Study J-1300 April 10, 1998

Memorandum 98-25

Trial Court Unification: Miscellaneous Issues

As the June 2 vote on SCA 4 approaches, the staff continues to review the codes for revisions necessary to implement the measure. The Commission has also received new input from the State Bar Litigation Section (Exhibit pp. 1-4), and has not fully considered the comments that the State Bar Committee on Administration of Justice ("CAJ") submitted in March (First Supplement to Memorandum 98-12, Exhibit pp. 1-3). This memorandum discusses the new issues raised in these letters and discovered by the staff.

Incorporating decisions on these issues into the Commission's proposed legislation should be straightforward, because Senator Lockyer has not yet amended his spot bill (SB 2139) to include the Commission's proposal. The staff's work is ongoing, as are discussions of SCA 4. It is still premature to finalize the Commission's recommendation.

APPEALS IN CIVIL CASES

CAJ and the Litigation Section comment that the proposed provisions on civil appeals are awkwardly worded. (Exhibit pp. 1-2; First Supplement to Memorandum 98-12, Exhibit p. 1.) Those provisions read:

> **Code Civ. Proc. § 904.1 (amended). Taking appeal**
>
> 904.1. (a) ~~An~~ Except as provided in Sections 904.2 and 904.5, an appeal may be taken from a superior court in the following cases:
>
> (1) From a judgment, except….
>
> **Code Civ. Proc. § 904.2 (amended). Taking appeal in limited civil case**
>
> 904.2. An appeal may be taken from ~~a municipal or justice court~~ a limited civil case in the following cases:
>
> (a) From a judgment, except….
>
> **Code Civ. Proc. § 904.3 (added). Court to which appeal is taken**
>
> 904.3. (a) An appeal, other than in a limited civil case, is to the court of appeal.

(b) An appeal in a limited civil case is to the appellate division of the superior court.

CAJ and the Litigation Section suggest incorporating the substance of proposed Section 904.3 into Sections 904.1 and 904.2, and rewording the latter provisions to improve syntax and eliminate ambiguous use of the word "case."

The staff would delete Section 904.3 as suggested and redraft Sections 904.1 and 904.2 as follows:

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

904.1. (a) ~~An appeal may be taken from a superior court in the following cases~~ An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following:

(1) From a judgment, except….

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

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

(a) From a judgment, except….

APPLICATION FOR RECLASSIFICATION

The proposed legislation to implement SCA 4 would differentiate between limited civil cases (traditional municipal court cases) and other cases (traditional superior court cases). In a limited civil case in a unified superior court, the caption of each pleading must state that the case is a limited civil case. (Proposed Code Civ. Proc. § 422.30.) Because the classification of a case has procedural consequences, the proposed legislation establishes a procedure for challenging how a case is classified. (Proposed Code Civ. Proc. §§ 395.9, 399.5, 400, reproduced at Exhibit pp. 5-7.) The remainder of this memorandum addresses a number of questions regarding that new procedure.

Time to Respond to Complaint: Should a Defendant Have to Respond While an Application for Reclassification is Pending?

Proposed Code of Civil Procedure Section 395.9 specifies how an application for reclassification affects a defendant's deadline for responding to a complaint:

> 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 duly noticed 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 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 that the clerk has refiled the case pursuant to Section 399.5.*
>
> [Emphasis added.]

CAJ comments that "misclassification should not extend the time to answer or otherwise plead to the complaint or cross-complaint, as the concept of court unification should be to minimize delays in the litigation process caused by the differences in courts." (First Supplement to Memorandum 98-12, Exhibit p. 2.) The Litigation Section concurs:

> …[A]fter unification, the same court will be able to hear a demurrer or motion to strike, and the same court would receive an answer for filing, even if the case is reclassified. Therefore, after trial court unification, a motion to reclassify would merely be a dilatory motion. The time to answer or otherwise respond to the complaint or cross-complaint should not be extended merely because a motion to reclassify is made.
>
> [Exhibit p. 3.]

CAJ and the Litigation Section are correct to emphasize the importance of moving cases forward where there is no jurisdictional issue. But whether a case is classified as a limited civil case or otherwise has serious consequences. (See Exhibit p. 8.) These include differing rules on responding to a complaint:

> • In a limited civil case, the answer need not be verified, even if the complaint or cross-complaint is verified. (Proposed Code Civ. Proc. §§ 91, 92(b).)

• In a limited civil case, special demurrers are not allowed. (Proposed Code Civ. Proc. §§ 91, 92(c).) Grounds for special demurrers include lack of legal capacity to sue, existence of another action pending between the same parties on the same cause of action, defect or misjoinder of parties, uncertainty of the complaint, failure to allege whether a contract is oral or written, and failure to attach attorney certificates or ADR certificates where required. (R. Weil & I. Brown, Jr., Civil Procedure Before Trial §§ 7:69.1-7:97.5 (Rutter Group, rev. # 1, 1997).)

• In a limited civil case, motions to strike are allowed only on the ground that the damages or relief sought are not supported by the allegations of the complaint. (Proposed Code Civ. Proc. §§ 91, 92(d).) Other grounds for a motion to strike, now allowed in superior court but not in municipal court, include falsity or irrelevancy of the pleadings and various technical bases for striking the entire pleading (e.g., failure to file certificate of merit where required, filing of complaint by nonlawyer on behalf of another person). *Id.* at §§ 7:173-7:181. See also Code Civ. Proc. § 425.16 (motion to strike SLAPP suit).

• In a limited civil case, if the plaintiff serves a case questionnaire with the complaint, the defendant must complete the questionnaire and serve this response along with the defendant's answer. (Proposed Code Civ. Proc. §§ 91, 93.)

• In any case, if a defendant wants to assert a cross-claim against the plaintiff, the defendant must file the cross-complaint before or with the defendant's answer. (Code Civ. Proc. § 428.50). In some substantive contexts, different pleading requirements would apply depending on whether the cross-claim was in a limited civil case or otherwise. (See proposed Code Civ. Proc. §§ 396a (statement of jurisdictional facts in limited civil case pursuant to Civil Code Section 1812.10 or 2984.4 or Code of Civil Procedure Section 395(b) or 1161); proposed Code Civ. Proc. §§ 425.10, 425.11 (complaint for personal injury or wrongful death shall not state the amount of damages sought, except in a limited civil case).)

Because of these differing rules on responding to a complaint, **the staff believes that the filing of an application for reclassification *should* extend the time to respond, as in the current draft.** Otherwise, parties will be forced to comply with pleading rules that may be inapplicable upon reclassification.

It will be important, however, for a party to be able to obtain a prompt ruling on an application for reclassification, not only to minimize delay in responding

to the complaint, but also to ensure that the case progresses under the proper rules for discovery, arbitration, use of court reporters and electronic recording, and other matters dependent on classification as a limited civil case or otherwise (see Exhibit p. 8). One way to achieve this would be to set a statutory deadline for ruling on an application for reclassification (and possibly also for hearing such an application). At this point, however, the staff is not convinced that such a step is necessary. Unless lengthy delays in processing applications for reclassification actually occur or appear inevitable, we should leave it to the courts to manage their workload and ensure that such applications receive prompt attention.

Time to Apply for Reclassification: What If the Basis for Reclassification Is Not Initially Apparent?

The Litigation Section writes:

> …proposed Section 395.9 includes a provision that the erroneously captioned complaint be reclassified on application filed within thirty days of service of the initial pleading. We question why the right to move for reclassification should be lost if it is not filed within thirty days. For example, the defendants may only find after discovery that the maximum recoverable damages would be less than $25,000.
>
> [Exhibit p. 3.]

CAJ expresses similar concern about "how reclassification is handled if the basis for reclassification does not appear until an amended complaint." (First Supplement to Memorandum 98-12, Exhibit pp. 2-3.)

This situation is already addressed in proposed Section 395.9(b):

> (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.

The State Bar groups apparently overlooked this provision because it was not quoted in the body of the memorandum they reviewed. **The staff does not see any need for change.**

How Does Proposed Section 395.9 Apply to Multiple Defendants? Does an Extension of Time to Respond to the Complaint Extend the Time to Apply for Reclassification?

The Litigation Section and CAJ point out that proposed Section 395.9 is ambiguous if there are multiple defendants. (Exhibit p. 3; First Supplement to Memorandum 98-12, Exhibit p. 2.) The provision does not indicate whether the thirty day deadline for seeking reclassification runs "from service of the complaint on the first defendant to be served, or on the last defendant to be served, or from some other event." (Exhibit p. 3.) Similarly, it is unclear whether an application for reclassification filed by one of several defendants affects the time for all defendants to respond to the complaint, or only the deadline for the defendant seeking reclassification.

CAJ suggests that instead of setting a 30-day time limit on applying for reclassification, it "may be better to state that a party waives the right to request reclassification by filing an answer." (First Supplement to Memorandum 98-12, Exhibit p. 3.) The staff considers that suggestion unworkable, because it would not account for the situation in which the basis for reclassification becomes apparent after the pleading stage.

The suggestion did, however, alert the staff to another potential source of confusion. The 30-day time limit on applying for reclassification deliberately coincides with the 30-day time limit on answering, demurring, or otherwise responding to a complaint (Code Civ. Proc. §§ 412.20 (answer), 428.50 (cross-complaint), 430.40 (demurrer), 435 (motion to strike).) Suppose, however, the plaintiff grants an extension of time to respond to the complaint. Does that extend the time to apply for reclassification? As currently drafted, Section 395.9 does not clearly address that point. It is possible to conclude that an application for reclassification must be filed within 30 days of service of the complaint, regardless of any extension of time to respond to the complaint. Such an interpretation is troublesome, because defendants relying on an extension of time to plead may inadvertently miss the deadline for seeking reclassification. Unlawful detainer, forcible detainer, and forcible entry cases present a further complication: The deadline for responding to the complaint is only five days

after service of the complaint (Code Civ. Proc. § 1167), yet Section 395.9 would give thirty days after service to apply for reclassification.

To correct those problems, as well as the defects relating to multiple defendants, the staff would revise Section 395.9 as follows:

> 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 duly noticed application of ~~either party within 30 days after service 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. If ~~summons is served 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~~ a party applies for reclassification, the time for that party 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 that the clerk has refiled the case pursuant to Section 399.5.
>
> (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~~ any party within 30 days after the party is or reasonably should be aware of the grounds for misclassification, or five days in a proceeding for unlawful detainer, forcible detainer, or forcible entry, or on the court's own motion at any time, reclassify the case.
>
> ….

By incorporating the deadline for responding to the initial pleading, instead of using a 30-day time limit, this revision would eliminate the danger of having different deadlines to apply for reclassification and respond to the complaint. In light of the expressed concerns about extending the time to plead while an application for reclassification is pending, the statute would only extend the deadline of the defendant applying for reclassification, not other defendants. Where the grounds for misclassification are not initially apparent, the deadline

for seeking reclassification in unlawful detainer cases would be five days after the party is or reasonably should be aware of the grounds for misclassification, not 30 days as in other cases. This parallels the five day deadline for discovery procedures and summary judgment motions in unlawful detainer cases. (See Code Civ. Proc. §§ 1170.7 (summary judgment motion), 2025(f)(deposition), 2030(h) (interrogatories), 2031(b)(request for production), 2033(h) (request for admissions).)

Entry of Default in Unlawful Detainer Case

Unlawful detainer cases pose a further complication relating to reclassification, which can only be explained by providing some background on default judgments. Code of Civil Procedure Section 585 sets forth the procedure for obtaining a default judgment where the defendant fails to answer the complaint. Code of Civil Procedure Section 586 identifies other situations in which a default judgment is in order, such as where a motion to quash service of summons is denied and the defendant fails to timely respond to the complaint. The Commission has already decided that Section 586 should be amended to account for an application for reclassification:

> 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.

In unlawful detainer cases, Code of Civil Procedure Section 1167 establishes that the defendant must respond to the summons within five days after service. Code of Civil Procedure Section 1167.3 amplifies on that rule and cross-references Section 586:

> 1167.3. In any action under this chapter, unless otherwise ordered by the court for good cause shown, the time allowed the defendant to answer the complaint, answer the complaint, if amended, or amend the answer under subdivision (2), (3), (5), (6), or (7) of Section 586 shall not exceed five days.

Unfortunately, these cross-references are inaccurate. Section 586 has no subdivisions (2), (3), (5), (6), and (7); the proper references are now to paragraphs (a)(2), (a)(3), (a)(5), (a)(6), and (a)(7). Section 586(a)(9) should be cross-referenced in Section 1167.3, so that the five day deadline of that statute applies where a default judgment is sought following an application for reclassification in an unlawful detainer case. Accordingly, **Section 1167.3 should be amended as follows:**

> **Code Civ. Proc. § 1167.3 (amended). Time to Respond**
>
> 1167.3. In any action under this chapter, unless otherwise ordered by the court for good cause shown, the time allowed the defendant to answer the complaint, answer the complaint, if amended, or amend the answer under ~~subdivision (2), (3), (5), (6), or (7)~~ paragraph (a)(2), (a)(3), (a)(5), (a)(6), (a)(7), or (a)(9) of Section 586 shall not exceed five days.
>
> **Comment.** Section 1167.3 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The amendment reflects the addition of Sections 395.9 (misclassification as limited civil case or otherwise) and 586(a)(9) (failure to respond to complaint following ruling on application for reclassification). See also Sections 85 (limited civil cases) & Comment, 399.5 (reclassification pursuant to Section 395.9), 400 (petition for writ of mandate), 422.30 (caption).
>
> Section 1167.3 is also amended to correct the cross-references to Section 586.

General Comments on Applying for Reclassification

As is obvious from the preceding discussion, the proposed procedure for seeking reclassification may still require refinement, not only to address the points raised here, but also to eliminate as-yet-undiscovered glitches and inefficiencies. CAJ and the Litigation Section have drawn attention to some important issues, enabling the Commission to streamline the procedure and prevent unnecessary problems. We encourage further scrutiny of this new procedure, so that potential difficulties can be addressed before the procedure is actually used. Input on other aspects of the SCA 4 implementing legislation would also be welcome.

Respectfully submitted,

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March 9, 1998

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re: SCA 4-Trial Court Unification: Miscellaneous Issues
[California Law Revision Commission Staff Memorandum 98-3]
January 16, 1998

Dear Mr. Long:

By this letter, the Litigation Section responds to your request for comments on the above proposals.

Most of the recommendations of the staff of the Law Revision Commission are straightforward changes which would be required to harmonize code provisions with the realities of trial court unification if SCA 4 is passed by the electorate. The staff of the Commission should be commended for addressing these details.

We make the following comments, however.

1. Appeals in Civil Cases.

The proposed revision to Code of Civil Procedure section 904.2 is ambiguous and awkward. It uses the word "case" and the word "cases" in the same clause with different meanings. We suggest that the proposed amendment be rewritten.

Proposed Code of Civil Procedure section 904.3 has two subdivisions. We suggest that those two subdivisions be moved so that a new code section is not needed. Proposed Section 904.3(a) could become a subdivision of Section 904.1, and proposed Section 904.3(b) could become part of Code of Civil Procedure section 904.2. This way, each code section would instruct the

reader both what cases may be appealed and to which courts they may be appealed.

2. Code of Civil Procedure section 575.6: Telephone Appearances at Trial Setting Conferences.

Code of Civil Procedure section 575.6 requires superior courts to adopt rules enabling appearance by telephone at trial setting conferences in civil cases. The proposed staff amendments would be consistent with existing law. However, we suggest that the Law Revision Commission, instead, consider eliminating the distinction between present municipal court and superior court cases after trial court unification. If trial setting conferences are going to be held in the unified trial courts, it would be anomalous to require attorneys in small cases to have to make personal appearances at such conferences, while attorneys in unlimited cases would not have to do so. The same cost savings that justify Section 575.6 in current superior court cases should apply to all cases after unification.

3. Code of Civil Procedure section 871.3: Good Faith Improver.

The proposed amendments to Code of Civil Procedure section 871.3 would continue the procedures applicable under current law. However, the existing law has built in inefficiencies. A good faith improver can only bring an action in superior court, but the claim will be heard in municipal court if it is less than $25,000. After trial court unification, that should be irrelevant, and, particularly in the case of a cross-complaint, we suggest that the Law Revision Commission should consider whether reclassification should still be required.

4. Code of Civil Procedure section 1281.5: Application to Stay Pending Arbitration.

The proposed amendment to Section 1281.5 would retain the practice consistent with current law. However, we suggest that the Law Revision Commission consider substantially revising the practice required under existing Section 1281.5.

Under that section, a lien foreclosure action must be filed in superior court if the plaintiff is going to obtain a stay because the statute does not give the municipal court jurisdiction to grant the stay. This problem could easily be corrected after unification by allowing the unified superior court in a limited action to grant a stay and to hear the lien foreclosure. This

would result in monetary savings for the parties and, perhaps, for the courts.

5. First Supplement to Memorandum 98-3:
Time to Respond and Judgment on Default.

The staff of the Law Revision Commission suggest that time to respond to a complaint be extended until after a motion to reclassify a case has been granted or denied. We oppose that suggestion.

Prior to trial court unification, if a case is filed in the wrong court, it will have to be transferred to the appropriate municipal or superior court. However, after unification, the consequences of misclassification are more of a procedural nature. Refiling in a different court would not be required if the case is reclassified, because the unified court could hear both what are now municipal court cases and what are now superior court cases.

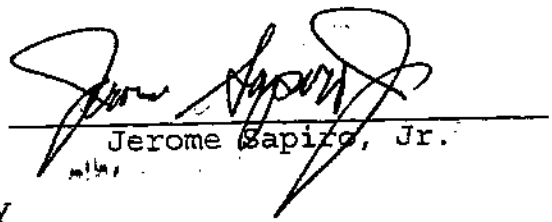
Therefore, after unification, the same court will be able to hear a demurrer or motion to strike, and the same court would receive an answer for filing, even if the case is reclassified. Therefore, after trial court unification, a motion to reclassify would merely be a dilatory motion. The time to answer or otherwise respond to the complaint or cross-complaint should not be extended merely because a motion to reclassify is made.

In addition, the wording of proposed Section 395.9 includes a provision that the erroneously captioned complaint be reclassified on application filed within thirty days of service of the initial pleading. We question why the right to move for reclassification should be lost if it is not filed within thirty days. For example, the defendants may only find after discovery that the maximum recoverable damages would be less than $25,000. If there are multiple defendants, the proposal does not indicate whether the thirty day time limit run from the service of the complaint on the first defendant to be served, or on the last defendant to be served, or from some other event.

In short, we suggest that the concepts of proposed Code of Civil Procedure section 395.9 be rethought.

Thank you for this opportunity to comment.

LITIGATION SECTION

By: 
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(9930.03:138)

cc: George L. Mallory, Jr., Esq.
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Rebecca E. Fink, Litigation Section Administrator

PROPOSED PROVISIONS ESTABLISHING PROCEDURE FOR SEEKING RECLASSIFICTION

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

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 duly noticed 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 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 that the clerk has refiled the case pursuant to Section 399.5.

(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.

For the briefing schedule on an application for reclassification, see Section 1005.

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

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.

CONSEQUENCES OF CLASSIFICATION AS LIMITED CIVIL CASE ("LCC") OR OTHERWISE

Statute	**Substance**
Proposed Code Civ. Proc. § 85.1	Original jurisdiction of LCC
Proposed Code Civ. Proc. § 91	Economic litigation procedures for LCC (pleadings, discovery, trial testimony)
Proposed Code Civ. Proc. § 274c, proposed Gov't Code § 72194.5	Duties of court reporters in LCC; electronic recording of LCC
Proposed Code Civ. Proc. § 396a	Statement of jurisdictional facts in LCC subject to Civil Code § 1812.10 or § 2984.4 or Code Civ. Proc. § 395(b)
Proposed Code Civ. Proc. § 402.5	Change of venue within county — LCC
Proposed Code Civ. Proc. §§ 425.10, 425.11	Specifying personal injury or wrongful death damages
Proposed Code Civ. Proc. §§ 489.220, 720.160, 720.260	Amt. of undertaking (prejudgment attachment, third-party claims)
Proposed Code Civ. Proc. § 580	Relief awardable in LCC (incorporated by reference into proposed Code Civ. Proc. § 85)
Proposed Code Civ. Proc. § 582.5	Terms of paying money judgment in LCC
Proposed Code Civ. Proc. § 631	Waiver of jury trial in case other than LCC
Proposed Code Civ. Proc. § 685.030	Substantial satisfaction of money judgment in LCC
Proposed Code Civ. Proc. §§ 904.1, 904.2	Appellate jurisdiction — LCCs; other cases
Proposed Code Civ. Proc. § 1033	Costs where recovery is small
Proposed Code Civ. Proc. §§ 1068, 1085, 1103	Writ procedures
Proposed Code Civ. Proc. § 1134	Confession of judgment and associated costs — LCCs; other cases
Proposed Code Civ. Proc. § 1141.11	Arbitration of certain civil actions
Proposed Code Civ. Proc. § 1161.2	Access to court file — LCC
Proposed Code Civ. Proc. § 1167.2	Rent deposit pilot program — optional for LCCs
Proposed Gov't Code §§ 26820.4, 72055, 72056, 72046.1	Fee for filing initial paper
Proposed Gov't Code § 26824	Filing fee — notice of appeal in LCC
Proposed Gov't Code §§ 26826.01, 72056.01	Filing fee — amending complaint or filing cross-complaint
Proposed Gov't Code § 68152	Retention of records — LCCs; other cases
Proposed Gov't Code § 68513	Entry, storage & retrieval of court data — cases other than LCCs
Proposed Gov't Code § 72060	Fee for certificate & transmitting transcript & papers on appeal in LCC
Proposed Ins. Code § 12961	Annual report of tort actions — permits exclusion of LCCs from study