

67

8/27/66

Memorandum 66-53

Subject: Study 67 - Suit by or Against an Unincorporated Association

Attached to this memorandum are two copies of a revised recommendation on this subject. The recommendation reflects the technical changes suggested by the Legislative Counsel and incorporates the suggestions of the office of the Secretary of State.

We hope that we can approve this recommendation for publication at the September meeting. Accordingly, please mark your suggested changes on one copy to return to the staff at or before the September meeting.

We received comments from two attorneys and from the office of the Secretary of State. These comments are attached as Exhibits I, II, and III. The two attorneys are strongly in favor of the recommendation.

We received two suggestions for revision of the tentative recommendation. Mr. Jacobson (Exhibit II) suggests that the word "person" in revised Section 388 be defined to include corporations, partnerships, and the like. We did not make this revision in preparing the attached revised recommendation for two reasons. First, Corporations Code Section 18 states: "'Person' includes a corporation as well as a natural person." Hence, we believe the suggested revision unnecessary. Moreover, we would be reluctant to make the suggested change in Section 388 and not make it in Section 24001. We believe the matter would best be left to court construction.

The office of the Secretary of State (Exhibit III) suggested that the provisions dealing with designation of agent for process were inadequate. We agree and have revised the provisions accordingly. See Sections 24003 and 24004 (beginning on page 18).

In addition to his comments on this tentative recommendation, Mr. Jacobson (Exhibit II) suggests that we also consider revising the Fictitious Name Statute. We have sent him a copy of our tentative recommendation on that subject.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

67-50-10

THE DOCTORS BUSINESS BUREAU

OF SOUTHERN CALIFORNIA

617 SOUTH OLIVE STREET
LOS ANGELES 14, CALIFORNIA
TELEPHONE MADISON 7-1252

July 29, 1966

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
Room 30, Crothers Hall
Stanford University
Stanford, California 94305

Re: The Fictitious Name Statute

Dear Mr. DeMouilly:

We thank you for the opportunity of reviewing the proposed legislation relating to suits by unincorporated associations.

The proposed statute exactly meets our requirements, and we are hopeful that it will become law.

Our attorneys asked me to compliment your Commission on the excellent work in the June 16 recommendation.

Sincerely,

George W. Elder
GEORGE W. ELDER
Managing Partner

GWE/n

cc: Call and Call
Attorneys at Law
617 So. Olive St., Room 400
Los Angeles, Calif. 90014

LAW OFFICES

LOWENTHAL & LOWENTHAL

MORRIS LOWENTHAL
JULIET LOWENTHAL
JEROME N. FIELD
JOHN R. JACOBSON
REED H. BEMENT

August 23, 1966

405 MONTGOMERY STREET
SAN FRANCISCO 94104
TELEPHONE 986-5366
AREA CODE 415

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
Room 30, Crothers Hall
Stanford University
Stanford, California 94305

Re: Tentative Recommendation on Suit
By or Against an Unincorporated
Association

Dear Mr. DeMouilly:

Your letter of August 22, 1966 and its enclosure are greatly appreciated.

The approach taken in the tentative recommendations is one which I believe is highly desirable. It will provide a central point at which to discover the existence and proper persons to serve to reach unincorporated associations, including partnerships, where such information often depends upon the fortuitous circumstance of knowing the identities of the real parties owning the partnership or association and being able to locate them.

There are two aspects which come to mind that it is suggested ought to be considered for further revisions of existing law.

At common law (as discussed in 37 Cal. Jur. 2nd, pp. 664-667) all of the real partners must be named as parties plaintiffs in an action on an obligation owned by the association or entered into in the name of the association or owned by the association at the time the obligation was made. However, there is authority (37 Cal. Jur. 2d, pp. 696-698) that the partnership may not maintain an action on the firm obligation unless it has first complied with Sections 2466 and 2471 of the Civil Code. It seems an anomaly to say that the members of a partnership must comply with the statute concerning publication of a Certificate of Doing Business Under a Fictitious Name yet must sue in the names of the partners rather than in the name of the firm.

It would seem appropriate to change the place for filing the Certificate of Doing Business Under Fictitious Name from the many different counties where the principal office could be to the same central point with the Secretary of State under the proposed CCP §395.2 and Corporation Code §24003.

The fact that an unincorporated association would be allowed to sue and be sued under its common name under the proposed CCP §388(b) would not necessarily cause a court to conclude that compliance with the fictitious name provisions of Civil Code sections mentioned above is no longer required because those sections are in terms of whether or not the action may be "maintained".

The proposed CCP §388(a) could raise the question of whether a "person" included a limited partnership, a general partnership, a corporation or other form of organization as a member of the "unincorporated association." No case has been found where this question arose under the present CCP §388. The fact that it has not arisen is not too surprising since the present Code section deals with naming such unincorporated associations as defendants rather than stating a statutory qualification for the exercise of a right or privilege by the unincorporated association. No doubt there are some judges who would hold that a statutory right to sue in an artificial name is in derogation of the common law requirement that the action be maintained in the names of all of the partners of a partnership, and then proceed to hold that a particular "unincorporated association" could not strictly comply with the proposed CCP §388 because at least one member of the unincorporated association was not a natural person. Perhaps this point would be obviated by adding a subdivision to the proposed CCP §388 along the following lines:

"(c) A 'person' includes natural person, general partnerships, limited partnerships, corporations, and other unincorporated associations or organizations."

An interesting side effect of the proposed CCP §388 is that it is broad enough to settle one point concerning limited partnerships which does not appear to have been settled by any decision that has come to my attention. That point is whether all of the actual members of a limited partnership must be named as plaintiffs where an action is brought on the claim of the limited partnership. Present law, from one point of view, could be said to require naming all of the partners, including the limited partner members on the theory that the law applicable to general partners applies to limited partnerships where

necessary to provide the law applicable to the relations of limited partnerships and to the extent not inconsistent with the Limited Partnership Act. Such a conclusion would tend to expose a limited partner to liability other than as provided in the Limited Partnership Act if there were a counter-claim or cross-complaint resulting in liability over and above the plaintiff's claim and there were a failure to plead and a failure to prove the limitation of liability of plaintiff limited partners. It is small comfort to say that the limited partners thus exposed to an excessive liability would have the recourse against the general partners or partner.

It is suggested that the foregoing speculations upon the state of the law and consequences justify some attention to the areas outlined. I regret that I am unable to analyze the recommendations in any degree of depth or to pursue the consequences of the above suggestions to any greater detail at this time. It is hoped that the recommendation is successful whether or not any of the thoughts expressed in this letter are adopted.

It would be appreciated if you could put me on your mailing list for any further developments in this area of legislation as the matter progresses.

Very truly yours,


JOHN R. JACOBSON

JRJ/s

K. M. JORDAN
TARY OF STATE



OFFICE OF THE

Secretary of State

STATE OF CALIFORNIA
SACRAMENTO 95814

July 28, 1966

Mr. John E. Belouilly, Executive Secretary
California Law Revision Commission
Room 30, Crothers Hall
Stanford University
Stanford, California 94305

Dear Sir:

We have reviewed the Commission's tentative recommendations relating to "The Fictitious Name Statute" and to "Suit by or Against an Unincorporated Association", submitted with your June 20, 1966 letter to us. One can only guess what the volume of the proposed new filings might be, but surely it would be substantial. As you probably know, our office now employs an electronic data processing indexing system for the storage and retrieval of Uniform Commercial Code filings, and we would be able to handle these new filings if data processing equipment were used. At this stage of the proposals we have not done even any tentative programming, so we do not know what would be required in the way of additional equipment and personnel.

THE FICTITIOUS NAME STATUTE

The proposed statutory provisions apparently were drafted with a manually operated indexing system in mind, and revision will be necessary, although we are not prepared at this time to suggest specific changes. For example, instead of issuing certified copies of fictitious name certificates, we would, when requested, issue a certificate showing whether or not a fictitious name certificate is on file for a certain individual, partnership or corporation and, if so, setting out certain necessary information retrieved by the data processing equipment and placed by it on the certificate. The provisions authorizing us to purge our records from time to time should be retained, with whatever modifications may be required.

It is not clear to us how the earlier expiration of fictitious name certificates (Page 18, Section 17906(b) through (d)) is to be made a matter of record with us or how we are to collect the fee for preparing and mailing notices of impending expiration of fictitious name certificates (pages 21, 33).

July 28, 1966

We understand that we will be merely a filing agency and will not be required to reject certificates on the ground that the DBA is the same as or is deceptively similar to a DBA of record with us, but, even so, the use of the same DBA by different business enterprises will present problems.

Our office is not staffed to make the investigations necessary to prosecute for violations of the filing requirements, and we suggest that Section 17912 (Page 26) be revised to authorize prosecution by the Attorney General or by a district attorney, as is done by sections 6800 and 6408, Corporations Code, in cases where foreign corporations fail to comply with the qualification requirements.

SUIT BY OR AGAINST AN UNINCORPORATED ASSOCIATION

We are unable to find any provision which would authorize us to purge our files in connection with the filings to be made pursuant to Section 24003 (Page 18) or which would permit a designated agent to resign as such agent (cf. Sections 3301.7 and 6405, Corporations Code), and we believe that such provisions should be added. Further, in cases where a corporation is authorized to act as agent for service of process, the certificate filed by the corporation pursuant to Section 3301.5, 3301.6, 6403.5 or 6403.6, Corporations Code, will include an address where the agent may be served, and therefore the address requirement set out in Subdivision (1) of Section 24003 probably should be limited in application to agents who are natural persons.

With reference to both of the tentative recommendations, we are unable at this time to estimate what our costs will be for the additional services which we are to provide, and consequently we do not know what fees should be charged.

Very truly yours,

FRANK M. JORDAN
Secretary of State

By 
RALPH R. MARTIG
Senior Counsel and Deputy

RRM:lk

#67

Revised August 28, 1966

STATE OF CALIFORNIA
CALIFORNIA LAW
REVISION COMMISSION

RECOMMENDATION
relating to
SUIT BY OR AGAINST AN UNINCORPORATED ASSOCIATION

September 1966

California Law Revision Commission
30 Crothers Hall
Stanford University
Stanford, California

RECOMMENDATION
of the
CALIFORNIA LAW REVISION COMMISSION
relating to

SUIT BY OR AGAINST AN UNINCORPORATED ASSOCIATION

At common law, an unincorporated association could neither sue nor be sued in the association's name. If the association incurred an obligation--whether in contract, in tort, or otherwise--a party seeking to enforce the obligation had to proceed against all of the members of the association as parties defendant. Similarly, if an unincorporated association desired to bring an action, all of the members of the association had to join as the parties plaintiff.

As the purposes for which unincorporated associations are organized have increased, and as the activities of unincorporated associations have expanded, these common law rules have been found to be increasingly burdensome. In modern times, unincorporated associations--such as partnerships, churches, lodges, clubs, labor unions, and business and professional societies--are organized for and carry on virtually every kind of commercial, charitable, and social activity. Because the common law rules that forbid an unincorporated association from appearing in court in its own name seriously impede the expeditious administration of litigation arising out of these activities, many states have enacted statutes that permit an unincorporated association to sue and be sued in its own name.

By statute, California provides that persons associated for the transaction of business may be sued in their common name. The California Supreme Court has held that one type of unincorporated association--a labor union--may sue in its own name. There is no general statute, however, that permits

unincorporated associations in California to sue in their own names. Moreover, the California rules governing service of process and venue in actions against unincorporated associations are unnecessarily disadvantageous to such associations. The existing California statutes are in need of substantial revision if the procedural rules applicable to actions brought by or against unincorporated associations are to be kept in harmony with modern conditions. Accordingly, the Law Revision Commission recommends:

1. An unincorporated association should be able to sue in its own name. An unincorporated association frequently incurs obligations or acquires rights in its association name, and there is no valid reason why it should be denied access to the courts as an association to define such obligations or to enforce such rights.

It is possible that legislation permitting an unincorporated association to sue in its own name will merely clarify rather than change existing California law. In Daniels v. Sanitarium Ass'n, Inc., 59 Cal.2d 602, 30 Cal. Rptr. 828, 381 P.2d 652 (1963), the Supreme Court held that a labor union could maintain an action in its own name. The courts may well apply the same rule to other types of unincorporated associations. But whether a particular type of unincorporated association can sue in its own name under the rule in the Daniels case may remain uncertain for many years since a case involving that type of association must be tried and processed through the appellate courts before the law can be determined with certainty. Clarifying legislation will obviate the need for repeated appeals to determine how far the principle of the Daniels case extends.

The present uncertainty as to the right of an unincorporated association to sue in its own name results in the institution of actions in the names of individuals who, apart from their association membership, are not

really interested in the action. Joining all of the members of the association as plaintiffs imposes an extremely onerous procedural burden upon the plaintiff association--both in preparing the complaint and in substituting parties when there is a change in membership--without any corresponding benefit to the defendant. If the defendant wishes to know who the members are, he may obtain that information expeditiously through the use of ordinary discovery procedures. Usually, however, the interests and identity of the individual members is irrelevant. Permitting an unincorporated association to sue in the association name, therefore, will further the principle expressed in Code of Civil Procedure Section 367 that every action should be prosecuted in the name of the real party in interest.

2. The limitation now contained in Code of Civil Procedure Section 388 that an unincorporated association must be engaged in "business" before it can be sued in its common name serves no useful purpose and should be repealed. Repeal of this limitation will make no great change in existing law, for the courts have held that practically any activity in which an unincorporated association engages constitutes the "transaction of business" within the meaning of this section. See Herald v. Glendale Lodge No. 1289, 46 Cal. App. 325, 189 Pac. 329 (1920).

3. Legislation should be enacted providing that an unincorporated association is responsible, to the same extent as if it were a natural person, for an act or omission of its officer, agent, or employee acting within the scope of his office, agency, or employment. Here, again, it seems likely that such legislation will clarify rather than change existing California law. Recent cases have held that certain associations are liable for the torts of their officers and employees. Inglis v. Operating Engineers Local Union No. 12, 58 Cal.2d 269, 23 Cal. Rptr. 403, 373 P.2d 467 (1962);

Marshall v. Int'l Longshoremen's & Warehousemen's Union, 57 Cal.2d 781, 22 Cal. Rptr. 211, 371 P.2d 987 (1962). The recently enacted Commercial Code defines a "person" who may contract obligations thereunder to include unincorporated associations. COM. CODE § 1201(28), (29), (30). Other statutes authorize certain kinds of associations to incur obligations under particular types of contracts. See, e.g., CORP. CODE § 21200, INS. CODE §§ 11040-11041, LABOR CODE § 1126. Thus, the recommended legislation will remove any remaining uncertainty concerning the extent to which unincorporated associations are liable for actions taken on their behalf.

4. Under existing law, an unincorporated association may be sued in any county where any member of the association resides. Juneau Spruce Corp. v. Int'l Longshoremen's & Warehousemen's Union, 37 Cal.2d 760, 235 P.2d 607 (1951). As a result, associations with large, widespread memberships are subject to suit in areas where they conduct no business and have incurred no obligations. Thus, a plaintiff who desires to sue an unincorporated association may frequently "shop" for a favorable forum. Individuals and corporations are not subject to this sort of forum shopping. To provide unincorporated associations with equivalent protection, legislation should be enacted permitting an unincorporated association to file a designation of its principal place of business with the Secretary of State so that such information may be readily ascertainable. After such a designation is filed, the unincorporated association should be subject to suit only in the designated county, in the county where a contract is made or is to be performed, or in the county where an obligation or liability arises or the breach occurs. This recommendation would make an unincorporated association that had complied with the statute subject to the same venue

provisions as a corporation.

5. Under existing California law, service of process may be made upon an unincorporated association by serving any member thereof. CODE CIV. PROC. § 388. There is no requirement that a plaintiff notify any of the responsible officers of the association of the pendency of the litigation. A plaintiff can, therefore, under existing law, serve a member who has little interest in the association or whose interests are actually more closely identified with those of the plaintiff than they are with those of the association. If that member fails to notify the association of the pending litigation, a default judgment may be taken against the association despite the lack of any meaningful notice to the association.

To remedy this situation, legislation should be enacted permitting any unincorporated association to file with the Secretary of State a certificate designating an agent for service of process and stating the address at which such agent can be served. Service upon the association should be required to be made either by service upon a responsible officer of the association or by service upon the designated service agent. A party should be permitted to serve process upon an unincorporated association by service upon an individual member only if the officers of the association cannot be found in this state after diligent search and the agent for the service of process cannot be found at the address designated in the certificate filed with the Secretary of State. But even in this case, the party should be required to mail a copy of the summons to the last known mailing address of the association.

The Commission's recommendations would be effectuated by the enactment of the following legislation:

6/30/66 7-3-66
Req. #7201 7564

An act to amend Sections 388, 410, and 411 of, and to add Section 395.2 to, the Code of Civil Procedure, and to add Part 4 (commencing with Section 24000) to Title 3 of the Corporations Code, relating to unincorporated associations.

The people of the State of California do enact as follows:

Section 1. Section 388 of the Code of Civil Procedure is amended to read:

388. When two or more persons, associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates, and the judgment in the action shall bind the joint property of all the associates, and the individual property of the party or parties served with process, in the same manner as if all had been named defendants and had been sued upon their joint liability.

(a) As used in this section, "unincorporated association" means any unincorporated organization of two or more persons which engages in any activity of any nature, whether for profit or not, under a common name.

(b) An unincorporated association may sue and be sued in its common name.

Comment. Under Section 388, any unincorporated association, whether engaged in business or not, may be sued in the association name. Under the prior law, only persons transacting business under a common name could be sued in that name. The term "business," however, was construed so broadly that it constituted little if any limitation on the right to sue an unincorporated association. See Herald v. Glendale Lodge No. 1289, 46 Cal. App. 325, 189 Pac. 329 (1920).

Section 388 also grants unincorporated associations the privilege of suing in the association name. The extent to which an unincorporated association could sue in its own name was unclear under prior law. Compare Daniels v. Sanitarium Ass'n, Inc., 59 Cal.2d 602, 30 Cal. Rptr. 828, 381 P.2d 652 (1963)(labor union could maintain action in its own name) with Kadota Fig Ass'n v. Case-Swayne Co., 73 Cal. App.2d 796, 167 P.2d 518 (1946) (unincorporated cooperative association could not sue in its own name).

The provisions formerly contained in Section 388 dealing with service of process are superseded by Code of Civil Procedure Sections 410 and 411(2.1) and the provisions formerly contained in Section 388 dealing with the enforcement of judgments are superseded by Corporations Code Section 24002.

SEC. 2. Section 395.2 is added to the Code of Civil Procedure, to read:

395.2. If an unincorporated association has filed a statement with the Secretary of State pursuant to Section 24003 of the Corporations Code listing its principal office or place of business in this state, the proper county for the trial of an action against such unincorporated association is the same as it would be if the unincorporated association were a corporation and, for the purpose of determining such county, the principal place of business of the unincorporated association shall be deemed to be the principal office or place of business listed in the statement.

Comment. Under Section 16 of Article XII of the Constitution of California, both corporations and unincorporated associations may be sued "in the county where the contract is made or is to be performed, or where the obligation or liability arises, or the breach occurs." In addition, that section of the Constitution provides that a corporation (but not an association) may be sued in the county where its principal place of business is located. An unincorporated association, however, may be sued in any county where the plaintiff can sue a member of the association. Juneau Spruce Corp. v. Int'l Longshoremen's & Warehousemen's Union, 37 Cal.2d 760, 235 P.2d 607 (1951). Thus, large unincorporated associations may be subjected to a kind of "forum shopping" that is not possible where corporations or individuals are concerned.

Under Section 395.2, an unincorporated association, by filing a designation of its principal office or principal place of business with the Secretary of State, may avoid this sort of forum shopping and may secure the advantages of the venue provisions applicable to corporations under the state Constitution.

SEC. 3. Section 410 of the Code of Civil Procedure is amended to read:

410. The summons may be served by the sheriff, a constable, or marshal, of the county where the defendant is found, or any other person over the age of 18, not a party to the action. A copy of the complaint must be served, with the summons, upon each of the defendants. When the service is against a corporation, or against an unincorporated association in an action brought under associates-conducting-business-under-a-common-name,-in-the-manner authorized by Section 388, there shall appear on the copy of the summons that is served a notice stating in substance: "To the person served: You are hereby served in the within action (or proceeding) on behalf of (here state the name of the corporation or the unincorporated association ~~common-name-under-which-business~~ ~~is-conducted-by-the-associates~~) as a person upon whom the summons and a copy of the complaint must be served to effect service against said party under the provisions of (here state appropriate provisions of Section 388-~~or~~ 411) of ~~this~~ the Code of Civil Procedure ." When service is intended to be made upon said person as an individual as well as a person upon whom service must be made on behalf of said corporation or said association ~~associates~~ , said notice shall also indicate that service is had upon said person as an individual as well as ~~on behalf of said corporation or said association associates~~ . In a case in which the foregoing provisions of the section require that notice of the capacity in which a person is served must appear on the copy of the summons that is served, the certificate or affidavit

of service must recite that such notice appeared on such copy of the summons, if, in fact, it did appear. When service is against a corporation, or against an unincorporated association in an action brought under associates-conducting-a-business-under-a common-name,-in-the-manner-authorized-by Section 388, and notice of that fact does not appear on the copy of the summons or a recital of such notification does not appear on the certificate or affidavit of service of process as required by this section, no default may be taken against such corporation or such association associates . When service is made upon the person served as an individual as well as on behalf of the corporation or association associates conducting-a-business-under-a-common-name , and the notice of that fact does not appear on the copy of the summons or a recital of such notification does not appear in the certificate or affidavit of service of process as required by this section, no default may be taken against such person.

When the summons is served by the sheriff, a constable or marshal, it must be returned, with his certificate of its service, and of the service of a copy of the complaint, to plaintiff if he is acting as his own attorney, otherwise to plaintiff's attorney. When it is served by any other person, it must be returned to the same place, with the affidavit of such person of its service, and of the service of a copy of the complaint.

If the summons is lost subsequent to service and before it is returned, an affidavit of the official or other person making service, showing the facts of service of the summons, may be returned in lieu of the summons and with the same effect as if the summons were itself returned.

Comment. The amendments to Section 410 merely conform the section to the amended versions of Sections 388 and 411.

SEC. 4. Section 411 of the Code of Civil Procedure is amended to read:

411. The summons must be served by delivering a copy thereof as follows:

1. If the suit is against a domestic corporation: to the president or other head of the corporation, a vice president, a secretary, an assistant secretary, general manager, or a person designated for service of process or authorized to receive service of process. If such corporation is a bank, to any of the foregoing officers or agents thereof, or to a cashier or an assistant cashier thereof. If no such officer or agent of the corporation can be found within the state after diligent search, then to the Secretary of State as provided in Sections 3301 to 3304, inclusive, of the Corporations Code, unless the corporation be of a class expressly excepted from the operation of those sections.

2. If the suit is against a foreign corporation, or a non-resident joint stock company or association, doing business in this state ~~;~~ in the manner provided by Sections 6500 to 6504, inclusive, of the Corporations Code.

2.1. If the suit is against an unincorporated association (not including a "public agency" as defined in subdivision 5): to the president or other head of the association, a vice president, a secretary, an assistant secretary, general manager, general partner, or a person designated as agent for service of process as provided in Section 2400³ of the Corporations Code. If no president or other head of the association, vice president, secretary, assistant secretary, general manager, or general partner can be found within the

state after diligent search, and if the person designated as agent for service of process cannot be found at his address as specified in the statement designating him as the agent of the association for the service of process, then to any one or more of the association's members and by mailing a copy thereof to the last known mailing address, if any, of the principal office or place of business of the association.

3. If against a minor, under the age of 14 years, residing within this state: to such minor, personally, and also to his father, mother, or guardian; or if there be none within this state, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed.

4. If against a person residing within this state and for whom a guardian or conservator has been appointed: to such person, and also to his guardian or conservator.

5. Except as otherwise specifically provided by statute, in an action or proceeding against a local or state public agency, to the clerk, secretary, president, presiding officer or other head thereof or of the governing body of such public agency. "Public agency" includes (1) every city, county, and city and county; (2) every public agency, authority, board, bureau, commission, corporation, district and every other political subdivision; and (3) every department and division of the state.

6. In all cases where a corporation has forfeited its charter or right to do business in this state, or has dissolved, by delivering a copy thereof to one of the persons who have become the trustees of the corporation and of its stockholders or members; or, in a proper case, as provided in Sections 3305 and 3306 of the Corporations Code.

7. If the suit is one brought against a candidate for public office and arises out of or in connection with any matter concerning his candidacy or the election laws and said candidate cannot be found within the state after diligent search, then as provided for in Section 54 of the Elections Code.

8. In all other cases to the defendant personally.

Comment. Subdivision 2.1 has been added to Section 411 to permit service upon an unincorporated association in much the same manner that service may be made upon a corporation. The revised form of the section provides assurance that the responsible officers of an unincorporated association will be aware of any actions that are brought against the association. Prior law did not provide such assurance, for service could be made under the prior law upon any member of the association.

SEC. 6. Part 4 (commencing with Section 24000) is added to Title 3 of the Corporations Code, to read:

PART 4. LIABILITY; LEVIES AGAINST PROPERTY;
DESIGNATION OF AGENT FOR SERVICE AND OF
PRINCIPAL OFFICE OR PLACE OF BUSINESS

24000. As used in this part, "unincorporated association" means any unincorporated organization of two or more persons which engages in any activity of any nature, whether for profit or not, under a common name but does not include a government or governmental subdivision or agency.

Comment. Section 24000 provides a definition that includes all private unincorporated associations of any kind and excludes all governmental entities, authorities, boards, bureaus, commissions, departments, and associations of any kind.

24001. Except as otherwise provided by statute, an unincorporated association is liable for its act or omission, and for the act or omission of its officer, agent, or employee acting within the scope of his office, agency, or employment, to the same extent as if the association were a natural person. Nothing in this section affects the liability between members of an association or the liability between an association and the members thereof.

Comment. Section 24001 provides that unincorporated associations are liable for acts or omissions done by or under the authority of the association to the same extent that natural persons are liable. The exception at the beginning of the section is intended to avoid repeal of any statutory limitations on association liability such as that found in Section 21400 of the Corporations Code (relating to death benefits payable by unincorporated fraternal societies).

Section 24001 is probably declarative of the prior California law insofar as the tort liability of unincorporated associations is concerned. See Inglis v. Operating Engineers Local Union No. 12, 58 Cal.2d 269, 23 Cal. Rptr. 403, 373 P.2d 467 (1962); Marshall v. Int'l Longshoremen's & Warehousemen's Union, 57 Cal.2d 781, 22 Cal. Rptr. 211, 371 P.2d 987 (1962).

Whether Section 24001 is declarative of the California law relating to the contractual liability of unincorporated associations is uncertain. In the absence of statute, a contract of an unincorporated association was regarded as the contract of the individual members of the association who authorized or ratified the contract. Pacific Freight Lines v. Valley Motor Lines, Inc., 72 Cal. App.2d 505, 164 P.2d 901 (1946); Security-First Nat'l Bank v. Cooper, 62 Cal. App.2d 653, 145 P.2d 722 (1944); Leake v. City of Venice, 50 Cal. App. 462, 195 Pac. 440 (1920). By statute, however, unincorporated associations have been authorized to enter into a wide

variety of transactions and thus incur liability on behalf of the association. See, e.g., COM. CODE § 1201(28), (29), (30); CCRP. CODE § 21200; INS. CODE §§ 11040-11041; LABOR CODE § 1126. Section 24001 eliminates whatever gaps may have remained in the previous statutory provisions making unincorporated associations responsible for their contractual obligations.

24002. The property of an unincorporated association may be levied upon under a writ of execution issued to enforce a judgment against the association.

Comment. Section 24002 permits the plaintiff to resort to the assets of an unincorporated association to satisfy a judgment against the association. Of course, nothing in the section precludes the plaintiff from also resorting to the individual property of a member of the association to satisfy a judgment against the member in a case where the member was a party defendant. The procedure provided by Code of Civil Procedure Sections 414 and 989-994 may also be available in a case where the members of the association are jointly or severally liable on a contract.

Section 24002 recodifies the law stated in former Code of Civil Procedure Section 388. Former Section 388 also purported to authorize satisfaction of the judgment against the association from the individual assets of a member who had been served with process in the action against the association. However, a 1959 amendment to Code of Civil Procedure Section 410 appears to have been intended to preclude this unless the member was made a defendant to the action in his individual capacity. Section 24002 continues the apparent effect of the 1959 amendment.

24003. (a) An unincorporated association may file with the Secretary of State on a form prescribed by him a statement containing either or both of the following:

(1) A statement designating the location and complete address of the association's principal office in this state or principal place of business in this state. Only one such place may be designated.

(2) A statement designating as agent of the association for service of process any natural person residing in this state or any corporation which has complied with Section 3301.5 or Section 6403.5 and whose capacity to act as such agent has not terminated.

(b) If a natural person is designated as agent for service of process, the statement shall set forth his complete business or residence address. If a corporate agent is designated, the statement shall set forth the state or place under the laws of which such agent was incorporated and the name of the city, town, or village wherein it has the office at which the association designating it as such agent may be served, as set forth in the certificate filed by such corporate agent pursuant to Section 3301.5, 3301.6, 6403.5, or 6403.6.

(c) An unincorporated association may at any time file a new statement as provided in this section. Such statement shall supersede the earlier statement and the filing of such statement shall be deemed to revoke any prior designation of agent.

(d) An unincorporated association may at any time file a revocation of a statement filed by the association under subdivision (a) or (c). Such revocation becomes effective 30 days after it is received by the Secretary of State.

(e) Delivery by hand of a copy of any process against the unincorporated association (1) to any natural person designated by it as agent, or (2) if the association has designated a corporate agent, at the office of such corporate agent, in the city, town, or village named in the statement filed by the association under this section to any person at such office named in the certificate of such corporate agent filed pursuant to Section 3301.5 or 6403.5 if such certificate has not been superseded, or otherwise to any person at such office named in the last certificate filed pursuant to Section 3301.6 or 6403.6, constitutes valid service on the corporation.

(f) For filing a statement as provided in this section, the Secretary of State shall charge and collect the fee prescribed in Government Code Section 12185 for filing a designation of agent.

(g) The Secretary of State may destroy or otherwise dispose of any statement filed under this section:

(1) At any time one year after such statement has been superseded; or

(2) In the case of a statement that only designates an agent for the service of process, at any time one year after such designation has been revoked or such agent has resigned as provided in Section 24004.

Comment. Section 24003 provides a procedure whereby an unincorporated association may designate a principal office or place of business for venue purposes (Code of Civil Procedure Section 395.2) and an agent upon whom service of process may be made (subdivision 2.1 of Section 411 of the Code of Civil Procedure). See the Law Revision Commission's Comments to Code of Civil Procedure Sections 395.2 and 411.

Section 24003 is based largely upon Corporations Code Section 3301 except that designation of an agent is permissive rather than mandatory.

24004. An agent designated by an unincorporated association for the service of process may file with the Secretary of State a written statement of resignation as such agent which shall be signed and execution thereof shall be duly acknowledged by the agent. Thereupon the authority of the agent to act in such capacity shall cease and the Secretary of State forthwith shall give written notice of the filing of the statement by mail to the unincorporated association addressed to its last known principal office or principal place of business in this state.

Comment. Section 24004 permits an agent designated to receive service of process to resign. See CORP. CODE §§ 3301.7, 6405.