

First Supplement to Memorandum 98-3

Trial Court Unification: Miscellaneous Issues

Proposed Code of Civil Procedure Sections 395.9, 399.5, and 400 (reproduced at Exhibit pp. 1-3) set forth procedures for challenging a litigant's classification of a civil case as a limited civil case or otherwise. Those procedures may require refinement in the following respects:

Time To Respond to Complaint

Proposed Code of Civil Procedure Section 395.9 should be revised to more clearly specify how an application for reclassification affects a defendant's deadline for responding to a complaint. The staff suggests the following:

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 subdivision (b)(1) of Section 581, but shall, on the application of either party within 30 days after service of 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. If summons is served ~~prior to the~~ before the court rules on reclassification of the action or proceeding, 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 the denial of reclassification or, if reclassification is granted, from service upon that defendant of written notice of the reclassification that the clerk has refiled the case pursuant to Section 399.5.

(b)

Judgment on Default

Proposed Code of Civil Procedure Section 585 concerns default judgments. In three places, it should be amended to make clear that the filing of an application for reclassification of a civil case precludes entry of a default:

585. Judgment may be had, if the defendant fails to answer the complaint, as follows:

(a) In an action arising upon contract or judgment for the recovery of money or damages only, if the defendant has, or if more than one defendant, if any of the defendants have, been served, other than by publication, and no answer, demurrer, notice of motion to strike (of the character hereinafter specified), application for reclassification pursuant to Section 395.9, notice of motion to transfer pursuant to Section 396b, notice of motion to dismiss pursuant to Article 2 (commencing with Section 583.210) of Chapter 1.5 of Title 8, notice of motion to quash service of summons or to stay or dismiss the action pursuant to Section 418.10, or notice of the filing of a petition for writ of mandate as provided in Section 418.10 has been filed with the clerk or judge of the court within the time specified in the summons, or such further time as may be allowed, the clerk, or the judge if there is no clerk, upon written application of the plaintiff, and proof of the service of summons, shall enter the default of the defendant or defendants, so served, and immediately thereafter enter judgment for the principal amount demanded in the complaint, in the statement required by Section 425.11, or in the statement provided for in Section 425.115, or a lesser amount if credit has been acknowledged, together with interest allowed by law or in accordance with the terms of the contract, and the costs against the defendant, or defendants, or against one or more of the defendants. If

(b) In other actions, if the defendant has been served, other than by publication, and no answer, demurrer, notice of motion to strike (of the character hereinafter specified), application for reclassification pursuant to Section 395.9, notice of motion to transfer pursuant to Section 396b, notice of motion to dismiss pursuant to Article 2 (commencing with Section 583.210) of Chapter 1.5 of Title 8, notice of motion to quash service of summons or to stay or dismiss the action pursuant to Section 418.10 or notice of the filing of a petition for writ of mandate as provided in Section 418.10 has been filed with the clerk or judge of the court within the time specified in the summons, or such further time as may be allowed, the clerk, or the judge if there is no clerk, upon written application of the plaintiff, shall enter the default of the defendant. The plaintiff thereafter may apply to the court for the relief demanded in the complaint

(c) In all actions where the service of the summons was by publication, upon the expiration of the time for answering, and upon proof of the publication and that no answer, demurrer, notice of motion to strike (of the character hereinafter specified), application for reclassification pursuant to Section 395.9, notice of motion to transfer pursuant to Section 396b, notice of motion to

dismiss pursuant to Article 2 (commencing with Section 583.210) of Chapter 1.5 of Title 8, notice of motion to quash service of summons or to stay or dismiss the action pursuant to Section 418.10, or notice of the filing of a petition for writ of mandate as provided in Section 418.10 has been filed, the clerk, or the judge if there is no clerk, upon written application of the plaintiff, shall enter the default of the defendant. The plaintiff thereafter

Comment. Section 585 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See Section 85 (limited civil cases) & Comment.

Judgment in the Same Manner as Where the Defendant Fails To Answer

Code of Civil Procedure Section 586 specifies circumstances where “the same proceedings shall be had, and judgment shall be rendered in the same manner, as if the defendant had failed to answer....” Again, modification is necessary to account for reclassification procedures. The staff suggests the following:

586. (a) In the following cases the same proceedings shall be had, and judgment shall be rendered in the same manner, as if the defendant had failed to answer:

(1) If the complaint has been amended, and the defendant fails to answer it, as amended, or demur thereto, or file a notice of motion to strike, of the character specified in Section 585, within 30 days after service thereof or within the time allowed by the court.

(2) If the demurrer to the complaint is overruled and a motion to strike, of the character specified in Section 585, is denied, or where only one thereof is filed, if the demurrer is overruled or the motion to strike is denied, and the defendant fails to answer the complaint within the time allowed by the court.

(3) If a motion to strike, of the character specified in Section 585, is granted in whole or in part, and the defendant fails to answer the unstricken portion of the complaint within the time allowed by the court, no demurrer having been sustained or being then pending.

(4) If a motion to quash service of summons or to stay or dismiss, the action has been filed or writ of mandate sought and notice thereof given, as provided in Section 418.10, and upon denial of such motion or writ, defendant fails to respond to the complaint, within the time provided in such section or as otherwise provided by law.

(5) If the demurrer to the answer is sustained and the defendant fails to amend the answer within the time allowed by the court.

(6)(A) If a motion to transfer pursuant to Section 396b is denied and the defendant fails to respond to the complaint within the time allowed by the court pursuant to subdivision (e) of Section 396b or within the time provided in subparagraph (C).

(B) If a motion to transfer pursuant to Section 396b is granted and the defendant fails to respond to the complaint within 30 days of the mailing of notice of the filing and case number by the clerk of the court to which the action or proceeding is transferred or within the time provided in subparagraph (C).

(C) If the order granting or denying a motion to transfer pursuant to Section 396a or 396b is the subject of an appeal pursuant to Section 904.2 or 904.3 in which a stay is granted or of a mandate proceeding pursuant to Section 400, the court having jurisdiction over the trial, upon application or on its own motion after such appeal or mandate proceeding becomes final or upon earlier termination of a stay, shall allow the defendant a reasonable time to respond to the complaint. Notice of the order allowing the defendant further time to respond to the complaint shall be promptly served by the party who obtained such order or by the clerk if the order is made on the court's own motion.

(7) If a motion to strike the answer in whole, of the character specified in Section 585, is granted without leave to amend, or if a motion to strike the answer in whole or in part, of the character specified in Section 585, is granted with leave to amend and the defendant fails to amend the answer within the time allowed by the court.

(8) If a motion to dismiss pursuant to Section 583.250 is denied and the defendant fails to respond within the time allowed by the court.

(9)(A) If an application for reclassification pursuant to Section 395.9 is denied and the defendant fails to respond to the complaint within the time provided in Section 395.9 or within the time provided in subparagraph (C).

(B) If an application for reclassification is granted and the defendant fails to respond to the complaint within the time provided in Section 395.9 or within the time provided in subparagraph (C).

(C) If the order granting or denying an application for reclassification is the subject of a mandate proceeding pursuant to Section 400, the court having jurisdiction over the trial, upon application or its own motion after the mandate proceeding becomes final or upon earlier termination of a stay, shall allow the defendant a reasonable time to respond to the complaint. Notice of the order allowing the defendant further time to respond to the complaint shall be promptly served by the party who obtained the order or by the clerk if the order is made on the court's own motion.

(b) For the purposes of this section, "respond" means to answer, to demur, or to move to strike.

Comment. Subdivision (a)(9) of Section 586 is added to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See Section 85 (limited civil cases) & Comment.

The reference to former Section 904.3 (appealable judgments and orders in justice court) in Section 586(a)(6)(C) is deleted as obsolete.

Correction of the obsolete reference in Section 586(a)(6)(C) is necessary to prevent confusion, in light of the staff's proposed addition of a new Code of Civil Procedure Section 904.3. See Memorandum 98-3, pp. 1-2.

Respectfully submitted,

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

SEC. _____. Section 395.9 is added to the Code of Civil Procedure, to read:

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 subdivision (b)(1) of Section 581, but shall, on the application of either party within 30 days after service of 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. If summons is served prior to the reclassification of the action or proceeding, 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 the reclassification.

(b) If an action or proceeding is commenced as a limited civil case or otherwise pursuant to Section 422.30, and it later 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 that classification, the court shall, on the application of either party within 30 days after the party is or reasonably should be aware of the grounds for misclassification, or on the court's own motion at any time, reclassify the case.

(c) An application 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.

(d) An action or proceeding which 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 which 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. Section 395.9 is added to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See Section 85 (limited civil cases) & Comment.

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

SEC. _____. Section 399.5 is added to the Code of Civil Procedure, to read:

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 upon 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 person 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 person responsible for the costs and fees under Section 395.9, in the event 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 duly noticed 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. When 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 refiling 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 refiling 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 require whatever amendment of the pleadings, filing and service of amended, additional, or

supplemental pleadings, or giving of notice, as may be necessary for the proper presentation and determination of the action or proceeding as reclassified.

Comment. Section 399.5 is added to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). Cal. Const. art. VI, § 5(e). See Section 85 (limited civil cases) & Comment.

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 an application to reclassify an action or proceeding pursuant to Section 395.9, the party aggrieved by such 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 such 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 such order or judgment becomes final.

Comment. Section 400 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See Section 85 (limited civil cases) & Comment.