) against whom a litigation is brought or  
20 maintained or sought to be brought or maintained.

21 **Comment.** Section 391 is amended to refer more precisely to the small claims division. See  
22 Section 116.210 & Comment.

23 **Code Civ. Proc. § 426.60 (amended). Application of article**

24 SEC. \_\_\_\_\_. Section 426.60 of the Code of Civil Procedure is amended to read:

25 426.60. (a) This article applies only to civil actions and does not apply to special  
26 proceedings.

27 (b) This article does not apply to actions in the small claims ~~court~~ division.

28 (c) This article does not apply where the only relief sought is a declaration of the  
29 rights and duties of the respective parties in an action for declaratory relief under  
30 Chapter 8 (commencing with Section 1060) of Title 14 of this part.

31 **Comment.** Section 426.60 is amended to refer more precisely to the small claims division. See  
32 Section 116.210 & Comment.

33 **Code Civ. Proc. § 1029.6 (amended). Complaint for damages against medical professionals**  
34 **or hospital**

35 SEC. \_\_\_\_\_. Section 1029.6 of the Code of Civil Procedure is amended to read:

36 1029.6. (a) Whenever a complaint for damages for personal injuries is filed  
37 against a physician and surgeon, dentist, registered nurse, dispensing optician,  
38 optometrist, pharmacist, registered physical therapist, podiatrist, licensed  
39 psychologist, osteopathic physician and surgeon, chiropractor, clinical laboratory  
40 bioanalyst, clinical laboratory technologist, or veterinarian, duly licensed as such  
41 under the laws of this state, or a licensed hospital as the employer of any such  
42 person, in an action for error, omission, or negligence in the performance of

1 professional services, or performance of professional services without consent,  
2 any such defendant may, within six months after service of summons, move the  
3 court for an order, upon notice to plaintiff and all defendants having appeared in  
4 the action, and hearing, requiring the plaintiff to file an undertaking in a sum not  
5 to exceed five hundred dollars (\$500) as security for the costs of defense as  
6 provided in subdivision (d), which may be awarded against the plaintiff. The  
7 motion shall be supported by affidavit showing that the claim against the  
8 defendant is frivolous. Any defendant having appeared in the action and within 30  
9 days after receipt of notice may join with the moving party requesting an order  
10 under this section as to the additional defendant. The failure of any defendant to  
11 join with the moving party shall preclude that defendant from subsequently  
12 requesting an order under this section.

13 At the hearing upon the motion, the court shall order the plaintiff to file the  
14 undertaking if the defendant shows to the satisfaction of the court that: (i) the  
15 plaintiff would not suffer undue economic hardship in filing the undertaking and  
16 (ii) there is no reasonable possibility that the plaintiff has a cause of action against  
17 each named defendant with respect to whom the plaintiff would otherwise be  
18 required to file the undertaking.

19 A determination by the court that an undertaking either shall or shall not be filed  
20 or shall be filed as to one or more defendants and not as to others, shall not be  
21 deemed a determination of any one or more issues in the action or of the merits  
22 thereof. If the court, upon any such motion, makes a determination that an  
23 undertaking be filed by the plaintiff as to any one or more defendants, the action  
24 shall be dismissed as to that defendant or defendants, unless the undertaking  
25 required by the court shall have been filed within the reasonable time as may be  
26 fixed by the court.

27 (b) This section does not apply to a complaint in an action commenced in a  
28 small claims ~~court~~ division.

29 (c) Whenever more than one defendant is named, the undertaking shall be  
30 increased to the extent of not to exceed five hundred dollars (\$500) for each  
31 additional defendant in whose favor the undertaking is ordered, not to exceed the  
32 total of one thousand dollars (\$1,000).

33 (d) In any action requiring an undertaking as provided in this section, upon the  
34 dismissal of the action or the award of judgment to the defendant, the court shall  
35 require the plaintiff to pay the defendant's court costs. Any sureties shall be liable  
36 for those costs in an amount not to exceed the sum of five hundred dollars (\$500)  
37 or the amount of the undertaking, whichever is lesser, for each defendant with  
38 respect to whom the sureties have executed an undertaking. If the plaintiff prevails  
39 in the action against any defendant with respect to whom an undertaking has been  
40 filed, the defendant shall pay the costs to plaintiff incurred in defending the motion  
41 for dismissal authorized by this section.

1 (e) Any defendant filing a motion under this section or joining with a moving  
2 party under this section is precluded from subsequently filing a motion for  
3 summary judgment.

4 (f) Any defendant filing a motion for summary judgment is precluded from  
5 subsequently filing a motion, or joining with a moving party, under this section.

6 **Comment.** Section 1029.6 is amended to refer more precisely to the small claims division. See  
7 Section 116.210 & Comment.

8 **Code Civ. Proc. § 1141.11 (amended). Arbitration of at-issue civil actions**

9 SEC. \_\_\_\_\_. Section 1141.11 of the Code of Civil Procedure is amended to read:

10 1141.1. (a) In each superior court with 10 or more judges, all at-issue civil  
11 actions pending on or filed after the operative date of this chapter shall be  
12 submitted to arbitration, by the presiding judge or the judge designated, under this  
13 chapter if the amount in controversy in the opinion of the court will not exceed  
14 fifty thousand dollars (\$50,000) for each plaintiff, which decision shall not be  
15 appealable.

16 (b) In each superior court with less than 10 judges, the court may provide by  
17 local rule, when it determines that it is in the best interests of justice, that all at-  
18 issue civil actions pending on or filed after the operative date of this chapter, shall  
19 be submitted to arbitration by the presiding judge or the judge designated under  
20 this chapter if the amount in controversy in the opinion of the court will not  
21 exceed fifty thousand dollars (\$50,000) for each plaintiff, which decision shall not  
22 be appealable.

23 (c) In each municipal court district, the municipal court district may provide by  
24 local rule, when it is determined to be in the best interests of justice, that all at-  
25 issue civil actions pending on or filed after the operative date of this chapter in  
26 such judicial district, shall be submitted to arbitration by the presiding judge or the  
27 judge designated under this chapter. This section does not apply to any action in  
28 the small claims court division, or to any action maintained pursuant to Section  
29 1781 of the Civil Code or Section 1161 of this code.

30 (d) In each municipal court district which has adopted judicial arbitration  
31 pursuant to subdivision (c), all civil actions pending on or after July 1, 1990,  
32 which involve a claim for money damages against a single defendant as a result of  
33 a motor vehicle collision, except those heard in the small claims division, shall be  
34 submitted to arbitration within 120 days of the filing of the defendant's answer to  
35 the complaint (except as may be extended by the court for good cause) before an  
36 arbitrator selected by the court, subject to disqualification for cause as specified in  
37 Sections 170.1 and 170.6.

38 The court may provide by local rule for the voluntary or mandatory use of case  
39 questionnaires, established under Section 93, in any proceeding subject to these  
40 provisions. Where local rules provide for the use of case questionnaires, the  
41 questionnaires shall be exchanged by the parties upon the defendant's answer and  
42 completed and returned within 60 days.

1 For the purposes of this subdivision, the term “single defendant” means (1) an  
2 individual defendant, whether a person or an entity, (2) two or more persons  
3 covered by the same insurance policy applicable to the motor vehicle collision, or  
4 (3) two or more persons residing in the same household when no insurance policy  
5 exists that is applicable to the motor vehicle collision. The naming of one or more  
6 cross-defendants, not a plaintiff, shall constitute a multiple-defendant case not  
7 subject to the provisions of this subdivision.

8 ~~(e) The provisions of this chapter shall not apply to those actions filed in a  
9 superior or municipal court which has been selected pursuant to Section 1823.1  
10 and is participating in a pilot project pursuant to Title 1 (commencing with Section  
11 1823) of Part 3.5; provided, however, that any superior or municipal court may  
12 provide by local rule that the provisions of this chapter shall apply to actions  
13 pending on or filed after July 1, 1979. Any action filed in such court after the  
14 conclusion of the pilot project shall be subject to the provisions of this chapter.~~

15 ~~(f) (e)~~ No local rule of a superior court providing for judicial arbitration may  
16 dispense with the conference required pursuant to Section 1141.16.

17 **Comment.** Section 1141.11 is amended to refer more precisely to the small claims division.  
18 See Section 116.210 & Comment. Subdivision (e) is deleted as obsolete.

19 **Code Civ. Proc. § 1995 (amended). Prisoner as witness**

20 SEC. \_\_\_\_\_. Section 1995 of the Code of Civil Procedure is amended to read:

21 1995. If the witness be a prisoner, confined in a jail within this state, an order for  
22 his examination of the prisoner in the jail upon deposition, or for his temporary  
23 removal and production of the prisoner before a court or officer may be made as  
24 follows:

25 1. By the court itself in which the action or special proceeding is pending, unless  
26 it be a small claims court is a small claims division.

27 2. By a justice of the Supreme Court, or a judge of the superior court of the  
28 county where the action or proceeding is pending, if pending before a small claims  
29 court division, or before a judge or other person out of court.

30 **Comment.** Section 1995 is amended to refer more precisely to the small claims division. See  
31 Section 116.210 & Comment.