

Memorandum 2000-72

**Civil Procedure After Trial Court Unification:  
Unresolved Simplification Issues**

Pursuant to statute (Gov't Code § 70219), the Commission and the Judicial Council are jointly reviewing civil procedure in light of trial court unification. As part of that study, Commission staff and staff from the Administrative Office of the Courts ("AOC") examined statutes that differentiate between limited and unlimited civil cases, and attempted to identify opportunities for simplification (the "test project"). At the July meeting, the Commission approved a tentative recommendation proposing to revise a number of these provisions. (See Memorandum 2000-71.) The Commission also requested further analysis of Code of Civil Procedure Section 396a (statement of jurisdictional facts) and related provisions. This memorandum discusses that topic, as well as some new issues that Mark Lomax (Management Analyst, Alameda County Superior Court) raises in his individual capacity in the following letters, which do not necessarily represent the views of his court:

	<i>Exhibit p.</i>
1. Mark Lomax (July 3, 2000) .....	1
2. Mark Lomax (July 14, 2000) .....	3

The staff recommends several reforms, as explained more fully below and set forth in the attached draft tentative recommendation. If the Commission approves this draft for circulation (as is, or with revisions), it may be possible to include these reforms in the same bill as the previously approved proposals, for introduction in early 2001.

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

Code of Civil Procedure Section 396a sets forth a special pleading rule, applicable only to limited civil cases in the following categories:

- (1) Actions under the Unruh Act (retail installment sales). Civ. Code § 1812.10.

- (2) Actions under the Automobile Sales Finance Act. Civ. Code § 2984.4.
- (3) Actions arising from consumer transactions. Code Civ. Proc. § 395(b).
- (4) Actions for unlawful detainer. Code Civ. Proc. § 1161.

In such a limited civil case, the plaintiff must state in the complaint (or in an affidavit filed with the complaint) verified facts showing that the action has been commenced in the proper court. This requirement is intended to discourage intentional filing of these types of lawsuits in inappropriate venues.

In a county with several municipal courts, the provision effectively requires the plaintiff not only to show that the case has been commenced in the proper county, but also to show that the case has been commenced in the proper part of the county (i.e., the proper judicial district). With unification, however, there is only one superior court in each county and the plaintiff need only show that the case has been commenced in the proper county. Consequently, the provision fails to provide protection against deliberate filing of a case in an inconvenient part of the county (e.g., a location far from the defendant's home).

At the July meeting, the Commission considered a proposal developed by Commission staff and AOC staff to address this point. (Memorandum 2000-55, Attachment pp. 22-30.) This joint staff proposal would have:

- Revised Section 396a to require the plaintiff to state that the action has been commenced in the proper *court location* for trial of the action, not just the proper *court*.
- Revised the provisions referenced in Section 396a (Civ. Code §§ 1812.10, 2984.4; Code Civ. Proc. §§ 395(b), 1161) to specify the appropriate court location(s) for trial within a county with a unified superior court. (E.g., "If there is no municipal court in the county, the proper court location for trial of an action under this chapter is the location where the court tries that type of action that is nearest or most accessible to where the contract was in fact signed by the buyer, where the buyer resided at the time the contract was entered into, where the buyer resides at the commencement of the action, or where the goods purchased pursuant to the contract have been so affixed to real property as to become a part of that real property.")
- Extended the special pleading requirement of Section 396a to unlimited civil cases, as well as limited civil cases.

The Commission discussed this proposal at length, observing that counties are experimenting with different systems for assigning cases to court locations within a county. For example, in some counties it does not matter where a complaint is filed within the county. The complaint may be filed at any location of the superior court, but the place of filing has no impact on where the case is assigned for trial. Elsewhere, the place of filing the complaint determines where the case is tried, unless affirmative steps are taken to transfer it to another location. Still other counties are exploring different systems, such as trying particular types of cases in particular court locations (e.g., all unlawful detainer actions are to be tried in Courthouse “A”) or assigning cases to different court locations for different stages of trial (e.g., conducting pretrial proceedings in a courthouse with small courtrooms, but holding trials in a courthouse with courtrooms large enough to accommodate a sizable audience). The Commission requested additional analysis of the types of systems in use.

The Commission also asked the staff to consider the administrative efficiency of different mechanisms for ensuring that the cases covered by Section 396a are filed and tried at an appropriate location within a county. For instance, suppose the plaintiff in a retail installment action were required to state verified facts showing “where the contract was in fact signed by the buyer,” “where the buyer resided at the time the contract was entered into,” “where the buyer resides at the commencement of the action,” and “where goods purchased pursuant to a contract have been so affixed to real property as to become a part of that real property.” Would it be reasonable to require court personnel to review these allegations for purposes of assigning a court location, or would that be an undue burden on the court?

AOC staff initially were enthusiastic about the joint staff proposal, but have since expressed a desire to examine the area more carefully, for reasons similar to those raised by the Commission. AOC staff are considering the possibility of forming a working group to study issues relating to Section 396a, which would include court executive officers and others who are familiar with how cases are assigned to different court locations within a county. They also intend to explore the extent to which guidance should be set forth in court rules, rather than by statute.

These efforts may need to be coordinated with other ongoing work, including:

- (1) A study by the Task Force on Court Facilities, which is required to submit its final report by July 1, 2001. See Gov't Code §§ 77650-77655.
- (2) The Judicial Council's study of superior court sessions. See Gov't Code § 70219; *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 84 (1998). This work has been deferred pending the work of the Task Force on Court Facilities.

Given the complexity of the issues, variation among the counties in assigning cases to different court locations, and ongoing changes in these practices due to trial court unification and changing technology, **it seems premature to revise Section 396a or related provisions in the context of the test project for the joint study.** Instead of rushing to finalize a proposal for introduction in 2001, we need to thoroughly investigate this area and develop a proposal that will work effectively in all counties. The staff will continue to gather relevant information and will present further analysis to the Commission when appropriate.

#### CLARIFICATION OF JURISDICTIONAL CLASSIFICATION

The "jurisdictional classification" of a civil case means its classification as a limited civil case or an unlimited civil case. Code Civ. Proc. § 32.5. A limited civil case is subject to economic litigation and other traditional municipal court procedures, an unlimited civil case is subject to traditional superior court procedures. See, e.g., Code Civ. Proc. § 85 & Comment; *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 64-65.

Under Code of Civil Procedure Section 85, a case is to be treated as a limited civil case if and only if all of the following conditions are met:

- (1) The amount in controversy does not exceed \$25,000.
- (2) The relief sought is a type that may be granted in a limited civil case.
- (3) The relief sought is exclusively of a type described in one or more statutes that classify an action or special proceeding as a limited civil case or that provide that an action or special proceeding is within the original jurisdiction of the municipal court.

Although this statute provides general guidance, Mark Lomax suggests revising a number of provisions to clarify the jurisdictional classification of the actions to which they pertain. These include the provisions governing a petition to release a mechanic's lien (Civ. Code § 3154), a proceeding to discharge the trustee and

distribute the proceeds of a sale under a deed of trust (Civ. Code § 2924j), and a petition for relief from claim-filing requirements of the Tort Claims Act (Gov't Code § 946.6). (Exhibit pp. 1-2.)

**Petition to Release Mechanic's Lien (Civil Code § 3154)**

Civil Code Section 3154 prescribes a procedure for obtaining the release of a mechanic's lien where the lien has expired and no action to enforce the lien has been filed. The provision directs the property owner to petition the "proper court" for a decree to release the property from the lien, but it does not define "proper court" by the amount of the lien or otherwise.

Under Code of Civil Procedure Section 86(a)(6), an action to enforce and foreclose a mechanic's lien of \$25,000 or less is a limited civil case. As Mr. Lomax points out, however, "a petition under section 3154 is obviously not an action to enforce and foreclose a mechanic's lien." (Exhibit p. 1.)

It is thus unclear (1) whether a petition to release a mechanic's lien of \$25,000 or less is to be brought in municipal court in a county with a municipal court, and (2) whether such a petition is to be treated as a limited civil case in a county with a unified superior court. Mr. Lomax urges the Commission "to eliminate the long-standing confusion regarding the jurisdictional classification of a petition to release a mechanic's lien." (*Id.* at 2.) He suggests treating a petition to release a mechanic's lien as a limited civil case (triable in municipal court in a county with a municipal court) if the amount of the lien is \$25,000 or less. (*Id.* at 1.) This would parallel the treatment of an action to foreclose a mechanic's lien.

The staff concurs in this approach. **It could be implemented by amending Code of Civil Procedure Section 86(a)(6) along the following lines:**

86. (a) ....

(6) Actions to enforce and foreclose, or petitions to release, liens of mechanics, materialmen, artisans, laborers, and of all other persons to whom liens are given under the provisions of Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 of the Civil Code, or to enforce and foreclose an assessment lien on a common interest development as defined in Section 1351 of the Civil Code, where the amount of the liens is twenty-five thousand dollars (\$25,000) or less. However, where an action to enforce the lien affects property that is also affected by a similar pending action that is not a limited civil case, or where the total amount of the liens sought to be foreclosed against the same property aggregates an amount in excess of twenty-five thousand dollars (\$25,000), the action is not a limited civil case, and if the action is pending in a

municipal court, upon motion of any interested party, the municipal court shall order the action or actions pending therein transferred to the proper superior court. Upon making the order, the same proceedings shall be taken as are provided by Section 399 with respect to the change of place of trial.

....

**Comment.** Subdivision (a)(6) of Section 86 is amended to clarify the jurisdictional classification of a petition to release a mechanic's lien. This is declaratory of existing law. See Code Civ. Proc. § 85 (limited civil cases) & Comment. See also Code Civ. Proc. §§ 85.1 (original jurisdiction), 88 (unlimited civil case).

(The full text of the proposed amendment is shown on pages 6-8 of the attached draft.)

### **Proceeding to Discharge Trustee and Distribute Proceeds of Sale Under Deed of Trust (Civil Code § 2924j)**

Civil Code Section 2924j sets forth a procedure for distributing excess proceeds of a sale under a deed of trust. Unless an interpleader action is filed, the trustee must notify potential claimants, provide an opportunity to submit claims, and exercise due diligence to determine the priority of any written claims received. If, after due diligence, the trustee cannot determine the priority of the claims or determines that there is a conflict between potential claimants, the trustee may file a declaration regarding the unresolved claims and deposit the disputed proceeds, less a reasonable clerk's fee, "with the clerk of the superior or municipal court, as applicable." Civ. Code § 2924j(c). The court then determines how to allocate the excess proceeds. The provision does not specify how to determine the appropriate court or jurisdictional classification.

According to Mr. Lomax, "there appears to be little confusion regarding the jurisdictional classification of a proceeding under section 2924j as the statute is currently worded." (Exhibit p. 2.) He nonetheless urges the Commission "to amend section 2924j to expressly provide that [the] jurisdictional classification is based on the amount deposited with the court." (*Id.*)

Again, this appears to be a good suggestion. It is clear that a "case at law" is a limited civil case if the amount in controversy is \$25,000 or less. Code Civ. Proc. § 86(a)(1). There may be confusion, however, about whether a dispute over the proceeds of a trustee's sale is a "case at law," and whether the amount in controversy is the amount of excess proceeds or the amount of excess proceeds

less the clerk's fee (i.e., the amount of the deposit). **To eliminate ambiguity, Section 2924j(c) should be amended along the following lines:**

....

(c) If, after due diligence, the trustee is unable to determine the priority of the written claims received by the trustee to the trustee's sale surplus of multiple persons or if the trustee determines there is a conflict between potential claimants, the trustee may file a declaration of the unresolved claims and deposit with the clerk of the superior or municipal court, as applicable, of the county in which the sale occurred, that portion of the sales proceeds that cannot be distributed, less any fees charged by the clerk pursuant to this subdivision. Where the amount of the deposit is twenty-five thousand dollars (\$25,000) or less, a proceeding pursuant to this subdivision is a limited civil case. The declaration shall ....

**Comment.** Subdivision (c) of Section 2924j is amended to clarify the jurisdictional classification of a proceeding to distribute excess sale proceeds. This is declaratory of existing law. See Code Civ. Proc. § 85 (limited civil cases) & Comment. See also Code Civ. Proc. §§ 85.1 (original jurisdiction), 88 (unlimited civil case).

(The full text of the proposed amendment is shown on pages 4-6 of the attached draft.)

#### **Petition for Relief From Requirements of Tort Claims Act (Gov't Code § 946.6)**

A similar issue arises with respect to Government Code Section 946.6, which is part of the Tort Claims Act. Under the Act, a person with a potential cause of action against a public entity must present the claim to the public entity before filing suit (if the cause of action is covered by the Act). Gov't Code § 945.4. The claim must be presented within a certain period of time. Gov't Code § 911.2. If a potential claimant misses the deadline, in some circumstances the potential claimant may apply to the public entity for leave to present a late claim. Gov't Code § 911.4.

If the public entity rejects this application, Section 946.6 permits the potential claimant to file a petition in court for relief from the requirement that the claim be presented to the public entity before filing suit. The provision further specifies that the proper court for filing the petition is "a court which would be a competent court for the trial of an action on the cause of action to which the claim relates and which is located in a county or judicial district which would be a proper place for the trial of the action."

Mr. Lomax points out that this is “preunification jurisdictional classification terminology,” which may be confusing to the bar. (Exhibit p. 2.) He urges the Commission to “clarify the wording” of the statute. (*Id.*)

The staff agrees that it would be helpful to provide additional guidance on the jurisdictional classification of a proceeding under the statute, particularly in a unified court. **This could be achieved by amending Section 946.6(a) along the following lines:**

946.6. (a) Where an application for leave to present a claim is denied or deemed to be denied pursuant to Section 911.6, a petition may be made to the court for an order relieving the petitioner from Section 945.4. The proper court for filing the petition is a court which would be a competent court for the trial of an action on the cause of action to which the claim relates and which is located in a county or judicial district which would be a proper place for the trial of the action, and if the petition is filed in a court which is not a proper court for the determination of the matter, the court, on motion of any party, shall transfer the proceeding to a proper court. Where an action on the cause of action to which the claim relates would be a limited civil case, a proceeding pursuant to this section is a limited civil case.

....

**Comment.** Section 946.6 is amended to clarify the jurisdictional classification of a proceeding for relief from the requirements of Section 945.4 following rejection of an application for leave to present a late claim. This is declaratory of existing law. See Code Civ. Proc. § 85 (limited civil cases) & Comment. See also Code Civ. Proc. §§ 85.1 (original jurisdiction), 88 (unlimited civil case).

(The full text of the proposed amendment is shown on pages 16-17 of the attached draft.)

#### OBSOLETE REFERENCES TO DOCKET

Mr. Lomax writes that the term “docket” is obsolete insofar as it is used to refer to a record kept by a trial court in a civil case. With the 1977 repeal of certain statutes relating to justice courts, “there ceased to be a statutory requirement for any court to maintain a record in civil cases called a docket.” (Exhibit p. 3.) However, the few remaining municipal courts are still required to keep a docket in criminal actions and proceedings. Penal Code § 1428.

Mr. Lomax recommends that the term “docket” be deleted from six provisions: Code of Civil Procedure Sections 396a, 472b, 631, 638, 912, and 1206.



(*Id.*) The staff concurs in this suggestion, but also recommends similar amendments of two other provisions in which the term “docket” is used to refer to a record kept by a trial court in a civil case (Code Civ. Proc. § 398; Food & Agric. Code § 11937). **Proposed amendments of all eight of these provisions are set forth in the attached draft.** In some of the provisions, it is necessary to replace the term “docket” with a reference to the “register of actions,” a similar type of record that is maintained by superior courts (Gov’t Code §§ 69845, 69845.5) and by municipal courts in civil cases (Code Civ. Proc. §§ 1052, 1052.1).

In three other provisions (Veh. Code §§ 16370, 16373, 16370) a reference to the “register of actions” should be inserted, but the reference to “docket entries” should be retained. The references to “docket entries” might still be useful, because these provisions pertain to records of cases tried in other states, not just cases tried in California. **Proposed amendments of these three additional provisions are also included in the attached draft.**

Respectfully submitted,

Barbara S. Gaal  
Staff Counsel



**Superior Court of California**

County of Alameda

Courthouse

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Oakland, California 94612

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Law Revision Commission  
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JUL - 6 2000

File: J-1320

July 3, 2000

Mr. Nathaniel Sterling  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Suite D-1  
Palo Alto, CA 94303-4739

Dear Mr. Sterling:

**SUGGESTED TRIAL COURT UNIFICATION  
CLEANUP/FOLLOW-UP SUBJECTS**

I am writing to draw your attention to three statutes prescribing special proceedings whose jurisdictional classification wording needs clarification.

***Petition to Release Mechanic's Lien (Civil Code, §3154)***

Civil Code\* section 3154 prescribes a procedure for obtaining the release of a mechanic's lien when the lien has expired with no action to enforce the lien having been filed. Section 3154 provides that the property owner may petition the "proper court" for a decree to release the property from the lien (§3154, subd. (a)), but it does not define "proper court" by the amount of the lien (or otherwise). Code of Civil Procedure section 86 designates as limited civil cases actions to "enforce and foreclose" mechanic's liens where the amount of the lien is \$25,000 or less (§86, subd. (a)(6)), but a petition under section 3154 is obviously not an action to enforce and foreclose a mechanic's lien. However, logic supports classifying a petition to release a lien of \$25,000 or less as a limited case.

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\*Hereafter, unless noted otherwise, all section references are to the Civil Code.

Mr. Nathaniel Sterling  
July 3, 2000  
Page 2

The language of section 3154 is ambiguous and confusing to courts and the bar. We urge the commission to eliminate the long-standing confusion regarding the jurisdictional classification of a petition to release a mechanic's lien.

***Trustee's Declaration Regarding Conflicting Claims (Civil Code, §2924j)***

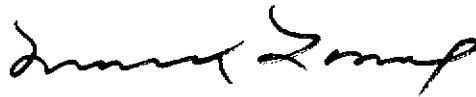
Section 2924j prescribes a procedure for a trustee to be discharged after depositing in court surplus proceeds from a sale under a deed of trust if there are conflicting claims to the proceeds or if the trustee is unable to determine the priority of the claims. In lieu of filing an interpleader action, the trustee may file a declaration of the unresolved claims and deposit the proceeds with the clerk of the "superior or municipal court, as applicable." (§2924j, subd. (c).)

While there appears to be little confusion regarding the jurisdictional classification of a proceeding under section 2924j as the statute is currently worded, we urge the commission to amend section 2924j to expressly provide that jurisdictional classification is based on the amount deposited with the court.

***Petition for Relief from Claim-Filing Requirements (Gov. Code, §946.6)***

Government Code section 946.6 authorizes the filing of a petition for relief from the claim-filing requirements of Government Code section 905 et seq. Like section 2924j, Government Code section 946.6 uses preunification jurisdictional classification terminology, which we think is potentially confusing to the bar. We urge the commission to clarify the wording of Government Code section 946.6.

Very truly yours,



MARK LOMAX  
Management Analyst  
Planning, Research, Court Services  
and Public Information Bureau

c: Janet Grove, Esq.  
Research Attorney  
Administrative Office of the Courts



## Superior Court of California

County of Alameda

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JUL 17 2000

File: J-1320

July 14, 2000

Mr. Nathaniel Sterling  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

Dear Mr. Sterling:

### TRIAL COURT UNIFICATION CLEANUP/FOLLOW-UP

I am writing to draw your attention to six obsolete references in the Code of Civil Procedure to a court record called a docket.

Currently, six sections of the Code of Civil Procedure—396a, 472b, 631, 638, 912, and 1206—refer to an entry to be made in a court record called a docket. Before 1977, justice court clerks were required by former Government Code sections 71614 and 71614.5 to keep a record in civil cases called a docket. In 1977, following legislation equalizing the jurisdiction of justice and municipal courts (Stats. 1976, ch. 1288), Government Code sections 71614 and 71614.5 were repealed; and Government Code section 71280.1, requiring municipal court clerks to keep minutes, and Code of Civil Procedure section 1052, requiring municipal court clerks to keep a register of actions, were made applicable to justice courts. (Stats. 1977, ch. 1257, §§70-71, p. 4776.) With the repeal of Government Code sections 71614 and 71614.5, there ceased to be a statutory requirement for any court to maintain a record in civil cases called a docket.\*

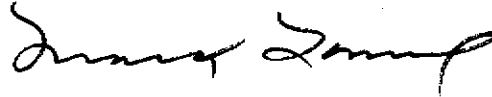
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\*When Government Code sections 71614 and 71614.5 were repealed, in 1977, Penal Code section 1428 required municipal and justice court clerks—and today still requires municipal court clerks—to keep a docket in criminal actions and proceedings.

Mr. Nathaniel Sterling  
July 14, 2000  
Page 2

Accordingly, I recommend that the Code of Civil Procedure sections identified above be amended to delete the reference to "docket," as shown on the attachment.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark Lomax", written in a cursive style.

MARK LOMAX  
Management Analyst  
Planning, Research, Court Services  
and Public Information Bureau

Attachment

## CODE OF CIVIL PROCEDURE

**396a.** In a limited civil case that is subject to Sections 1812.10 and 2984.4 of the Civil Code, or subdivision (b) of Section 395 of the Code of Civil Procedure, or is an action or proceeding for an unlawful detainer as defined in Section 1161 of the Code of Civil Procedure, the plaintiff shall state facts in the complaint, verified by the plaintiff's oath, or the oath of the plaintiff's attorney, or in an affidavit of the plaintiff or of the plaintiff's attorney filed with the complaint, showing that the action has been commenced in the proper court for the trial of the action or proceeding, and showing that the action is subject to the provisions of Sections 1812.10 and 2984.4 of the Civil Code or subdivision (b) of Section 395 of the Code of Civil Procedure, or is an action for an unlawful detainer. When the affidavit is filed with the complaint, a copy thereof shall be served with the summons. Except as herein provided, if the complaint or affidavit be not so filed, no further proceedings shall be had in the action or proceeding, except to dismiss the same without prejudice. However, the court may, on such terms as may be just, permit the affidavit to be filed subsequent to the filing of the complaint, and a copy of the affidavit shall be served on the defendant and the time to answer or otherwise plead shall date from that service. If it appears from the complaint or affidavit, or otherwise, that the court in which the action or proceeding is commenced is not the proper court for the trial thereof, the court in which the action or proceeding is commenced, or a judge thereof, shall, whenever that fact appears, transfer it to the proper court, on its own motion, or on motion of the defendant, unless the defendant consents in writing, or in open court (consent in open court being **entered in the minutes or docket** of the court), to the keeping of the action or proceeding in the court where commenced. . . .

**472b.** When a demurrer to any pleading is sustained or overruled, and time to amend or answer is given, the time so given runs from the service of notice of the decision or order, unless the notice is waived in open court, and the waiver **entered in the minutes or docket**. When an order sustaining a demurrer without leave to amend is reversed or otherwise remanded by any order issued by a reviewing court, any amended complaint shall be filed within 30 days after the clerk of the reviewing court mails notice of the issuance of the remittitur.

**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**. . . .

638. A reference may be ordered upon the agreement of the parties filed with the clerk, or judge, or **entered in the minutes or in the docket**, or upon the motion of a party to a written contract or lease which provides that any controversy arising therefrom shall be heard by a reference if the court finds a reference agreement exists between the parties:

....

912. Upon final determination of an appeal by the reviewing court, the clerk of the court shall remit to the trial court a certified copy of the judgment or order of the reviewing court and of its opinion, if any. The clerk of the trial court shall file the certified copy of the judgment and opinion of the reviewing court, shall attach the same to the judgment roll if the appeal was from a judgment, and shall enter a note of the judgment of the reviewing court stating whether the judgment or order appealed from has been affirmed, reversed or modified, in the margin of the original entry of the judgment or order, and also **in the register of actions or docket**.

1206. Upon the levy under a writ of attachment or execution not founded upon a claim for labor, any miner, mechanic, salesman, servant, clerk, laborer or other person who has performed work or rendered personal services for the defendant within 90 days prior to the levy may file a verified statement of the claim therefor with the officer executing the writ, file a copy thereof with the court that issued the writ, and give copies thereof, containing his or her address, to the plaintiff and the defendant, or any attorney, clerk or agent representing them, or mail copies to them by registered mail at their last known address, return of which by the post office undelivered shall be deemed a sufficient service if no better address is available, and that claim, not exceeding nine hundred dollars (\$900), unless disputed, must be paid by the officer, immediately upon the expiration of the time for dispute of the claim as prescribed in Section 1207, from the proceeds of the levy remaining in the officer's hands at the time of the filing of the statement or collectible by the officer on the basis of the writ. The court issuing the writ must **make a notation on its docket in the register of actions** of every preferred labor claim of which it receives a copy and must endorse on any writ of execution or abstract of judgment issued subsequently in the case that it is issued subject to the rights of a preferred labor claimant or claimants thereunder and giving the names and amounts of all preferred labor claims of which it has notice. . . .

# CALIFORNIA LAW REVISION COMMISSION

*Staff Draft*

TENTATIVE RECOMMENDATION

## Civil Procedure: Technical Corrections

October 2000

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN December 31, 2000.**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739  
650-494-1335 FAX: 650-494-1827



## SUMMARY OF TENTATIVE RECOMMENDATION

The Law Revision Commission recommends technical revisions to clarify the jurisdictional classification of:

- A proceeding to release a mechanic's lien (Civ. Code § 3154)
- A proceeding to discharge the trustee and distribute the proceeds of a sale under a deed of trust (Civ. Code § 2924j)
- A petition for relief from claim-filing requirements of the Tort Claims Act (Gov't Code § 946.6).

The Commission also recommends revision of the codes to reflect that trial courts no longer maintain a record denominated a "docket" in civil cases.

These revisions would not be a substantive change in the law.

This recommendation was prepared pursuant to Government Code Section 70219.

## CIVIL PROCEDURE: TECHNICAL CORRECTIONS

1 At the direction of the Legislature, the Law Revision Commission and the  
2 Judicial Council are jointly reexamining civil procedure in light of trial court  
3 unification.<sup>1</sup> In connection with that study, the Commission has been alerted to  
4 ambiguities relating to the jurisdictional classification of certain proceedings. The  
5 Commission recommends statutory reforms to clarify these points, as well as to  
6 delete obsolete references to a record known as the “docket,” which is no longer  
7 maintained by trial courts in civil cases.

### CLARIFICATION OF JURISDICTIONAL CLASSIFICATION

8 The “jurisdictional classification” of a civil case means its classification as a  
9 limited civil case or an unlimited civil case.<sup>2</sup> A limited civil case is subject to  
10 economic litigation and other traditional municipal court procedures; an unlimited  
11 civil case is subject to traditional superior court procedures.<sup>3</sup>

12 Under Code of Civil Procedure Section 85, a case is to be treated as a limited  
13 civil case if and only if all of the following conditions are met:

- 14 (1) The amount in controversy does not exceed \$25,000.
- 15 (2) The relief sought is a type that may be granted in a limited civil case.<sup>4</sup>
- 16 (3) The relief sought is exclusively of a type described in one or more  
17 statutes that classify an action or special proceeding as a limited civil  
18 case or that provide that an action or special proceeding is within the  
19 original jurisdiction of the municipal court.

20 Although this statute provides general guidance, a number of provisions require  
21 revision to clarify the jurisdictional classification of the actions to which they  
22 pertain. These include the provisions governing a petition to release a mechanic’s  
23 lien,<sup>5</sup> a proceeding to determine claims to the proceeds of a sale under a deed of

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1. Gov’t Code § 70219; see also *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 82-83.

2. Code Civ. Proc. § 32.5. Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.

3. See, e.g., Sections 85 & Comment (limited civil cases), 91 (application of economic litigation procedures), 904.1 (taking appeal), 904.2 (taking appeal in limited civil case); see also *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 64-65. In a county with a municipal court, the municipal court has original jurisdiction in a limited civil case. Section 85.1.

4. For restrictions on the relief awardable in a limited civil case, see Section 580(b).

5. Civ. Code § 3154.

1 trust,<sup>6</sup> and a petition for relief from claim-filing requirements of the Tort Claims  
2 Act.<sup>7</sup>

**Petition to Release Mechanic’s Lien (Civil Code § 3154)**

3 Civil Code Section 3154 prescribes a procedure for obtaining the release of a  
4 mechanic’s lien where the lien has expired and no action to enforce the lien has  
5 been filed. The provision directs the property owner to petition the “proper court”  
6 for a decree to release the property from the lien, but it does not define “proper  
7 court” by the amount of the lien or otherwise.

8 Code of Civil Procedure Section 86(a)(6) does specify that an action to enforce  
9 and foreclose a mechanic’s lien of \$25,000 or less is a limited civil case, thus  
10 triable in municipal court in a county with a municipal court. But a petition for  
11 release of a mechanic’s lien is not an action to enforce and foreclose a mechanic’s  
12 lien.

13 It is thus unclear (1) whether a petition to release a mechanic’s lien of \$25,000 or  
14 less is to be brought in municipal court in a county with a municipal court, and (2)  
15 whether such a petition is to be treated as a limited civil case in a county with a  
16 unified superior court. To prevent confusion, Section 86(a)(6) should be amended  
17 to expressly state that a proceeding to release a mechanic’s lien is a limited civil  
18 case (triable in municipal court in a county with a municipal court) if the amount  
19 of the lien is \$25,000 or less. This would parallel the treatment of an action to  
20 foreclose a mechanic’s lien.

**Proceeding to Discharge Trustee and Distribute Proceeds of Sale Under Deed of  
Trust (Civil Code § 2924j)**

21 Civil Code Section 2924j sets forth a procedure for distributing excess proceeds  
22 of a sale under a deed of trust. If, after due diligence, the trustee cannot determine  
23 the priority of claims to the proceeds or determines that there is a conflict between  
24 potential claimants, the trustee may file a declaration regarding the unresolved  
25 claims and deposit the disputed proceeds, less a reasonable clerk’s fee, “with the  
26 clerk of the superior or municipal court, as applicable.”<sup>8</sup> The court then determines  
27 how to allocate the excess proceeds. The provision does not specify how to  
28 determine the appropriate court or jurisdictional classification.

29 As a general matter, a “case at law” is a limited civil case if the amount in  
30 controversy is \$25,000 or less.<sup>9</sup> There may be confusion, however, about whether  
31 a dispute over the proceeds of a trustee’s sale is a “case at law,” and whether the  
32 amount in controversy is the amount of excess proceeds or the amount of excess  
33 proceeds less the clerk’s fee (i.e., the amount of the deposit). To eliminate  
34 ambiguity, Section 2924j should be amended to specify that a proceeding under

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6. Civ. Code § 2924j.

7. Gov’t Code § 946.6.

8. Civ. Code § 2924j(c).

9. Section 86(a)(1).

1 the statute is a limited civil case where the amount of the deposit is \$25,000 or  
2 less.

**Petition for Relief From Requirements of Tort Claims Act (Gov't Code § 946.6)**

3 If a public entity rejects an application to file a late claim under the Tort Claims  
4 Act, Government Code Section 946.6 permits the claimant to petition the court for  
5 relief from the requirement that the claim be presented to the public entity before  
6 filing suit. The proper court for filing the petition is “a court which would be a  
7 competent court for the trial of an action on the cause of action to which the claim  
8 relates and which is located in a county or judicial district which would be a  
9 proper place for the trial of the action.”

10 This terminology may be confusing, because it does not directly state whether a  
11 proceeding for relief from the claim-filing requirement is a limited civil case or an  
12 unlimited civil case. To improve clarity, the statute should be amended to make  
13 clear that the jurisdictional classification of such a proceeding is the same as the  
14 jurisdictional classification of a suit on the cause of action in the underlying claim.

**OBSOLETE REFERENCES TO DOCKET**

15 The term “docket” is obsolete insofar as it is used to refer to a record kept by a  
16 trial court in a civil case. Municipal courts are still required to maintain a record  
17 known as a “docket” in criminal actions and proceedings,<sup>10</sup> but neither municipal  
18 nor superior courts keep a record denominated a “docket” in civil cases.<sup>11</sup> Instead,  
19 these courts keep a “register of actions.”<sup>12</sup> The codes should be revised to delete  
20 obsolete references to the “docket” in civil cases, and insert references to the  
21 “register of actions” where appropriate.<sup>13</sup>

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10. Penal Code § 1428.

11. Formerly, justice courts were required to maintain a “docket” in civil cases. 1953 Cal. Stat. ch. 206, § 1 (former Gov't Code § 71614); 1959 Cal. Stat. ch. 671, § 2 (former Gov't Code § 71614.5). In 1977, these provisions were repealed and there ceased to be a statutory requirement for any trial court to maintain a record known as a “docket” in civil cases. 1977 Cal. Stat. ch. 1257, §§ 71, 72.

12. Code Civ. Proc. §§ 1052 (clerk of municipal court may keep register of civil actions), 1052.1 (alternative methods of keeping register of actions in municipal court); Gov't Code §§ 69845 (clerk of superior court may keep register of actions), 69845.5 (alternative to maintaining register of actions in superior court).

13. See proposed Code Civ. Proc. §§ 396a, 398, 472b, 631, 638, 912, 1206; Food & Agric. Code § 11937; Veh. Code §§ 16370, 16373, 16370.

1 PROPOSED LEGISLATION

2 **Civ. Code § 2924j (amended). Proceeding to discharge trustee and distribute proceeds of**  
3 **sale under deed of trust**

4 SEC. \_\_\_\_\_. Section 2924j of the Civil Code is amended to read:

5 2924j. (a) Unless an interpleader action has been filed, within 30 days of the  
6 execution of the trustee's deed resulting from a sale in which there are proceeds  
7 remaining after payment of the amounts required by paragraphs (1) and (2) of  
8 subdivision (a) of Section 2924k, the trustee shall send written notice to all  
9 persons with recorded interests in the real property as of the date immediately  
10 prior to the trustee's sale who would be entitled to notice pursuant to subdivisions  
11 (b) and (c) of Section 2924b. The notice shall be sent by first-class mail in the  
12 manner provided in paragraph (1) of subdivision (c) of Section 2924b and inform  
13 each entitled person of each of the following:

14 (1) That there has been a trustee's sale of the described real property.

15 (2) That the noticed person may have a claim to all or a portion of the sale  
16 proceeds remaining after payment of the amounts required by paragraphs (1) and  
17 (2) of subdivision (a) of Section 2924k.

18 (3) The noticed person may contact the trustee at the address provided in the  
19 notice to pursue any potential claim.

20 (4) That before the trustee can act, the noticed person may be required to present  
21 proof that the person holds the beneficial interest in the obligation and the security  
22 interest therefor. In the case of a promissory note secured by a deed of trust, proof  
23 that the person holds the beneficial interest may include the original promissory  
24 note and assignment of beneficial interests related thereto. The noticed person  
25 shall also submit a written claim to the trustee, executed under penalty of perjury,  
26 stating the following:

27 (A) The amount of the claim to the date of trustee's sale.

28 (B) An itemized statement of the principal, interest, and other charges.

29 (C) That claims must be received by the trustee at the address stated in the notice  
30 no later than 30 days after the date the trustee sends notice to the potential  
31 claimant.

32 (b) The trustee shall exercise due diligence to determine the priority of the  
33 written claims received by the trustee to the trustee's sale surplus proceeds from  
34 those persons to whom notice was sent pursuant to subdivision (a). In the event  
35 there is no dispute as to the priority of the written claims submitted to the trustee,  
36 proceeds shall be paid within 30 days after the conclusion of the notice period. If  
37 the trustee has failed to determine the priority of written claims within 90 days  
38 following the 30-day notice period, then within 10 days thereafter the trustee shall  
39 deposit the funds with the clerk of the court pursuant to subdivision (c) or file an  
40 interpleader action pursuant to subdivision (e). Nothing in this section shall

1 preclude any person from pursuing other remedies or claims as to surplus  
2 proceeds.

3 (c) If, after due diligence, the trustee is unable to determine the priority of the  
4 written claims received by the trustee to the trustee's sale surplus of multiple  
5 persons or if the trustee determines there is a conflict between potential claimants,  
6 the trustee may file a declaration of the unresolved claims and deposit with the  
7 clerk of the superior or municipal court, as applicable, of the county in which the  
8 sale occurred, that portion of the sales proceeds that cannot be distributed, less any  
9 fees charged by the clerk pursuant to this subdivision. Where the amount of the  
10 deposit is twenty-five thousand dollars (\$25,000) or less, a proceeding pursuant to  
11 this subdivision is a limited civil case. The declaration shall specify the date of the  
12 trustee's sale, a description of the property, the names and addresses of all persons  
13 sent notice pursuant to subdivision (a), a statement that the trustee exercised due  
14 diligence pursuant to subdivision (b), that the trustee provided written notice as  
15 required by subdivisions (a) and (d) and the amount of the sales proceeds  
16 deposited by the trustee with the superior or municipal court. Further, the trustee  
17 shall submit a copy of the trustee's sales guarantee and any information relevant to  
18 the identity, location, and priority of the potential claimants with the superior or  
19 municipal court and shall file proof of service of the notice required by subdivision  
20 (d) on all persons described in subdivision (a).

21 The clerk shall deposit the amount with the county treasurer subject to order of  
22 the superior or municipal court upon the application of any interested party. The  
23 clerk may charge a reasonable fee for the performance of activities pursuant to this  
24 subdivision equal to the fee for filing an interpleader action pursuant to Article 2  
25 (commencing with Section 26820) of Division 2 of Title 3 of the Government  
26 Code. Upon deposit of that portion of the sale proceeds that cannot be distributed  
27 by due diligence, the trustee shall be discharged of further responsibility for the  
28 disbursement of sale proceeds. A deposit with the clerk of the superior or  
29 municipal court pursuant to this subdivision may be either for the total proceeds of  
30 the trustee's sale, less any fees charged by the clerk, if a conflict or conflicts exist  
31 with respect to the total proceeds, or that portion that cannot be distributed after  
32 due diligence, less any fees charged by the clerk.

33 (d) Before the trustee deposits the funds with the clerk of the court pursuant to  
34 subdivision (c), the trustee shall send written notice by first-class mail, postage  
35 prepaid, to all persons described in subdivision (a) informing them that the trustee  
36 intends to deposit the funds with the clerk of the superior or municipal court, as  
37 applicable, and that a claim for the funds must be filed with the court within 30  
38 days from the date of the notice, providing the address of the court in which the  
39 funds were deposited, and a phone number for obtaining further information.

40 Within 90 days after deposit with the clerk, the court shall consider all claims  
41 filed at least 15 days before the date on which the hearing is scheduled by the  
42 court, the clerk shall serve written notice of the hearing by first-class mail on all  
43 claimants identified in the trustees' declaration at the addresses specified therein.

1 The court shall distribute the deposited funds to any and all claimants entitled  
2 thereto.

3 (e) Nothing in this section restricts the ability of a trustee to file an interpleader  
4 action in order to resolve a dispute about the proceeds of a trustee's sale. Once an  
5 interpleader action has been filed, thereafter the provisions of this section shall not  
6 apply.

7 (f) "Due diligence," for the purposes of this section means that the trustee  
8 researched the written claims submitted or other evidence of conflicts and  
9 determined that a conflict of priorities exists between two or more claimants which  
10 the trustee is unable to resolve.

11 (g) To the extent required by the Unclaimed Property Law, a trustee in  
12 possession of surplus proceeds not required to be deposited with the court pursuant  
13 to subdivision (b) shall comply with the Unclaimed Property Law (Chapter 7  
14 commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil  
15 Procedure).

16 (h) Prior to July 1, 2000, the Judicial Council shall adopt a form to accomplish  
17 the filing authorized by this section.

18 **Comment.** Subdivision (c) of Section 2924j is amended to clarify the jurisdictional  
19 classification of a proceeding to distribute excess sale proceeds. This is declaratory of existing  
20 law. See Code Civ. Proc. § 85 (limited civil cases) & Comment. See also Code Civ. Proc. §§ 85.1  
21 (original jurisdiction), 88 (unlimited civil case).

22 **Code Civ. Proc. § 86 (amended). Miscellaneous limited civil cases**

23 SEC. \_\_\_\_\_. Section 86 of the Code of Civil Procedure is amended to read:

24 86. (a) The following civil cases and proceedings are limited civil cases:

25 (1) Cases at law in which the demand, exclusive of interest, or the value of the  
26 property in controversy amounts to twenty-five thousand dollars (\$25,000) or less.  
27 This paragraph does not apply to cases that involve the legality of any tax, impost,  
28 assessment, toll, or municipal fine, except actions to enforce payment of  
29 delinquent unsecured personal property taxes if the legality of the tax is not  
30 contested by the defendant.

31 (2) Actions for dissolution of partnership where the total assets of the partnership  
32 do not exceed twenty-five thousand dollars (\$25,000); actions of interpleader  
33 where the amount of money or the value of the property involved does not exceed  
34 twenty-five thousand dollars (\$25,000).

35 (3) Actions to cancel or rescind a contract when the relief is sought in connection  
36 with an action to recover money not exceeding twenty-five thousand dollars  
37 (\$25,000) or property of a value not exceeding twenty-five thousand dollars  
38 (\$25,000), paid or delivered under, or in consideration of, the contract; actions to  
39 revise a contract where the relief is sought in an action upon the contract if the  
40 action otherwise is a limited civil case.



1 (4) Proceedings in forcible entry or forcible or unlawful detainer where the  
2 whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or  
3 less.

4 (5) Actions to enforce and foreclose liens on personal property where the amount  
5 of the liens is twenty-five thousand dollars (\$25,000) or less.

6 (6) Actions to enforce and foreclose, or petitions to release, liens of mechanics,  
7 materialmen, artisans, laborers, and of all other persons to whom liens are given  
8 under the provisions of Chapter 2 (commencing with Section 3109) of Title 15 of  
9 Part 4 of Division 3 of the Civil Code, or to enforce and foreclose an assessment  
10 lien on a common interest development as defined in Section 1351 of the Civil  
11 Code, where the amount of the liens is twenty-five thousand dollars (\$25,000) or  
12 less. However, where an action to enforce the lien affects property that is also  
13 affected by a similar pending action that is not a limited civil case, or where the  
14 total amount of the liens sought to be foreclosed against the same property  
15 aggregates an amount in excess of twenty-five thousand dollars (\$25,000), the  
16 action is not a limited civil case, and if the action is pending in a municipal court,  
17 upon motion of any interested party, the municipal court shall order the action or  
18 actions pending therein transferred to the proper superior court. Upon making the  
19 order, the same proceedings shall be taken as are provided by Section 399 with  
20 respect to the change of place of trial.

21 (7) Actions for declaratory relief when brought pursuant to either of the  
22 following:

23 (A) By way of cross-complaint as to a right of indemnity with respect to the  
24 relief demanded in the complaint or a cross-complaint in an action or proceeding  
25 that is otherwise a limited civil case.

26 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and  
27 client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of  
28 Division 3 of the Business and Professions Code, where the amount in controversy  
29 is twenty-five thousand dollars (\$25,000) or less.

30 (8) Actions to issue temporary restraining orders and preliminary injunctions, to  
31 take accounts, and to appoint receivers where necessary to preserve the property or  
32 rights of any party to a limited civil case; to appoint a receiver and to make any  
33 order or perform any act, pursuant to Title 9 (commencing with Section 680.010)  
34 of Part 2 (enforcement of judgments) in a limited civil case; to determine title to  
35 personal property seized in a limited civil case.

36 (9) Actions under Article 3 (commencing with Section 708.210) of Chapter 6 of  
37 Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property  
38 or to enforce the liability of the debtor of a judgment debtor where the interest  
39 claimed adversely is of a value not exceeding twenty-five thousand dollars  
40 (\$25,000) or the debt denied does not exceed twenty-five thousand dollars  
41 (\$25,000).

42 (10) Arbitration-related petitions filed pursuant to either of the following:



1 (A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3,  
2 except for uninsured motorist arbitration proceedings in accordance with Section  
3 11580.2 of the Insurance Code, if the petition is filed before the arbitration award  
4 becomes final and the matter to be resolved by arbitration is a limited civil case  
5 under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed  
6 after the arbitration award becomes final and the amount of the award and all other  
7 rulings, pronouncements, and decisions made in the award are within paragraphs  
8 (1) to (9), inclusive, of subdivision (a).

9 (B) To confirm, correct, or vacate a fee arbitration award between an attorney  
10 and client that is binding or has become binding, pursuant to Article 13  
11 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and  
12 Professions Code, where the arbitration award is twenty-five thousand dollars  
13 (\$25,000) or less.

14 (b) The following cases in equity are limited civil cases:

15 (1) Cases to try title to personal property when the amount involved is not more  
16 than twenty-five thousand dollars (\$25,000).

17 (2) Cases when equity is pleaded as a defensive matter in any case that is  
18 otherwise a limited civil case.

19 (3) Cases to vacate a judgment or order of the court obtained in a limited civil  
20 case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

21 **Comment.** Subdivision (a)(6) of Section 86 is amended to clarify the jurisdictional  
22 classification of a petition to release a mechanic's lien. This is declaratory of existing law. See  
23 Code Civ. Proc. § 85 (limited civil cases) & Comment. See also Code Civ. Proc. §§ 85.1 (original  
24 jurisdiction), 88 (unlimited civil case).

25 **Code Civ. Proc. § 396a (amended). Statement of jurisdictional facts**

26 SEC. \_\_\_\_\_. Section 396a of the Code of Civil Procedure is amended to read:

27 396a. (a) In a limited civil case that is subject to Sections 1812.10 and 2984.4 of  
28 the Civil Code, or subdivision (b) of Section 395 of the Code of Civil Procedure,  
29 or is an action or proceeding for an unlawful detainer as defined in Section 1161 of  
30 the Code of Civil Procedure, the plaintiff shall state facts in the complaint, verified  
31 by the plaintiff's oath, or the oath of the plaintiff's attorney, or in an affidavit of  
32 the plaintiff or of the plaintiff's attorney filed with the complaint, showing that the  
33 action has been commenced in the proper court for the trial of the action or  
34 proceeding, and showing that the action is subject to the provisions of Sections  
35 1812.10 and 2984.4 of the Civil Code or subdivision (b) of Section 395 of the  
36 Code of Civil Procedure, or is an action for an unlawful detainer. When the  
37 affidavit is filed with the complaint, a copy thereof of the affidavit shall be served  
38 with the summons. Except as herein provided in this section, if the complaint or  
39 affidavit be are not so filed, no further proceedings shall be had in the action or  
40 proceeding, except to dismiss the same without prejudice. However, the court  
41 may, on such terms as may be just, permit the affidavit to be filed subsequent to  
42 after the filing of the complaint, and a copy of the affidavit shall be served on the

1 defendant and the time to answer or otherwise plead shall ~~date~~ dates from that  
2 service.

3 (b) If it appears from the complaint or affidavit, or otherwise, that the court in  
4 which the action or proceeding is commenced is not the proper court for the trial  
5 thereof, the court in which the action or proceeding is commenced, or a judge  
6 thereof of the court, shall, whenever that fact appears, transfer it to the proper  
7 court, on its own motion, or on motion of the defendant, unless the defendant  
8 consents in writing, or in open court (consent in open court being entered in the  
9 minutes or ~~docket~~ register of actions of the court), to the keeping of the action or  
10 proceeding in the court where commenced. If that consent be is given, the action  
11 or proceeding may continue in the court where commenced. Notwithstanding the  
12 provisions of Section 1801.1 and subdivision (f) of Section 2983.7 of the Civil  
13 Code, that consent may be given by a defendant who is represented by counsel at  
14 the time the consent is given, and where an action or proceeding is subject to  
15 subdivision (b) of Section 395 or is for an unlawful detainer, that consent may  
16 only be given by a defendant who is represented by counsel at the time the consent  
17 is given. In any case where the transfer of the action or proceeding is ordered  
18 under the provisions of this paragraph, if summons is served ~~prior to~~ before the  
19 filing of the action or proceeding in the court to which it is transferred, as to any  
20 defendant, so served, who has not appeared in the action or proceeding, the time to  
21 answer or otherwise plead shall ~~date~~ dates from service upon that defendant of  
22 written notice of the filing.

23 (c) When it appears from the complaint or affidavit of the plaintiff that the court  
24 in which the action or proceeding is commenced is a proper court for the trial  
25 thereof, all proper proceedings may be had, and the action or proceeding may be  
26 tried therein; ~~provided, however, that a~~ in that court. A motion for a transfer of the  
27 action or proceeding may be made as in other cases, within the time, ~~upon~~ on the  
28 grounds, and in the manner provided in this title, and if ~~upon~~ on that motion it  
29 appears that the action or proceeding is not pending in the proper court, or should  
30 for other cause be transferred, the same action or proceeding shall be ordered  
31 transferred as provided in this title.

32 (d) When any action or proceeding is ordered transferred as ~~herein~~ provided in  
33 this section, proceedings shall be had, and the costs and fees shall be paid, as  
34 provided in Sections 398 and 399 ~~of this code~~.

35 **Comment.** Section 396a is amended to replace the term “docket,” with “register of actions.”  
36 The reference to a “docket” is obsolete, because courts no longer maintain a record denominated a  
37 “docket” in civil cases. See former Gov’t Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed  
38 by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a book denominated a  
39 “docket”), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk  
40 or judge of justice court shall keep the “docket” and other records of the court). See also Code  
41 Civ. Proc. §§ 1052 (clerk of municipal court may keep a register of civil actions), 1052.1  
42 (alternative methods of keeping register of actions in municipal court); Gov’t Code §§ 69845  
43 (clerk of superior court may keep a register of actions); 69845.5 (alternative to maintaining  
44 register of actions in superior court). For preparation of a “docket” in criminal actions and  
45 proceedings in municipal court, see Penal Code § 1428.

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

2 ☞ **Staff Note.** For other possible revisions of this provision (both technical and substantive), see  
3 Memorandum 2000-55, Attachment pp. 22-30, and Memorandum 2000-72.

4 **Code Civ. Proc. § 398 (amended). Proper court for transfer**

5 SEC. \_\_\_\_\_. Section 398 of the Code of Civil Procedure is amended to read:

6 398. (a) If, for any ~~cause~~, cause specified in subdivisions ~~2, 3 and 4~~ (b), (c), or  
7 (d) of section 397, the court orders the transfer of an action or proceeding, it must  
8 be transferred to a court having jurisdiction of the subject matter of the action  
9 which the parties may agree upon, by stipulation in writing, or made in open court  
10 and entered in the minutes or ~~docket~~ register of actions; or, if they do not so agree,  
11 then to the nearest or most accessible court, where the ~~like~~ objection or cause for  
12 making the order does not exist.

13 (b) If an action or proceeding is commenced in a court, other than one  
14 designated as a proper court for the trial thereof by the provisions of this title, and  
15 the ~~same be action or proceeding is~~ ordered transferred for that reason, it ~~must~~  
16 shall be transferred to any ~~such~~ proper court which the parties may agree upon by  
17 stipulation in writing, or made in open court and entered in the minutes or ~~docket~~;  
18 if register of actions. If the parties do not so agree, then the action or proceeding  
19 shall be transferred to any ~~such~~ proper court in the county in which the action or  
20 proceeding was commenced which the defendant may designate, or, if there ~~be is~~  
21 no ~~such~~ proper court in ~~such~~ the county, to any ~~such~~ proper court, in a proper  
22 county, designated by the ~~defendant~~; if defendant. If the parties do not so agree,  
23 and the defendant does not so designate the court, as ~~herein~~ provided in this  
24 section, or where the court orders the transfer of an action on its own motion as  
25 provided in this title, ~~to such the action or proceeding shall be transferred to a~~  
26 proper court as determined by the court in which the action or proceeding is  
27 pending may determine.

28 (c) The designation of the court by the defendant, ~~herein~~ provided for in this  
29 section, may be made in the notice of motion for change of venue or in open court,  
30 entered in the minutes or ~~docket~~ register of actions, at the time the order for  
31 transfer is made.

32 **Comment.** Section 398 is amended to replace the term “docket,” with “register of actions.” The  
33 reference to a “docket” is obsolete, because courts no longer maintain a record denominated a  
34 “docket” in civil cases. See former Gov’t Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed  
35 by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a book denominated a  
36 “docket”), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk  
37 or judge of justice court shall keep the “docket” and other records of the court). See also Code  
38 Civ. Proc. §§ 1052 (clerk of municipal court may keep a register of civil actions), 1052.1  
39 (alternative methods of keeping register of actions in municipal court); Gov’t Code §§ 69845  
40 (clerk of superior court may keep a register of actions); 69845.5 (alternative to maintaining  
41 register of actions in superior court). For preparation of a “docket” in criminal actions and  
42 proceedings in municipal court, see Penal Code § 1428.

43 Section 398 is also amended to correct the cross-references in the first sentence, insert  
44 subdivisions, and make other changes in conformity with preferred drafting style.

1 **Code Civ. Proc. § 472b (amended). Running of time following decision on demurrer**

2 SEC. \_\_\_\_\_. Section 472b of the Code of Civil Procedure is amended to read:

3 472b. When a demurrer to any pleading is sustained or overruled, and time to  
4 amend or answer is given, the time so given runs from the service of notice of the  
5 decision or order, unless the notice is waived in open court, and the waiver entered  
6 in the minutes or ~~docket~~ register of actions. When an order sustaining a demurrer  
7 without leave to amend is reversed or otherwise remanded by any order issued by  
8 a reviewing court, any amended complaint shall be filed within 30 days after the  
9 clerk of the reviewing court mails notice of the issuance of the remittitur.

10 **Comment.** Section 472b is amended to replace the term “docket,” with “register of actions.”  
11 The reference to a “docket” is obsolete, because courts no longer maintain a record denominated a  
12 “docket” in civil cases. See former Gov’t Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed  
13 by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a book denominated a  
14 “docket”), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk  
15 or judge of justice court shall keep the “docket” and other records of the court). See also Code  
16 Civ. Proc. §§ 1052 (clerk of municipal court may keep a register of civil actions), 1052.1  
17 (alternative methods of keeping register of actions in municipal court); Gov’t Code §§ 69845  
18 (clerk of superior court may keep a register of actions); 69845.5 (alternative to maintaining  
19 register of actions in superior court). For preparation of a “docket” in criminal actions and  
20 proceedings in municipal court, see Penal Code § 1428.

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

22 SEC. \_\_\_\_\_. Section 631 of the Code of Civil Procedure is amended to read:

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

25 (1) By failing to appear at the trial.

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

27 (3) By oral consent, in open court, entered in the minutes or ~~docket~~ register of  
28 actions.

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

32 (5) By failing to deposit with the clerk, or judge, advance jury fees 25 days prior  
33 to the date set for trial, except in unlawful detainer actions where the fees shall be  
34 deposited at least five days prior to the date set for trial, or as provided by  
35 subdivision (b). An advance jury fee deposited pursuant to this paragraph may not  
36 exceed a total of one hundred fifty dollars (\$150).

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

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

43 (b) In a superior court action, other than a limited civil case, if a jury is  
44 demanded by either party in the memorandum to set the cause for trial and the

1 party, prior to trial, by announcement or by operation of law, waives a trial by  
2 jury, then all adverse parties shall have five days following the receipt of notice of  
3 the waiver to file and serve a demand for a trial by jury and to deposit any advance  
4 jury fees that are then due.

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

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

15 **Comment.** Section 631 is amended to replace the term “docket,” with “register of actions.” The  
16 reference to a “docket” is obsolete, because courts no longer maintain a record denominated a  
17 “docket” in civil cases. See former Gov’t Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed  
18 by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a book denominated a  
19 “docket”), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk  
20 or judge of justice court shall keep the “docket” and other records of the court). See also Code  
21 Civ. Proc. §§ 1052 (clerk of municipal court may keep a register of civil actions), 1052.1  
22 (alternative methods of keeping register of actions in municipal court); Gov’t Code §§ 69845  
23 (clerk of superior court may keep a register of actions); 69845.5 (alternative to maintaining  
24 register of actions in superior court). For preparation of a “docket” in criminal actions and  
25 proceedings in municipal court, see Penal Code § 1428.

26 ☞ **Staff Note.** Section 631 was amended by urgency legislation signed by Governor Davis on  
27 July 8, 2000 (subject to unrelated item vetoes), and effective immediately. 2000 Cal. Stat. ch.  
28 127, § 2 (AB 2866 (Migden)). The statute is shown here as so amended.

29 For other possible revisions of Section 631, see Tentative Recommendation on *Elimination of*  
30 *Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases*, pp. 8-9, 18-20  
31 (July 2000). The recent revisions made by AB 2866 (Migden) are not reflected in the tentative  
32 recommendation.

### 33 **Code Civ. Proc. § 638 (amended). Reference by agreement**

34 SEC. \_\_\_\_\_. Section 638 of the Code of Civil Procedure is amended to read:

35 638. A reference may be ordered upon the agreement of the parties filed with the  
36 clerk, or judge, or entered in the minutes or in the ~~docket~~ register of actions, or  
37 upon the motion of a party to a written contract or lease which provides that any  
38 controversy arising therefrom shall be heard by a reference if the court finds a  
39 reference agreement exists between the parties:

40 1. (a) To try any or all of the issues in an action or proceeding, whether of fact or  
41 of law, and to report a statement of decision ~~thereon~~;

42 2. (b) To ascertain a fact necessary to enable the court to determine an action or  
43 proceeding.

44 **Comment.** Section 638 is amended to replace the term “docket” with “register of actions.” The  
45 reference to a “docket” is obsolete, because courts no longer maintain a record denominated a



1 “docket” in civil cases. See former Gov’t Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed  
2 by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a book denominated a  
3 “docket”), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk  
4 or judge of justice court shall keep the “docket” and other records of the court). See also Code  
5 Civ. Proc. §§ 1052 (clerk of municipal court may keep a register of civil actions), 1052.1  
6 (alternative methods of keeping register of actions in municipal court); Gov’t Code §§ 69845  
7 (clerk of superior court may keep a register of actions); 69845.5 (alternative to maintaining  
8 register of actions in superior court). For preparation of a “docket” in criminal actions and  
9 proceedings in municipal court, see Penal Code § 1428.

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

11 ☞ **Staff Note.** Pending legislation (AB 2912 (Assembly Judiciary Committee)) would amend  
12 this provision but would not correct the reference to the “docket”.

13 **Code Civ. Proc. § 912 (amended). Certification to trial court of result on appeal**

14 SEC. \_\_\_\_\_. Section 912 of the Code of Civil Procedure is amended to read:

15 912. Upon final determination of an appeal by the reviewing court, the clerk of  
16 the court shall remit to the trial court a certified copy of the judgment or order of  
17 the reviewing court and of its opinion, if any. The clerk of the trial court shall file  
18 the certified copy of the judgment and opinion of the reviewing court, shall attach  
19 ~~the same~~ it to the judgment roll if the appeal was from a judgment, and shall enter  
20 a note of the judgment of the reviewing court stating whether the judgment or  
21 order appealed from has been affirmed, reversed or modified, in the margin of the  
22 original entry of the judgment or order, and also in the register of actions ~~or~~  
23 ~~docket~~.

24 **Comment.** Section 912 is amended to delete the reference to a “docket,” because courts no  
25 longer maintain a record denominated a “docket” in civil cases. See former Gov’t Code §§ 71614  
26 (1953 Cal. Stat. ch. 206, § 1, repealed by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court  
27 shall keep a book denominated a “docket”), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by  
28 1977 Cal. Stat. ch. 1257, § 72) (clerk or judge of justice court shall keep the “docket” and other  
29 records of the court). See also Code Civ. Proc. §§ 1052 (clerk of municipal court may keep a  
30 register of civil actions), 1052.1 (alternative methods of keeping register of actions in municipal  
31 court); Gov’t Code §§ 69845 (clerk of superior court may keep a register of actions); 69845.5  
32 (alternative to maintaining register of actions in superior court). For preparation of a “docket” in  
33 criminal actions and proceedings in municipal court, see Penal Code § 1428.

34 **Code Civ. Proc. § 1206 (amended). Asserting preferred labor claim in connection with writ  
35 of attachment or execution**

36 SEC. \_\_\_\_\_. Section 1206 of the Code of Civil Procedure is amended to read:

37 1206. (a) Upon the levy under a writ of attachment or execution not founded  
38 upon a claim for labor, any miner, mechanic, salesman, servant, clerk, laborer or  
39 other person who has performed work or rendered personal services for the  
40 defendant within 90 days prior to the levy may file a verified statement of the  
41 claim ~~therefor~~ for payment for that work or services with the officer executing the  
42 writ, file a copy ~~thereof~~ of that statement with the court that issued the writ, and  
43 give copies ~~thereof~~ of the statement, containing his or her address, to the plaintiff  
44 and the defendant, or any attorney, ~~clerk or~~ clerk, or agent representing them, or  
45 mail copies to them by registered mail at their last known address, return of which

1 by the post office undelivered shall be deemed a sufficient service if no better  
2 address is available, and that claim, not exceeding nine hundred dollars (\$900),  
3 unless disputed, must be paid by the officer, immediately upon the expiration of  
4 the time for dispute of the claim as prescribed in Section 1207, from the proceeds  
5 of the levy remaining in the officer's hands at the time of the filing of the  
6 statement or collectible by the officer on the basis of the writ.

7 (b) The court issuing the writ must make a notation ~~on its docket~~ in the register  
8 of actions of every preferred labor claim of which it receives a copy and must  
9 endorse on any writ of execution or abstract of judgment issued subsequently in  
10 the case that it is issued subject to the rights of a preferred labor claimant or  
11 claimants ~~thereunder~~ and giving the names and amounts of all preferred labor  
12 claims of which it has notice. In levying under any writ of execution the officer  
13 making the levy shall include in the amount due under the execution any and all  
14 preferred labor claims that have been filed in the action and of which the officer  
15 has notice, except any claims that may have been finally disallowed by the court  
16 under the procedure provided for ~~herein~~ in this section and of which disallowance  
17 the officer has actual notice. The amount due on preferred labor claims that have  
18 not been finally disallowed by the court shall be considered a part of the sum due  
19 under any writ of attachment or execution in augmentation of the amount ~~thereof~~  
20 of the writ of attachment or execution and it shall be the duty of any person, firm,  
21 association or corporation on whom a writ of attachment or execution is levied to  
22 immediately pay to the levying officer the amount of the preferred labor claims,  
23 out of any money belonging to the defendant in the action, before paying the  
24 principal sum called for in the writ.

25 (c) If any claim is disputed within the time, and in the manner prescribed in  
26 Section 1207, and a copy of the dispute is mailed by registered mail to the  
27 claimant or the claimant's attorney at the address given in the statement of claim  
28 and the registry receipt is attached to the original of the dispute when it is filed  
29 with the levying officer, or is handed to the claimant or the claimant's attorney,  
30 the claimant, or the claimant's assignee, must within 10 days after the copy is  
31 deposited in the mail or is handed to the claimant or the claimant's attorney  
32 petition the court having jurisdiction of the action on which the writ is based, for a  
33 hearing before it to determine the claim for priority, or the claim to priority is  
34 barred. If more than one attachment or execution is involved, the petition shall be  
35 filed in the court having jurisdiction over the senior attachment or execution. The  
36 hearing shall be held within 20 days from the filing of the petition unless the court  
37 continues it for good cause. Ten days' notice of the hearing shall be given by the  
38 petitioner to the plaintiff and the defendant, and to all parties claiming an interest  
39 in the property, or their attorneys. The notice may be informal and need specify  
40 merely the name of the court, names of the principal parties to the senior  
41 attachment or execution and name of the wage claimant or claimants on whose  
42 behalf it is filed but shall specify that the hearing is for the purpose of determining  
43 the claim for priority. The plaintiff or the defendant, or any other party claiming an

1 interest may contest the amount or validity of the claim in spite of any confession  
2 of judgment or failure to appear or to contest the claim on the part of any other  
3 person.

4 (d) There shall be no cost for filing or hearing the petition and the hearing on the  
5 petition shall be informal but all parties testifying must be sworn. Any claimant  
6 may appear on the claimant's own behalf at the hearing and may call and examine  
7 witnesses to substantiate his or her claim. An appeal may be taken from a  
8 judgment in a proceeding under this section in the manner provided for appeals  
9 from judgments of the court where the proceeding is had, in an action of the same  
10 jurisdictional classification.

11 (e) The officer shall retain in possession until the determination of the claim for  
12 priority so much of the proceeds of the writ as may be necessary to satisfy the  
13 claim, and if the claim for priority is allowed, the officer shall pay the amount due,  
14 including the claimant's cost of suit, from such proceeds, immediately after the  
15 order allowing the claim becomes final.

16 **Comment.** Section 1206 is amended to replace the term "docket" with "register of actions."  
17 The reference to a "docket" is obsolete, because courts no longer maintain a record denominated a  
18 "docket" in civil cases. See former Gov't Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed  
19 by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a book denominated a  
20 "docket"), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk  
21 or judge of justice court shall keep the "docket" and other records of the court). See also Code  
22 Civ. Proc. §§ 1052 (clerk of municipal court may keep a register of civil actions), 1052.1  
23 (alternative methods of keeping register of actions in municipal court); Gov't Code §§ 69845  
24 (clerk of superior court may keep a register of actions); 69845.5 (alternative to maintaining  
25 register of actions in superior court). For preparation of a "docket" in criminal actions and  
26 proceedings in municipal court, see Penal Code § 1428.

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

28 **Food & Agric. Code § 11937 (amended). Certification to director of result in court**

29 SEC. \_\_\_\_\_. Section 11937 of the Food and Agricultural Code is amended to  
30 read:

31 11937. Upon the expiration of 30 days after any judgment becomes final, which  
32 is not stayed or satisfied in any action which results in a judgment for damages,  
33 the clerk of a court, ~~or the judge of a court which has no clerk,~~ shall forward to the  
34 director a certified copy of the judgment or a certified copy of the ~~docket entries in~~  
35 ~~the action~~ register of actions, and a certificate of facts relative to such the  
36 judgment, on a form which is provided by the director.

37 **Comment.** Section 11937 is amended to replace the term "docket" with "register of actions."  
38 The reference to a "docket" is obsolete, because courts no longer maintain a record denominated a  
39 "docket" in civil cases. See former Gov't Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed  
40 by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a book denominated a  
41 "docket"), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk  
42 or judge of justice court shall keep the "docket" and other records of the court). See also Code  
43 Civ. Proc. §§ 1052 (clerk of municipal court may keep a register of civil actions), 1052.1  
44 (alternative methods of keeping register of actions in municipal court); Gov't Code §§ 69845  
45 (clerk of superior court may keep a register of actions); 69845.5 (alternative to maintaining



1 register of actions in superior court). For preparation of a “docket” in criminal actions and  
2 proceedings in municipal court, see Penal Code § 1428.

3 The amendment also deletes the clause authorizing the judge to substitute for the clerk if there  
4 is no clerk. That provision is obsolete because every municipal and superior court has a clerk.  
5 Additionally, a judge has authority to perform any act that a court clerk is allowed to perform.  
6 Code Civ. Proc. § 167.

7 **Gov’t Code § 946.6 (amended). Petition following public entity’s rejection of application to**  
8 **present late claim**

9 SEC. \_\_\_\_\_. Section 946.6 of the Government Code is amended to read:

10 946.6. (a) Where an application for leave to present a claim is denied or deemed  
11 to be denied pursuant to Section 911.6, a petition may be made to the court for an  
12 order relieving the petitioner from Section 945.4. The proper court for filing the  
13 petition is a court which would be a competent court for the trial of an action on  
14 the cause of action to which the claim relates and which is located in a county or  
15 judicial district which would be a proper place for the trial of the action, and if the  
16 petition is filed in a court which is not a proper court for the determination of the  
17 matter, the court, on motion of any party, shall transfer the proceeding to a proper  
18 court. Where an action on the cause of action to which the claim relates would be a  
19 limited civil case, a proceeding pursuant to this section is a limited civil case.

20 (b) The petition shall show each of the following:

21 (1) That application was made to the board under Section 911.4 and was denied  
22 or deemed denied.

23 (2) The reason for failure to present the claim within the time limit specified in  
24 Section 911.2.

25 (3) The information required by Section 910.

26 The petition shall be filed within six months after the application to the board is  
27 denied or deemed to be denied pursuant to Section 911.6.

28 (c) The court shall relieve the petitioner from Section 945.4 if the court finds that  
29 the application to the board under Section 911.4 was made within a reasonable  
30 time not to exceed that specified in subdivision (b) of Section 911.4 and was  
31 denied or deemed denied pursuant to Section 911.6 and that one or more of the  
32 following is applicable:

33 (1) The failure to present the claim was through mistake, inadvertence, surprise,  
34 or excusable neglect unless the public entity establishes that it would be prejudiced  
35 in the defense of the claim if the court relieves the petitioner from Section 945.4.

36 (2) The person who sustained the alleged injury, damage or loss was a minor  
37 during all of the time specified in Section 911.2 for the presentation of the claim.

38 (3) The person who sustained the alleged injury, damage or loss was physically  
39 or mentally incapacitated during all of the time specified in Section 911.2 for the  
40 presentation of the claim and by reason of that disability failed to present a claim  
41 during that time.

42 (4) The person who sustained the alleged injury, damage or loss died before the  
43 expiration of the time specified in Section 911.2 for the presentation of the claim.

1 (d) A copy of the petition and a written notice of the time and place of hearing  
2 thereof shall be served before the hearing as prescribed by subdivision (b) of  
3 Section 1005 of the Code of Civil Procedure on (1) the clerk or secretary or board  
4 of the local public entity, if the respondent is a local public entity, or (2) the  
5 Attorney General, if the respondent is the state. However, if the petition involves a  
6 claim arising out of alleged actions or inactions of the Department of  
7 Transportation, service of the petition and notice of the hearing shall be made on  
8 the Attorney General or the Director of Transportation. Service on the Attorney  
9 General may be accomplished at any of the Attorney General's offices in Los  
10 Angeles, Sacramento, San Diego, or San Francisco. Service on the Director of  
11 Transportation may be accomplished only at the Department of Transportation's  
12 headquarters office in Sacramento.

13 (e) The court shall make an independent determination upon the petition. The  
14 determination shall be made upon the basis of the petition, any affidavits in  
15 support of or in opposition to the petition, and any additional evidence received at  
16 the hearing on the petition.

17 (f) If the court makes an order relieving the petitioner from Section 945.4, suit  
18 on the cause of action to which the claim relates shall be filed with the court within  
19 30 days thereafter.

20 **Comment.** Section 946.6 is amended to clarify the jurisdictional classification of a proceeding  
21 for relief from the requirements of Section 945.4 following rejection of an application for leave to  
22 present a late claim. This is declaratory of existing law. See Code Civ. Proc. § 85 (limited civil  
23 cases) & Comment. See also Code Civ. Proc. §§ 85.1 (original jurisdiction), 88 (unlimited civil  
24 case).

25 **Veh. Code § 16370 (amended). Failure to satisfy judgment for damage from operation of**  
26 **motor vehicle**

27 SEC. \_\_\_\_\_. Section 16370 of the Vehicle Code is amended to read:

28 16370. The department shall suspend the privilege of any person to operate a  
29 motor vehicle upon receiving a certified copy of a judgment, or a certified copy of  
30 the register of actions or the docket entries in an action resulting in a judgment for  
31 damages, and a certificate of facts relative to the judgment, on a form provided by  
32 the department, indicating that the person has failed for a period of 30 days to  
33 satisfy a judgment rendered against him or her.

34 **Comment.** Section 16370 is amended to insert a reference to the "register of actions." A  
35 municipal or superior court maintains a "register of actions" in a civil case, not a "docket." See  
36 Code Civ. Proc. §§ 1052 (clerk of municipal court may keep a register of civil actions), 1052.1  
37 (alternative methods of keeping register of actions in municipal court); Gov't Code §§ 69845  
38 (clerk of superior court may keep a register of actions); 69845.5 (alternative to maintaining  
39 register of actions in superior court). The reference to "docket entries" is retained, because the  
40 provision applies to judgments rendered by courts in other states, as well as judgments rendered  
41 by the municipal and superior courts. Section 16250 ("judgment" defined); see also Section  
42 16251 ("cause of action" defined).

43 **Veh. Code § 16373 (amended). Certification to judgment creditor**

44 SEC. \_\_\_\_\_. Section 16373 of the Vehicle Code is amended to read:

1 16373. (a) The clerk of a court, ~~or the judge of a court which has no clerk,~~ shall,  
2 subject to subdivision (b), issue upon the request of a judgment creditor a certified  
3 copy of any judgment or a certified copy of the register of actions or the docket  
4 entries in an action resulting in a judgment for damages, and a certificate of facts  
5 relative to the judgment on a form provided by the department.

6 (b) The judgment creditor may pay the required fees and request the documents  
7 specified in subdivision (a) upon the expiration of 30 days after the judgment has  
8 become final, if the judgment has not been stayed or satisfied within the amounts  
9 specified in this chapter as shown by the records of the court. The court shall  
10 determine the required fees, which shall be commensurate with the cost incurred  
11 by the court in carrying out this section.

12 **Comment.** Section 16373 is amended to insert a reference to the “register of actions.” A  
13 municipal or superior court maintains a “register of actions” in a civil case, not a “docket.” See  
14 Code Civ. Proc. §§ 1052 (clerk of municipal court may keep a register of civil actions), 1052.1  
15 (alternative methods of keeping register of actions in municipal court); Gov’t Code §§ 69845  
16 (clerk of superior court may keep a register of actions); 69845.5 (alternative to maintaining  
17 register of actions in superior court). The reference to “docket entries” is retained, because the  
18 provision applies to judgments rendered by courts in other states, as well as judgments rendered  
19 by the municipal and superior courts. Section 16250 (“judgment” defined); see also Section  
20 16251 (“cause of action” defined).

21 The amendment also deletes the clause authorizing the judge to substitute for the clerk if there  
22 is no clerk. That provision is obsolete because every municipal and superior court has a clerk.  
23 Additionally, a judge has authority to perform any act that a court clerk is allowed to perform.  
24 Code Civ. Proc. § 167.

25 **Veh. Code § 16379 (amended). Payment of judgment in installments**

26 SEC. \_\_\_\_\_. Section 16379 of the Vehicle Code is amended to read:

27 16379. (a) The department shall not suspend a license and shall restore any  
28 suspended license following nonpayment of a final judgment when the judgment  
29 debtor gives proof of financial responsibility for future damages and when the trial  
30 court in which the judgment was rendered orders the payment of the judgment in  
31 installments and while the payment of any installment payment is not in default.

32 (b) Whenever the trial court orders the payment of a judgment in installments as  
33 provided in this section, upon payment of the required fees by the judgment  
34 creditor, it shall forward a certified copy of the order to the department, together  
35 with a certified copy of the judgment or a certified copy of the register of actions  
36 or the docket entries in an action resulting in a judgment for damages and a  
37 certificate of facts relative to the judgment on a form provided by the department.

38 (c) The court shall determine the required fees, which shall be commensurate  
39 with cost incurred by the court in carrying out the provisions of this section.

40 **Comment.** Section 16379 is amended to insert a reference to the “register of actions.” A  
41 municipal or superior court maintains a “register of actions” in a civil case, not a “docket.” See  
42 Code Civ. Proc. §§ 1052 (clerk of municipal court may keep a register of civil actions), 1052.1  
43 (alternative methods of keeping register of actions in municipal court); Gov’t Code §§ 69845  
44 (clerk of superior court may keep a register of actions); 69845.5 (alternative to maintaining  
45 register of actions in superior court). The reference to “docket entries” is retained, because the

1 provision applies to judgments rendered by courts in other states, as well as judgments rendered  
2 by the municipal and superior courts. Section 16250 (“judgment” defined); see also Section  
3 16251 (“cause of action” defined).

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