

Memorandum 99-22

Trial Court Unification: Followup Legislation

The Commission's clean-up bill on trial court unification (SB 210 (Senate Judiciary Committee)) has been passed by the Senate Judiciary Committee and the full Senate without a negative vote. The bill is now pending in the Assembly, where we plan to amend it to correct some typographical errors, incorporate material previously approved by the Commission, and make other revisions. This memorandum is an update on the bill and proposed amendments.

TECHNICAL REVISIONS BY LEGISLATIVE COUNSEL

The implementing legislation for trial court unification (SB 2139 (Lockyer)) included numerous provisions that were also amended in other bills enacted in 1998. To prevent SB 2139 from overriding ("chaptering out") these other amendments, Legislative Counsel incorporated extensive double-jointing provisions into the bill. Nonetheless, some bill conflicts were not covered and the double-jointing provisions for others were imperfect. In December 1998, the Commission approved draft legislation to address these problems. (See Memorandum 98-82, pp. 1-3; Minutes (Dec. 10-11, 1998), p. 9.)

In preparing the official version of the Commission's clean-up bill, however, Legislative Counsel concluded that SB 2139's double-jointing provisions for Government Code Section 68090.7, Penal Code Section 1203.1, and Vehicle Code Section 14607.6 were effective despite technical glitches in those provisions. Accordingly, Legislative Counsel omitted Government Code Section 68090.7 and Vehicle Code Section 14607.6 from the bill, and included only a trivial amendment of Penal Code Section 1203.1, which we plan to delete when the bill is amended.

Legislative Counsel also takes the position that two versions of Penal Code Section 1214 are in effect: (1) a version operative until January 1, 2000, which incorporates revisions made in SB 1768 (Kopp), as well as revisions made in SB 2139 and (2) a version operative on January 1, 2000 (with exceptions), which does not incorporate the revisions made in SB 2139. As prepared by Legislative

Counsel, SB 210 would amend the latter version to incorporate the revisions made in SB 2139 to accommodate trial court unification. That is fine, but it means that **the Commission should revise the proposed Comment to Penal Code Section 1214, operative January 1, 2000, to reflect Legislative Counsel's official position that a version of Section 1214 operative January 1, 2000, is currently in effect, rather than having been chaptered out by SB 2139:**

**Penal Code § 1214, operative January 1, 2000 (added) (amended).
Enforcement**

Comment. Section 1214, as operative (with exceptions) January 1, 2000, is added to restore this version of the statute, which was originally added by Chapter 587 of the Statutes of 1998 but chaptered out by Chapter 931 of the Statutes of 1998 amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). New subdivision (c) continues the policy of former Code of Civil Procedure Section 86(a)(11), which provided that the municipal court had original jurisdiction in all actions to enforce restitution orders or restitution fines that were imposed by the municipal court (without any limitation on amount in controversy). In certain criminal cases, a municipal court could impose a restitution order or restitution fine. Penal Code §§ 1462(a) (misdemeanor or infraction case), 1462(b) (pronouncing judgment in noncapital criminal case). In a county in which there is no municipal court, Penal Code Section 1462(d) gives the superior court the jurisdiction provided in Section 1462(a)-(b). Thus, new subdivision (c) of this section accommodates trial court unification and continues the effect of former law.

See Code Civ. Proc. §§ 85 (limited civil cases), 86(a)(8) (enforcement of judgment in limited civil case).

As revised, this proposed Comment would be essentially the same as the Comment to the version of Penal Code Section 1214 that is operative until January 1, 2000.

PENAL CODE SECTION 1382

Both SB 2139 and another bill, SB 1558 (McPherson), amended Penal Code Section 1382 in 1998. The bills were properly double-jointed as to this provision, but the resultant version of Section 1382 (incorporating both amendments) requires further revision to accommodate unification. The clean-up bill currently includes the following amendment of Section 1382(a):

1382. (a) The court, unless good cause to the contrary is shown, shall order the action to be dismissed in the following cases:

....

(2) In a felony case, when a defendant is not brought to trial within 60 days of the defendant's arraignment ~~in the superior court~~, or reinstatement of criminal proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2,

Both the Judicial Council and the California Attorneys for Criminal Justice have pointed out that this amendment would leave an ambiguity, because it does not specify whether the time runs from the defendant's arraignment on the complaint (traditionally conducted by a magistrate) or from the defendant's arraignment on an indictment or information (traditionally conducted in superior court). To eliminate this ambiguity, they would replace the phrase "in the superior court" with the phrase "on an indictment or information".

The staff agrees with this analysis. We propose to implement it as follows:

1382. (a) The court, unless good cause to the contrary is shown, shall order the action to be dismissed in the following cases:

....

(2) In a felony case, when a defendant is not brought to trial within 60 days of the defendant's arraignment ~~in the superior court~~ on an indictment or information, or reinstatement of criminal proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2,

Comment. Section 1382 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

RECLASSIFICATION OF CIVIL CASES

At the February meeting, the Commission approved the concept of repealing the provisions on reclassification of civil cases (Code of Civil Procedure Sections 395.9 and 399.5) and reorganizing them in a new chapter of the Code of Civil Procedure, with modifications to address ambiguities previously identified by the Judicial Council and the staff. (Minutes, p. 7.) The Commission directed the staff to work on the details with the Judicial Council and the State Bar, and then report back to the Commission.

The staff prepared a draft consistent with these instructions, which differs from existing law in the following respects:

(1) It would expressly negate any inference that a motion for reclassification may only be granted upon a finding of fault.

(2) It would clarify the costs and fees due on reclassification.

(3) It would expressly address the situation where a plaintiff recognizes the need for reclassification and amends the complaint accordingly.

(4) It would expressly address the situation where a defendant in a limited civil case files a cross-complaint that exceeds the \$25,000 maximum for a limited civil case, or otherwise fails to meet the requirements for a limited civil case.

(5) It would require a party to attempt to resolve a reclassification issue informally before filing a motion for reclassification.

We circulated this draft to the Judicial Council, the State Bar Committee on Administration of Justice (“CAJ”), and the State Bar Litigation Section for review.

The Civil and Small Claims Advisory Committee of the Judicial Council voted to support the proposal. By phone, Judicial Council staff members later raised a number of concerns about the draft, as did the Council’s Court Executive Committee. We have also received written comments from CAJ (Exhibit pp. 1-4), but have not yet heard from the Litigation Section.

Attached for the Commission’s review is a revised draft (“Alternative A”), which attempts to address the concerns raised. (Exhibit pp. 5-18.) Throughout this draft, we have:

- Replaced terms such as “erroneous classification” and “erroneously classified” with phrases such as “misclassification,” “mistakenly classified,” and “misstates.” Judicial Council staff believe that this new terminology “may help reduce any implication of fault when a case is reclassified.”

- Eliminated references to “refiling” a case and “refiled” pleadings. The Court Executive Committee requested this revision to ensure that courts can reclassify a case without having to “refile” it.

- Replaced the phrase “costs and fees” with “fees.” CAJ suggested this approach. (Exhibit p. 3.) “Cost could imply attorney’s fees, which we do not believe are intended.” (*Id.*) The staff agrees that attorney’s fees are not intended, but does not share

CAJ's concern about misinterpretation, because the Comment to proposed Section 403.050 (both in this draft and in the draft we circulated) specifically states that the provision "does not authorize an award of attorney's fees attributable to misclassification of a case." We used the phrase "costs and fees" in proposed Section 403.050 and existing Sections 395.9 and 399.5 for parallelism with existing Sections 396 and 399. Nonetheless, we have incorporated CAJ's suggestion to reduce unnecessary verbiage.

Other efforts to accommodate expressed concerns are indicated in Staff Notes in the draft. We believe that this revised draft represents a significant improvement over existing law and our previous drafts.

As redrafted, however, the reclassification proposal is quite detailed. From the large volume of suggestions on reclassification procedure (both in the instant context and in connection with SB 2139), it seems likely that the Judicial Council or other persons may want to make additional improvements in the next few years. To facilitate such revisions, it may be helpful to codify only the basics and give the Judicial Council authority to flesh out the details in rules of court, which can be revised more readily than legislation. The draft labeled "Alternative B" (Exhibit pp. 19-29) follows this approach. Please review both it and Alternative A carefully, to assess their relative merits and determine whether any further revisions are warranted. Subject to whatever revisions the Commission deems necessary, **the staff recommends Alternative B for inclusion in the pending clean-up bill.**

JUDICIAL COUNCIL PROPOSALS

The Judicial Council has requested inclusion of the following matters in the clean-up bill:

Small Claims Advisory Committee (Code Civ. Proc. § 116.950)

Code of Civil Procedure Section 116.950 governs the composition of the Small Claims Advisory Committee. At the Judicial Council's request, the Commission has already agreed to include an amendment of this statute in SB 210. (Minutes (Feb. 4-5, 1999), pp. 8-9.) The Judicial Council has since revisited this matter and requested that the amendment be slightly revised, to mention temporary judges as shown in bold below:

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

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

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

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

(1) The Attorney General or a representative.

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

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

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

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

(6) ~~Six judges of the municipal court, or of the superior court in a county in which there is no municipal court, who have had extensive experience as judges of small claims court, appointed by the Judicial Council~~ judicial officers who have had extensive experience presiding in small claims court, appointed by the Judicial Council. Judicial officers appointed under this subdivision may include judicial officers of the superior court, judicial officers of the municipal court, judges of the appellate courts, retired judicial officers, and temporary judges.

(7) One representative appointed by the Governor.

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

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

This revision is unobjectionable and the Commission should agree to incorporate it in the clean-up bill.

Presiding Judge (Gov't Code §§ 69508, 69508.5)

The Judicial Council has also requested that the clean-up bill include the following amendments of Government Code Sections 69508 and 69508.5, which relate to presiding judges:

Gov't Code § 69508 (amended). Presiding judge in superior court with three or more judges

SEC. _____. Section 69508 of the Government Code is amended to read:

69508. (a) The judges of each superior court having three or more judges, shall choose from their own number a presiding judge who serves as such at their pleasure. Subject to the rules of the Judicial Council, he the presiding judge shall distribute the business of the court among the judges, and prescribe the order of business.

(b) Notwithstanding subdivision (a), the Judicial Council may provide by rule of court for the qualifications of the presiding judge.

Gov't Code § 69508.5 (amended). Presiding judge in court with two judges

SEC. _____. Section 69508.5 of the Government Code is amended to read:

69508.5. (a) In courts with two judges a presiding judge shall be selected by the judges each calendar year and the selection should be on the basis of administrative qualifications and interest.

(b) If a selection cannot be agreed upon, then the office of presiding judge shall be rotated each calendar year between the two judges, commencing with the senior judge. If the judges are of equal seniority, the first presiding judge shall be selected by lot.

(c) Notwithstanding subdivisions (a) and (b), the Judicial Council may provide by rule of court for the qualifications of the presiding judge.

We would agree to include these amendments, subject to deletion if they engender controversy.

Conversion of Certain Referees to Commissioners

The Judicial Council has further requested that the clean-up bill include two provisions converting referees to commissioners:

Gov't Code § 74643.1 (added). Conversion of Santa Barbara referee

SEC. _____. Section 74643.1 is added to the Government Code, to read:

74643.1. Subject to certification by the Court to the Administrative Office of the Courts that the Court is able to absorb the differential salary cost within the Court's existing budget, the Superior Court of California, County of Santa Barbara, may convert and reclassify one (1) existing Traffic Referee position to one (1) additional Court Commissioner position.

Gov't Code § 73362.1 (added). Conversion of Contra Costa referees

SEC. _____. Section 73362.1 is added to the Government Code, to read:

73362.1. Subject to certification by the Court to the Administrative Office of the Courts that the Court is able to absorb the differential salary costs within the Court's existing budget, the Superior Court of California, County of Contra Costa, may convert and reclassify four (4) existing Referee positions to four (4) additional Court Commissioner positions.

Apparently, there is some urgency to these proposed conversions.

We question, however, whether our technical clean-up bill is really an appropriate vehicle for these proposed provisions. It is possible that inclusion of these staffing matters would delay or impede the progress of the bill. We have raised this concern with the Judicial Council, which is checking whether another vehicle is available, and whether these revisions really are so urgent as to require inclusion in the clean-up bill. We will keep the Commission posted on this matter, through the Chair and Vice-Chair if necessary.

Respectfully submitted,

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March 18, 1999

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California Law Revision Commission
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Re: Trial Court Unification - Reclassification
Procedures

Dear Mr. Sterling:

I am writing on behalf of the Committee on Administration of Justice of the State Bar of California, which has reviewed the Commission's February 10, 1999 draft of Proposed Reorganization of Reclassification Revisions.

The CAJ would propose to revise C.C.P. 403.020(a) as follows:

403.020. (a) If a plaintiff, cross-complainant, or petitioner files an amended complaint or other amended ~~initial~~ pleading that changes the jurisdictional classification ~~from that previously stated~~ in the caption, and ~~the plaintiff, cross-complainant, or petitioner~~ simultaneously pays the costs and fees of reclassification provided in Section 403.050, the clerk ~~of the superior court~~ shall promptly reclassify the case as provided in Section 403.070. The time to respond to the amended ~~initial~~ pleading ~~in the reclassified action or proceeding~~ runs....

The Committee's concerns are:

- a) The term "initial" does not appear to be defined elsewhere in the code and probably is irrelevant;
- b) the statute ought to say that it is the stated classification that has been changed;
- c) repeating "plaintiff..." appears unnecessary;
- d) by definition, this only happens in a county where the only clerk is the clerk of the superior court. The reference to "superior court" can be deleted throughout this proposed legislation.

Nathaniel Sterling, Esq.
March 26, 1999
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In proposed 403.030, the Committee suggests that the phrase "that exceeds the maximum amount in controversy for a limited civil case, or otherwise" seems to be unnecessary verbiage.

With regard to proposed § 403.040:

a) In subsection (a), the language that the defendant "may" move within the time to respond to the "initial" pleading appears unnecessary, and inconsistent with (b) (2) of proposed 403.040. Conceptually, we believe it would be better to provide in (b) that "[The court shall grant the motion and enter an order for reclassification if the action or proceeding should be reclassified, unless reclassification will [materially] prejudice a party or interfere with administration of the court's calendar." Delay, in and of itself, should not be the governing criteria. Matters should be reclassified to effectuate the notion that it is the statutes and the court rules that determine which court (i.e., judge) will determine an issue, not one or both of the litigants, but that this reclassification procedure is to be subordinate to the court's calendar management.

b) It would be better to say that "the court, on its own motion, may reclassify...." rather than "The court may bring its own motion."

c) Your memorandum states that the "regardless of any fault or lack of fault" language was inserted at the suggestion of the Judicial Council, but this language appears unnecessary. We see nothing suggesting a "fault" requirement in the present legislation or the statutes on which it is based.

d) We do not see anything in CCP 581(b) that relates to dismissal. The cross-reference should be deleted.

e) Subsection (c) appears to be unnecessary; if the attorneys are civil, it isn't needed. If the attorneys aren't civil, there are more important issues to be resolved by meet and confer requirements. Perhaps more importantly, (i) reclassification is more a matter of the integrity of the court's calendar and procedures and should be driven by the court and not the parties and (ii) meet and confer requirements, if they work, are best applied where compromise can result; reclassification is a yes or no decision.

f) Subsection (d) states the obvious; adding it here only

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raises the question of what significance its absence means for other motions.

As to proposed §403.050, the Committee suggests that in (a) (1) the phrase "cost and fees" of reclassification be changed to simply "fees" or "filing fees." Cost could imply attorney's fees, which we do not believe are intended. Although it may be more convenient for the court to put the burden on the erroneously classifying party of initially paying all of the increased filing fees, if the party that erroneously classified the case pays for refiling the pleading of another party and then is not promptly reimbursed by the party that erroneously classified the case, the party paying the fees must then pay a \$23 motion fee, plus at spend least two or three hours of attorney time to correct what may be a deliberate failure to pay.

While Section 403.060 follows the present provision for reclassification between superior and municipal courts, that is not entirely satisfactory because it frequently leaves a pending action in limbo, without judicial supervision, for too long a period of time. There are a many self executing provisions, particularly in discovery, that can be abused during the wait. For example, if a subpoena is served immediately before the order for reclassification, how does one move to quash it? What about responding to, or objecting to, discovery? The problem can be serious if ex parte relief is needed, etc. Particularly with the unification of the courts, there is little reason to put the proceeding in limbo until the case file is moved across the hall and renumbered. Alternatives the commission might consider include (a) allowing the "old" court to retain jurisdiction for all aspects of the case except trial until the transfer is completed and (b) allowing the party objecting to reclassification to waive that objection, in writing, after the "old" court has ruled, after which the "new" court would immediately have jurisdiction.

Also, in § 403.060 (a) (2) the reference throughout should be to a petition for writ.

We appreciate having had the opportunity to review and comment on this proposed legislation.

Nathaniel Sterling, Esq.
March 26, 1999
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Kindest regards.

Sincerely,

A handwritten signature in black ink, appearing to be 'PNC', with a long horizontal flourish extending to the right.

Paul N. Crane

PNC:pk

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**PROPOSED REORGANIZATION OF
RECLASSIFICATION PROVISIONS: ALTERNATIVE A
(4/2/99 DRAFT)**

Heading of Title 4 (commencing with Section 392) (amended)

SEC. _____. The heading of Title 4 (commencing with Section 392) of Part 2 of the Code of Civil Procedure is amended to read:

**TITLE 4. OF THE PLACE OF TRIAL, RECLASSIFICATION, AND
COORDINATION OF CIVIL ACTIONS**

Comment. The heading “Title 4. Of the Place of Trial of Civil Actions” is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Heading of Chapter 1 (commencing with Section 392) (amended)

SEC. _____. The heading of Chapter 1 (commencing with Section 392) of Title 4 of Part 2 of the Code of Civil Procedure is amended to read:

CHAPTER 1. GENERALLY PLACE OF TRIAL

Comment. The heading “Chapter 1. Generally” is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Code Civ. Proc. § 395.9 (repealed). Reclassification as limited civil case or otherwise

SEC. _____. Section 395.9 of the Code of Civil Procedure is repealed:

~~395.9. (a) In a county in which there is no municipal court, if the caption of the complaint, cross-complaint, petition, or other initial pleading erroneously states or fails to state, pursuant to Section 422.30, that the action or proceeding is a limited civil case, the action or proceeding shall not be dismissed, except as provided in Section 399.5 or paragraph (1) of subdivision (b) of Section 581, but shall, on the motion of the defendant or cross-defendant within the time allowed for that party to respond to the initial pleading, or on the court’s own motion at any time, be reclassified as a limited civil case or otherwise. The action or proceeding shall then be prosecuted as if it had been so commenced, all prior proceedings being saved. A motion for reclassification shall not extend the moving party’s time to answer or otherwise respond.~~

~~(b) If it appears from the verified pleadings, or at the trial, or hearing, that the determination of the action or proceeding, or of a cross-complaint, will necessarily involve the determination of questions inconsistent with the jurisdictional classification of the case, the court shall, on motion of either party establishing the grounds for misclassification and good cause for not seeking reclassification earlier, or on the court’s own motion at any time, reclassify the case.~~

~~(c) A motion for reclassification pursuant to this section shall be supported by a declaration, affidavit, or other evidence if necessary to establish that the case is~~

~~misclassified. A declaration, affidavit, or other evidence is not required if the grounds for misclassification appear on the face of the challenged pleading. All moving and supporting papers, opposition papers, and reply papers shall be filed and served in accordance with Section 1005.~~

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

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

~~(f) Nothing in this section shall be construed to require the superior court to reclassify any action or proceeding because the judgment to be rendered, as determined at the trial or hearing, is one that might have been rendered in a limited civil case.~~

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

~~(h) Upon the making of an order for reclassification, proceedings shall be had as provided in Section 399.5. Unless the court ordering the reclassification otherwise directs, the costs and fees of those proceedings, and other costs and fees of reclassifying the case, including any additional amount due for filing the initial pleading, are to be paid by the party filing the pleading that erroneously classified the case.~~

Comment. For organizational clarity, Section 395.9 is repealed and recodified in “Chapter 2. Reclassification of Civil Actions and Proceedings.”

The first and third sentences of former Section 395.9(a) are continued without substantive change in subdivision (a) of Section 403.040 (motion for reclassification). The second sentence of former Section 395.9(a) is continued without substantive change in subdivision (b) of Section 403.070 (reclassification procedure).

Former Section 395.9(b) is continued in subdivision (b) of Section 403.040, with revisions to improve clarity. The reference to a motion by the court is deleted as redundant. See Section 403.040(a).

Former Section 395.9(c) is continued without substantive change in subdivision (d) of Section 403.040.

Former Section 395.9(d) is continued without substantive change in subdivision (c) of Section 403.070 (reclassification procedure).

Former Section 395.9(e) is continued without substantive change in subdivision (b) of Section 403.010 (application and effect of chapter).

Former Section 395.9(f)-(g) are continued without substantive change in subdivisions (f)-(g) of Section 403.040.

The first sentence of former Section 395.9(h) is continued without substantive change in subdivision (e) of Section 403.040. The second sentence of former Section 395.9(h) is continued without substantive change in the introductory clause and the first sentence of subdivision (a) of Section 403.050 (reclassification fees).

Code Civ. Proc. § 399.5 (repealed). Reclassification pursuant to Section 395.9

SEC. _____. Section 399.5 of the Code of Civil Procedure is repealed:

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

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

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

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

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

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

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

Comment. For organizational clarity, Section 399.5 is repealed and recodified in “Chapter 2. Reclassification of Civil Actions and Proceedings.”

Former Section 399.5(a)-(c) are continued without substantive change in Section 403.060 (proceedings on order granting motion for reclassification), except that the clerk is to reclassify the case upon payment of the reclassification fees, regardless of whether the time for filing a writ petition pursuant to Section 403.080 (petition for writ of mandate) has expired or a such a petition is pending.

Former Section 399.5(d)-(e) are continued without substantive change in subdivisions (a)-(b) of Section 403.070 (reclassification procedure).

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

SEC. _____. Section 400 of the Code of Civil Procedure is amended to read:

400. When an order is made by the superior court granting or denying a motion to change the place of trial ~~or a motion to reclassify an action or proceeding pursuant to Section 395.9~~, the party aggrieved by the order may, within 20 days after service of a written notice of the order, petition the court of appeal for the district in which the court granting or denying the motion is situated for a writ of mandate requiring trial of the case in the proper court ~~or proper classification of the action or proceeding pursuant to Section 395.9~~. The superior court may, for good cause, and prior to the expiration of the initial 20-day period, extend the time for one additional period not to exceed 10 days. The petitioner shall file a copy of the petition in the trial court immediately after the petition is filed in the court of appeal. The court of appeal may stay all proceedings in the case, pending judgment on the petition becoming final. The clerk of the court of appeal shall file with the clerk of the trial court, a copy of any final order or final judgment immediately after the order or judgment becomes final.

Comment. For organizational clarity, Section 400 is amended to delete the references to reclassification, which are continued without substantive change in Section 403.080 (petition for writ of mandate).

Code Civ. Proc. §§ 403.010-403.080 (added). Reclassification of civil actions and proceedings

SEC. _____. Chapter 2 (commencing with Section 403.010) is added to Title 4 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 2. RECLASSIFICATION OF CIVIL ACTIONS
AND PROCEEDINGS

§ 403.010. Application and effect of chapter

403.010. (a) This chapter applies in a county in which there is no municipal court.

(b) Nothing in this chapter expands or limits the law on whether a plaintiff, cross-complainant, or petitioner may file an amended complaint or other amended initial pleading. Nothing in this chapter expands or limits the law on whether and to what extent an amendment relates back to the date of filing the original complaint or other initial pleading.

Comment. Subdivision (a) of Section 403.010 makes clear that this chapter is limited to counties in which the trial courts have unified. For transfer between superior and municipal courts in counties in which the courts have not unified, see Chapter 1 (commencing with Section 392).

The first sentence of subdivision (b) continues former Section 395.9(e) without substantive change. For authority to amend pleadings, see Sections 426.50 (amending to add cause of action),

472 (amendment once of course), 473 (amendment requiring leave of court). The second sentence clarifies that this chapter does not affect the running of the statute of limitations.

☞ **Staff Note.**

(1) This version of proposed Section 403.010 expressly states that the reclassification provisions do not affect whether a plaintiff, cross-complainant, or petitioner is entitled to file an amended complaint or other amended initial pleading. The version we circulated contained similar language, but in Section 403.040.

(2) This version of Section 403.010 expressly states that the reclassification provisions do not expand or limit the law “on whether and to what extent an amendment relates back to the date of filing the original complaint or other initial pleading.” This language was not included in the version we circulated. It is intended to address the Court Executive Committee’s concern that the proposed legislation could be interpreted to affect the running of the statute of limitations.

§ 403.020. Reclassification by amending initial pleading

403.020. (a) If a plaintiff, cross-complainant, or petitioner files an amended complaint or other amended initial pleading that changes the jurisdictional classification from that previously stated in the caption, and simultaneously pays the reclassification fees provided in Section 403.050, the clerk shall promptly reclassify the case as provided in Section 403.070. The time to respond to the amended initial pleading runs from the date of service of the amended pleading, or from the date of service of the notice of reclassification pursuant to Section 403.070, whichever is later.

(b) For purposes of this section, an amendment to an initial pleading shall be treated in the same manner as an amended initial pleading.

Comment. Section 403.020 is added to provide guidance where a plaintiff recognizes and acknowledges the need for reclassification. For authority to amend pleadings, see Sections 426.50 (amending to add cause of action), 472 (amendment once of course), 473 (amendment requiring leave of court).

See Section 32.5 (jurisdictional classification). See also Sections 403.030 (reclassification of limited civil case by cross-complaint), 403.040 (motion for reclassification), 422.030 (caption).

☞ **Staff Note.** We have incorporated several stylistic suggestions from the State Bar Committee on Administration of Justice (“CAJ”). (See Exhibit p. 1.) CAJ would also delete the term “initial” because it “does not appear to be defined elsewhere in the code and probably is irrelevant.” (*Id.*) The staff disagrees. The term “initial pleading” is widely used in statutes (e.g., Code Civ. Proc. §§ 395.9, 425.13, 583.110; Gov’t Code § 11507.6, 91007), local rules, and rules of the State Bar and State Bar Court. If it were not included in Section 403.020, the provision might be construed to permit a cross-complainant to reclassify a case by filing an amended answer. Referring to the “initial” pleading helps to clarify the proper application of the provision.

§403.030. Reclassification of limited civil case by cross-complaint

403.030. If a cross-complainant in a limited civil case files a cross-complaint that causes the action or proceeding to exceed the maximum amount in controversy for a limited civil case, or otherwise fail to satisfy the requirements for a limited civil case as prescribed by Section 85, the caption of the cross-complaint shall state that the action or proceeding is a limited civil case to be reclassified by cross-complaint, or words to that effect. The cross-complainant shall pay the

reclassification fees provided in Section 403.050, and the clerk shall promptly reclassify the case as provided in Section 403.070. The time to respond to the cross-complaint runs from the date of service of the cross-complaint, or from the date of service of the notice of reclassification pursuant to Section 403.070, whichever is later.

Comment. Section 403.030 is added to provide guidance where a cross-complainant in a limited civil case recognizes and acknowledges the need for reclassification.

See also Sections 403.020 (reclassification by amending initial pleading), 403.040 (motion for reclassification), 422.30 (caption).

☞ **Staff Note.**

(1) The version of Section 403.030 we circulated referred to “a cross-complaint that exceeds the maximum amount in controversy for a limited civil case, or otherwise fails to satisfy the requirements for a limited civil case as prescribed by Section 85.” In recognition that amounts in controversy may be aggregated under some circumstances, we now refer to “a cross-complaint that causes the action or proceeding to exceed”

(2) Unlike the version we circulated, this version provides that if a defendant in a limited civil case files a cross-complaint causing the action to exceed the requirements for a limited civil case, the “caption of the cross-complaint shall state that the action or proceeding is a limited civil case to be reclassified by cross-complaint, or words to that effect.” The cross-complainant is required to pay the reclassification fees and the clerk is required to reclassify the case. This approach was developed in conversations with Judicial Council staff. It spares the clerk from having to make an independent assessment of whether a case properly is a limited civil case or otherwise (which arguably would have been required under the draft we circulated). To determine whether reclassification is in order, the clerk need only examine the caption and determine whether the reclassification fees have been paid.

(3) CAJ suggests that the first sentence be revised along the following lines:

If a cross-complainant in a limited civil case files a cross-complaint that causes the action or proceeding to ~~exceed the maximum amount in controversy for a limited civil case, or otherwise fail~~ to satisfy the requirements for a limited civil case as prescribed by Section 85, the caption

(Exhibit p. 2.) The staff prefers the current version, but we do not feel strongly about this.

§ 403.040. Motion for reclassification

403.040. (a) If the caption of a complaint, cross-complaint, petition, or other initial pleading misstates the jurisdictional classification of the action or proceeding, or mistakenly fails to state, pursuant to Section 422.30, that the action or proceeding is a limited civil case, the defendant or cross-defendant may file a motion for reclassification within the time allowed for that party to respond to the initial pleading. The court, on its own motion, may reclassify a case at any time. A motion for reclassification does not extend the moving party’s time to answer or otherwise respond. The court shall grant the motion and enter an order for reclassification, regardless of any fault or lack of fault, if the caption of the initial pleading misstates the jurisdictional classification of the action or proceeding, or mistakenly fails to state, pursuant to Section 422.30, that the action or proceeding

is a limited civil case. Except as provided in Section 403.060 or paragraph (1) of subdivision (b) of Section 581, the action or proceeding shall not be dismissed.

(b) If a defendant or cross-defendant files a motion for reclassification after the time for that party to respond to the complaint, cross-complaint, or other initial pleading, the court shall grant the motion and enter an order for reclassification only if both of the following conditions are satisfied:

(1) The caption of the initial pleading misstates the jurisdictional classification of the action or proceeding, or mistakenly fails to state, pursuant to Section 422.30, that the action or proceeding is a limited civil case.

(2) The moving party shows good cause for not seeking reclassification earlier.

(c) Before filing a motion for reclassification, a party seeking reclassification shall request that the plaintiff, cross-complainant, or petitioner amend the initial pleading to correct the caption. In making the request, the party seeking reclassification shall explain the basis for seeking reclassification.

(d) A motion for reclassification shall be supported by a declaration, affidavit, or other evidence if necessary to establish that the case is misclassified. A declaration, affidavit, or other evidence is not required if the grounds for reclassification appear on the face of the challenged pleading. All moving and supporting papers, opposition papers, and reply papers shall be filed and served as provided in Section 1005.

(e) Upon the granting of a motion for reclassification and entry of an appropriate order, proceedings shall be had as provided in Sections 403.060 and 403.070.

(f) Nothing in this section shall be construed to require the superior court to reclassify an action or proceeding because the judgment to be rendered, as determined at the trial or hearing, is one that might have been rendered in a limited civil case.

(g) In any case where the misclassification is due solely to an excess in the amount of the demand, the excess may be remitted and the action may continue as a limited civil case.

Comment. Subdivision (a) of Section 403.040(a) continues the first and third sentences of former Section 395.9(a) without substantive change. A new clause is added to expressly negate any inference that a motion for reclassification may only be granted upon a finding of fault. This is declarative of existing law.

Subdivision (b) continues former Section 395.9(b), with revisions to improve clarity. The reference to a motion by the court is deleted as redundant. See subdivision (a).

Subdivision (c) is added to encourage informal resolution of reclassification issues.

Subdivision (d) continues former Section 395.9(c) without substantive change.

Subdivision (e) continues the first sentence of former Section 395.9(h) without substantive change.

Subdivisions (f)-(g) continue former Section 395.9(f)-(g) without substantive change.

For the procedure upon granting a motion for reclassification, see Sections 403.060 (proceedings on order granting motion for reclassification), 403.070 (reclassification procedure). For reclassification fees, see Section 403.050. See also Sections 403.020 (reclassification by amending initial pleading), 403.030 (reclassification of limited civil case by cross-complaint).

☞ **Staff Note.**

(1) CAJ comments that the “regardless of any fault or lack of fault” language “appears unnecessary.” (Exhibit p. 2.) “We see nothing suggesting a “fault” requirement in the present legislation or the statutes on which it is based.” *Id.* The staff agrees that existing Sections 395.9 and 399.5 are not intended to include a fault requirement. According to the Judicial Council, however, a considerable number of courts have expressed confusion about this. The Judicial Council requested that we clarify the matter. In light of this background, the staff would include the phrase “regardless of any fault or lack of fault”. Consistent with CAJ’s position, however, we have revised the Comment to point out that this is declarative of existing law.

(2) CAJ writes:

In subsection (a), the language that the defendant “may” move within the time to respond to the “initial” pleading appears unnecessary, and inconsistent with (b)(2) of proposed 403.040. Conceptually, we believe it would be better to provide in (b) that “[T]he court shall grant the motion and enter an order for reclassification if the action or proceeding should be reclassified, unless reclassification will [materially] prejudice a party or interfere with administration of the court’s calendar.” Delay, in and of itself, should not be the governing criteria. Matters should be reclassified to effectuate the notion that it is the statutes and the court rules that determine which court (i.e., judge) will determine an issue, not one or both of the litigants, but that this reclassification procedure is to be subordinate to the court’s calendar management.

(Exhibit p. 2.)

The issue is whether the party moving for reclassification should have to show good cause for bringing the motion after the time to plead, or the other side should have to show prejudice resulting from the delay. Last year, the State Bar Litigation Section took the same position that CAJ now urges (i.e., the good cause requirement should be deleted). The Commission considered and rejected that approach. (See Memorandum 98-61, pp. 6-7; Minutes (Dec. 10-11), p. 9.) The staff would stick with that decision.

(3) CAJ would delete subdivision (c), which requires a party to informally request reclassification before filing a motion for reclassification:

Subsection (c) appears to be unnecessary; if the attorneys are civil, it isn’t needed. If the attorneys aren’t civil, there are more important issues to be resolved by meet and confer requirements. Perhaps more importantly, (i) reclassification is more a matter of the integrity of the court’s calendar and procedures and should be driven by the court and not the parties and (ii) meet and confer requirements, if they work, are best applied where compromise can result; reclassification is a yes or no decision.

(Exhibit p. 2.)

Unlike CAJ, the Judicial Council had no concerns about subdivision (c), even though the cover letter we sent along with our draft specifically pointed it out. The intent of the provision is to encourage informal resolution of reclassification issues, to conserve resources of the courts and litigants. Whether it would actually achieve this goal is uncertain. This may be a matter that is better handled by a rule of court than by statute. That would make the requirement easy to change or eliminate if it proves ineffective or wasteful. We have taken that approach in the draft attached as Alternative B (Exhibit pp. 19-29).

(4) CAJ comments that subdivision (d) “states the obvious; adding it here only raises the question of what significance its absence means for other motions.” (Exhibit pp. 2-3.) The staff agrees that subdivision (d) is not essential, particularly the last sentence on the briefing schedule.

We think it may be helpful, however, providing a ready answer to basic procedural issues facing a litigant preparing a reclassification motion. In fact, inclusion of the last sentence was a possibility CAJ suggested in 1998. Again, this may be a matter that is better handled by rule of court. See Alternative B (Exhibit pp. 19-29.)

(5) CAJ says that it “ would be better to say that ‘the court, on its own motion, may reclassify’ rather than ‘The court may bring its own motion.’” We have incorporated this stylistic suggestion.

(6) CAJ says that subdivision (a)’s cross-reference to Code of Civil Procedure Section 581(b)(1) should be deleted, because they “do not see anything in CCP 581(b) that relates to dismissal.” (Exhibit p. 2.) We do not understand this comment. Code of Civil Procedure Section 581(b)(1) provides:

(b) An action may be dismissed in any of the following instances:

(1) With or without prejudice, upon written request of the plaintiff to the clerk, filed with papers in the case, or by oral or written request to the court at any time before the actual commencement of trial, upon payment of the costs, if any.

The reference to this provision in proposed Section 403.040 and existing Section 399.5(a) parallels a similar reference in the first paragraph of Code of Civil Procedure Section 396, which governs transfers for lack of subject matter jurisdiction. The reference in Section 396 requires correction, however, because it is to “subdivision 1 of Section 581” (which no longer exists) instead of to “paragraph (1) of subdivision (b) of Section 581”. If the Commission desires, we could make this correction in the clean-up bill. See Exhibit pp. 30-31.

(7) In three places, this draft of Section 403.040 expressly includes the situation in which a caption improperly fails to state that a case is a limited civil case. The draft we circulated expressly included this situation only in one place.

§ 403.050. Reclassification fees

403.050. Unless the court otherwise directs:

(a) If a court grants a motion for reclassification, the reclassification fees are to be paid by the party that misclassified the case. The fees shall be determined as follows:

(1) If a party misclassifies a case as a limited civil case and the case is reclassified, the party shall pay as a reclassification fee the difference between the fee paid for filing the first paper in a limited civil case and the fee for filing the first paper in a case other than a limited civil case. A similar adjustment shall be made for other fees paid before reclassification, and shall also be paid by the party that misclassified the case. If the party that misclassified the case pays an amount for reclassifying the pleading of another party, the other party shall promptly reimburse the party that misclassified the case. Failure to make reimbursement shall be grounds for striking the reclassified pleading.

(2) If a party fails to classify a case as a limited civil case and the case is reclassified, the party shall not be required to pay a new fee for filing the first paper in a limited civil case, but the party is not entitled to a refund of the difference between the fee for filing the first paper in a case other than a limited civil case and the fee for filing the first paper in a limited civil case. Other fees paid before reclassification shall be handled in the same manner.

(b) If an action or proceeding is reclassified by filing an amended pleading or an amendment to a pleading pursuant to Section 403.020 or a cross-complaint pursuant to Section 403.030, the reclassification fees shall be determined as if the court had granted a motion for reclassification. The party filing the amended pleading, amendment to a pleading, or cross-complaint shall pay all of those fees. If that party pays an amount for reclassifying the pleading of another party, the other party shall either promptly reimburse the party that paid for reclassifying the pleading, or file a motion for reclassification. Failure to make reimbursement or file a motion shall be grounds for striking the reclassified pleading. If a party files a motion for reclassification instead of making reimbursement, and the motion is denied, the party shall promptly make reimbursement. Failure to make reimbursement after denial of the motion shall be grounds for striking the reclassified pleading.

Comment. The introductory clause and the first sentence of Section 403.050(a) continue the second sentence of former Section 395.9(h) without substantive change. Former Section 395.9 was drawn from Section 396 (transfer for lack of subject matter jurisdiction), with modifications to fit the context of reclassification. Like former Section 395.9(h), Section 403.050 does not authorize an award of attorney's fees attributable to misclassification of a case. For authority to make such an award under limited circumstances, see Sections 128.6, 128.7.

Section 403.050(a)(1)-(a)(2) are added to clarify the fees due on reclassification pursuant to order of the court. See Gov't Code §§ 26820.4 (fee for filing first paper in case other than a limited civil case), 26826 (fee for filing defendant's first paper in case other than a limited civil case), 72055 (fee for filing first paper in limited civil case), 72056 (fee for filing defendant's first paper in limited civil case).

Under subdivision (b), if a limited civil case is reclassified by filing an amended complaint pursuant to Section 403.020, and the defendant has already answered the original complaint, the reclassification fees include the difference between the fee for filing the defendant's first paper in a limited civil case (Gov't Code § 72056) and the fee for filing the defendant's first paper in a case other than a limited civil case (Gov't Code § 26826). The plaintiff must pay this amount (as well as the other reclassification fees), but is entitled to prompt reimbursement from the defendant, unless the defendant moves to have the case reclassified as a limited civil case. The same approach applies where a cross-complainant reclassifies a limited civil case by filing a cross-complaint pursuant to Section 403.030.

See Section 403.040 (motion for reclassification). See also Section 422.30 (caption).

☞ **Staff Note.**

(1) The draft we circulated included references to the "party seeking reclassification" in subdivision (b). Consistent with the caption-determinative, automatic approach to reclassification by the clerk pursuant to Section 403.020 or 403.030, we eliminated those references in the current draft.

(2) Subdivision (b) now provides that if a case is automatically reclassified pursuant to Section 403.020 (reclassification by amending initial pleading) or 403.030 (reclassification of limited civil case by cross-complaint), and the party filing the amended pleading, amendment to a pleading, or cross-complaint pays an amount for reclassifying the pleading of another party, the other party *has the option* of either reimbursing the party that paid for reclassifying the pleading, or filing a motion for reclassification. The draft we circulated did not provide the option of filing a motion for reclassification rather than making reimbursement. Judicial Council staff suggested this revision.

(3) CAJ comments:

.... Although it may be more convenient for the court to put the burden on the erroneously classifying party of initially paying all of the increased filing fees, if the party that erroneously classified the case pays for refiling the pleading of another party and then is not promptly reimbursed by the party that erroneously classified the case, the party paying the fees must then pay a \$23 motion fee, plus spend at least two or three hours of attorney time to correct what may be a deliberate failure to pay.

(Exhibit p. 3.) The staff is not sure what manner of payment and/or reimbursement would be administratively most efficient and just in this context. Again, this is an area where experimentation may be helpful. The draft attached as Alternative B would leave this matter to be developed in rules of court.

§ 403.060. Proceedings on order granting motion for reclassification

403.060. (a) If an order is made for reclassification of an action or proceeding pursuant to Section 403.040, and fees have been paid as provided in Section 403.050, the clerk shall promptly reclassify the case.

(b) If the fees have not been paid as provided in Section 403.050 within five days after service of notice of the order for reclassification, any party interested in the case, regardless of whether that party is named in the complaint, may pay the fees, and the clerk shall promptly reclassify the case as if the fees had been paid as provided in Section 403.050. The fees shall then be a proper item of costs of the party paying them, recoverable if that party prevails in the action or proceeding. Otherwise, the fees shall be offset against and deducted from the amount, if any, awarded to the party responsible for the fees under Section 403.050, if that party prevails in the action or proceeding.

(c) The cause of action shall not be further prosecuted in any court until the reclassification fees are paid. If those fees are not paid within 30 days after service of notice of an order for reclassification, the court on its own motion or motion of any party may dismiss the action without prejudice to the cause on the condition that no other action on the cause may be commenced in another court before the reclassification fees are paid.

Comment. Section 403.060(a)-(c) continue former Section 399.5(a)-(c) without substantive change, except that the clerk is to reclassify the case upon payment of the reclassification fees, regardless of whether the time for filing a writ petition pursuant to Section 403.080 (petition for writ of mandate) has expired or a such a petition is pending. For authority of the court of appeal to stay an action or proceeding pending determination of a writ proceeding, see Section 403.080. For reclassification procedure, see Section 403.070.

☞ **Staff Note.** The draft we circulated, like existing Section 399.5, required the clerk to wait until the time for filing a writ expired (or the writ was denied) before reclassifying a case when a motion to reclassify was granted. Judicial Council staff expressed concern that this might cause undue delay. Similarly, CAJ commented:

While Section 403.060 follows the present provision for reclassification between superior and municipal courts, that is not entirely satisfactory because it frequently leaves a pending action in limbo, without judicial supervision, for too

long a period of time. There are many self executing provisions, particularly in discovery, that can be abused during the wait. For example, if a subpoena is served immediately before the order for reclassification, how does one move to quash it? What about responding to, or objecting to, discovery? The problem can be serious if ex parte relief is needed, etc. Particularly with the unification of the courts, there is little reason to put the proceeding in limbo until the case file is moved across the hall and renumbered. Alternatives the commission might consider include (a) allowing the “old” court to retain jurisdiction for all aspects of the case except trial until the transfer is completed and (b) allowing the party objecting to reclassification to waive that objection, in writing, after the “old” court has ruled, after which the “new” court would immediately have jurisdiction.

(Exhibit p. 3.) In response to these concerns about delay, we have (1) removed the requirement that the clerk wait for the writ process to be completed before reclassifying a case, and (2) directed the clerk to “promptly” reclassify the case. Is this sufficient to address the problem?

§ 403.070. Reclassification procedure

403.070. (a) At the time of reclassifying a case, the clerk shall mail notice to all parties who have appeared in the action or proceeding, stating the date on which reclassification occurred and the number assigned to the case as reclassified.

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

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

Comment. Section 403.070(a)-(b) continue former Section 399.5(d)-(e) and the second sentence of former Section 395.9(a) without substantive change. Section 403.070(c) continues former Section 399.5(d) without substantive change.

For reclassification fees, see Section 403.050. See also Sections 403.020 (reclassification by amending initial pleading), 403.030 (reclassification of limited civil case by cross-complaint), 403.040 (motion for reclassification), 422.30 (caption).

§ 403.080. Petition for writ of mandate

403.080. When an order is made by the superior court granting or denying a motion to reclassify an action or proceeding pursuant to Section 403.040, the party aggrieved by the order may, within 20 days after service of a written notice of the order, petition the court of appeal for the district in which the court granting or denying the motion is situated for a writ of mandate requiring proper classification of the action or proceeding pursuant to Section 403.040. The superior court may, for good cause, and prior to the expiration of the initial 20-day period, extend the time for one additional period not to exceed 10 days. The petitioner shall file a copy of the petition in the superior court immediately after the petition is filed in

the court of appeal. The court of appeal may stay all proceedings in the case, pending judgment on the petition becoming final. The clerk of the court of appeal shall file with the clerk of the superior court, a copy of any final order or final judgment immediately after the order or judgment becomes final.

Comment. Section 403.080 continues without substantive change the references to reclassification that were deleted from Section 400.

Heading of Chapter 2 (commencing with Section 404) (amended)

SEC. _____. The heading of Chapter 2 (commencing with Section 404) of Title 4 of Part 2 of the Code of Civil Procedure is amended to read:

CHAPTER-2 3. COORDINATION

Comment. The heading of “Chapter 2. Coordination” is renumbered to reflect the addition of new “Chapter 2. Reclassification of Civil Actions and Proceedings” (commencing with Section 403.010).

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

SEC. _____. Section 422.30 of the Code of Civil Procedure is amended to read:

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

(1) The name of the court and county, and, in municipal courts, the name of the judicial district, in which the action is brought.

(2) The title of the action.

(b) In a limited civil case in a county in which there is no municipal court, the caption shall state that the case is a limited civil case, and the clerk shall file the case accordingly.

Comment. Section 422.30(c) is amended to clarify that the clerk is to rely on the caption in determining how to classify a civil case that is brought in a unified superior court. For the rules governing reclassification, see “Chapter 2. Reclassification of Civil Actions and Proceedings.” See also Section 32.5 (jurisdictional classification).

Code Civ. Proc. § 871.3 (amended). Good faith improver

SEC. _____. Section 871.3 of the Code of Civil Procedure is amended to read:

871.3. A good faith improver may bring an action in the superior court or, subject to ~~Sections 395.9 and 396~~ Section 396 and Chapter 2 (commencing with Section 403.010) of Title 4, may file a cross-complaint in a pending action in the superior or municipal court for relief under this chapter. In every case, the burden is on the good faith improver to establish that ~~he or she~~ the good faith improver is entitled to relief under this chapter, and the degree of negligence of the good faith improver should be taken into account by the court in determining whether the improver acted in good faith and in determining the relief, if any, that is consistent with substantial justice to the parties under the circumstances of the particular case.

Comment. Section 871.3 is amended to reflect relocation of the provisions governing reclassification of a civil case.

Code Civ. Proc. § 1014 (amended). Appearance by defendant

SEC. _____. Section 1014 of the Code of Civil Procedure is amended to read:

1014. A defendant appears in an action when the defendant answers, demurs, files a notice of motion to strike, files a notice of motion to transfer pursuant to Section 396b, moves for reclassification pursuant to Section ~~395.9~~ 403.040, gives the plaintiff written notice of appearance, or when an attorney gives notice of appearance for the defendant. After appearance, a defendant or the defendant's attorney is entitled to notice of all subsequent proceedings of which notice is required to be given. Where a defendant has not appeared, service of notice or papers need not be made upon the defendant.

Comment. Section 1014 is amended to reflect relocation of the provisions governing reclassification of a civil case.

**PROPOSED REORGANIZATION OF
RECLASSIFICATION PROVISIONS: ALTERNATIVE B
(4/2/99 DRAFT)**

Heading of Title 4 (commencing with Section 392) (amended)

SEC. _____. The heading of Title 4 (commencing with Section 392) of Part 2 of the Code of Civil Procedure is amended to read:

**TITLE 4. OF THE PLACE OF TRIAL, RECLASSIFICATION, AND
COORDINATION OF CIVIL ACTIONS**

Comment. The heading “Title 4. Of the Place of Trial of Civil Actions” is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Heading of Chapter 1 (commencing with Section 392) (amended)

SEC. _____. The heading of Chapter 1 (commencing with Section 392) of Title 4 of Part 2 of the Code of Civil Procedure is amended to read:

CHAPTER 1. GENERALLY PLACE OF TRIAL

Comment. The heading “Chapter 1. Generally” is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Code Civ. Proc. § 395.9 (repealed). Reclassification as limited civil case or otherwise

SEC. _____. Section 395.9 of the Code of Civil Procedure is repealed:

~~395.9. (a) In a county in which there is no municipal court, if the caption of the complaint, cross-complaint, petition, or other initial pleading erroneously states or fails to state, pursuant to Section 422.30, that the action or proceeding is a limited civil case, the action or proceeding shall not be dismissed, except as provided in Section 399.5 or paragraph (1) of subdivision (b) of Section 581, but shall, on the motion of the defendant or cross-defendant within the time allowed for that party to respond to the initial pleading, or on the court’s own motion at any time, be reclassified as a limited civil case or otherwise. The action or proceeding shall then be prosecuted as if it had been so commenced, all prior proceedings being saved. A motion for reclassification shall not extend the moving party’s time to answer or otherwise respond.~~

~~(b) If it appears from the verified pleadings, or at the trial, or hearing, that the determination of the action or proceeding, or of a cross-complaint, will necessarily involve the determination of questions inconsistent with the jurisdictional classification of the case, the court shall, on motion of either party establishing the grounds for misclassification and good cause for not seeking reclassification earlier, or on the court’s own motion at any time, reclassify the case.~~

~~(c) A motion for reclassification pursuant to this section shall be supported by a declaration, affidavit, or other evidence if necessary to establish that the case is~~

~~misclassified. A declaration, affidavit, or other evidence is not required if the grounds for misclassification appear on the face of the challenged pleading. All moving and supporting papers, opposition papers, and reply papers shall be filed and served in accordance with Section 1005.~~

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

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

~~(f) Nothing in this section shall be construed to require the superior court to reclassify any action or proceeding because the judgment to be rendered, as determined at the trial or hearing, is one that might have been rendered in a limited civil case.~~

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

~~(h) Upon the making of an order for reclassification, proceedings shall be had as provided in Section 399.5. Unless the court ordering the reclassification otherwise directs, the costs and fees of those proceedings, and other costs and fees of reclassifying the case, including any additional amount due for filing the initial pleading, are to be paid by the party filing the pleading that erroneously classified the case.~~

Comment. For organizational clarity, Section 395.9 is repealed and recodified in “Chapter 2. Reclassification of Civil Actions and Proceedings.”

The first and third sentences of former Section 395.9(a) are continued without substantive change in subdivision (a) of Section 403.040 (motion for reclassification). The second sentence of former Section 395.9(a) is continued without substantive change in subdivision (b) of Section 403.070 (reclassified action or proceeding).

Former Section 395.9(b) is continued in subdivision (b) of Section 403.040, with revisions to improve clarity. The reference to a motion by the court is deleted as redundant. See Section 403.040(a).

Former Section 395.9(c) is unnecessary and is not continued. The Judicial Council has authority to promulgate rules governing reclassification of civil actions and proceedings. See Sections 403.050 (reclassification fees) and 403.090 (rules governing reclassification procedure).

Former Section 395.9(d) is continued without substantive change in subdivision (a) of Section 403.070 (reclassified action or proceeding).

Former Section 395.9(e) is continued without substantive change in subdivision (b) of Section 403.010 (application and effect of chapter).

Former Section 395.9(f)-(g) are continued without substantive change in subdivisions (c)-(d) of Section 403.040.

The first sentence of former Section 395.9(h) is unnecessary and is not continued. The second sentence of former Section 395.9(h) is continued without substantive change in the introductory clause and the first sentence of subdivision (a) of Section 403.050 (reclassification fees), except that portion of Section 403.050 does not specify which party is to make payment.

Code Civ. Proc. § 399.5 (repealed). Reclassification pursuant to Section 395.9

SEC. _____. Section 399.5 of the Code of Civil Procedure is repealed:

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

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

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

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

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

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

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

Comment. For organizational clarity, Section 399.5 is repealed and recodified in “Chapter 2. Reclassification of Civil Actions and Proceedings.”

Former Section 399.5(a)-(c) are continued without substantive change in Section 403.060 (proceedings on order granting motion for reclassification), except that (1) the consequences of failure to make payment are not addressed as fully, because this matter may be covered by rules of court promulgated pursuant to Section 403.050, and (2) the clerk is to reclassify the case upon payment of the reclassification fees, regardless of whether the time for filing a writ petition

pursuant to Section 403.080 (petition for writ of mandate) has expired or a such a petition is pending.

Former Section 399.5(d) is not continued. See Section 403.090 (rules governing reclassification procedure).

Former Section 399.5(e) is continued without substantive change in subdivision (b) of Section 403.070 (reclassified action or proceeding).

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

SEC. _____. Section 400 of the Code of Civil Procedure is amended to read:

400. When an order is made by the superior court granting or denying a motion to change the place of trial ~~or a motion to reclassify an action or proceeding pursuant to Section 395.9~~, the party aggrieved by the order may, within 20 days after service of a written notice of the order, petition the court of appeal for the district in which the court granting or denying the motion is situated for a writ of mandate requiring trial of the case in the proper court ~~or proper classification of the action or proceeding pursuant to Section 395.9~~. The superior court may, for good cause, and prior to the expiration of the initial 20-day period, extend the time for one additional period not to exceed 10 days. The petitioner shall file a copy of the petition in the trial court immediately after the petition is filed in the court of appeal. The court of appeal may stay all proceedings in the case, pending judgment on the petition becoming final. The clerk of the court of appeal shall file with the clerk of the trial court, a copy of any final order or final judgment immediately after the order or judgment becomes final.

Comment. For organizational clarity, Section 400 is amended to delete the references to reclassification, which are continued without substantive change in Section 403.080 (petition for writ of mandate).

Code Civ. Proc. §§ 403.010-403.080 (added). Reclassification of civil actions and proceedings

SEC. _____. Chapter 2 (commencing with Section 403.010) is added to Title 4 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 2. RECLASSIFICATION OF CIVIL ACTIONS
AND PROCEEDINGS

§ 403.010. Application and effect of chapter

403.010. (a) This chapter applies in a county in which there is no municipal court.

(b) Nothing in this chapter expands or limits the law on whether a plaintiff, cross-complainant, or petitioner may file an amended complaint or other amended initial pleading. Nothing in this chapter expands or limits the law on whether and to what extent an amendment relates back to the date of filing the original complaint or other initial pleading.

Comment. Subdivision (a) of Section 403.010 makes clear that this chapter is limited to counties in which the trial courts have unified. For transfer between superior and municipal courts in counties in which the courts have not unified, see Chapter 1 (commencing with Section 392).

The first sentence of subdivision (b) continues former Section 395.9(e) without substantive change. The second sentence clarifies that this chapter does not affect the running of the statute of limitations.

403.020. Reclassification by amending initial pleading

403.020. (a) If a plaintiff, cross-complainant, or petitioner files an amended complaint or other amended initial pleading that changes the jurisdictional classification from that previously stated in the caption, and simultaneously pays the reclassification fees provided in Section 403.050, the clerk shall promptly reclassify the case.

(b) For purposes of this section, an amendment to an initial pleading shall be treated in the same manner as an amended initial pleading.

Comment. Section 403.020 is added to provide guidance where a plaintiff recognizes and acknowledges the need for reclassification. It does not affect whether a plaintiff is entitled to amend the complaint or other initial pleading. See Section 403.010 (application and effect of chapter). For authority to amend pleadings, see Sections 426.50 (amending to add cause of action), 472 (amendment once of course), 473 (amendment requiring leave of court).

See Section 32.5 (jurisdictional classification). See also Sections 403.030 (reclassification of limited civil case by cross-complaint), 403.040 (motion for reclassification), 422.030 (caption).

☞ **Staff Note.** In Alternative A, Section 403.020 states in part: “The time to respond to the amended initial pleading runs from the date of service of the amended pleading, or from the date of service of the notice of reclassification pursuant to Section 403.070, whichever is later.” We have omitted that sentence here. The matter could be covered by a rule of court promulgated pursuant to Section 403.090.

§403.030. Reclassification of limited civil case by cross-complaint

403.030. If a cross-complainant in a limited civil case files a cross-complaint that causes the action or proceeding to exceed the maximum amount in controversy for a limited civil case, or otherwise fail to satisfy the requirements for a limited civil case as prescribed by Section 85, the caption of the cross-complaint shall state that the action or proceeding is a limited civil case to be reclassified by cross-complaint, or words to that effect. The cross-complainant shall pay the reclassification fees provided in Section 403.050, and the clerk shall promptly reclassify the case.

Comment. Section 403.030 is added to provide guidance where a cross-complainant in a limited civil case recognizes and acknowledges the need for reclassification.

See also Sections 403.020 (reclassification by amending initial pleading), 403.040 (motion for reclassification), 422.30 (caption).

☞ **Staff Note.** In Alternative A, Section 403.030 states in part: “The time to respond to the cross-complaint runs from the date of service of the cross-complaint, or from the date of service of the notice of reclassification pursuant to Section 403.070, whichever is later.” We have omitted that sentence here. The matter could be covered by a rule of court promulgated pursuant to Section 403.090.

§ 403.040. Motion for reclassification

403.040. (a) If the caption of a complaint, cross-complaint, petition, or other initial pleading misstates the jurisdictional classification of the action or proceeding, or mistakenly fails to state, pursuant to Section 422.30, that the action or proceeding is a limited civil case, the defendant or cross-defendant may file a motion for reclassification within the time allowed for that party to respond to the initial pleading. The court, on its own motion, may reclassify a case at any time. A motion for reclassification does not extend the moving party's time to answer or otherwise respond. The court shall grant the motion and enter an order for reclassification, regardless of any fault or lack of fault, if the caption of the initial pleading misstates the jurisdictional classification of the action or proceeding, or mistakenly fails to state, pursuant to Section 422.30, that the action or proceeding is a limited civil case.

(b) If a defendant or cross-defendant files a motion for reclassification after the time for that party to respond to the complaint, cross-complaint, or other initial pleading, the court shall grant the motion and enter an order for reclassification only if both of the following conditions are satisfied:

(1) The caption of the initial pleading misstates the jurisdictional classification of the action or proceeding, or mistakenly fails to state, pursuant to Section 422.30, that the action or proceeding is a limited civil case.

(2) The moving party shows good cause for not seeking reclassification earlier.

(c) Nothing in this section shall be construed to require the superior court to reclassify an action or proceeding because the judgment to be rendered, as determined at the trial or hearing, is one that might have been rendered in a limited civil case.

(d) In any case where the misclassification is due solely to an excess in the amount of the demand, the excess may be remitted and the action may continue as a limited civil case.

Comment. Subdivision (a) of Section 403.040(a) continues the first and third sentences of former Section 399.5(a) without substantive change. A new clause is added to expressly negate any inference that a motion for reclassification may only be granted upon a finding of fault. This is declarative of existing law.

Subdivision (b) continues former Section 395.9(b), with revisions to improve clarity. The reference to a motion by the court is deleted as redundant. See subdivision (a).

Subdivisions (c)-(d) continue former Section 395.9(f)-(g) without substantive change.

For the procedure upon granting a motion for reclassification, see Sections 403.060 (proceedings on order granting motion for reclassification), 403.070 (reclassified action or proceeding). For reclassification fees, see Section 403.050. See also Sections 403.020 (reclassification by amending initial pleading), 403.030 (reclassification of limited civil case by cross-complaint).

☞ **Staff Note.** In Alternative A, Section 403.030 states in part:

(c) Before filing a motion for reclassification, a party seeking reclassification shall request that the plaintiff, cross-complainant, or petitioner amend the initial pleading to correct the caption. In making the request, the party seeking reclassification shall explain the basis for seeking reclassification.

(d) A motion for reclassification shall be supported by a declaration, affidavit, or other evidence if necessary to establish that the case is misclassified. A declaration, affidavit, or other evidence is not required if the grounds for reclassification appear on the face of the challenged pleading. All moving and supporting papers, opposition papers, and reply papers shall be filed and served as provided in Section 1005.

We have omitted that material here. If necessary, these matters could be covered by a rule of court promulgated pursuant to Section 403.090.

§ 403.050. Reclassification fees

403.050. Unless the court otherwise directs:

(a) If a court grants a motion for reclassification, the reclassification fees shall be determined as follows:

(1) If a party misclassifies a case as a limited civil case and the case is reclassified, the party shall pay as a reclassification fee the difference between the fee paid for filing the first paper in a limited civil case and the fee for filing the first paper in a case other than a limited civil case. A similar adjustment shall be made for other fees paid before reclassification. Each party shall pay for reclassification of that party's pleadings, but the Judicial Council may prescribe rules governing the manner of making payment and consequences of failure to make payment.

(2) If a party fails to classify a case as a limited civil case and the case is reclassified, the party shall not be required to pay a new fee for filing the first paper in a limited civil case, but the party is not entitled to a refund of the difference between the fee for filing the first paper in a case other than a limited civil case and the fee for filing the first paper in a limited civil case. Other fees paid before reclassification shall be handled in the same manner.

(b) If an action or proceeding is reclassified by filing an amended pleading or an amendment to a pleading pursuant to Section 403.020 or a cross-complaint pursuant to Section 403.030, the reclassification fees shall be determined as if the court had granted a motion for reclassification.

Comment. The introductory clause and the first sentence of Section 403.050(a) continue the second sentence of former Section 395.9(h) without substantive change, except that they do not specify which party is to make payment. Former Section 395.9 was drawn from Section 396 (transfer for lack of subject matter jurisdiction), with modifications to fit the context of reclassification. Like former Section 395.9(h), Section 403.050 does not authorize an award of attorney's fees attributable to misclassification of a case. For authority to make such an award under limited circumstances, see Sections 128.6, 128.7.

Section 403.050(a)(1)-(a)(2) are added to clarify the fees due on reclassification pursuant to order of the court. See Gov't Code §§ 26820.4 (fee for filing first paper in case other than a limited civil case), 26826 (fee for filing defendant's first paper in case other than a limited civil case), 72055 (fee for filing first paper in limited civil case), 72056 (fee for filing defendant's first paper in limited civil case). Rules promulgated by the Judicial Council may specify that the losing party is to pay the reclassification fees in the first instance, subject to reimbursement by the other parties in accordance with this provision.

Under subdivision (b), if a limited civil case is reclassified by filing an amended complaint pursuant to Section 403.020, and the defendant has already answered the original complaint, the

reclassification fees include, for example, the difference between the fee for filing the defendant's first paper in a limited civil case (Gov't Code § 72056) and the fee for filing the defendant's first paper in a case other than a limited civil case (Gov't Code § 26826). The same approach applies where a cross-complainant reclassifies a limited civil case by filing a cross-complaint pursuant to Section 403.030.

See Section 403.040 (motion for reclassification). See also Section 422.30 (caption).

§ 403.060. Proceedings on order granting motion for reclassification

403.060. (a) If an order is made for reclassification of an action or proceeding pursuant to Section 403.040, and fees have been paid as provided in Section 403.050, the clerk shall promptly reclassify the case.

(b) If the fees have not been paid as provided in Section 403.050 within five days after service of notice of the order for reclassification, any party interested in the case, regardless of whether that party is named in the complaint, may pay the fees, and the clerk shall promptly reclassify the case as if the fees had been paid as provided in Section 403.050.

(c) The cause of action shall not be further prosecuted in any court until the reclassification fees are paid. If those fees are not paid within 30 days after service of notice of an order for reclassification, the court on its own motion or motion of any party may dismiss the action without prejudice to the cause on the condition that no other action on the cause may be commenced in another court before the reclassification fees are paid.

Comment. Section 403.060(a)-(c) continue former Section 399.5(a)-(c) without substantive change, except that (1) the consequences of failure to make payment are not addressed as fully, because this matter may be covered by rules of court promulgated pursuant to Section 403.050, and (2) the clerk is to reclassify the case upon payment of the reclassification fees, regardless of whether the time for filing a writ petition pursuant to Section 403.080 (petition for writ of mandate) has expired or a such a petition is pending. For authority of the court of appeal to stay an action or proceeding pending determination of a writ proceeding, see Section 403.080. For rules governing reclassified actions or proceedings, see Section 403.070.

 **Staff Note.** In Alternative A, Section 403.060 states in part:

The fees shall then be a proper item of costs of the party paying them, recoverable if that party prevails in the action or proceeding. Otherwise, the fees shall be offset against and deducted from the amount, if any, awarded to the party responsible for the fees under Section 403.050, if that party prevails in the action or proceeding.

We have omitted that material here. As stated in the Comment, these points could be covered by a rule of court promulgated pursuant to Section 403.050.

§ 403.070. Reclassified action or proceeding

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

(b) The court shall have and exercise over the reclassified action or proceeding the same authority as if the action or proceeding had been originally commenced as reclassified, all prior proceedings being saved. The court may allow or require

whatever amendment of the pleadings, filing and service of amended, additional, or supplemental pleadings, or giving of notice, or other appropriate action, as may be necessary for the proper presentation and determination of the action or proceeding as reclassified.

Comment. Section 403.070(a) continues former Section 399.5(d) without substantive change. Section 403.070(b) continues former Section 399.5(e) and the second sentence of former Section 395.9(a) without substantive change.

For reclassification fees, see Section 403.050. See also Sections 403.020 (reclassification by amending initial pleading), 403.030 (reclassification of limited civil case by cross-complaint), 403.040 (motion for reclassification), 422.30 (caption).

☞ **Staff Note.** In Alternative A, Section 403.070 states in part:

(a) At the time of reclassifying a case, the clerk shall mail notice to all parties who have appeared in the action or proceeding, stating the date on which reclassification occurred and the number assigned to the case as reclassified.

We have omitted that material here. This matter could be covered by a rule of court promulgated pursuant to Section 403.090.

§ 403.080. Petition for writ of mandate

403.080. When an order is made by the superior court granting or denying a motion to reclassify an action or proceeding pursuant to Section 403.040, the party aggrieved by the order may, within 20 days after service of a written notice of the order, petition the court of appeal for the district in which the court granting or denying the motion is situated for a writ of mandate requiring proper classification of the action or proceeding pursuant to Section 403.040. The superior court may, for good cause, and prior to the expiration of the initial 20-day period, extend the time for one additional period not to exceed 10 days. The petitioner shall file a copy of the petition in the superior court immediately after the petition is filed in the court of appeal. The court of appeal may stay all proceedings in the case, pending judgment on the petition becoming final. The clerk of the court of appeal shall file with the clerk of the superior court, a copy of any final order or final judgment immediately after the order or judgment becomes final.

Comment. Section 403.080 continues without substantive change the references to reclassification that were deleted from Section 400.

§ 403.090. Rules governing reclassification procedure

403.090. The Judicial Council may prescribe rules, not inconsistent with statute, governing the procedure for reclassification of civil actions and proceedings.

Comment. Section 403.090 is added to facilitate refinement of the procedures governing reclassification of civil actions. See also Section 403.050, which gives the Judicial Council authority to prescribe rules governing the manner of paying reclassification fees and consequences of failure to make payment.

Heading of Chapter 2 (commencing with Section 404) (amended)

SEC. _____. The heading of Chapter 2 (commencing with Section 404) of Title 4 of Part 2 of the Code of Civil Procedure is amended to read:

CHAPTER-2 3. COORDINATION

Comment. The heading of “Chapter 2. Coordination” is renumbered to reflect the addition of new “Chapter 2. Reclassification of Civil Actions and Proceedings” (commencing with Section 403.010).

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

SEC. _____. Section 422.30 of the Code of Civil Procedure is amended to read:

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

(1) The name of the court and county, and, in municipal courts, the name of the judicial district, in which the action is brought.

(2) The title of the action.

(b) In a limited civil case in a county in which there is no municipal court, the caption shall state that the case is a limited civil case, and the clerk shall file the case accordingly.

Comment. Section 422.30(c) is amended to clarify that the clerk is to rely on the caption in determining how to classify a civil case that is brought in a unified superior court. For the rules governing reclassification, see “Chapter 2. Reclassification of Civil Actions and Proceedings.” See also Section 32.5 (jurisdictional classification).

Code Civ. Proc. § 871.3 (amended). Good faith improver

SEC. _____. Section 871.3 of the Code of Civil Procedure is amended to read:

871.3. A good faith improver may bring an action in the superior court or, subject to ~~Sections 395.9 and 396~~ Section 396 and Chapter 2 (commencing with Section 403.010) of Title 4, may file a cross-complaint in a pending action in the superior or municipal court for relief under this chapter. In every case, the burden is on the good faith improver to establish that ~~he or she~~ the good faith improver is entitled to relief under this chapter, and the degree of negligence of the good faith improver should be taken into account by the court in determining whether the improver acted in good faith and in determining the relief, if any, that is consistent with substantial justice to the parties under the circumstances of the particular case.

Comment. Section 871.3 is amended to reflect relocation of the provisions governing reclassification of a civil case.

Code Civ. Proc. § 1014 (amended). Appearance by defendant

SEC. _____. Section 1014 of the Code of Civil Procedure is amended to read:

1014. A defendant appears in an action when the defendant answers, demurs, files a notice of motion to strike, files a notice of motion to transfer pursuant to Section 396b, moves for reclassification pursuant to ~~Section 395.9~~ 403.040, gives the plaintiff written notice of appearance, or when an attorney gives notice of appearance for the defendant. After appearance, a defendant or the defendant’s attorney is entitled to notice of all subsequent proceedings of which notice is required to be given. Where a defendant has not appeared, service of notice or papers need not be made upon the defendant.

Comment. Section 1014 is amended to reflect relocation of the provisions governing reclassification of a civil case.

**CODE OF CIVIL PROCEDURE SECTION 396:
CORRECTION OF CROSS-REFERENCE**

Code Civ. Proc. § 396 (amended). Transfer for lack of subject matter jurisdiction

SEC. _____. Section 396 of the Code of Civil Procedure is amended to read:

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

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

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

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

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

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

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

Comment. Section 396 is amended to correct the cross-reference to Section 581.