

Memorandum 2000-55**Civil Procedure After Trial Court Unification**

As directed by the Legislature (Gov't Code § 70219), the Commission and the Judicial Council are jointly reexamining civil procedure in light of trial court unification. Preliminary work on this study included preparation of a list of issues and ideas to be considered, and development of a procedure to be used in jointly conducting the study. One of several projects in the study is to review statutes that differentiate between limited and unlimited civil cases, and identify opportunities for simplification. Because this project is relatively straightforward and narrow in scope, it is being used to test the procedure for the study. Thus, Commission staff and staff from the Administrative Office of the Courts ("AOC") are jointly preparing a working paper on the topic. This paper has not yet been finalized, but the current draft is attached for the Commission's review, in hopes that a tentative recommendation incorporating material from the draft can be approved at the July meeting for circulation during late summer and early fall. The goal is to have a final proposal, approved by both the Judicial Council and the Commission, for introduction in the Legislature next year.

Commission staff and AOC staff have put much time and effort into the attached draft. It is still a work in progress, however, and the views expressed may not be the staff's final position. In particular, the draft should not be construed to reflect the official position of the AOC on any point.

Analyses of two of the provisions identified for study (Gov't Code §§ 68152 (retention of court records), 68513 (entry, storage, and retrieval of court data) are not included in this draft. These probably will not be completed before the July meeting. We expect to present them at the October meeting.

As indicated in the draft, bill files at state archives may provide additional insight into some of the provisions (particularly Code Civ. Proc. §§ 582.5 (installment judgments), 685.030 (satisfaction of judgment)). We intend to check these bill files before the July meeting and prepare a supplement if there is

anything significant to report. If time permits, conforming revisions will also be prepared and included in a supplement.

Respectfully submitted,

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Joint Study of Judicial Council and
California Law Revision Commission:
*Revision of Civil Procedure
in Light of Trial Court Unification*

DRAFT STAFF REPORT

**ELIMINATION OF UNNECESSARY
PROCEDURAL DIFFERENCES
BETWEEN LIMITED AND UNLIMITED
CIVIL CASES**

(Test Project)

JULY 7, 2000

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1 ELIMINATION OF UNNECESSARY PROCEDURAL DIFFERENCES
2 BETWEEN LIMITED AND UNLIMITED CIVIL CASES

3 The California codes include provisions that distinguish between limited civil
4 cases and unlimited civil cases, applying different procedures depending on which
5 type of case is at hand. In some instances, this procedural complexity may not be
6 necessary. This working paper examines the pertinent provisions and underlying
7 policy objectives, identifies opportunities for simplification, and proposes
8 corresponding reforms.

9 B A C K G R O U N D

10 On June 2, 1998, California voters approved a constitutional amendment
11 providing for trial court unification on a county-by-county basis.¹ At that time,
12 each county had a superior court and one or more municipal courts.² These courts
13 heard different types of cases and used different procedures.³ The ballot measure
14 provided for unification of the superior and municipal courts in a county on a
15 majority vote of the superior court judges and a majority vote of the municipal
16 court judges within the county.⁴

17 Numerous statutory revisions were necessary to implement trial court
18 unification. At the direction of the Legislature⁵, the California Law Revision
19 Commission reviewed the codes and drafted extensive implementing legislation.⁶
20 The statutory revisions⁷ were narrowly limited to generally preserve existing
21 procedures in the context of unification.⁸ The objective was “to preserve existing
22 rights and procedures despite unification, with no disparity of treatment between a
23 party appearing in municipal court and a similarly situated party appearing in

1. 1996 Cal. Stat. res. ch. 36 (“SCA 4”), which appeared on the ballot as Proposition 220.

2. Former Cal. Const. art. VI, §§ 4, 5. Justice courts were previously eliminated. 1994 Cal. Stat. res. ch. 113 (“SCA 7”) (Proposition 191, approved by the voters Nov. 8, 1994, operative Jan. 1, 1995).

3. See, e.g., former Cal. Const. art. VI, § 10 (“Superior courts have original jurisdiction in all causes except those given by statute to other trial courts”); former Code Civ. Proc. §§ 86 (civil cases within original jurisdiction of municipal court), 91 (economic litigation procedures in municipal court). See also Code Civ. Proc. § 85 Comment.

4. Cal. Const. art. VI, § 5(e).

5. 1997 Cal. Stat. res. ch. 102; see also 1998 Cal. Stat. res. ch. 91.

6. *Trial Court Unification: Revision of Codes* (hereafter, “*Revision of Codes*”), 28 Cal. L. Revision Comm’n Reports 51 (1998); see also *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999 (Senate Bill 210)*, 29 Cal. L. Revision Comm’n Reports 657 (1999). This assignment followed an earlier legislative assignment in which the Commission made recommendations on the constitutional revisions necessary to implement trial court unification. See *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm’n Reports 1 (1994); *Trial Court Unification: Transitional Provisions for SCA 3*, 24 Cal. L. Revision Comm’n Reports 627 (1994).

7. 1998 Cal. Stat. ch. 931; see also 1999 Cal. Stat. ch. 344.

8. *Revision of Codes*, *supra* note 6, at 60.

1 superior court as a result of unification of the municipal and superior courts in the
2 county.”⁹

3 To that end, the term “limited civil case” was introduced to refer to actions
4 traditionally within the jurisdiction of the municipal court,¹⁰ and the term
5 “unlimited civil case” was introduced to refer to actions traditionally within the
6 jurisdiction of the superior court.¹¹ Provisions prescribing municipal court
7 procedures were revised to apply to limited civil cases;¹² provisions prescribing
8 traditional superior court procedures were revised to apply to other cases.¹³

9 The Law Revision Commission recommended, however, that the procedural
10 distinctions between limited civil cases and unlimited civil cases be reviewed to
11 identify opportunities for simplification.¹⁴ The Legislature directed the
12 Commission and the Judicial Council to jointly undertake this work, as well as to
13 reexamine other aspects of civil procedure in light of trial court unification (“the
14 Joint Study”).¹⁵

15 As of July 1, 2000, the trial courts in fifty-six of California’s fifty-eight counties
16 have unified. The two remaining counties (Kings County and Monterey County)
17 are seeking preclearance of unification pursuant to the Voting Rights Act.

18 JOINT STUDY

19 With assistance from a consultative panel of experts,¹⁶ as well as input from the
20 Law Revision Commission, staff from the Administrative Office of the Courts
21 (“AOC”) and from the Commission jointly prepared a list of issues and ideas to be
22 considered in the Joint Study. AOC staff and Commission staff also developed a
23 procedure to be used for the Joint Study.

24 One of several projects in this study is to review statutes that differentiate
25 between limited and unlimited civil cases, and identify opportunities for

9. *Id.*

10. *Id.* at 64-65; see also Cal. Code Civ. Proc. § 85 & Comment.

11. Code Civ. Proc. § 88 & Comment.

12. See, e.g., Code Civ. Proc. § 91 & Comment; see also *Revision of Codes*, *supra* note 6, at 64-65.

13. See, e.g., Code Civ. Proc. § 564.

14. *Revision of Codes*, *supra* note 6, at 82-83.

15. Gov’t Code § 70219. The Commission also identified a number of narrower issues for study. *Revision of Codes*, *supra* note 6, at 84-86. The Judicial Council has primary responsibility for some of these studies; the Commission has primary responsibility for the remainder. Gov’t Code § 70219. The Legislature directed the Judicial Council and the Commission to consult with each other on these studies. *Id.*

16. The panel consists of Prof. Walter Heiser (Univ. of S. Diego School of Law), Prof. Deborah Hensler (Stanford Law School), Prof. Richard Marcus (Hastings College of Law), Hon. William Schwarzer, ret. (U.S.D.C., N. Dist. Cal.), Prof. William Slomanson (Thomas Jefferson Law School), and Prof. Keith Wingate (Hastings College of Law). Others who have assisted with this study include Prof. J. Clark Kelso (McGeorge School of Law), Prof. David Jung (Hastings College of Law), and Larry Sipes (President Emeritus, Nat’l Ctr. for State Courts).

1 simplification. Because this project is relatively straightforward and narrow in
2 scope, it is being used to test the procedure for the Joint Study.

3 METHODOL OGY

4 Statutory provisions using the terms “limited civil case” or “unlimited civil case”
5 were identified through computer searches. Of the provisions identified, many
6 simply state that a particular type of action is a limited civil case.¹⁷ A few are
7 definitional or otherwise fundamental provisions.¹⁸

8 Still other provisions establish procedural distinctions between limited and
9 unlimited civil cases, but are being dealt with in another context.

10 **Appellate jurisdiction.** An appeal in a limited civil case is to the
11 appellate division of the superior court¹⁹; an appeal in an unlimited civil
12 case is to the court of appeal.²⁰ This division of responsibility, and other
13 issues relating to appellate procedure, are being studied by the Judicial
14 Council’s Appellate Advisory Committee and Ad Hoc Task Force on the
15 Appellate Division of the Superior Court. If necessary, such issues will also
16 be considered in a later phase of this study.

17 **Appointment of receiver.** Different provisions govern appointment of a
18 receiver in a limited civil case²¹ and appointment of a receiver in an
19 unlimited civil case.²² The Law Revision Commission studied these
20 provisions²³ and recommended that they be consolidated.²⁴ The
21 Commission is seeking an author for legislation to implement this
22 recommendation.

17. See Civ. Code §§ 798.61, 1719, 3342.5; Code Civ. Proc. §§ 86, 86.1, 1710.20; Food & Agric. Code §§ 7581, 12647, 27601, 31503, 31621, 52514, 53564; Gov’t Code §§ 53069.4, 53075.6, 53075.61; Pub. Util. Code § 5411.5; Veh. Code §§ 9872.1, 10751, 14607.6, 40230, 40256.

18. See Code Civ. Proc. §§ 32.5 (“jurisdictional classification” defined), 85 (limited civil cases), 85.1 (original jurisdiction in limited civil case), 87 (rules applicable to small claims case), 88 (“unlimited civil case” defined), 403.030 (reclassification of limited civil case by cross-complaint), 403.040 (motion for reclassification), 422.30 (caption); Gov’t Code § 910 (contents of claim against governmental entity); Welf. & Inst. Code § 742.16(l) (jurisdiction of judge of juvenile court in restitution hearing).

Insurance Code Section 12961 requires the Insurance Commissioner to report annually to the Legislature on tort actions, but permits the Commissioner to exclude limited civil cases from the report. The purpose of the report is to determine whether, or to what extent, court judgments and settlements have had an effect on insurance companies’ ability to offer tort liability insurance at adequate rates in California. 1986 Cal. Stat. ch. 1326, § 1. Because the provision does not relate to civil procedure and information on its implementation does not appear to be readily available, the staff has not analyzed it in this report.

19. Cal. Const. art. VI, § 11(b); Code Civ. Proc. § 904.2.

20. Cal. Const. art. VI, § 11(a); Code Civ. Proc. § 904.1.

21. Code Civ. Proc. § 86(a)(8).

22. Code Civ. Proc. § 564.

23. Gov’t Code § 70219; *Revision of Codes*, *supra* note 6, at 85.

24. *Authority to Appoint Receivers*, 30 Cal. L. Revision Comm’n Reports ____ (2000).

1 **Court reporters and electronic recording.** Several provisions on court
2 reporters or electronic recording differentiate between limited and unlimited
3 civil cases.²⁵ These are encompassed in a study of court reporting being
4 conducted by the Law Revision Commission.²⁶

5 **Economic litigation procedures.** Most limited civil cases are subject to
6 economic litigation procedures.²⁷ Reexamination of these procedures and
7 the criteria for applying them is a major focus of the Joint Study. There is
8 no need to analyze them as part of this project on unnecessary procedural
9 differences between limited and unlimited civil cases.

10 **Filing and transmittal fees.** In general, court fees in a limited civil case
11 are lower than in an unlimited civil case.²⁸ The Judicial Council is studying
12 court fees.²⁹ The fee distinctions between limited and unlimited civil cases
13 are being examined in that study.

14 **Judicial arbitration.** Whether a case is subject to judicial arbitration
15 depends in part on whether it is a limited civil case or an unlimited civil
16 case.³⁰ To avoid overlap with other ongoing studies of alternative dispute
17 resolution, issues relating to judicial arbitration and other types of
18 alternative dispute resolution have been deferred to a later phase of this
19 Joint Study.

20 **Relief awardable.** Certain types of equitable relief may not be granted in
21 a limited civil case.³¹ These restrictions derive from limits on the equitable
22 jurisdiction of the municipal courts.³² Revising the restrictions (e.g.,
23 permitting entry of a permanent injunction in a limited civil case)

25. Code Civ. Proc. §§ 269, 274a, 274c; Gov't Code § 72194.5; see also Gov't Code § 68086.

26. Gov't Code § 70219; *Revision of Codes*, *supra* note 6, at 86.

27. Code Civ. Proc. § 91.

28. See Gov't Code §§ 26820.4, 26824, 26826, 26826.01, 26826.4, 26838, 68926, 68926.1, 72055, 72056, 72056.01, 72060; see also Gov't Code § 72056.1; Code Civ. Proc. §§ 116.760; 403.050.

29. Gov't Code § 70219; *Revision of Codes*, *supra* note 6, at 84.

30. Code Civ. Proc. § 1141.11.

31. Code of Civil Procedure Section 580(b) provides:

(b) ... the following types of relief may not be granted in a limited civil case:

(1) Relief exceeding the maximum amount in controversy for a limited civil case as provided in Section 85, exclusive of attorney's fees, interest, and costs.

(2) A permanent injunction.

(3) A determination of title to real property.

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

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

32. See Code Civ. Proc. § 580 Comment & sources cited therein.

1 necessarily would raise issues relating to appellate jurisdiction.³³ Such
2 issues are being studied by the Judicial Council’s Appellate Advisory
3 Committee and Ad Hoc Task Force on the Appellate Division of the
4 Superior Court.³⁴

5 **Writ jurisdiction.** Writ jurisdiction depends on the jurisdictional
6 classification of a case (whether the case is a limited civil case or an
7 unlimited civil case).³⁵ Issues relating to writ jurisdiction are being
8 considered by the Judicial Council’s Appellate Advisory Committee and
9 Ad Hoc Task Force on the Appellate Division of the Superior Court.

10 AOC staff and Commission staff analyzed the remaining provisions, assessing
11 whether the distinctions between limited and unlimited civil cases should be
12 eliminated, and whether the provisions should be revised in other respects.

13 ANALYSIS

14 The provisions in question relate to the following topics:

- 15 • Access to Court Records in Unlawful Detainer Cases (Code Civ. Proc. §
16 1161.2)
- 17 • Change of Venue Within County (Code Civ. Proc. § 402.5)
- 18 • Confession of Judgment (Code Civ. Proc. § 1134)
- 19 • Costs Where Recovery is Small (Code Civ. Proc. § 1033)
- 20 • Entry, Storage, and Retrieval of Court Data (Gov’t Code § 68513)
- 21 • Installment Judgments (Code Civ. Proc. § 582.5)
- 22 • Pleading Personal Injury and Wrongful Death Damages (Code Civ.
23 Proc. §§ 425.10, 425.11; see also § 425.115, 425.12)

33. Except in death penalty cases, courts of appeal “have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in other causes prescribed by statute.” Cal. Const. art. VI, § 11. An action for a permanent injunction (or the other types of equitable relief mentioned in Section 580) was within the original jurisdiction of the superior court as of June 30, 1995, so appellate jurisdiction of such an action is constitutionally vested in the court of appeal. Altering the appeal path would require a constitutional amendment. Altering the jurisdictional classification without altering the appeal path is an option, but this would require consideration of the appropriateness of (1) subjecting a case to traditional municipal court procedures at the trial level, while (2) applying traditional superior court review procedures at the appellate level.

34. If necessary, issues relating to appellate jurisdiction will also be considered in a later phase of this study. In addition, the Law Revision Commission considered issues relating to equitable relief in its good faith improver study. The Commission decided to reexamine the law/equity distinction, but to defer such reexamination until all counties have unified their trial courts. Law Revision Commission Minutes (June 24-25, 1999), p. 9.

35. Cal. Const. art. VI, § 10; Code Civ. Proc. §§ 1068, 1085, 1103.

- 1 • Retention of Court Records (Gov't Code § 68152)
- 2 • Satisfaction of Judgment (Code Civ. Proc. § 685.030)
- 3 • Statement of Jurisdictional Facts (Code Civ. Proc. § 396a)
- 4 • Undertaking to Obtain Writ of Attachment or Protective Order (Code
- 5 Civ. Proc. § 489.220)
- 6 • Undertaking of Creditor in Case of Third Party Claim (Code Civ. Proc.
- 7 §§ 720.160, 720.260)
- 8 • Waiver of Jury (Code Civ. Proc. § 631)

9 Each topic is addressed in order below.

10 ACCESS TO COURT RECORDS IN UNLAWFUL DETAINER CASES
11 (CODE CIV. PROC. § 1161.2)

12 Code of Civil Procedure Section 1161.2 prevents public access to court filings in
13 unlawful detainer cases until sixty days after the complaint is filed. This limitation
14 only applies to limited civil cases.³⁶

15 An obvious question is whether there is a logical basis for distinguishing
16 between limited and unlimited civil cases in this regard. Examination of the
17 legislative history sheds light on this point.

18 The statute was first enacted in 1991 as a three-year pilot project in a few key
19 jurisdictions, with a thirty day limitation on access to files.³⁷ The purpose of the
20 provision was to restrict access to court records by “unscrupulous eviction defense
21 services” that use the records to seek out and prey on unsophisticated tenants,
22 causing unlawful bankruptcies and false “Arrieta” claims to be filed.³⁸

23 The Legislature also demonstrated concern for the general policy of open access
24 to public records, however, seeking to ensure that access to court records was
25 restricted only under compelling circumstances and only to the extent necessary.
26 “It is the intent of the Legislature to create a narrow exception to the important
27 policy that the public should have free and open access to court files.”³⁹

28 The Legislature revisited this matter in 1993, concluded that further constraints
29 were warranted, extended the restriction to the current sixty day black out period,
30 and made the pilot program a permanent feature for all courts.⁴⁰ A year later the
31 Legislature narrowed the application of the provision, limiting it to municipal

36. With exceptions, in any unlawful detainer case filed as a limited civil case “the court clerk shall not allow access to the court file, index, register of actions, or other court records until 60 days following the date the complaint is filed” Code Civ. Proc. § 1161.2(a).

37. 1991 Cal. Stat. ch. 1007, §3.

38. 1991 Cal. Stat. ch. 1007, §1.

39. 1991 Cal. Stat. ch. 1007, §1.

40. 1993 Cal. Stat. ch. 1191.

1 court filings.⁴¹ To accommodate trial court unification, the provision was revised
2 again in 1998, to apply to limited civil cases instead of municipal court cases.⁴²

3 This history illustrates that (1) the problem addressed by the statutory restriction
4 on access to court records is relatively current, and (2) the Legislature’s policy has
5 been to make the restriction as narrow as possible to address the problem. As a
6 theoretical matter, therefore, it would appear that the public policies involved
7 outweigh any benefit that would be achieved either by eliminating the provision or
8 extending it to limited and unlimited cases alike, in the interest of procedural
9 simplicity in unified courts.

10 As a practical matter, though, we do not know whether the distinction between
11 limited and unlimited civil cases here is causing any problems for court clerks. We
12 believe, based on preliminary information, that clerks’ offices in unified courts are
13 distinguishing between limited and unlimited civil case files by color-coding the
14 files, physically segregating them, applying distinguishing file numbers to them, or
15 other devices. As practices in unified courts evolve, it is not clear that these types
16 of distinctions will be maintained. Because the caption of the complaint in a
17 limited civil case must state the jurisdictional classification of case,⁴³ however,
18 the files should continue to be readily distinguishable.

19 Based on this analysis, the staff concludes that no change in Section 1161.2 is
20 warranted. The distinction between limited and unlimited civil cases with respect
21 to access to unlawful detainer court filings should be retained.

22 CHANGE OF VENUE WITHIN COUNTY
23 (CODE CIV. PROC. § 402.5)

24 Code of Civil Procedure Section 402.5 is a special venue provision for a limited
25 civil case:

26 402.5. The superior court in a county in which there is no municipal court may
27 transfer a limited civil case to another branch or location of the superior court in
28 the same county.

29 It was just recently added to accommodate trial court unification.⁴⁴ As explained in
30 the Commission’s Comment, the provision “makes clear that even though a
31 limited civil case is triable in the superior court in a county in which there is no
32 municipal court, there may be circumstances where it is appropriate to transfer the
33 case for trial within the same county rather than to another county.”⁴⁵

34 For example, trying a limited civil case in a court facility far from the
35 defendant’s home may be a hardship for the defendant, even if the facility is in the

41. 1994 Cal. Stat. ch. 587, § 7.5.

42. 1998 Cal. Stat. ch. 931, § 118.

43. Code Civ. Proc. § 422.30(b).

44. 1998 Cal. Stat. ch. 931, § 69.

45. *Revision of Codes*, *supra* note 6, at 181.

1 same county where the defendant lives. The amount at issue may not justify the
2 travel expense for defending the claim. Section 402.5 permits the court to transfer
3 the case to the court facility nearest the defendant's home, just as a municipal
4 court in a non-unified county may transfer a case to another municipal court within
5 the same county. Because it expressly preserves this important option, Section
6 402.5 is a useful provision.

7 It may, however, be helpful to revise the statute to clarify the appropriate
8 treatment of an unlimited civil case and provide guidance on exercise of the power
9 to transfer:

10 **Code Civ. Proc. § 402.5 (amended). Transfer within county**

11 SEC. _____. Section 402.5 of the Code of Civil Procedure is amended to read:

12 ~~402.5. The superior court in a county in which there is no municipal court~~
13 Except as otherwise provided by statute, the superior court may transfer a limited
14 civil case in which it has jurisdiction to another branch or location of the superior
15 court in the same county, to accommodate the needs of the parties, witnesses,
16 jurors, other interested persons, or the court, as justice requires.

17 **Comment.** Section 402.5 is amended to make clear that the superior court may,
18 with limitations as specified, order transfer of any civil case within its jurisdiction,
19 limited or unlimited, between branches of the court, regardless of whether the
20 courts in that county have unified. This supplements statutory authority for a
21 change of venue between (as opposed to within) counties, and codifies the general
22 authority of the court to control its work. For exceptions to Section 402.5, see
23 Sections 392 (local filing of unlawful detainer proceedings) and 395 (local filing
24 of actions arising from specified consumer transactions); see also Civil Code
25 Sections 1812.10 (local filing of actions under Unruh Act) and 2984.4 (local filing
26 of actions under Automobile Sales Finance Act).⁴⁶

27 For transfer between municipal courts in the same county, see Section 402.

28 ☞ **Note.** The proposed amendment would permit the superior court to transfer a
29 civil case from one superior court facility to another such facility in the same
30 county, “[e]xcept as otherwise provided by statute.” Should this authority be
31 qualified to a greater extent? In particular, should the court’s ability to transfer a
32 case be subject to restrictions in court rules or in case law? Are there particular
33 court decisions that ought to be recognized in this regard?

34 **CONFESSION OF JUDGMENT (CODE CIV. PROC. § 1134)**

35 Code of Civil Procedure Section 1134 establishes fees for filing a confession of
36 judgment that differ depending on the jurisdictional classification of the case. The
37 filing fee is \$15 except in a limited civil case, in which case the filing fee is \$10.⁴⁷

46. See discussion of “Statement of Jurisdictional Facts” *infra*. If the staff recommendations in that discussion are not adopted, we will revise this proposed amendment accordingly.

47. The statute provides:

1134. In all courts the statement must be filed with the clerk of the court in which the judgment is to be entered, who must endorse upon it, and enter a judgment of the court for the amount confessed with the costs hereinafter set forth. At the time of filing, the plaintiff shall pay as court costs that

1 The drafting of this provision is anomalous, since technically speaking it cannot
2 be said that a confession of judgment in an amount under \$25,000 is “in a limited
3 civil case”, no case ever having been filed. Before 1998, the statute provided a
4 lower fee in municipal and justice courts; the 1998 substitution of the reference to
5 a “limited civil case” was made to accommodate trial court unification.⁴⁸ At the
6 minimum, this section requires correction to refer to a fee of \$10 where the
7 amount confessed does not exceed \$25,000.

8 However, this appears to be an instance where procedures may be simplified and
9 unified, without substantial loss. The \$5 fee differential depending on whether a
10 judgment is over or under \$25,000 could easily be eliminated. It is not clear why
11 there should be a differential at all, because the work of the court clerk in
12 endorsing and entering judgment is the same, regardless of amount.

13 Historically, the \$15 fee was charged in superior court and the \$10 fee was
14 charged in municipal court. While it is possible there once was a fiscal justification
15 for this differential, with unification of the courts there should be no differential.

16 As a matter of policy, there may be a sentiment that in a smaller case, the costs
17 charged against the parties should remain proportionately smaller. When the fee
18 structure was enacted in 1872, the differential may have been significant. At that
19 time, there was a proliferation of trial courts, including district courts, county
20 courts, and justice courts. The general fee for filing a confession of judgment at
21 that time was \$10; in justice courts the fee was \$3.⁴⁹ The equivalents in current
22 dollars would be about \$135 and \$40.⁵⁰

23 That fee structure remained unchanged for 85 years until the 1950’s, when the
24 fees were changed to \$10 in superior court, \$9 in municipal court, and \$5 in justice
25 court.⁵¹ In the 1970’s the fees were raised to what they are today (\$15 in superior
26 court and \$10 in municipal court).⁵²

27 The \$5 difference in filing fees in today’s dollars is so small that it is not worth
28 maintaining. This is particularly so under unification, where the work of the filing
29 clerk is done by the same personnel in the same court. While a lower fee in smaller

shall become a part of the judgment the following fees: fifteen dollars (\$15) or in a limited civil case ten dollars (\$10). No fee shall be collected from the defendant. No fee shall be paid by the clerk of the court in which a confession of judgment is filed for the law library fund nor for services of any court reporter. The statement and affidavit, with the judgment endorsed thereon, becomes the judgment roll.

48. *Revision of Codes*, *supra* note 6, at 217.

49. 1872 Code Civ. Proc. §§ 1134, 1135.

50. These amounts were determined using “The Inflation Calculator” found at <<http://www.westegg.com/inflation/>> (a website created and maintained by S. Morgan Friedman, as modified Jan. 19, 2000). The adjustments are based on the Consumer Price Index from 1800-1999. The pre-1975 data are the Consumer Price Index statistics from *Historical Statistics of the United States* (USGPO, 1975). Data from 1975 forward are from the annual *Statistical Abstracts of the United States*.

51. 1957 Cal. Stat. ch. 1982, §§ 1, 2.

52. 1974 Cal. Stat. ch. 1285, § 1; 1975 Cal. Stat. ch. 766, § 1; 1977 Cal. Stat. ch. 1257 § 37. The justice court filing fee was increased to \$10 (1977 Cal. Stat. ch. 1257 § 37) and then eliminated when the justice court was abolished in 1995.

1 cases may be viewed as a populist measure, this is illusory. The law on
2 confessions of judgment has evolved to the point that as a practical matter the
3 confession of judgment is no longer of any use for small consumer cases. A
4 confession of judgment is not valid unless an attorney representing the defendant
5 signs a certificate that the attorney has examined the proposed judgment and has
6 advised the defendant with respect to the waiver of rights and defenses under the
7 confession of judgment procedure and has advised the defendant to utilize the
8 confession of judgment procedure.⁵³ The cost of the attorney's certificate dwarfs
9 the nominal filing fee, and renders the confession of judgment practically useless
10 for the small case.⁵⁴

11 In the interest of simplicity, the staff recommends elimination of the filing fee
12 differential, and adoption of a standard \$15 filing fee for all confessions of
13 judgment:⁵⁵

14 **Code Civ. Proc. § 1134 (amended). Entry of judgment**

15 SEC. _____. Section 1134 of the Code of Civil Procedure is amended to read:

16 1134. ~~In all courts the~~ (a) The statement must be filed with the clerk of the court
17 in which the judgment is to be entered, who must endorse ~~upon~~ on it, and enter a
18 judgment of the court for the amount confessed with the costs ~~hereinafter set forth~~
19 provided in subdivision (b).

20 (b) At the time of filing, the plaintiff shall pay as court costs that shall become a
21 part of the judgment the following fees: fifteen dollars (\$15) ~~or in a limited civil~~
22 ~~case ten dollars (\$10).~~ No fee shall be collected from the defendant. No fee shall
23 be paid by the clerk of the court in which a confession of judgment is filed for the
24 law library fund nor for services of any court reporter.

25 (c) The statement and affidavit, with the judgment endorsed thereon, together
26 with the certificate filed pursuant to Section 1132, becomes the judgment roll.

27 **Comment.** Section 1134 is amended to divide the section into subdivisions and
28 to eliminate the \$10 filing fee for a limited civil case. Under this amendment, the
29 filing fee is \$15 regardless of the jurisdictional classification of the case.

30 The reference to "all courts" in subdivision (a) is deleted as obsolete. It derived
31 from an era when a confession of judgment might have been entered in any of
32 several courts, depending on the amount of the judgment and the jurisdiction of
33 the court. *Cf.* Section 1132(a) ("Such judgment may be entered in any court
34 having jurisdiction for like amounts").

35 The attorney's certificate is made part of the judgment roll in subdivision (c).
36 The certificate is a prerequisite to entry of judgment and must be filed with the
37 defendant's written and verified statement. Section 1132(b).

53. Code Civ. Proc. § 1132.

54. See *Confessions of Judgment*, 15 Cal. L. Revision Comm'n Reports 1053 (1980).

55. The real question, perhaps, is whether the \$15 ought to be increased to a more realistic level. It can be argued that the fee ought to be kept low, to encourage the parties to proceed without resort to court processes other than enforcement. In any event, assessing the merits of increasing the fee is beyond the scope of the current project, which is to simplify procedures under unification.

1 This amendment would insert a reference to the attorney's certificate in
2 subdivision (c). Because an attorney's certificate is now a prerequisite to entry of a
3 confession of judgment, the certificate should be made part of the judgment roll.⁵⁶

4 COSTS WHERE RECOVERY IS SMALL
5 (CODE CIV. PROC. § 1033)

6 The general rule in civil proceedings is that the prevailing party is entitled to
7 costs as a matter of right.⁵⁷ This rule is subject to a number of exceptions,
8 including where judgment in favor of the prevailing party is so small it could have
9 been rendered in a case with a lower jurisdictional classification.⁵⁸ For example, if
10 the plaintiff in an unlimited civil case recovers less than \$25,000, or the plaintiff in
11 a limited civil case recovers less than \$5,000, the plaintiff's recovery of costs is
12 discretionary with the court:

13 **Code Civ. Proc. § 1033. Costs where recovery is small**

14 1033. (a) Costs or any portion of claimed costs shall be as determined by the
15 court in its discretion in a case other than a limited civil case in accordance with
16 Section 1034 where the prevailing party recovers a judgment that could have been
17 rendered in a limited civil case.

18 (b) When a prevailing plaintiff in a limited civil case recovers less than the
19 amount prescribed by law as the maximum limitation upon the jurisdiction of the
20 small claims court, the following shall apply:

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

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

33 The purpose of this provision is to encourage litigants to sue in the appropriate
34 jurisdictional classification.⁵⁹

56. The affidavit mentioned in subdivision (c) evidently refers to the defendant's verification by oath required by Code of Civil Procedure Section 1133.

57. Code Civ. Proc. § 1032.

58. Code Civ. Proc. § 1033; see, e.g., *Steele v. Jensen Instrument Co.*, 59 Cal. App. 4th 326, 330-31, 69 Cal. Rptr. 2d 135 (1997); *Dorman v. DWLC Corp.*, 35 Cal. App. 4th 1808, 1814-15, 42 Cal. Rptr. 2d 459 (1995).

59. See *Steele*, 59 Cal. App. 4th at 330; see also *Young v. General Telephone Co.*, 75 Cal. App. 3d 177, 142 Cal. Rptr. 57 (1977) (interpreting predecessor provision).

1 The statute is reasonably clear, the scheme is fairly logical, and the courts appear
2 to have construed the statute consistently.⁶⁰ However, the drafting of the statute is
3 subject to a number of inconsistencies.⁶¹ These drafting issues will be considered
4 in the Law Revision Commission’s ongoing study of costs and contractual
5 attorney’s fees, instead of in this joint study.

6 ENTRY, STORAGE, AND RETRIEVAL OF COURT DATA
7 (GOV’T CODE § 68513)

8 [This analysis has not yet been prepared.]

9 INSTALLMENT JUDGMENTS (CODE CIV. PROC. § 582.5)

10 Code of Civil Procedure Section 582.5 provides for installment judgments in
11 limited civil cases:

12 **Code Civ. Proc. § 582.5. Installment judgments**

13 582.5. In a limited civil case in which the defendant has appeared, if the
14 judgment or order is for the payment of money by the defendant, the defendant
15 shall pay the judgment immediately or at any time and upon terms and conditions,
16 including installment payments, that the court may prescribe. The court may
17 amend the terms and conditions for payment of the judgment or order at any time
18 to provide for installment payments for good cause upon motion by a party and
19 notice to all affected parties, regardless of the nature of the underlying debt and
20 regardless of whether the moving party appeared before entry of the judgment or
21 order. In any determination regarding the imposition of terms and conditions upon
22 the payment of the judgment, the court shall consider any factors that would be
23 relevant to the determination of a claim for exemption pursuant to Chapter 4
24 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 or the
25 examination of a debtor pursuant to Article 2 (commencing with Section 708.110)
26 of Chapter 6 of Division 2 of Title 9.

60. The interrelationship between Code of Civil Procedure Section 1033 and statutes providing for attorney’s fees (e.g., Civil Code Section 1717) is not expressly addressed in Section 1033. The matter has been discussed in a number of cases, which exclude potential fee awards in determining whether Section 1033 applies. See *Steele*, 59 Cal. App. 4th at 331 (“In determining whether the prevailing party recovered a judgment that could have been rendered in a court of lesser jurisdiction, the trial court does not add a potential award of statutory or contractual attorney’s fees”); *Dorman*, 35 Cal. App. 4th at 1815 (“discretion to award attorney fees pursuant to section 1717 is controlled by the provisions of section 1033 in that situation where the primary damages awarded are less than the jurisdictional limit of a court of lesser jurisdiction”); see also *Korech v. Hornwood*, 58 Cal. App. 4th 1412, 1417-18, 68 Cal. Rptr. 2d 637 (1997) (same as *Dorman* but fee award upheld as proper exercise of discretion). The possibility of codifying that approach will be considered in the Law Revision Commission’s ongoing study of costs and contractual attorney’s fees, rather than in the instant study.

61. E.g., Why does the court in an unlimited civil case “determine” costs in its discretion, whereas in a limited civil case it may “allow or deny” costs in its discretion? Why is the court’s discretion in an unlimited civil case exercised in accordance with Section 1034 (Judicial Council rules), but not in a limited civil case (particularly when Section 1034 by its own terms purports to apply to both)? Why do some provisions of Section 1033 state that costs shall be “allowed” while others refer to costs that are “awarded”?

1 This statute was originally enacted as Section 85 in 1974, applicable in municipal
2 and justice courts.⁶² It was renumbered and made applicable in limited civil cases
3 to accommodate trial court unification.⁶³

4 At the time of enactment of this section in 1974, small claims courts had
5 statutory authority to order installment payment of a money judgment,⁶⁴ and the
6 superior court may have had this authority (at least in some contexts) because of
7 its equity powers.⁶⁵ It was more questionable whether municipal or justice courts
8 had this authority. The legislation was intended to clear up any doubts as to the
9 authority to provide for the payment of money judgments on terms established by
10 municipal or justice courts.⁶⁶

11 Under existing law, superior courts have express statutory authority to order
12 installment payments in a number of specific situations.⁶⁷ There are also some
13 express limitations. For example, where damages are due to a motor vehicle
14 accident the court may enter an installment judgment only when the defendant is
15 uninsured or underinsured.⁶⁸ A judgment against a local public entity may be paid
16 in installments only if such payment is necessary to avoid unreasonable hardship.⁶⁹
17 Where a MICRA judgment debtor is not adequately insured, periodic payment of
18 future damages is authorized only if the debtor posts security adequate to assure

62. 1974 Cal. Stat. ch. 1415, § 1.

63. 1998 Cal. Stat. ch. 931, § 80.

64. Former Code Civ. Proc. § 117i, enacted by 1933 Cal. Stat. ch. 743, § 30. See now Code Civ. Proc. § 116.620 (payment of small claims judgment).

65. Commentary states that “prior to the enactment of section 85 it appeared that superior courts, because of their equity powers, ... had the authority to provide for payment of money judgments on such terms or conditions as the court saw fit to prescribe.” *Review of Selected 1974 Legislation*, 6 Pac. L. J. 125, 212 (1975). The author does not cite any authority for this proposition, and the staff has not found any California case clearly relying on the superior court’s equity powers as a basis for entering an installment judgment. A number of out-of-state cases upheld installment judgments in specific contexts based on the equity power of the court. See, e.g., *Holden v. Construction Machinery Co.*, 202 N.W.2d 348 (Iowa 1972) (court had equitable power to enter variable periodic-payment award for future damages in dispute over employment contract in closely held corporation); *McGhee v. McGhee*, 82 Idaho 367, 353 P.2d 760 (1960) (installment judgment based on court’s equity powers proper where defendant fraudulently induced woman to marry him). Courts denied installment judgments in other cases, particularly personal injury cases. See Henderson, *Designing a Responsible Periodic-Payment System for Tort Awards: Arizona Enacts a Prototype*, 32 Ariz. L. Rev. 21, 26 n.19 (1990) & cases cited therein.

[Staff has not yet examined the bill file for 1974 Cal. Stat. ch. 1415. It may provide additional insight into why the bill was limited to municipal and justice courts.]

66. *Review of Selected 1974 Legislation*, 6 Pac. L. J. 125, 212 (1975).

67. See, e.g., Code Civ. Proc. §§ 667.7(a) (periodic payment of future damages equal to or exceeding \$50,000 under MICRA), 871.5 & Comment (installment judgment in good faith improver case); Family Code § 3580 (husband and wife may provide in agreement for support of either of them and of their children during their separation or on the dissolution of their marriage); Gov’t Code §§ 970.6 (judgment against local public entity payable in installments under specified conditions), 984 (judgment against public entity payable in installments under specified conditions); Labor Code §§ 4650-4651 (timing of workers’ compensation payments); Veh. Code § 16379 (installment judgment for damages due to motor vehicle accident).

68. Veh. Code § 16380.

69. Gov’t Code § 970.6. The judgment must be paid in no more than ten equal annual installments. *Id.*

1 full payment.⁷⁰ If the judgment creditor dies, damages for loss of future earnings
2 are not to be reduced or terminated but are to be paid to persons to whom the
3 creditor owed a duty of support.⁷¹ There is no general statutory authority for the
4 superior court to order installment judgments.

5 The unification of the courts, and the revision of the municipal court statute to
6 apply to a limited civil case in superior court, could cast doubt (by negative
7 implication) on the authority of the superior court to order an installment judgment
8 in an unlimited civil case. This raises the question whether the installment
9 judgment statute should be broadened to apply in any civil case.

10 Installment judgments have both positive and negative aspects. Among the
11 advantages to the plaintiff is the assurance of a continuing income stream, as
12 opposed to a lump sum payment that may be difficult to conserve and successfully
13 invest.⁷² There may also be favorable tax or debt collection consequences.⁷³ From
14 the defendant's side, use of installment judgments reduces the need for a large
15 cash reserve, decreasing the defendant's expenses and permitting a reduction in
16 insurance premiums.⁷⁴

17 An important disadvantage for the plaintiff, however, is the possibility that the
18 judgment debtor will become insolvent before the judgment is fully paid.⁷⁵ The
19 plaintiff also loses the opportunity to profitably invest a lump sum payment and
20 the flexibility to use the money when needed even if the need arises earlier than
21 anticipated.⁷⁶

22 The staff recommends against broadening Section 85 to apply in any civil case,
23 at least in the context of this test project. The use of installment judgments,
24 particularly in tort cases, has been the subject of considerable litigation and
25 debate.⁷⁷ Much has been written about the circumstances and manner in which
26 such judgments should be permitted.⁷⁸ Providing express statutory authority for
27 installment judgments in all unlimited civil cases is likely to prove controversial,

70. Code Civ. Proc. § 667.6(a).

71. Code Civ. Proc. § 667.7(c). Other restrictions also apply to the use of periodic payments under MICRA. See Code Civ. Proc. § 667.7.

72. Henderson, *supra* note 65, at 31-32.

73. *Id.*

74. Steiner, *Periodic Payment Awards: The Prescription for the Medical Malpractice Crisis in Ohio*, 3 J. Law & Health 47, 66 (1989). For further discussion of the advantages and disadvantages of installment judgments, see *id.* at 51-52; see also Henderson, *supra* note 65, at 31-38; Commissioners' Prefatory Note to Model Periodic Payment of Judgments Act (1980), reproduced in Uniform Periodic Payment of Judgments Act (1990); Plant, *Periodic Payment of Damages for Personal Injury*, 44 La. L. Rev. 1327, 1328-33 (1984).

75. See Steiner, *supra* note 77, at 70-71.

76. American Bank & Trust Co. v. Community Hosp., 36 Cal. 3d 359, 379-80, 683 P.2d 670, 204 Cal. Rptr. 671 (1984) (Mosk, J., dissenting).

77. See, e.g., Salgado v. County of Los Angeles, 19 Cal. 4th 629, 627 P.2d 585, 80 Cal. Rptr. 2d 46 (1999); American Bank & Trust Co. v. Community Hosp., 36 Cal. 3d 359, 379-80, 683 P.2d 670, 204 Cal. Rptr. 671 (1984); Henderson, *supra* note 65; Plant, *supra* note 74; Steiner, *supra* note 74.

78. See sources cited in note 74, *supra*; see also Uniform Periodic Payment of Judgments Act (1990).

1 even if entry of an installment judgment is discretionary with the court rather than
2 mandatory as under MICRA. Absent evidence that interested parties desire such a
3 reform and are likely to reach a consensus, it seems imprudent to delve into the
4 area.

5 **PLEADING PERSONAL INJURY AND WRONGFUL DEATH**
6 **DAMAGES (CODE CIV. PROC. §§ 425.10, 425.11)**

7 Pleading rules generally require that if the plaintiff demands recovery of money
8 or damages, the amount demanded must be stated in the complaint.⁷⁹ However, in
9 an action brought in superior court for personal injury or wrongful death, the
10 amount demanded may not be stated in the complaint (except in a limited civil
11 case):

12 **Code Civ. Proc. § 425.10. Contents of complaint**

13 425.10. A complaint or cross-complaint shall contain both of the following:

14 (a) A statement of the facts constituting the cause of action, in ordinary and
15 concise language.

16 (b) A demand for judgment for the relief to which the pleader claims to be
17 entitled. If the recovery of money or damages be demanded, the amount thereof
18 shall be stated, unless the action is brought in the superior court to recover actual
19 or punitive damages for personal injury or wrongful death, in which case the
20 amount thereof shall not be stated, except in a limited civil case.

21 Is there a good reason to distinguish between limited and unlimited cases in
22 pleading damages for personal injury or wrongful death?

23 The statutory prohibition on pleading damages for personal injury or wrongful
24 death was first enacted in 1974.⁸⁰ The legislation was spearheaded by the
25 California Medical Association. It addressed a concern that inflated claims in
26 multimillion dollar malpractice lawsuits tend to attract sensational media coverage
27 and unfairly cast physicians in a bad light.⁸¹

28 Due process and fairness issues have been raised about statutes such as this that
29 do not put the defendant on notice of the extent of potential liability. The issues are
30 addressed in a companion statute.⁸² That section provides for a separate notice of
31 the damages claimed by the plaintiff:

32 **Code Civ. Proc. § 425.11. Statement of damages**

33 425.11. (a) As used in this section:

79. Code Civ. Proc. § 425.10(a).

80. See 1974 Cal. Stat. ch. 1481 (amending Code Civ. Proc. § 425.10).

81. See *Review of Selected 1974 California Legislation*, 6 Pac. L. J. 216-217 (1975); Schwab v. Rondel Homes, Inc., 53 Cal. 3d 428, 808 P.2d 226, 280 Cal. Rptr. 83 (1991).

82. Code Civ. Proc. § 425.11. See also Code of Civil Procedure Section 425.115, which requires a similar statement as to punitive damages. The Judicial Council has developed an official form for statements prepared pursuant to Sections 425.11 and 425.115. See Code Civ. Proc. § 425.12; Judicial Council form 982(a)(24).

1 (1) “Complaint” includes a cross-complaint.

2 (2) “Plaintiff” includes a cross-complainant.

3 (3) “Defendant” includes a cross-defendant.

4 (b) When a complaint is filed in an action in the superior court to recover
5 damages for personal injury or wrongful death, the defendant may at any time
6 request a statement setting forth the nature and amount of damages being sought,
7 except in a limited civil case. The request shall be served upon the plaintiff, who
8 shall serve a responsive statement as to the damages within 15 days. In the event
9 that a response is not served, the party, on notice to the plaintiff, may petition the
10 court in which the action is pending to order the plaintiff to serve a responsive
11 statement.

12 (c) If no request is made for the statement referred to in subdivision (a), the
13 plaintiff shall serve the statement on the defendant before a default may be taken.

14 (d) The statement referred to in subdivision (b) shall be served in the following
15 manner:

16 (1) If a party has not appeared in the action, the statement shall be served in the
17 same manner as a summons.

18 (2) If a party has appeared in the action, the statement shall be served upon his
19 or her attorney, or upon the party if he or she has appeared without an attorney, in
20 the manner provided for service of a summons or in the manner provided by
21 Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

22 (e) The statement referred to in subdivision (b) may be combined with the
23 statement described in Section 425.115.

24 A default judgment entered against the defendant in a case to which this section
25 applies is limited to the amount claimed by the plaintiff in the statement of
26 damages.⁸³

27 Neither the prohibition on pleading damages nor the statement of damages
28 claimed applies in a limited civil case.⁸⁴ The reason for this limitation is nowhere
29 expressly stated. However, it appears likely that the concern about grossly inflated
30 damage claims is less acute in a limited civil case than in an unlimited civil case,
31 because the maximum amount in controversy in a limited civil case is \$25,000.⁸⁵

32 It does not appear productive to attempt to eliminate the special rule for
33 pleadings in personal injury and wrongful death unlimited civil cases to conform
34 to the general rule for all other cases, including limited civil cases. The special rule
35 for wrongful death and personal injury cases is politically based, and we have seen
36 nothing to indicate any dissatisfaction with it among those who obtained its

83. Code Civ. Proc. §§ 580, 585. The same rule does not apply in a contested case. The plaintiff may recover damages proved in excess of the amount stated, just as if the prayer for relief were in the complaint. See, e.g., *Damele v. Mack Trucks, Inc.*, 219 Cal. App. 3d 29, 267 Cal. Rptr. 197 (1990).

84. Before unification, those provisions were limited to an action in superior court. See *Revision of Codes*, supra note 6, at 182-183.

85. Code Civ. Proc. § 85. Despite the \$25,000 maximum, the defendant in a limited civil case is entitled as a matter of fundamental fairness to know the amount claimed by the plaintiff. See, e.g., *Janssen v. Luu*, 57 Cal. App. 4th 274, 66 Cal. Rptr. 2d 838 (1997).

1 enactment. Although the special rule has received some criticism,⁸⁶ it is unlikely
2 that the rule could be eliminated.

3 What about the converse? In an effort to attain consistency between limited and
4 unlimited civil cases, should pleadings in limited civil cases be conformed to
5 pleadings in unlimited cases? The pleadings would not include the amount of
6 damages claimed in a personal injury or wrongful death case, but a statement by
7 the plaintiff would be provided on demand. Of course, consistency between
8 limited and unlimited cases in this respect would simultaneously create internal
9 inconsistency among pleadings in various types of limited civil cases.

10 But for the practitioner, as well as for judges in a unified court, it is probably
11 better to have the same pleading rules for personal injury and wrongful death
12 cases, regardless of the jurisdictional classification of the case as limited or
13 unlimited. Moreover, if the jurisdictional amounts are significantly increased in the
14 future, for example from \$25,000 to \$100,000, some of the same policy concerns
15 about inflated claims in unlimited civil cases may also come to play in limited
16 civil cases.

17 For these reasons, it may be worth exploring whether to conform the pleading
18 requirements for all personal injury or wrongful death cases. This could be
19 accomplished by amending Code of Civil Procedure Section 425.10 as follows:

20 **Code Civ. Proc. § 425.10 (amended). Contents of complaint**

21 SEC. _____. Section 425.10 of the Code of Civil Procedure is amended to read:

86. The Judicial Council opposed enactment of the provision in 1974, raising questions “as to its efficacy as well as to its constitutionality.” *Review of Selected 1974 California Legislation*, 6 Pac. L. J. 216-217 (1975). Justice Mosk sharply criticized the statute in a 1991 dissent:

Ultimately, the solution to this problem lies with the Legislature. The procedural hurdles to recovery now greatly outweigh the Legislature’s apparent concern about the embarrassment to personal injury defendants of adverse publicity stemming from a lawsuit with a prayer for monumental damages. [Citations omitted.]

A statutory scheme that forbids a party to provide useful information — a form of compulsory silence — and that creates anomalous results of the type reached today urgently needs reexamination. Moreover, in a newsworthy case a lawyer or party can always call a press conference and trumpet the claim to the heavens, or at least to the terrestrial media. Thus not only are sections 425.10 and 425.11 bad law and bad policy, they are an ineffective means of implementing the Legislature’s apparent intent. Nor can they be made effective: I cannot conceive of legislation that could constitutionally prevent plaintiffs with sensational personal injury damage claims from announcing those claims in any forum whatsoever.

Schwab v. Rondel Homes, Inc., 53 Cal. 3d 428, 808 P.2d 226, 280 Cal. Rptr. 83 (1991) (Mosk, J., dissenting).

The statutory scheme has been revised since these criticisms were advanced. 1979 Cal. Stat. ch. 778, § 2; 1993 Cal. Stat. ch. 456, § 2; 1995 Cal. Stat. ch. 796, § 2. It is unclear to what extent dissatisfaction with the statute persists. A current treatise explains:

The statement of damages requirement makes entry of default more complicated: If defendant does not respond to the summons and complaint, plaintiff must go back and *re-serve* defendant with the statement of damages *before* seeking entry of default — i.e., double service may be required!

R. Weil & I. Brown, Jr., *California Practice Guide: Civil Procedure Before Trial, Pleading* § 6:288, at 6-60.3 (1999) (emphasis in original). The authors advise practitioners to attach the statement of damages to the summons if there is a likelihood of default.

1 425.10. A complaint or cross-complaint shall contain both of the following:

2 (a) A statement of the facts constituting the cause of action, in ordinary and
3 concise language.

4 (b) A demand for judgment for the relief to which the pleader claims to be
5 entitled. If the recovery of money or damages ~~be is~~ demanded, the amount thereof
6 demanded shall be stated, unless the action is brought ~~in the superior court~~ to
7 recover actual or punitive damages for personal injury or wrongful death, in
8 which case the amount thereof demanded shall not be stated, ~~except in a limited~~
9 ~~civil case.~~

10 **Comment.** Section 425.10 is amended to conform the pleading requirements in
11 limited and unlimited civil cases. Technical changes are also made for conformity
12 with preferred drafting style.

13 It would also be necessary to revise Code of Civil Procedure Section 425.11:⁸⁷

14 **Code Civ. Proc. § 425.11 (amended). Statement of damages**

15 SEC. _____. Section 425.11 of the Code of Civil Procedure is amended to read:

16 425.11. (a) As used in this section:

17 (1) “Complaint” includes a cross-complaint.

18 (2) “Plaintiff” includes a cross-complainant.

19 (3) “Defendant” includes a cross-defendant.

20 (b) When a complaint is filed in an action ~~in the superior court~~ to recover
21 damages for personal injury or wrongful death, the defendant may at any time
22 request a statement setting forth the nature and amount of damages being sought,
23 ~~except in a limited civil case.~~ The request shall be served ~~upon~~ on the plaintiff,
24 who shall serve a responsive statement as to the damages within 15 days. In the
25 event that a response is not served, the party defendant, on notice to the plaintiff,
26 may petition the court in which the action is pending to order the plaintiff to serve
27 a responsive statement.

28 (c) If no request is made for the statement referred to in subdivision (a), the
29 plaintiff shall serve the statement on the defendant before a default may be taken.

30 (d) The statement referred to in subdivision (b) shall be served in the following
31 manner:

32 (1) If a party has not appeared in the action, the statement shall be served in the
33 same manner as a summons.

34 (2) If a party has appeared in the action, the statement shall be served ~~upon his~~
35 ~~or her~~ on the party’s attorney, or ~~upon~~ on the party if ~~he or she~~ the party has
36 appeared without an attorney, in the manner provided for service of a summons or
37 in the manner provided by Chapter 5 (commencing with Section 1010) of Title 14
38 of Part 2.

39 (e) The statement referred to in subdivision (b) may be combined with the
40 statement described in Section 425.115.

41 **Comment.** Section 425.11 is amended to conform to the pleading requirements
42 of limited and unlimited civil cases. See Section 425.10. Technical changes are
43 also made for conformity with preferred drafting style.

87. Code of Civil Procedure Sections 425.115 (statement of punitive damages) and 425.12 (Judicial Council forms for statements of damages) would not require revision.

1 Persons dissatisfied with the special pleading rule for personal injury and
2 wrongful death cases may object to expanding the rule in this manner, despite the
3 benefits of uniformity.⁸⁸ Circulating a proposal along these lines would, however,
4 afford them an opportunity to voice their concerns, not only about the proposed
5 new rule but also about the current rule. The proposal could then be adjusted to
6 respond to their objections and improve on the existing statutory scheme.

7 RETENTION OF COURT RECORDS (GOV'T CODE § 68152)

8 [This analysis is still in progress.]

9 SATISFACTION OF JUDGMENT (CODE CIV. PROC. § 685.030)

10 In 1991, the satisfaction of judgment statute was amended to allow entry of a
11 satisfaction in cases in which the only amount left unsatisfied is an interest deficit
12 of less than \$10.⁸⁹ This rule initially applied only in municipal court.⁹⁰ As
13 presently worded to reflect trial court unification, the statute provides:

14 **Code Civ. Proc. § 685.030. Satisfaction of judgment**

15 ...

16 (e) In a limited civil case, the clerk of a court may enter in the Register of
17 Actions a writ of execution on a money judgment as returned wholly satisfied
18 when the judgment amount, as specified on the writ, is fully collected and only an
19 interest deficit of no more than ten dollars (\$10) exists, due to automation of the
20 continual daily interest accrual calculation.

21 The staff is still researching why this section was initially limited to municipal
22 courts.⁹¹ The underlying policy of the provision seems to be that where the amount
23 outstanding on a judgment is trivial (ten dollars or less) and the deficit appears to
24 relate to calculation of interest, further effort should not be expended to collect on
25 the judgment and the matter should be considered closed.

26 This policy would appear to apply equally in a limited as in an unlimited civil
27 case in superior court. Absent a showing of the need for a difference in treatment,
28 the staff would eliminate the distinction between limited and unlimited civil cases
29 on this point:

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

31 SEC. _____. Section 685.030 of the Code of Civil Procedure is amended to read:

32 ...

88. See generally note 86, *supra*.

89. 1991 Cal. Stat. ch. 1090, § 4.5.

90. *Id.*

91. Bill analyses that provide insight may be in state archives. We intend to check for these analyses.

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

6 **Comment.** Subdivision (e) of Section 685.030 is amended to eliminate the
7 difference in treatment between limited and unlimited civil cases. The reference to
8 automation of the continual daily interest accrual calculation is deleted as
9 unnecessary.

10 For the register of actions in superior court, see Gov't Code §§ 69845, 69845.5.
11 For the register of actions in municipal court, see Code Civ. Proc. §§ 1052,
12 1052.1.

13 STATEMENT OF JURISDICTIONAL FACTS
14 (CODE CIV. PROC. § 396a)

15 Code of Civil Procedure Section 396a contains special rules requiring that the
16 plaintiff in certain limited civil cases state in the complaint verified facts showing
17 that the action has been commenced in the proper court. This provision was
18 enacted in response to practices exercised against consumers, including intentional
19 filing of lawsuits in inappropriate venues. "The intentional and mass filing of such
20 complaints in the wrong county is not only an abuse of process but also an
21 unlawful business practice and may be enjoined under CC §3369."⁹²

22 The cases to which the requirements of Section 396a apply are:

- 23 (1) Actions under the Unruh Act (retail installment sales) — Civil Code
24 Section 1812.10.
- 25 (2) Actions under the Automobile Sales Finance Act — Civil Code §
26 2984.4.
- 27 (3) Actions arising from consumer transactions — Code Civ. Proc. §
28 395(b).
- 29 (4) Actions for unlawful detainer — Code Civ. Proc. § 1161.

30 Historically, these requirements applied only to proceedings in justice and
31 municipal courts. To accommodate trial court unification, the provision was
32 adjusted to apply to limited civil cases in any court.⁹³

92. 1 California Civil Procedure Before Trial 3d § 15.26 (Cal. Cont. Ed. Bar 1999).

93. *Revision of Codes*, *supra* note 6, at 192-193.

1 **Judicial Districts**

2 An initial question is whether the provision serves a useful purpose any longer,
3 with unification of the trial courts. It played a greater role in the past, when actions
4 in these cases were required to be brought in a specific judicial district.⁹⁴

5 Under unification, judicial districts are extinguished, and venue in a limited civil
6 case is simply the proper county under normal venue rules.⁹⁵ One unintended
7 consequence of unification, perhaps, is the loss of this particular consumer
8 protection: the requirement that a lawsuit be filed in an appropriate local venue.

9 It would be possible to preserve the local venue requirement by preserving the
10 former judicial districts for this purpose. This is already being done for publication
11 of legal notices. A map approved by the county surveyor is filed with the county
12 recorder showing the boundaries of judicial districts as of the date of unification.⁹⁶
13 Those boundaries demarcate separate judicial districts for purposes of
14 publication.⁹⁷

15 One problem with such a scheme is that, while it serves a stop-gap transitional
16 purpose, it does not provide a rational long-term approach to venue issues. It
17 depends on arcane maps preserved in the county recorder's office. This situation
18 may be satisfactory for newspapers that survive on publication of legal notices
19 within their districts and can be expected to be familiar with the jurisdictional
20 details. But it is not a satisfactory situation for the general public or for attorneys
21 who would be required to file in the proper "district". Moreover, the legal
22 publication scheme itself is subject to further critical review.⁹⁸

23 Even if it could be determined with certainty that a particular former judicial
24 district would be the proper venue for a lawsuit, there is no guarantee that a
25 courthouse will continue to exist in that location in the future. While existing court
26 locations are preserved as a transitional matter through unification,⁹⁹ unification
27 should foster future courthouse realignments in the most appropriate places based
28 on demographics, transportation, and other relevant factors.

29 An alternate approach would be to eliminate the special judicial district
30 requirements in the existing consumer laws, and instead require filing in the
31 appropriate county. Where geographic or other constraints (e.g., a mountain range
32 in the middle of a county) make a particular court location inappropriate, the court

94. See, e.g., Code Civ. Proc. § 395(c) ("in the judicial district in which the buyer or lessee resides, in which the buyer or lessee in fact signed the contract, in which the buyer or lessee resided at the time the contract was entered into, or in which the buyer or lessee resides at the commencement of the action").

95. Code Civ. Proc. § 38 & Comment; see Code Civ. Proc. §§ 392, 395(b); Civ. Code §§ 1812.10, 2984.4.

96. Gov't Code § 71042.6.

97. Gov't Code § 71042.5.

98. See *Revision of Codes*, *supra* note 6, at 86 (scheme "may be unsatisfactory in the long-term because it would not account for changing demographics").

99. See Cal. Const. Art. 1, § 23(c)(2); Gov't Code § 70212(b).

1 could transfer a case to another location in the same county.¹⁰⁰ This approach may
2 be unsatisfactory, however, because it would put the onus on the defendant to
3 move for the transfer, in contrast with existing law which requires the plaintiff to
4 make a verified statement of proper venue.

5 Still another approach would be to require filing in an appropriate location of the
6 unified superior court (e.g., the location that is “nearest and most accessible”¹⁰¹ to
7 the defendant’s residence). This seems the best alternative, because it would
8 account for court relocations, yet ensure that consumer cases are tried in an
9 appropriate venue within the county.¹⁰²

10 **Limited Versus Unlimited Civil Cases**

11 Having determined how to preserve local filing of a consumer case, we come to
12 the issue whether it makes sense to distinguish between limited and unlimited civil
13 cases with respect to the special pleading requirement. In all likelihood, the great
14 majority of cases falling within the identified consumer protection statutes will be
15 limited civil cases (under \$25,000). It is also likely that the abuses responded to by
16 the existing statutes have occurred primarily in municipal and justice court filings.

17 This would argue for maintaining the existing scope of the special pleading
18 provisions, applicable only in limited civil cases. This argument would be
19 particularly strong if the \$25,000 jurisdictional amount for a limited civil case is
20 increased, say to \$100,000.

21 It is important to consider, however, whether the special rule for limited civil
22 case pleadings sets a trap for lawyers. Standardizing the pleading rules may help to
23 prevent inadvertent noncompliance or unnecessary compliance¹⁰³ with the
24 statutory requirements.

25 The staff therefore recommends that the special pleading rule be applied to all
26 cases involving the identified causes of action, regardless of whether the case is a
27 limited civil case.

28 **Proposed Reforms**

29 The recommended approach could be implemented by amending Code of Civil
30 Procedure Section 396a as follows:

100. Code Civ. Proc. § 402.5. For discussion of this provision, see “Change of Venue Within County”
supra.

101. This language is drawn from Code of Civil Procedure Section 398, pertaining to changes of venue.

102. The same reasoning would apply to other statutes, besides the consumer protection statutes, that
provide special venue provisions for municipal court judicial districts. See, e.g., Code Civ. Proc. §§ 392,
393. However, each statute needs to be analyzed in its own right, to determine whether there might not be a
compelling reason to preserve a special local venue rule. Rather than undertaking such review in this test
project, the staff recommends that it be deferred, either to a later part of this study or to the general cleanup
of statutes that the Law Revision Commission will undertake on unification of all courts.

103. If a lawyer prepares a statement of jurisdictional facts where it is not required, there is no harm to the
client’s case but either the lawyer or the client must bear the expense of this unnecessary expenditure of
effort.

1 **Code Civ. Proc. § 396a. Statement of jurisdictional facts**

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

3 396a. In a ~~limited-civil~~ case that is subject to Sections 1812.10 and 2984.4 of the
4 Civil Code, or subdivision (b) of Section 395 of the Code of Civil Procedure, or is
5 an action or proceeding for an unlawful detainer as defined in Section 1161 of the
6 Code of Civil Procedure, ~~the Procedure:~~

7 (a) ~~The~~ plaintiff shall state facts in the complaint, verified by the plaintiff's oath,
8 or the oath of the plaintiff's attorney, or in an affidavit of the plaintiff or of the
9 plaintiff's attorney filed with the complaint, showing that the action has been
10 commenced in the proper court location for the trial of the action or proceeding,
11 and showing that the action is subject to the provisions of Sections 1812.10 and
12 2984.4 of the Civil Code or subdivision (b) of Section 395 of the Code of Civil
13 Procedure, or is an action for an unlawful detainer. When the affidavit is filed
14 with the complaint, a copy ~~thereof~~ of the affidavit shall be served with the
15 summons. Except as herein provided, if the complaint or affidavit ~~be~~ is not so
16 filed, no further proceedings shall be had in the action or proceeding, except to
17 dismiss the ~~same action or proceeding~~ without prejudice. However, the court may,
18 on such terms as may be just, permit the affidavit to be filed ~~subsequent to~~ after
19 the filing of the complaint, and a copy of the affidavit shall be served on the
20 defendant and the time to answer or otherwise plead shall date from that service.
21 If

22 (b) If it appears from the complaint or affidavit, or otherwise, that the court
23 location in which the action or proceeding is commenced is not the proper ~~court~~
24 location for the trial ~~thereof~~, the court in which the action or proceeding is
25 commenced, or a judge thereof, shall, whenever that fact appears, transfer it to the
26 proper ~~court~~ location, on its own motion, or on motion of the defendant, unless the
27 defendant consents in writing, or in open court (consent in open court being
28 entered in the minutes or docket of the court), to the keeping of the action or
29 proceeding in the ~~court~~ location where commenced. If that consent ~~be~~ is given, the
30 action or proceeding may continue in the ~~court~~ location where commenced.
31 Notwithstanding the provisions of Section 1801.1 and subdivision (f) of Section
32 2983.7 of the Civil Code, that consent may be given by a defendant who is
33 represented by counsel at the time the consent is given, and where an action or
34 proceeding is subject to subdivision (b) of Section 395 or is for an unlawful
35 detainer, that consent may only be given by a defendant who is represented by
36 counsel at the time the consent is given. ~~In~~

37 (c) In any case where the transfer of the an action or proceeding to another court
38 is ordered under the provisions of this ~~paragraph~~ section, if summons is served
39 ~~prior to~~ before the filing of the action or proceeding in the court to which it is
40 transferred, as to any defendant, so served, who has not appeared in the action or
41 proceeding, the time to answer or otherwise plead shall date from service ~~upon~~ on
42 that defendant of written notice of the filing.

43 (d) When it appears from the complaint or affidavit of the plaintiff that the ~~court~~
44 location in which the action or proceeding is commenced is a proper court
45 location for the trial ~~thereof~~, all proper proceedings may be had, and the action or
46 proceeding may be tried ~~therein; provided, however, that a~~ in that location. A
47 motion for a transfer of the action or proceeding may be made as in other cases,
48 within the time, ~~upon~~ on the grounds, and in the manner provided in this title, and
49 if ~~upon~~ on that motion it appears that the action or proceeding is not pending in
50 the proper court or court location, or should for other cause be transferred, the
51 ~~same~~ action or proceeding shall be ordered transferred as provided in this title.

1 (e) When any action or proceeding is ordered transferred to another court as
2 herein provided in this section, proceedings shall be had, and the costs and fees
3 shall be paid, as provided in Sections 398 and 399 of this code.

4 **Comment.** Section 396a is amended to conform the pleading requirements in
5 limited and unlimited civil cases, and to reflect preservation of local filing
6 requirements for actions under the Unruh Act (Civil Code § 1812.10), actions
7 under the Automobile Sales Finance Act (Civil Code § 2984.4), actions arising
8 from consumer transactions (Code Civ. Proc. § 395(b)), and unlawful detainer
9 cases (Code Civ. Proc. §§ 392, 1161). Technical changes are also made for
10 conformity with preferred drafting style.

11 This amendment will not greatly expand the scope of the statutory requirement
12 as a practical matter, because most cases will continue to be limited civil cases. It
13 will, however, promote uniformity of pleading requirements and help simplify the
14 statutes.

15 The substantive provisions referenced in Section 396a also require amendment.
16 Civil Code Section 1812.10 should be revised along the following lines:

17 **Civil Code § 1812.10 (amended). Action on contract or installment account**

18 SEC. _____. Section 1812.10 of the Civil Code is amended to read:

19 1812.10. (a) An action on a contract or installment account under the provisions
20 of this chapter shall be tried in the county in which the contract was in fact signed
21 by the buyer, in the county in which the buyer resided at the time the contract was
22 entered into, in the county in which the buyer resides at the commencement of the
23 action, or in the county in which the goods purchased pursuant to the contract
24 have been so affixed to real property as to become a part of that real property.

25 (b) If within the county there is a municipal court, having jurisdiction of the
26 subject matter, established in the city and county or judicial district in which the
27 contract was in fact signed by the buyer, or in which the buyer resided at the time
28 the contract was entered into, or in which the buyer resides at the commencement
29 of the action or action, or in which the goods purchased pursuant to the contract
30 have been so affixed to real property as to become a part of that real property,
31 then that court is the proper court for the trial of the action. Otherwise, any court
32 in the county, having jurisdiction of the subject matter, is the proper court for the
33 trial thereof.

34 (c) If there is no municipal court in the county, the proper court location for trial
35 of an action under this chapter is the location where the court tries that type of
36 action that is nearest or most accessible to where the contract was in fact signed
37 by the buyer, where the buyer resided at the time the contract was entered into,
38 where the buyer resides at the commencement of the action, or where the goods
39 purchased pursuant to the contract have been so affixed to real property as to
40 become a part of that real property.

41 (d) In any action subject to the provisions of this section, concurrently with the
42 filing of the complaint, the plaintiff shall file an affidavit stating facts showing
43 that the action has been commenced in a county or judicial district or court
44 location described in this section as a proper place for the trial of the action. Those
45 facts may be stated in a verified complaint and shall not be stated on information
46 or belief. When that affidavit is filed with the complaint, a copy thereof shall be
47 served with the summons. If a plaintiff fails to file the affidavit or state facts in a
48 verified complaint required by this section, no further proceedings shall be had,
49 but the court shall, upon on its own motion or upon on motion of any party,

1 dismiss the action without ~~prejudice~~; however, prejudice. However, the court
2 may, on such terms as may be just, permit the affidavit to be filed subsequent to
3 after the filing of the complaint and a copy of the affidavit shall be served on the
4 defendant. The time to answer or otherwise plead shall date from that service.

5 **Comment.** Section 1812.10 is amended to preserve local filing of an action
6 under this chapter in a county with a unified superior court. Instead of selecting
7 any superior court facility within the county, the plaintiff is to file the action in the
8 facility that is nearest or most accessible to where the contract was in fact signed
9 by the buyer, where the buyer resided at the time the contract was entered into,
10 where the buyer resides at the commencement of the action, or where the goods
11 purchased pursuant to the contract have been so affixed to real property as to
12 become a part of that real property. The action may not, however, be filed in a
13 location where the court does not try actions under this chapter (e.g., a court
14 facility that is used only for family law cases). The “nearest or most accessible”
15 standard is drawn from Section 398 (change of venue).

16 For additional requirements applicable to actions under this chapter, see Section
17 396a.

18 A similar revision should be made in Civil Code Section 2984.4:

19 **Civil Code § 2984.4 (amended). Action on contract or purchase order**

20 SEC. _____. Section 2984.4 of the Civil Code is amended to read:

21 2984.4. (a) An action on a contract or purchase order under ~~the provisions of~~
22 this chapter shall be tried in the county in which the contract or purchase order
23 was in fact signed by the buyer, in the county in which the buyer resided at the
24 time the contract or purchase order was entered into, in the county in which the
25 buyer resides at the commencement of the ~~action or~~ action, or in the county in
26 which the motor vehicle purchased pursuant to the contract or purchase order is
27 permanently ~~garaged~~.

28 In garaged. In any action involving multiple claims, or causes of action, venue
29 shall lie in such these counties so long as there is at least one claim or cause of
30 action arising from a contract subject to ~~the provisions of~~ this chapter.

31 (b) If within the county there is a municipal court, having jurisdiction of the
32 subject matter, established in the judicial district in which the contract, conditional
33 sale contract, or purchase order was in fact signed by the buyer, or in which the
34 buyer resided at the time the contract, conditional sale contract, or purchase order
35 was entered into, or in which the buyer resides at the commencement of the
36 action, or in which the motor vehicle purchased pursuant to the contract is
37 permanently garaged, that court is the proper court for the trial of the action.
38 ~~Otherwise, any court in the county, having jurisdiction of the subject matter, is the~~
39 ~~proper court for the trial of the action.~~

40 (c) If there is no municipal court in the county, the proper court location for trial
41 of an action under this chapter is the location where the court tries that type of
42 action that is nearest or most accessible to where the contract, conditional sale
43 contract, or purchase order was in fact signed by the buyer, where the buyer
44 resided at the time the contract, conditional sale contract, or purchase order was
45 entered into, where the buyer resides at the commencement of the action, or where
46 the motor vehicle purchased pursuant to the contract is permanently garaged.

47 (d) In any action subject to ~~the provisions of~~ this section, concurrently with the
48 filing of the complaint, the plaintiff shall file an affidavit stating facts showing
49 that the action has been commenced in a ~~county or~~ judicial district or court
50 location described in this section as a proper place for the trial of the action. Those

1 facts may be stated in a verified complaint and shall not be stated on information
2 or belief. When that affidavit is filed with the complaint, a copy thereof shall be
3 served with the summons. If a plaintiff fails to file the affidavit or state facts in a
4 verified complaint required by this section, no further proceedings shall be had,
5 but the court shall, ~~upon~~ on its own motion or ~~upon~~ on motion of any party,
6 dismiss the action without ~~prejudice~~; ~~however,~~ prejudice. ~~However,~~ the court
7 may, on such terms as may be just, permit the affidavit to be filed ~~subsequent to~~
8 after the filing of the complaint and a copy of the affidavit shall be served on the
9 defendant. The time to answer or otherwise plead shall date from that service.

10 **Comment.** Section 2984.4 is amended to preserve local filing of an action under
11 this chapter in a county with a unified superior court. Instead of selecting any
12 superior court facility within the county, the plaintiff is to file the action in the
13 facility that is nearest or most accessible to where the contract, conditional sale
14 contract, or purchase order was in fact signed by the buyer, where the buyer
15 resided at the time the contract, conditional sale contract, or purchase order was
16 entered into, where the buyer resides at the commencement of the action, or where
17 the motor vehicle purchased pursuant to the contract is permanently garaged. The
18 action may not, however, be filed in a location where the court does not try
19 actions under this chapter (e.g., a court facility that is used only for family law
20 cases). The “nearest or most accessible” standard is drawn from Section 398
21 (change of venue).

22 For additional requirements applicable to actions under this chapter, see Section
23 396a.

24 Technical changes are also made for conformity with preferred drafting style.

25 Code of Civil Procedure Section 395 also requires amendment:¹⁰⁴

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

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

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

44 In a proceeding to establish and enforce a foreign judgment or court order for
45 the support of a minor child, the county in which the child resides is the proper
46 county for the trial of the action. Subject to subdivision (b), when a defendant has

104. There are many drafting improvements that could be made to this statute, particularly by tabulating subdivision (a) into paragraphs. However, that should probably wait until the general cleanup statutes in the context of cleansing municipal court references, generally.

1 contracted to perform an obligation in a particular county, either the county where
2 the obligation is to be performed or in which the contract in fact was entered into
3 or the county in which the defendant or any defendant resides at the
4 commencement of the action shall be a proper county for the trial of an action
5 founded on that obligation, and the county in which the obligation is incurred
6 shall be deemed to be the county in which it is to be performed unless there is a
7 special contract in writing to the contrary. If none of the defendants reside in the
8 state or if residing in the state and the county in which they reside is unknown to
9 the plaintiff, the action may be tried in any county that the plaintiff may designate
10 in his or her complaint, and, if the defendant is about to depart from the state, the
11 action may be tried in any county where either of the parties reside or service is
12 made.

13 If any person is improperly joined as a defendant or has been made a defendant
14 solely for the purpose of having the action tried in the county or judicial district
15 where he or she resides, his or her residence shall not be considered in
16 determining the proper place for the trial of the action.

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

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

40 (d) If there is no municipal court in the county, the proper court location for trial
41 of a case mentioned in subdivision (b) is the location where the court tries that
42 type of case that is nearest or most accessible to where the buyer or lessee resides,
43 where the buyer or lessee in fact signed the contract, where the buyer or lessee
44 resided at the time the contract was entered into, or where the buyer or lessee
45 resides at the commencement of the action

46 ~~(d) (e)~~ Any provision of an obligation described in subdivision (b) ~~or~~ (c), or
47 (d) waiving those subdivisions is void and unenforceable.

48 **Comment.** Section 395 is amended to preserve local filing of the actions
49 specified in subdivision (b) in a county with a unified superior court. Instead of
50 selecting any superior court facility within the county, the plaintiff is to file such
51 an action in the facility that is nearest or most accessible to where the buyer or
52 lessee resides, where the buyer or lessee in fact signed the contract, where the
53 buyer or lessee resided at the time the contract was entered into, or where the

1 buyer or lessee resides at the commencement of the action. The action may not,
2 however, be filed in a location where the court does not try the specified types of
3 actions (e.g., a court facility that is used only for family law cases). The “nearest
4 or most accessible” standard is drawn from Section 398 (change of venue).

5 For special pleading requirements applicable to the actions specified in
6 subdivision (b), see Section 396a.

7 Technical changes are also made for conformity with preferred drafting style.

8 Finally, Code of Civil Procedure Section 392 should be amended along the
9 following lines:

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

11 SEC. _____. Section 392 of the Code of Civil Procedure is amended to read:

12 392. (H) (a) Subject to the power of the court to transfer actions or proceedings
13 as provided in this title, the county in which the real ~~property, that property that~~ is
14 the subject of the action, or some part thereof, is situated, is the proper county for
15 the trial of the following actions:

16 (a) (1) For the recovery of real property, or of an estate or interest therein, or for
17 the determination in any form, of that right or interest, and for injuries to real
18 property; ~~property.~~

19 (b) (2) For the foreclosure of all liens and mortgages on real property.

20 (2) ~~The proper court for the trial of any such action, in the county hereinabove~~
21 ~~designated as the proper county, shall be determined as follows:~~

22 (b) If there is no municipal court in the county, the proper court location for trial
23 of a proceeding for an unlawful detainer as defined in Section 1161 is the location
24 where the court tries that type of proceeding that is nearest or most accessible to
25 where the real property that is the subject of the proceeding, or some part thereof,
26 is situated.

27 (c) ~~If there is a municipal court, having jurisdiction of the subject matter of the~~
28 ~~action an action described in subdivision (a), established in the city and county or~~
29 ~~judicial district in which the real property that is the subject of the action, or some~~
30 ~~part thereof, is situated, that court is the proper court for the trial of the action;~~
31 ~~otherwise action. Otherwise, except as provided in subdivision (b), any court in~~
32 ~~the county having jurisdiction of the subject matter of the action, action is a~~
33 ~~proper court for the trial thereof.~~

34 **Comment.** Section 392 is amended to preserve local filing of unlawful detainer
35 proceedings in a county with a unified superior court. Instead of selecting any
36 superior court facility within the county, the plaintiff is to file such a proceeding
37 in the facility that is nearest or most accessible to where the real property that is
38 the subject of the proceeding, or some part thereof, is situated. The proceeding
39 may not, however, be filed in a location where the court does not try unlawful
40 detainer proceedings (e.g., a court facility that is used only for family law cases).
41 The “nearest or most accessible” standard is drawn from Section 398 (change of
42 venue).

43 For special pleading requirements applicable to unlawful detainer proceedings,
44 see Section 396a.

45 Technical changes are also made for conformity with preferred drafting style.

1 UNDERTAKING FOR WRIT OF ATTACHMENT OR PROTECTIVE
2 ORDER (CODE CIV. PROC. § 489.220)

3 Code of Civil Procedure Section 489.220 provides for an undertaking as a
4 condition to issuance of a writ of attachment. The undertaking varies in amount
5 depending on whether the case in which the attachment is issued is a limited or an
6 unlimited civil case:

7 489.220. (a) Except as provided in subdivision (b), the amount of an
8 undertaking filed pursuant to this article shall be two thousand five hundred
9 dollars (\$2,500) in a limited civil case, and seven thousand five hundred dollars
10 (\$7,500) otherwise.

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

16 This provision has its origin in the pre-1974 attachment law, which provided
17 simply for a undertaking in one-half the principal amount of the total indebtedness
18 or damages claimed, excluding attorneys' fees.¹⁰⁵ The court was permitted to
19 increase or decrease this amount on an appropriate showing.

20 This scheme was changed in the Attachment Law of 1974 to provide a fixed
21 undertaking in a relatively low amount, with provision for court-ordered increase
22 in an appropriate case.¹⁰⁶ The fixed amount differed with the court: \$2,500 in
23 municipal court proceedings, and \$7,500 in superior court proceedings.

24 Trial court unification led to the current scheme in 1998. The undertaking is
25 \$2,500 in a limited civil case, and \$7,500 in an unlimited civil case.¹⁰⁷

26 Is it still useful, in a unified court, to distinguish between limited and unlimited
27 civil cases in fixing the initial amount of the attachment undertaking? The function
28 of the undertaking is to ensure that funds are available to compensate the
29 defendant for any damages that may result from a wrongful attachment.¹⁰⁸ For this
30 purpose, the jurisdictional classification of the case as limited (claim less than
31 \$25,000) or unlimited (claim greater than \$25,000)¹⁰⁹ bears little or no relationship
32 to the amount of damage that the defendant may sustain due to a wrongful
33 attachment.

105. 1973 Cal. Stat. ch. 20, § 6 (former Code Civ. Proc. § 539(a)).

106. See *Prejudgment Attachment*, 11 Cal. L. Revision Comm'n Reports 701, 738, 833-34 (1973).

107. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 64-65, 183-84 (1998).

108. See *North Hollywood Marble Co. v. Superior Court*, 157 Cal. App. 3d 683, 690, 204 Cal. Rptr. 55 (1984).

109. For greater detail on what constitutes a limited or unlimited civil case, see Code Civ. Proc. §§ 85 (limited civil cases) & Comment, 88 (unlimited civil cases); see also Code Civ. Proc. §§ 32.5 (jurisdictional classification), 580 (relief awardable).

1 The amount of the initial undertaking is relatively small, and provides no real
2 protection to the defendant for the substantial damages that can result from a
3 wrongful attachment.¹¹⁰ The defendant's real protection lies in the ability to obtain
4 a court-ordered increase in the amount of the undertaking.

5 The amounts of the undertakings required by Section 489.220 are inadequate,
6 and the rationale for the undertakings does not support a differential based on the
7 jurisdictional classification of the case. The staff recommends that there be a
8 single undertaking for an attachment, regardless of the jurisdictional classification
9 of the case, and that the amount be increased to \$10,000:

10 **Code Civ. Proc. § 489.220 (amended). Undertaking for writ of attachment or**
11 **protective order**

12 SEC. _____. Section 489.220 of the Code of Civil Procedure is amended to read:

13 489.220. (a) Except as provided in subdivision (b), the amount of an
14 undertaking filed pursuant to this article shall be ~~two thousand five hundred~~
15 ~~dollars (\$2,500) in a limited civil case, and seven thousand five hundred dollars~~
16 ~~(\$7,500) otherwise~~ ten thousand dollars (\$10,000).

17 (b) If, ~~upon~~ on objection to the undertaking, the court determines that the
18 probable recovery for wrongful attachment exceeds the amount of the
19 undertaking, it shall order the amount of the undertaking increased to the amount
20 it determines to be the probable recovery for wrongful attachment if it is
21 ultimately determined that the attachment was wrongful.

22 **Comment.** Section 489.220 is amended to provide for a single attachment
23 undertaking, regardless of the jurisdictional classification of the case.

24 **UNDERTAKING OF CREDITOR IN CASE OF THIRD PARTY**
25 **CLAIM (CODE CIV. PROC. §§ 720.160, 720.260)**

26 Code of Civil Procedure Sections 720.160 and 720.260 require a creditor's
27 undertaking to maintain a levy on property where there has been a third party
28 claim to the property. The amount of the undertaking is \$2,500 in a limited civil
29 case and \$7,500 in an unlimited civil case (or the creditor can elect to give an
30 undertaking in the amount of twice the enforcement lien).

31 Before enactment of this scheme in 1982, the law provided for a creditor's
32 undertaking in third party claim proceedings in an amount twice the value of the
33 property claimed.¹¹¹ This was changed in 1982 on recommendation of the Law
34 Revision Commission to a flat amount of \$2,500 for actions pending or judgments
35 rendered in municipal court, and \$7,500 for actions pending or judgments rendered
36 in superior court. The rationale for a flat amount undertaking was that it would
37 eliminate the need for the courts to consider objections to the amount of an

110. Inflation has eroded the protection provided by the statute. A \$2,500 undertaking in 1974 would be the equivalent of over \$9,000 in today's dollars. (This amount was determined using "The Inflation Calculator" found at <<http://www.westegg.com/inflation/>>. See *supra* note 47.)

111. See 1980 Cal. Stat. ch. 309 §§ 1, 2 (former Code Civ. Proc. §§ 689, 689b).

1 undertaking based on the value of the property.¹¹² The amounts selected were
2 based on the amounts for an attachment undertaking.

3 Trial court unification led to the current scheme in 1998. The undertaking is
4 \$2,500 in a limited civil case, and \$7,500 in an unlimited civil case.¹¹³

5 To maintain the current pattern, Code of Civil Procedure Sections 720.160 and
6 720.260 should track the undertaking amounts given by a creditor for an
7 attachment. Because we have proposed an attachment undertaking of \$10,000,¹¹⁴
8 we would apply the same amount to third party claim situations.

9 This would require amendment of Section 720.160 along the following lines:

10 **Code Civ. Proc. § 720.160 (amended). Undertaking by creditor where third**
11 **party claims ownership or possession**

12 SEC. _____. Section 720.160 of the Code of Civil Procedure is amended to read:

13 720.160. (a) If the creditor files with the levying officer an undertaking that
14 satisfies the requirements of this section within the time allowed under
15 subdivision (b) of Section 720.140:

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

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

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

25 ~~(1) Except as provided in paragraph (2), seven thousand five hundred dollars~~
26 ~~(\$7,500), or twice the amount of the execution lien as of the date of levy or other~~
27 ~~enforcement lien as of the date it was created, whichever is the lesser amount.~~

28 ~~(2) In a limited civil case, two thousand five hundred dollars (\$2,500), ten~~
29 ~~thousand dollars (\$10,000), or twice the amount of the execution lien as of the~~
30 ~~date of levy or other enforcement lien as of the date it was created, whichever is~~
31 ~~the lesser amount.~~

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

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

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

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

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

112. See *1982 Creditors' Remedies Legislation*, 16 Cal. L. Revision Comm'n Reports 1001, 1146-48 (1982).

113 See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 64-65, 204-06 (1998).

114. See discussion of "Undertaking for Writ of Attachment or Protective Order" *supra*.

1 **Comment.** Section 720.160 is amended to provide for an undertaking of
2 \$10,000 (or twice the amount of the execution lien, whichever is less), regardless
3 of the jurisdictional classification of the case. The \$10,000 undertaking amount is
4 the same as the amount of an attachment undertaking. See Section 489.220
5 (attachment undertaking).

6 A similar revision should be made in Section 720.260:

7 **Code Civ. Proc. § 720.260 (amended). Undertaking by creditor where third**
8 **party claims security interest or lien**

9 SEC. _____. Section 720.260 of the Code of Civil Procedure is amended to read:

10 720.260. (a) If the creditor within the time allowed under subdivision (b) of
11 Section 720.240 either files with the levying officer an undertaking that satisfies
12 the requirements of this section and a statement that satisfies the requirements of
13 Section 720.280 or makes a deposit with the levying officer of the amount
14 claimed under Section 720.230:

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

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

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

25 (1) ~~Except as provided in paragraph (2), seven thousand five hundred dollars~~
26 ~~(\$7,500), or twice the amount of the execution lien as of the date of levy or other~~
27 ~~enforcement lien as of the date it was created, whichever is the lesser amount.~~

28 (2) ~~In a limited civil case, two thousand five hundred dollars (\$2,500), ten~~
29 ~~thousand dollars, or twice the amount of the execution lien as of the date of levy~~
30 ~~or other enforcement lien as of the date it was created, whichever is the lesser~~
31 ~~amount.~~

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

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

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

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

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

44 **Comment.** Section 720.260 is amended to provide for an undertaking of
45 \$10,000 (or twice the amount of the execution lien, whichever is less), regardless
46 of the jurisdictional classification of the case. The \$10,000 undertaking amount is
47 the same as the amount of an attachment undertaking. See Section 489.220
48 (attachment undertaking).

1 WAIVER OF JURY (CODE CIV. PROC. § 631)

2 Code of Civil Procedure Section 631 governs waiver of a jury trial. Subdivision
3 (b) addresses waiver induced by a party's reliance on another party's jury demand.
4 It prescribes a procedure for protection of a party who has detrimentally relied on
5 another party's demand:

6 (b) In a superior court action, other than a limited civil case, if a jury is
7 demanded by either party in the memorandum to set the cause for trial and the
8 party, prior to trial, by announcement or by operation of law, waives a trial by
9 jury, then all adverse parties shall have five days following the receipt of notice of
10 the waiver to file and serve a demand for a trial by jury and to deposit any
11 advance jury fees that are then due.

12 This language was added to the statute in 1941 to overturn contrary case law.¹¹⁵

13 The court in *DeCastro v. Rowe*,¹¹⁶ explains that, "The 1941 amendment above
14 noted eliminated such a harsh rule. Its purpose and philosophy was to permit a
15 party to rely on another party's demand and deposit of fees."¹¹⁷

16 What is not clear in all of this is why the 1941 legislation cured the problem only
17 as to cases in superior court, and not other cases. The reference in subdivision (b)
18 to superior court cases was revised in 1998 to exclude limited civil cases, in order
19 to accommodate trial court unification.¹¹⁸ But the policy supporting this limitation
20 was not reexamined.¹¹⁹

21 The limitation to superior court cases was criticized immediately on enactment.
22 In *The Work of the 1941 California Legislature*,¹²⁰ Professor Stanley Howell
23 observes:

24 This amendment apparently takes care of the situation in actions in superior
25 courts, where the difficulty probably was more acute due to the procedure
26 followed in such courts in setting cases for trial. However, the same difficulty can
27 arise in an action in any court and it its to be regretted that the remedial
28 amendment under discussion was limited to superior courts.

29 There appears to be no basis for distinguishing between limited and unlimited
30 civil cases on this point. In fact, California Rule of Court 521 (made applicable to
31 limited civil cases in superior court by Rule 709) provides the same type of
32 protection for limited civil cases that the statute provides for unlimited civil cases:

115. See *Dunham v. Reichlin*, 217 Cal. 289, 291, 18 P.2d 664 (1933) ("It is reasonable to assume that if an exception to the requirements laid down by the code were to be effective, the legislature would have inserted it."); *Estate of Miller*, 16 Cal. App. 2d 154, 60 P.2d 498 (1936).

116. 223 Cal. App. 2d 547, 36 Cal. Rptr. 53 (1963).

117. 223 Cal. App. 2d at 561.

118. *Revision of Codes*, *supra* note 6, at 192-193.

119. See "Background" *supra*.

120. 15 So. Cal. L. Rev. 1, 14-15 (1941).

Rule 521. Notice of waiver of jury trial

521. If a jury is demanded by either party in the memorandum to set a civil case for trial and such party thereafter by announcement or by operation of law waives a trial by jury, any and all adverse party or parties shall be given 10 days' written notice by the clerk of the court of such waiver. Such adverse party or parties shall have not exceeding five days immediately following the receipt of such notice of waiver, within which to file and serve a demand for a trial by jury and deposit advance jury fees for the first day's trial whenever such deposit is required by law. If it is impossible for the clerk of the court to give such 10 days' notice by reason of the trial date, or if for any cause such notice is not given, the trial of said action shall be continued by the court for a sufficient length of time to enable the giving of such notice by the clerk of the court to such adverse party.¹²¹

There is no apparent reason for a difference between limited and unlimited civil cases on this matter. The staff recommends revision of Code of Civil Procedure Section 631 to read:

Code Civ. Proc. § 631 (amended). Waiver of trial by jury

SEC. _____. Section 631 of the Code of Civil Procedure is amended to read:

631. (a) Trial by jury may be waived by the several parties to an issue of fact in any of the following ways:

(1) By failing to appear at the trial.

(2) By written consent filed with the clerk or judge.

(3) By oral consent, in open court, entered in the minutes or docket.

(4) By failing to announce that a jury is required, at the time the cause is first set for trial, if it is set upon on notice or stipulation, or within five days after notice of setting if it is set without notice or stipulation.

(5) By failing to deposit with the clerk, or judge, advance jury fees 25 days ~~prior to~~ before the date set for trial, except in unlawful detainer actions where the fees shall be deposited at least five days ~~prior to~~ before the date set for trial, or as provided by subdivision (b). The advance jury fee shall not exceed the amount necessary to pay the average mileage and fees of 20 trial jurors for one day in the court to which the jurors are summoned.

(6) By failing to deposit with the clerk or judge, promptly after the impanelment of the jury, a sum equal to the mileage or transportation (if allowed by law) of the jury accrued up to that time.

(7) By failing to deposit with the clerk or judge, at the beginning of the second and each succeeding day's session a sum equal to one day's fees of the jury, and the mileage or transportation, if any.

(b) ~~In a superior court action, other than a limited civil case, if~~ If a jury is demanded by either party ~~in the memorandum to set the cause for trial and the party, prior to~~ before trial, by announcement or by operation of law, waives a trial by jury, then ~~all adverse parties~~ that party shall promptly notify all other parties of the waiver, in writing or in open court, and each of adverse party shall have five days following the receipt of the notice of the waiver to file and serve a demand for a trial by jury and to deposit any advance jury fees that are then due.

121. The requirement that the court clerk give 10 days notice of the waiver parallels a provision found in the statute from 1941 until 1988, but the court rule has not been conformed to the 1988 amendment.

1 (c) When the party who has demanded trial by jury either (1) waives the trial
2 ~~upon on~~ or after the assignment for trial to a specific department of the court, or
3 ~~upon on~~ or after the commencement of the trial, or (2) fails to deposit the fees as
4 provided in paragraph (6) of subdivision (a), trial by jury shall be is waived by the
5 other party by either failing promptly to demand trial by jury before the judge in
6 whose department the waiver, other than for the failure to deposit the fees, was
7 made, or by failing promptly to deposit the fees ~~described~~ provided in paragraph
8 (6) of subdivision (a).

9 (d) The court may, in its discretion ~~upon on~~ just terms, allow a trial by jury
10 although there may have been a waiver of a trial by jury.

11 **Comment.** Subdivision (b) of Section 631 is amended to apply to both limited
12 and unlimited civil cases. This codifies existing law. See Cal. R. Ct. 521, 709. For
13 limited civil cases, see Section 85 & Comment. For unlimited civil cases, see
14 Section 88. For waiver of a jury in a criminal case, see Cal. Const. art. I, § 16.

15 Subdivision (b) is also amended to delete the reference to the memorandum to
16 set the cause for trial. The reference is obsolete because an at-issue memorandum
17 is no longer required in most cases. See R. Weil & I. Brown, Jr., *California*
18 *Practice Guide: Civil Procedure Before Trial, Case Management and Trial Setting*
19 § 12:101, at 12(1)-36 (2000).

20 As amended, subdivision (b) also clarifies that the party who waives a jury after
21 demanding one is responsible for providing notice of the waiver. Failure to
22 provide timely notice may be grounds for a continuance or other remedial action.
23 See *Leslie v. Roe*, 52 Cal. App. 3d 686, 688, 125 Cal. Rptr. 157 (1975).

24 Technical changes are also made for conformity with preferred drafting style.

25 As explained in the Comment, this amendment would delete the reference to the
26 memorandum to set the cause for trial (commonly known as the “at-issue
27 memorandum”). The reference is obsolete because an at-issue memorandum is not
28 required in cases that are subject to case management, although it may still be
29 required in cases that are exempt from case management.¹²²

30 The amendment would also specify that the party who waives a jury after
31 demanding one is responsible for promptly notifying all other parties of the
32 waiver. As a leading treatise points out, the provision is currently silent on who is
33 to provide the notice.¹²³ Previously, the court clerk was required to notify the
34 parties.¹²⁴ This requirement was deleted from the statute in 1988,¹²⁵ but still
35 applies to limited civil cases pursuant to court rule.¹²⁶ To conserve court resources
36 in both limited and unlimited civil cases, the proposed law would place the burden
37 of providing notice on the party whose action creates the need for notice.

122. See R. Weil & I. Brown, Jr., *California Practice Guide: Civil Procedure Before Trial, Case Management and Trial Setting* §§ 12:101-12:103, p. 12(I)-36 (2000).

123. See *id.* at § 12:321, p. 12(I)-67.

124. 1941 Cal. Stat. ch. 1191, § 1.

125. 1988 Cal. Stat. ch. 10, §§ 2,3.

126. Cal. R. Ct. 521, 709.