

Memorandum 2001-3

Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases (Draft Recommendation)

At the December meeting, the Commission reviewed a draft of a final recommendation on *Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases*. A new draft, revised as directed by the Commission, is attached. This draft covers the following topics:

- (1) Special pleading rules for personal injury or wrongful death (Code Civ. Proc. §§ 425.10, 425.11).
- (2) Attachment undertaking (Code Civ. Proc. § 489.220).
- (3) Waiver of jury demand (Code Civ. Proc. § 631).
- (4) Satisfaction of judgment (Code Civ. Proc. § 685.030).
- (5) Undertaking for third-party claims (Code Civ. Proc. §§ 720.160, 720.260).
- (6) Confession of judgment (Code Civ. Proc. § 1134).
- (7) Implied court authority in limited and unlimited civil cases (Proposed Code Civ. Proc. § 89).
- (8) Filing fee for first paper in limited civil case (Gov't Code § 72055).

The Judicial Council is still in the process of considering the proposed reforms. Due to legislative deadlines, however, Commission staff and staff from the Administrative Office of the Courts ("AOC") have submitted a bill draft to Legislative Counsel (covering all of the proposals except the ones on undertakings) and taken steps to find an author. The current status of each of the proposals at the Judicial Council is discussed below, as well as some suggestions from Prof. William Slomanson (Thomas Jefferson School of Law). The Judicial Council will consider several of the proposals on January 31 (the day before the upcoming Commission meeting), so we will update the Commission orally as to the results of that meeting. At that point, it may be possible to finalize a recommendation as to at least some of the proposed reforms.

SPECIAL PLEADING RULES FOR PERSONAL INJURY OR WRONGFUL DEATH
(CODE CIV. PROC. §§ 425.10, 425.11)

Code of Civil Procedure Sections 425.10 and 425.11 set forth special rules for pleading damages in an unlimited civil case for personal injury or wrongful death. The attached draft proposes to extend those special pleading rules to all actions for personal injury or wrongful death, regardless of the jurisdictional classification of the case. In December, the Policy Coordination and Liaison Committee of the Judicial Council (“Policy Committee”) recommended approval of this proposed reform. The proposal is on the consent calendar for the Judicial Council’s meeting on January 31.

ATTACHMENT UNDERTAKING (CODE CIV. PROC. § 489.220)

Code of Civil Procedure Section 489.220 requires an attachment undertaking of \$2,500 in a limited civil case and \$7,500 in an unlimited civil case. Where the fixed amount is insufficient to cover the defendant’s probable recovery for wrongful attachment, the court may require that the undertaking be increased.

In its tentative recommendation, the Commission proposed that the distinction between attachment undertakings in limited and unlimited civil cases be eliminated. Due to inflation, the Commission further recommended that the amount of the initial undertaking be increased to \$10,000.

As discussed at the October meeting, the Joint Legislative Subcommittee of the Court Executives Advisory Committee and Trial Court Presiding Judges Advisory Committee (“Joint Legislative Subcommittee”) of the Judicial Council recommended approval of these reforms. The Judicial Council’s Civil and Small Claims Advisory Committee (“Civil and Small Claims Advisory Committee”) reached a different conclusion, recommending that the reforms be approved but the court be given discretion to lower, as well as raise, the initial undertaking amount.

Faced with this conflict, the Commission decided to stick with the proposal in the tentative recommendation. (October Minutes, p. 9.) The Commission directed the staff to revise the preliminary part (narrative discussion) of its proposal to more fully explain the reasons for requiring a \$10,000 minimum undertaking. (*Id.*)

The staff has revised the proposal as directed. See pages 6-8 of the attached draft.

AOC staff plan to present this matter to the Civil and Small Claims Advisory Committee for further consideration, perhaps on January 31. The Judicial Council's position on the Commission's approach will not be resolved before the Commission meets on February 1-2.

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

The tentative recommendation proposed a number of reforms of Code of Civil Procedure Section 631(b), which applies in an unlimited civil case where a party waives a jury after having demanded one. On considering this proposal, the Joint Legislative Subcommittee and the Civil and Small Claims Advisory Committee recommended that the procedures governing jury waivers be studied in-depth, addressing issues such as:

- Should the statute or a rule prescribe how and when a jury trial should be demanded?
- Should the provision allowing one party to rely on another's demand for a jury and payment of fees be retained? If not, how will the courts handle multiple payments of fees for the same jury?
- What are the consequences of failure to post jury fees or to notify other parties of a jury waiver?
- What procedures will protect both the parties' rights to a jury trial and the court's interest in efficiency?

At the October meeting, the Commission considered whether the reforms in the tentative recommendation should be delayed pending completion of such an in-depth study. The Commission decided that the proposal should go forward but should be revised in certain respects. (October Minutes, pp. 9-11.)

After the October meeting, Commission staff asked AOC staff whether the Judicial Council would support the revised proposal as an interim step pending further study of jury waivers. AOC staff raised this issue with the Civil and Small Claims Advisory Committee, which recommended approval of the proposal with further revisions.

At the December meeting, the Commission rejected the approach of the Civil and Small Claims Advisory Committee, but approved a number of revisions to address the committee's concerns. (December Minutes, pp. 14-16; see also Memorandum 2000-83, pp. 7-11.) AOC staff have since presented the proposal as

so revised to the Case Management Subcommittee of the Civil and Small Claims Advisory Committee (“Case Management Subcommittee”).

The Case Management Subcommittee did not approve the Commission’s revised proposal. The subcommittee expressed the following concerns:

- (1) *Possible implication that the court might be required to provide notice.* The subcommittee reportedly concluded that the proposed amendment of Section 631 might be interpreted to imply that the court has a duty to provide notice of a jury waiver. This concern seems unwarranted, because Section 631 as the Commission proposes to amend it would state in part: “If the party who waived a trial by jury does not promptly notify all other parties of the waiver, any other party, or the clerk or judge, *may provide notice of the waiver, but is not required to do so.* (Emphasis added.) The Comment further explains that if the party who waives a jury after demanding one “fails to provide notice of the waiver as required, another party (or the clerk or judge) is *permitted but not required to provide the notice instead.* (Emphasis added.)
- (2) *Potential gamesmanship relating to jury waivers.* The subcommittee reportedly also voiced concern regarding possible gamesmanship with respect to jury waivers. To our knowledge, the subcommittee did not identify any specific problems along these lines that might result from the Commission’s proposal.

The subcommittee proposed that a small joint working group on jury waivers be created, consisting of members of:

- The Civil and Small Claims Advisory Committee
- The Presiding Judges Advisory Committee
- The Court Executives Advisory Committee
- The Law Revision Commission

According to AOC staff, it is contemplated that the proposed working group might be able to prepare legislation for enactment still this year. Apparently, however, a cooperative effort of this type (involving a group comprised of representatives of several Judicial Council committees) has not previously been used by the Judicial Council. It would be an experiment, even if the Law Revision Commission did not participate.

Notably, the proposed working group is similar to an approach that the Commission favored earlier in this study, which the Judicial Council rejected:

Joint working group develops proposal, then seeks approval from each entity. The Judicial Council and Law Revision Commission would create a joint working group to conduct this study, comprised of members of the Judicial Council and the Law Revision Commission who are especially interested in this study. The joint working group would develop one or more proposals. After the joint working group approves a proposal, members of the group would present the proposal to their respective entities for consideration and approval (e.g., a Commissioner who serves on the working group would present the proposal to the Law Revision Commission; a Judicial Council member who serves on the working group would present the proposal to the Judicial Council). ...[T]he objective would be to develop joint recommendations to the Legislature.

(Memorandum 99-88, Exhibit p. 1.) An important difference between this approach and the one now being proposed is that the Commission contemplated that Judicial Council members would participate in the working group, whereas the Case Management Subcommittee does not.

In assessing whether to participate in the proposed working group on jury waivers, the Commission should also be aware of two issues raised by Prof. Slomanson, one of the panelists for this study. In reviewing a draft of the Commission's proposal, he questioned whether it is really necessary to deposit jury fees 25 days before trial, as Code of Civil Procedure Section 631 requires. Setting the deadline closer to the trial date would eliminate the need to deposit jury fees in many cases, because many cases settle as trial approaches. (Email from Prof. Slomanson to Nat Sterling & Barbara Gaal (Jan. 18, 2001).) Prof. Slomanson also observed where a party waives a jury after demanding one, Section 631 only allows an *adverse* party to demand a jury. He questions whether this limitation is appropriate. (*Id.*) With regard to each of these issues, he recognizes that they go beyond the scope of the study on unnecessary procedural differences between limited and unlimited civil cases. (*Id.*)

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

Code of Civil Procedure Section 685.030 permits the clerk of court to record a satisfaction of judgment in a limited civil case where there is an interest deficit of \$10 or less. The attached draft proposes to extend that rule to unlimited civil cases. In December, the Policy Committee recommended approval of this

proposed reform. The proposal is on the consent calendar for the Judicial Council's meeting on January 31.

UNDERTAKING FOR THIRD-PARTY CLAIMS
(CODE CIV. PROC. §§ 720.160, 720.260)

Code of Civil Procedure Sections 720.160 and 720.260 require a creditor's undertaking to maintain a levy on property where there has been a third-party claim to the property. The amount of the undertaking is \$2,500 in an limited civil case and \$7,500 in an unlimited civil case. The beneficiary of the undertaking may seek an increase of the undertaking amount, but the party who files the undertaking may not apply for a reduction of the amount. (The court may, however, order a reduction if the beneficiary objects to the undertaking and the court finds that the amount of the undertaking exceeds the probable recovery of the beneficiary if the beneficiary ultimately prevails. Code Civ. Proc. § 720.770.)

The tentative recommendation proposed to eliminate the differentiation between limited and unlimited civil cases as to the undertaking amount where there is a third-party claim. The Commission further recommended that the amount be increased to \$10,000, to parallel the proposal on attachment undertakings.

The Joint Legislative Subcommittee recommended approval of these reforms. As in the attachment context, however, the Civil and Small Claims Advisory Committee recommended approval with a caveat: The party who files the undertaking should be permitted to seek, and the court allowed to grant, a reduction of the initial undertaking amount.

The Commission considered this input and decided not to change its proposed approach. (October Minutes, p. 9.) The Commission directed the staff to revise the narrative discussion of the proposal to more fully explain the reasons for requiring a \$10,000 minimum undertaking. (*Id.*)

The staff has revised the proposal as directed. See pages 12-13 of the attached draft.

AOC staff plan to present this matter to the Civil and Small Claims Advisory Committee for further consideration, perhaps on January 31. The Judicial Council's position on the Commission's approach will not be resolved before the Commission meets on February 1-2.

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

This proposal was supposed to be presented to the Policy Committee in December as part of the Trial Court Funding Act package, but was inadvertently omitted from the agenda. It will be included on the Policy Committee's agenda for January 31, as part of a second set of proposals relating to the Trial Court Funding Act. If the Policy Committee recommends approval, the proposal will still have to go to the Judicial Council for consideration, perhaps at its meeting on February 22, 2001.

IMPLIED COURT AUTHORITY IN LIMITED AND UNLIMITED CIVIL CASES (PROPOSED CODE CIV. PROC. § 89)

The tentative recommendation proposed to add a new provision to the Code of Civil Procedure:

89. (a) The existence of a statute relating to the authority of the court in a limited civil case does not, by itself, imply that the same authority does or does not exist in an unlimited civil case.

(b) The existence of a statute relating to the authority of the court in an unlimited civil case does not, by itself, imply that the same authority does or does not exist in a limited civil case.

The purpose of this provision would be to provide guidance in interpreting statutory provisions that expressly authorize particular conduct in a limited civil case but are silent as to an unlimited civil case, or vice versa.

The Joint Legislative Subcommittee and the Civil and Small Claims Advisory Committee recommended approval of this proposal. In December, the Policy Committee also voted in favor of it. The proposal is on the discussion calendar for the Judicial Council's meeting on January 31.

Among the issues likely to be discussed is whether proposed Section 89 is likely to be overlooked by practitioners. It has been suggested instead of adding Section 89, similar language should be inserted in each provision that grants authority in a limited civil case but is silent as to an unlimited civil case, or vice versa.

Significantly, the Commission started this endeavor by considering two such provisions: Code of Civil Procedure Section 402.5 (which permits a superior court to transfer a limited civil case to another court location in the county, but is silent as to transfer of an unlimited civil case) and Code of Civil Procedure Section

582.5 (which authorizes the court to enter an installment judgment in a limited civil case but is silent as to an unlimited civil case). (See Memorandum 2000-55, Attachment pp. 9-10, 14-17.) The Commission considered amending these provisions to expressly cover an unlimited civil case, but decided that proposed Section 89 was a better approach. The approach now under discussion within the Judicial Council is a third alternative. At this point, however, there is no assurance that the Judicial Council would support it, even if the Commission revises its proposal along those lines.

FILING FEE FOR FIRST PAPER IN LIMITED CIVIL CASE
(GOV'T CODE § 72055)

Under Government Code Section 72055, the filing fee for the first paper in a limited civil case is \$83 if the amount of the demand is \$10,000 or less, and \$90 if the demand exceeds \$10,000. To facilitate determination of the applicable fee, the statute further requires that the amount of the demand be stated on the first page of the paper, immediately below the caption.

The latter requirement is inconsistent with the proposal to extend the special pleading rules for personal injury or wrongful death to a limited civil case (see “Special Rules for Personal Injury or Wrongful Death, *supra*). Thus, a conforming revision of Government Code Section 72055 is necessary.

At least two approaches are possible: (1) preserving the fee differential between larger (over \$10,000) and smaller (\$10,000 or under) limited civil cases, while clarifying whether the first paper in a limited civil case for personal injury or wrongful death should include any reference to the size of the demand, or (2) eliminating the differential between larger and smaller limited civil cases, thus eliminating the need to refer to the size of the demand in any way in the first paper (other than stating that the case is a limited civil case, as required by Code of Civil Procedure Section 422.30).

In the interest of simplicity and administrative efficiency, the Commission decided to follow the latter approach, approving an amendment along the following lines at the December meeting:

Gov't Code § 72055 (amended). First filing fee in limited civil case
SEC. 10. Section 72055 of the Government Code is amended to read:

72055. (a) ~~The total fee for filing of the first paper in a limited civil case, case shall be ninety dollars (\$90), except that in cases where the amount demanded, excluding attorney's fees and costs, is ten thousand dollars (\$10,000) or less, the fee shall be eighty-three dollars (\$83). The amount of the demand shall be stated on the first page of the paper immediately below the caption eighty-five dollars (\$85).~~

....

Comment. For purposes of simplification, Section 72055 is amended to establish a uniform filing fee for filing the first paper in a limited civil case, regardless of the amount of the demand. Formerly, the amount of the fee depended on whether the demand exceeded \$10,000, or was \$10,000 or less. 1998 Cal. Stat. ch. 931, § 315; see also 1992 Cal. Stat. ch. 696, § 73; 1997 Cal. Stat. ch. 850, § 37.

Section 72055 is further amended to delete the requirement that the amount of the demand be stated on the first page of the first paper immediately below the caption. This requirement is no longer necessary, because the amount of the demand no longer affects the amount due under the statute. To permit differentiation between limited and unlimited civil cases, however, a plaintiff in a limited civil case is still required to state in the caption that the case is a limited civil case. Code Civ. Proc. § 422.30 (caption).

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

The intent was to achieve a proposal that would neither increase nor decrease the revenue of the courts. The \$85 figure was based on preliminary information from the AOC.

In December, the Policy Committee also recommended approval of an amendment along these lines, subject to further data-gathering on the appropriate dollar figure to make the proposal revenue-neutral. The proposal will be on the agenda for the Judicial Council's meeting on January 31.

Apparently, however, data on the appropriate dollar figure are not clear-cut. The Judicial Council may opt to preserve the existing fee differential, rather than eliminating it. We should know its decision by the time that the Commission meets.

One means of preserving the existing fee differential while conforming Section 72055 to the proposed amendments on personal injury and wrongful death would be as follows:

Gov't Code § 72055 (amended). First filing fee in limited civil case
SEC. 10. Section 72055 of the Government Code is amended to read:

72055. (a) The total fee for filing of the first paper in a limited civil case, shall be ninety dollars (\$90), except that in cases where the amount demanded, excluding attorney's fees and costs, is ten thousand dollars (\$10,000) or less, the fee shall be eighty-three dollars (\$83). The Except as provided in subdivision (e), the amount of the demand shall be stated on the first page of the paper immediately below the caption.

....

(e) Notwithstanding Code of Civil Procedure Section 425.10, in a limited civil case for personal injury or wrongful death the first page of the first paper shall state whether the demand exceeds \$10,000, but shall not state the precise amount of the demand.

Comment. Section 72055 is amended to reflect that the special pleading rules for personal injury and wrongful death (Code Civ. Proc. §§ 425.10, 425.11) have been extended to limited civil cases.

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

Another alternative would be to eliminate the requirement that the amount of the demand be stated in the first paper, and leave it to the Judicial Council to provide by rule for a method by which the clerk of court can determine which fee to charge. Because any rule must be consistent with statute, and because Section 425.10 would prohibit stating the amount of the demand in a complaint for personal injury or wrongful death, the Judicial Council could not require by rule that the complaint in a limited civil case for personal injury or wrongful death disclose whether the demand exceeds \$10,000. This information could, however, be required in another document, such as a civil cover sheet.

We will discuss this matter further at the Commission meeting.

Respectfully submitted,

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#J-1320

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft RECOMMENDATION

Unnecessary Procedural Differences
Between Limited and Unlimited Civil Cases

January 2001

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SUMMARY OF RECOMMENDATION

1 To identify opportunities for simplification, the California Law Revision
2 Commission reviewed statutes that differentiate between limited and unlimited
3 civil cases. The Commission recommends the following reforms:

4 (1) The same rules for pleading damages should apply in all actions for
5 personal injury or wrongful death, regardless of the jurisdictional
6 classification of the case. Code Civ. Proc. §§ 425.10, 425.11.

7 (2) The distinction between attachment undertakings in limited and
8 unlimited civil cases should be eliminated, and the amount of the initial
9 undertaking increased to \$10,000. Code Civ. Proc. § 489.220.

10 (3) The statutory protection regarding waiver of a jury demand should be
11 extended to limited civil cases. Code Civ. Proc. § 631.

12 (4) The clerk of court should be permitted to record a satisfaction of
13 judgment where there is an interest deficit of \$10 or less in an unlimited
14 civil case, not just in a limited civil case. Code Civ. Proc. § 685.030.

15 (5) The differentiation between limited and unlimited civil cases as to the
16 amount of a creditor's undertaking where there is a third-party claim
17 should be eliminated. Code Civ. Proc. §§ 720.160, 720.260.

18 (6) The same filing fee should be required for all confessions of judgment,
19 regardless of the size of the claim. Code Civ. Proc. § 1134.

20 (7) A provision on statutory interpretation should be added to negate any
21 implied limitation on court authority in limited and unlimited civil
22 cases. Proposed Code Civ. Proc. § 89.

23 (8) The same filing fee should be required for the first paper in all limited
24 civil cases, regardless of the size of the demand. Gov't Code § 72055.

25 This recommendation was prepared pursuant to Government Code Section
26 70219.

ELIMINATION OF UNNECESSARY PROCEDURAL DIFFERENCES BETWEEN LIMITED AND UNLIMITED CIVIL CASES

1 The California codes include provisions that distinguish between limited civil
2 cases and unlimited civil cases. In some instances, this complexity may not be
3 necessary. To simplify and improve civil procedure, the California Law Revision
4 Commission recommends elimination of some of the procedural distinctions
5 between limited and unlimited civil cases.

B A C K G R O U N D

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

13 Numerous statutory revisions were necessary to implement trial court
14 unification. At the direction of the Legislature,⁵ the Law Revision Commission
15 reviewed the codes and drafted extensive implementing legislation.⁶ The statutory
16 revisions⁷ were narrowly limited to generally preserve existing procedures but
17 make them workable in the context of unification.⁸

18 To that end, the term “limited civil case” was introduced to refer to civil actions
19 traditionally within the jurisdiction of the municipal court,⁹ and the term

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

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

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

4. Cal. Const. art. VI, § 5(e).

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

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

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

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

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

1 “unlimited civil case” was introduced to refer to civil actions traditionally within
2 the jurisdiction of the superior court.¹⁰ Provisions prescribing municipal court
3 procedures were revised to apply to limited civil cases;¹¹ provisions prescribing
4 traditional superior court procedures were revised to apply to unlimited civil
5 cases.¹²

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

METHODOLOGY

11 Statutory provisions using the terms “limited civil case” or “unlimited civil case”
12 were identified through computer searches. Of the provisions identified, many
13 simply state that a particular type of action is a limited civil case.¹⁵ A few are
14 definitional or otherwise fundamental provisions.¹⁶ Still other provisions establish
15 procedural distinctions between limited and unlimited civil cases, but are being
16 dealt with in another context.¹⁷

17 Staff from the Commission and the Administrative Office of the Courts
18 (“AOC”) analyzed the remaining provisions, assessing whether the distinctions
19 between limited and unlimited civil cases should be eliminated, and whether the
20 provisions should be revised in other respects. The Commission then reviewed the

10. Code Civ. Proc. § 88 & Comment.

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

12. See, e.g., Code Civ. Proc. § 564.

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

14. Gov’t Code § 70219. A consultative panel of experts has been selected to assist in this endeavor. The panel consists of Prof. Walter Heiser (University of San Diego School of Law), Prof. Deborah Hensler (Stanford Law School), Prof. Richard Marcus (Hastings College of Law), Hon. William Schwarzer, ret. (U.S.D.C., N. Dist. Cal.), Prof. William Slomanson (Thomas Jefferson Law School), and Prof. Keith Wingate (Hastings College of Law). Others who have assisted with this study include Prof. David Jung (Hastings College of Law), Prof. J. Clark Kelso (McGeorge School of Law), and Larry Sipes (President Emeritus, National Center for State Courts).

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

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

17. These include provisions relating to appellate jurisdiction, appointment of receiver, court reporters and electronic recording, economic litigation procedures, filing and transmittal fees, judicial arbitration, relief awardable, and writ jurisdiction. See Commission Staff Memorandum 2000-55 (July 7, 2000), Attachment pp. 5-7.

1 staff recommendations.¹⁸ Having studied the provisions, the Law Revision
2 Commission recommends reforms in the following areas:¹⁹

- 3 • Pleading personal injury and wrongful death damages
- 4 • Undertaking to obtain writ of attachment or protective order
- 5 • Waiver of jury
- 6 • Satisfaction of judgment
- 7 • Undertaking of creditor in case of third-party claim
- 8 • Confession of judgment
- 9 • Implied court authority in limited and unlimited civil cases
- 10 • Filing fee for the first paper in a limited civil case

11 Each topic is addressed in order below.

12 It should be noted that this statutory review and simplification effort is prompted
13 by unification of the trial courts. The trial courts in Kings County have not yet
14 unified.²⁰ However, the simplifications recommended here are limited to those that
15 will work well and will modestly improve court procedures, regardless of whether
16 the courts in a county have unified.

17 PLEADING PERSONAL INJURY AND WRONGFUL DEATH
18 DAMAGES (CODE CIV. PROC. §§ 425.10, 425.11)

19 Under Code of Civil Procedure Section 425.10, if a plaintiff demands recovery
20 of money or damages, the complaint must state the amount of the demand. In an
21 action brought in superior court for personal injury or wrongful death, however,
22 the complaint may not include the amount of the demand, except in a limited civil
23 case:

24 425.10. A complaint or cross-complaint shall contain both of the following:

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

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

18. The Judicial Council is undertaking its own review of the staff recommendations.

19. These are recommendations of the Commission. They do not necessarily reflect official positions of the Judicial Council, the AOC, or AOC staff.

20. Kings County recently obtained preclearance of trial court unification under the Voting Rights Act.

1 It is natural to ask whether there is a good reason for distinguishing between
2 limited and unlimited cases in pleading damages for personal injury or wrongful
3 death.

4 The Legislature first enacted the statutory prohibition on pleading damages for
5 personal injury or wrongful death in 1974.²¹ The California Medical Association
6 supported the legislation, which addressed a concern that inflated claims in
7 multimillion dollar malpractice lawsuits tend to attract sensational media coverage
8 and unfairly cast physicians in a bad light.²²

9 The provision presents due process and fairness issues, because it does not put
10 the defendant on notice of the extent of potential liability. Those issues are
11 addressed in Code of Civil Procedure Section 425.11,²³ which provides for a
12 separate notice of the claimed damages:

13 425.11. (a) As used in this section:

14 (1) "Complaint" includes a cross-complaint.

15 (2) "Plaintiff" includes a cross-complainant.

16 (3) "Defendant" includes a cross-defendant.

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

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

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

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

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

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

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

22. See *Review of Selected 1974 California Legislation*, 6 Pac. L.J. 216-17 (1975); Schwab v. Rondel Homes, Inc., 53 Cal. 3d 428, 808 P.2d 226, 280 Cal. Rptr. 83 (1991).

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

1 A default judgment in a case governed by this section may not exceed the amount
2 that the plaintiff claims in the statement of damages.²⁴

3 Like the prohibition on pleading damages, the requirement of a separate notice
4 of damages does not apply in a limited civil case.²⁵ To the Commission’s
5 knowledge, the reason for excluding such cases from the special pleading rules is
6 nowhere expressly stated. It is likely, however, that the concern about grossly
7 inflated damage claims is less acute in a limited civil case than in an unlimited
8 civil case, because the maximum amount in controversy in a limited civil case is
9 \$25,000.²⁶

10 It does not appear productive to consider eliminating the prohibition on pleading
11 damages or the requirement of a separate notice of damages in an unlimited case
12 for personal injury or wrongful death. These special rules are politically based.
13 There is no indication that those who obtained their enactment are dissatisfied with
14 the rules. Although the rules have received some criticism from other sources,²⁷ it
15 is unlikely that they could be eliminated.

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

25. Before unification, those provisions were limited to an action in superior court. See *Revision of Codes*, *supra* note 6, at 182-83.

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

27. The Judicial Council opposed enactment of the provision in 1974, raising questions “as to its efficacy as well as to its constitutionality.” *Review of Selected 1974 California Legislation*, 6 Pac. L. J. 216-17 (1975). Justice Mosk sharply criticized the statute in a 1991 dissent:

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

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

Schwab v. Rondel Homes, Inc., 53 Cal. 3d 428, 440-41, 808 P.2d 226, 280 Cal. Rptr. 83 (1991).

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

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

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

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

8 But for the practitioner, as well as for judges, it is probably better to have the
9 same pleading rules for personal injury and wrongful death cases, regardless of the
10 jurisdictional classification of the case as limited or unlimited. Moreover, if the
11 jurisdictional amounts are increased in the future, some of the same policy
12 concerns about inflated claims in unlimited civil cases might surface in limited
13 civil cases. For these reasons, the proposed law would revise Sections 425.10 and
14 425.11 to conform the pleading requirements for all personal injury and wrongful
15 death cases.²⁸ Regardless of the jurisdictional classification of the case, the
16 prohibition on pleading damages and the requirement of a separate notice of
17 damages would apply.

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

18 Code of Civil Procedure Section 489.220 provides for an undertaking as a
19 prerequisite to issuance of a writ of attachment. The undertaking is \$2,500 in a
20 limited civil case and \$7,500 in an unlimited civil case.²⁹

21 This provision has its origin in the pre-1974 attachment statute, which provided
22 simply for an undertaking in one-half the principal amount of the total
23 indebtedness or damages claimed, excluding attorney's fees.³⁰ The court was
24 permitted to decrease the amount on ex parte application of the plaintiff, if the
25 court was satisfied that a lower amount would adequately protect the defendant.³¹
26 The court could also increase the required undertaking on the defendant's motion,
27 but the statute gave no guidance as to the increased amount.³²

28 This scheme was changed in the Attachment Law of 1974 to provide for a fixed
29 undertaking amount: \$2,500 in municipal court proceedings, and \$7,500 in

28. Code of Civil Procedure Sections 425.115 (statement of punitive damages) and 425.12 (Judicial Council forms for statements of damages) would not require revision. A conforming revision of Government Code Section 72055 is necessary, because that provision requires that the amount of the demand in a limited civil case be stated on the first page of the first paper immediately below the caption. See "Filing Fee for First Paper in a Limited Civil Case" *infra*.

29. For the text of Code of Civil Procedure Section 489.220, see "Proposed Legislation" *infra*.

30. 1973 Cal. Stat. ch. 20, § 6 (former Code Civ. Proc. § 539(a)).

31. 1973 Cal. Stat. ch. 20, § 6 (former Code Civ. Proc. § 539(a)).

32. *Id.*; see also *Recommendation Relating to Prejudgment Attachment*, 11 Cal. L. Revision Comm'n Reports 701, 738 (1973).

1 superior court proceedings.³³ The defendant could object to the amount of the
2 undertaking on the ground that it was less than the probable recovery for wrongful
3 attachment. If the court determined that the amount was insufficient, the
4 undertaking was to be increased to the amount of the probable recovery for
5 wrongful attachment.³⁴

6 This approach had several advantages over the earlier scheme. Because the fixed
7 undertaking amounts were “arbitrary but modest,”³⁵ they were affordable for
8 plaintiffs. This was not always true under the previous scheme, because the
9 undertaking amount depended on the amount of the plaintiff’s claim, which could
10 be so large as to prohibit an attachment.³⁶ By permitting the defendant to seek an
11 increase in the undertaking amount, but expressly tying the amount of any increase
12 to the probable recovery for wrongful attachment, the new provision also protected
13 the defendant to a more appropriate and more predictable extent than the previous
14 statute.³⁷ The new approach was also simple to administer, because the initial
15 undertaking amounts were always the same and the amounts could only be
16 increased, not decreased.

17 Trial court unification led to the current scheme in 1998. The undertaking is
18 \$2,500 in a limited civil case, and \$7,500 in an unlimited civil case.³⁸ As before, if
19 the fixed amount is insufficient, the court may increase the undertaking to the
20 amount of the probable recovery for wrongful attachment.

21 Is it still useful to distinguish between limited and unlimited civil cases in fixing
22 the initial amount of the attachment undertaking? The function of the undertaking
23 is to ensure that funds are available to compensate the defendant for any damages
24 that may result from a wrongful attachment.³⁹ For this purpose, the jurisdictional
25 classification of the case as limited (\$25,000 or less in controversy) or unlimited
26 (more than \$25,000 in controversy)⁴⁰ bears little or no relationship to the amount
27 of damage that the defendant may sustain due to a wrongful attachment.

28 Moreover, the amount of the initial undertaking in today’s dollars is even more
29 modest in light of its intended purpose than it was in 1974.⁴¹ It provides very little

33. 1974 Cal. Stat. ch. 1516, § 9.

34. *Id.*; see also *Prejudgment Attachment*, *supra* note 32, at 738, 833-34.

35. Commission Staff Memorandum 73-95 (Oct. 25, 1973), at 5.

36. See *id.* at 4 (referring to the “apparent unfairness of requiring a large bond where the only property subject to attachment has a much smaller value”).

37. *Id.* at 4-5.

38. See *Revision of Codes*, *supra* note 6, at 183-84.

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

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

41. Inflation has eroded the protection provided by the statute. A \$2,500 undertaking in 1974 would be the equivalent of over \$9,000 in 1999 dollars. (This amount was determined using “The Inflation

1 protection to the defendant against the potentially devastating effects of a wrongful
2 attachment (e.g., forcing the defendant out of business). The defendant's only real
3 protection lies in the ability to obtain a court-ordered increase in the amount of the
4 undertaking.

5 Because the amounts of the undertakings required by Section 489.220 are
6 inadequate, and the rationale for the undertakings does not support a differential
7 based on the jurisdictional classification of the case, the statute should be revised.
8 The Commission recommends that the distinction between attachment
9 undertakings in limited and unlimited civil cases be eliminated, and that the
10 amount of the initial undertaking be increased to \$10,000 to account for inflation
11 since 1974. Although this figure may not be adequate in every case, it would be
12 more realistic than the current \$2,500 and \$7,500 amounts, it would be subject to
13 upward adjustment where needed, and it would be simpler than having two
14 different undertaking amounts.

15 As under existing law, the court would not be authorized to decrease the amount
16 of the undertaking. An undertaking of \$10,000 is minimal in view of the potential
17 harm to the defendant from a wrongful attachment. The likelihood that a smaller
18 amount would suffice is small. Certainly, the amount should not be reduced
19 without first affording the defendant adequate notice and an opportunity to be
20 heard. Nor would it make sense to permit a plaintiff to file a \$10,000 undertaking,
21 attach property, and then apply for a reduction in the amount of the undertaking.
22 The difference between the premium for a \$10,000 undertaking and the premium
23 for a smaller undertaking would not be large enough to justify the costs that such a
24 procedure would impose on the court and the litigants.

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

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

29 In a superior court action, other than a limited civil case, if a jury is demanded
30 by either party in the memorandum to set the cause for trial and the party, prior to
31 trial, by announcement or by operation of law, waives a trial by jury, then all
32 adverse parties shall have five days following the receipt of notice of the waiver to
33 file and serve a demand for a trial by jury and to deposit any advance jury fees
34 that are then due.

35 This language was added to the statute in 1941 to overturn case law holding that
36 a party who relies on an adverse party's jury demand is not entitled to a jury if the

Calculator" found at <<http://www.westegg.com/inflation/>>, a website created and maintained by S. Morgan Friedman, as modified Jan. 19, 2000. The adjustments are based on the Consumer Price Index from 1800-1999.

1 demand is withdrawn or abandoned.⁴² As the court explained in *DeCastro v. Row*,
2 the 1941 amendment “eliminated such a harsh rule.”⁴³ The amendment’s “purpose
3 and philosophy was to permit a party to rely on another party’s demand and
4 deposit of fees.”⁴⁴

5 It is not clear why the 1941 legislation cured the problem only as to cases in
6 superior court, and not as to cases in other courts. The reference in subdivision (b)
7 to superior court cases was revised in 1998 to exclude limited civil cases, in order
8 to accommodate trial court unification.⁴⁵ But the policy supporting this limitation
9 was not reexamined.⁴⁶

10 The limitation to superior court cases was criticized immediately on enactment.
11 In *The Work of the 1941 California Legislature*,⁴⁷ Professor Stanley Howell
12 observes:

13 This amendment apparently takes care of the situation in actions in superior
14 courts, where the difficulty probably was more acute due to the procedure
15 followed in such courts in setting cases for trial. However, the same difficulty can
16 arise in an action in any court and it is to be regretted that the remedial
17 amendment under discussion was limited to superior courts.

18 The Commission is not aware of any policy basis for distinguishing between
19 limited and unlimited civil cases on this point. In fact, California Rule of Court
20 222.1 provides the same type of protection for limited civil cases that the statute
21 provides for unlimited civil cases.⁴⁸

22 This complexity is unnecessary. For purposes of simplification, the statute
23 should be revised to cover both limited and unlimited civil cases, and the rule
24 should be eliminated.

25 The statute should also be revised to delete the reference to the memorandum to
26 set the cause for trial (commonly known as the “at-issue memorandum”). That
27 reference may be obsolete, because in many cases an at-issue memorandum is no
28 longer required.⁴⁹ Moreover, the reference is unnecessary. The purpose of the
29 provision is to provide statutory protections where one party has relied on another

42. See *Dunham v. Reichlin*, 217 Cal. 289, 291, 18 P.2d 664 (1933); *Estate of Miller*, 16 Cal. App. 2d 154, 158-59, 60 P.2d 498 (1936).

43. 223 Cal. App. 2d 547, 36 Cal. Rptr. 53 (1963).

44. *Id.* at 561.

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

46. See “Background” *supra*.

47. 15 So. Cal. L. Rev. 1, 14-15 (1941).

48. Effective January 1, 2001, Rule 222.1 superseded former California Rule of Court 521 (made applicable to limited civil cases in superior court by former California Rule of Court 709), which provided similar but not identical protection.

49. See R. Weil & I. Brown, Jr., *California Practice Guide: Civil Procedure Before Trial*, *Case Management and Trial Setting* §§ 12:101-12:103, at 12(I)-36 (2000) (at-issue memorandum not required in cases subject to case management, but may still be required in cases exempt from case management).

1 party's jury demand. There is no need to state the manner in which the demand
2 was made.

3 Finally, the statute should specify that the party who waives a jury after
4 demanding one is responsible for promptly notifying all other parties of the
5 waiver. As a leading treatise points out, the provision is currently silent on who is
6 to provide the notice.⁵⁰ Previously, the court clerk was required to notify the
7 parties.⁵¹ This requirement was deleted from the statute in 1988.⁵² To conserve
8 court resources in both limited and unlimited civil cases, the proposed law would
9 place the burden of providing notice on the party whose action creates the need for
10 notice.⁵³ If that party fails to provide notice of the waiver as required, other parties
11 (or the clerk or judge) would be permitted but not required to provide the notice
12 instead, so that they can promptly ascertain whether to plan for a jury trial.

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

13 In 1991, the satisfaction of judgment statute was amended to allow entry of a
14 satisfaction in cases in which the only amount left unsatisfied is an interest deficit
15 of less than \$10.⁵⁴ This rule initially applied only in municipal court.⁵⁵ As
16 presently worded to reflect trial court unification, Code of Civil Procedure Section
17 685.030(e) applies only in a limited civil case:

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

23 The proposal to amend the satisfaction of judgment statute to permit the clerk to
24 ignore a trivial interest deficit in a municipal court case was sponsored by the
25 Administrative Office of the Municipal Courts of Contra Costa County, which
26 explained the need for the proposal as follows:

27 Section 685.030(a)(2) currently provides that interest continues to accrue on
28 money judgments until the date the levying officer actually receives the proceeds.
29 Since there is often turnaround time of 2-3 days between the service of the writ
30 and the actual receipt of the proceeds by the levying officer, the amount stated on
31 the writ is often understated by the daily interest amount which continues to
32 accrue during the turnaround period. In these instances, the clerk's office is unable

50. See *id.* § 12:321, at 12(I)-67.

51. 1941 Cal. Stat. ch. 1191, § 1.

52. 1988 Cal. Stat. ch. 10, §§ 2, 3.

53. Failure to provide timely notice may be grounds for a continuance other remedial action. See *Leslie v. Roe*, 52 Cal. App. 3d 686, 688, 125 Cal. Rptr. 157 (1975).

54. 1991 Cal. Stat. ch. 1090, § 4.5.

55. *Id.*

1 to record in the Register of Actions that the judgment is fully satisfied. Some
2 persistent judgment creditors have returned to the clerk's office seeking the
3 additional interest owing on the writ, which is typically under \$10. This statute
4 causes additional workload for the clerk's office with minimal benefit to the
5 judgment creditor.⁵⁶

6 The sponsor limited the proposal to municipal court cases because "judgments in
7 superior court are substantially higher and the daily interest accruing is much
8 greater."⁵⁷

9 The amount of a judgment is irrelevant, however, so long as all that remains
10 unpaid is an interest deficit of \$10 or less.⁵⁸ Because that situation could arise in a
11 superior court case as well as in a municipal court case, the California State
12 Sheriffs' Association suggested that the proposal "cover all money judgment civil
13 writs issued from both municipal and Superior Courts."⁵⁹

14 The legislative history does not disclose why the Legislature did not adopt that
15 approach. The answer may relate more to the timing of the legislative process than
16 to the substance of the suggestion. The proposal to amend the satisfaction of
17 judgment statute was part of the Assembly Judiciary Committee's 1991 omnibus
18 civil practice bill. It was one of the last provisions added to the bill,⁶⁰ so the
19 suggestion to extend the proposal to superior court cases may not have received as
20 much consideration as it would have if the suggestion were made earlier in the
21 legislative process.

22 In any case, the underlying policy of Section 685.030(e) seems to be that where
23 the amount outstanding on a judgment is trivial (\$10 or less) and the deficit
24 appears to relate to calculation of interest, it is wasteful to expend further effort to
25 collect on the judgment and the matter should be considered closed. This policy
26 would appear to apply equally in a limited as in an unlimited civil case in superior
27 court. Absent a need for a difference in treatment, the statute should be amended to
28 permit the clerk to record a judgment as satisfied whenever the principal is fully
29 paid and only an interest deficit of \$10 or less remains, regardless of the
30 jurisdictional classification of the case.

56. Memorandum from Kiri Torre, Contra Costa County Municipal Court Administrator, to Claude L. Van Marter, Ass't County Administrator (Jan. 25, 1991). This memorandum is at State Archives in the Assembly Judiciary Committee's file on Assembly Bill 1484 (1991 Cal. Stat. ch. 1090). The explanation in the memorandum is repeated almost verbatim in the Senate Judiciary Committee analysis (July 16, 1991) and the Senate Floor analysis (Aug. 29, 1991) of the legislation.

57. Memorandum from Kiri Torre, Contra Costa County Municipal Court Administrator, to Claude L. Van Marter, Ass't County Administrator (Jan. 25, 1991). For the location of this memorandum, see *supra* note 56.

58. Letter from Anthony Pisciotta, California State Sheriffs' Ass'n to Irene Ishizaka, consultant to the Assembly Judiciary Committee (June 5, 1991). This letter is at State Archives in the Assembly Judiciary Committee's file on Assembly Bill 1484 (1991 Cal. Stat. ch. 1090).

59. *Id.*

60. It was amended into the bill on July 10, 1991, just before the bill was heard in the Senate Judiciary Committee.

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

1 Code of Civil Procedure Sections 720.160⁶¹ and 720.260⁶² require a creditor's
2 undertaking to maintain a levy on property where there has been a third-party
3 claim to the property. The amount of the undertaking is \$2,500 in a limited civil
4 case and \$7,500 in an unlimited civil case (or the creditor can elect to give an
5 undertaking in the amount of twice the enforcement lien). The beneficiary may
6 object to the undertaking as insufficient,⁶³ and the court may order the undertaking
7 increased if it is shown to be necessary.⁶⁴ The principal may not seek a reduction
8 of the undertaking amount.⁶⁵

9 Before enactment of this scheme in 1982, the law provided for a creditor's
10 undertaking in third-party claim proceedings in an amount twice the value of the
11 property claimed.⁶⁶ This was changed in 1982 on recommendation of the Law
12 Revision Commission to a flat amount of \$2,500 for actions pending or judgments
13 rendered in municipal court, and \$7,500 for actions pending or judgments rendered
14 in superior court. The rationale for a flat amount undertaking was that it would
15 eliminate the need for the courts to consider objections to the amount of an
16 undertaking based on the value of the property.⁶⁷ The amounts selected were based
17 on the amounts for an attachment undertaking.

18 Trial court unification led to the current scheme in 1998. The initial undertaking
19 amount now depends on the jurisdictional classification of the case (whether it is a
20 limited civil case or an unlimited civil case), rather than on the type of court in
21 which the case is pending.⁶⁸

22 To maintain the current pattern, Code of Civil Procedure Sections 720.160 and
23 720.260 should track the undertaking amount given by a creditor for an
24 attachment. Because the proposed attachment undertaking is \$10,000,⁶⁹ the same
25 amount should apply to third-party claim situations.

61. For the text of Code of Civil Procedure Section 720.160, see "Proposed Legislation" *infra*.

62. For the text of Code of Civil Procedure Section 720.260, see "Proposed Legislation" *infra*.

63. Code Civ. Proc. § 995.920.

64. Code Civ. Proc. § 995.960.

65. The court may "order the amount of the undertaking decreased below the amount prescribed by Section 720.160 or 720.260 if the court determines the amount prescribed exceeds the probable recovery of the beneficiary if the beneficiary ultimately prevails in proceedings to enforce the liability on the undertaking." Code Civ. Proc. § 720.770. But the amount of the undertaking "may *not* be decreased on the *principal's* initiative *but only* in a situation where the *beneficiary* has objected and the court finds that it is more than adequate." Code Civ. Proc. § 720.770 Comment (1982) (emphasis added).

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

67. See 1982 *Creditors' Remedies Legislation*, 16 Cal. L. Revision Comm'n Reports 1001, 1021-22, 1146-48 (1982).

68. See *Revision of Codes*, *supra* note 6, at 64-65, 204-06.

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

1 As before, the beneficiary could object to the undertaking amount, but the
2 principal would not be permitted to apply for a reduction of the amount. Allowing
3 such a procedure would be unduly burdensome on the court and the litigants,
4 because the difference between the premium for a \$10,000 undertaking and the
5 premium for a smaller undertaking is not likely to be substantial, as compared to
6 the costs inherent in reviewing the size of the undertaking.

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

7 Code of Civil Procedure Section 1134 establishes fees for filing a confession of
8 judgment that differ depending on the jurisdictional classification of the case. The
9 filing fee is \$15 except in a limited civil case, in which case the filing fee is \$10.⁷⁰

10 The drafting of this provision is anomalous, since technically speaking it cannot
11 be said that a confession of judgment in an amount of \$25,000 or less is “in a
12 limited civil case,” no case ever having been filed. Before 1998, the statute
13 provided a lower fee in municipal and justice courts; the 1998 substitution of the
14 reference to a “limited civil case” was made to accommodate trial court
15 unification.⁷¹ At a minimum, this section requires correction to refer to a fee of
16 \$10 where the amount confessed does not exceed \$25,000.

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

22 Historically, the \$15 fee was charged in superior court and the \$10 fee was
23 charged in municipal court. While it is possible there once was a fiscal justification
24 for this differential, the actual costs now involved to process the filing of a
25 confession of judgment are independent of the jurisdictional classification of the
26 case.

27 As a matter of policy, there may be a sentiment that in a smaller case, the costs
28 charged against the parties should remain proportionately smaller. When the fee
29 structure was enacted in 1872, the differential may have been significant. At that

70. The statute provides:

1134. In all courts the statement must be filed with the clerk of the court in which the judgment is to be entered, who must endorse upon it, and enter a judgment of the court for the amount confessed with the costs hereinafter set forth. At the time of filing, the plaintiff shall pay as court costs that shall become a part of the judgment the following fees: fifteen dollars (\$15) or in a limited civil case ten dollars (\$10). No fee shall be collected from the defendant. No fee shall be paid by the clerk of the court in which a confession of judgment is filed for the law library fund nor for services of any court reporter. The statement and affidavit, with the judgment endorsed thereon, becomes the judgment roll.

The affidavit mentioned in the last sentence of the provision evidently refers to the defendant’s verification by oath required by Code of Civil Procedure Section 1133.

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

1 time, there was a proliferation of trial courts, including district courts, county
2 courts, and justice courts. The general fee for filing a confession of judgment at
3 that time was \$10; in justice courts the fee was \$3.⁷² The equivalents in current
4 dollars would be about \$135 and \$40.⁷³

5 That fee structure remained unchanged for 85 years until the 1950s, when the
6 fees were changed to \$10 in superior court, \$9 in municipal court, and \$5 in justice
7 court.⁷⁴ In the 1970s the fees were raised to what they are today (\$15 in superior
8 court and \$10 in municipal court).⁷⁵ The \$5 difference in filing fees in today's
9 dollars is so small that it is not worth maintaining.

10 While a lower fee in smaller cases may be viewed as a populist measure, this is
11 illusory. The law on confessions of judgment has evolved to the point that as a
12 practical matter the confession of judgment is no longer of any use for a claim for
13 a small amount. A confession of judgment is not valid unless an attorney
14 representing the defendant signs a certificate that the attorney has examined the
15 proposed judgment and has advised the defendant with respect to the waiver of
16 rights and defenses under the confession of judgment procedure and has advised
17 the defendant to utilize the confession of judgment procedure.⁷⁶ The cost of
18 obtaining the attorney's certificate renders the confession of judgment procedure
19 practically useless for a claim for a small amount.⁷⁷ Whether the filing fee were
20 \$15 as opposed to \$10 would make no difference, because the cost of the
21 attorney's certificate, not the nominal filing fee, is prohibitive for such a claim.

22 In the interest of simplicity, the Commission recommends elimination of the
23 filing fee differential, and adoption of a standard \$15 filing fee for all confessions
24 of judgment.⁷⁸ Because an attorney's certificate is now a prerequisite to entry of a
25 confession of judgment, the proposed amendment of Section 1134 would also
26 require that the certificate be made part of the judgment roll.

72. 1872 Code Civ. Proc. §§ 1134, 1135.

73. These amounts were determined using "The Inflation Calculator" found at <http://www.westegg.com/inflation/>, a website created and maintained by S. Morgan Friedman, as modified Jan. 19, 2000. The adjustments are based on the Consumer Price Index from 1800-1999.

74. 1957 Cal. Stat. ch. 1982, §§ 1, 2.

75. 1974 Cal. Stat. ch. 1285, § 1; 1975 Cal. Stat. ch. 766, § 1; 1977 Cal. Stat. ch. 1257, § 37. The justice court filing fee was increased to \$10 (1977 Cal. Stat. ch. 1257, § 37) and then eliminated when the justice court was abolished in 1995.

76. Code Civ. Proc. § 1132.

77. See *Recommendation Relating to Confessions of Judgment*, 15 Cal. L. Revision Comm'n Reports 1053 (1980).

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

IMPLIED COURT AUTHORITY IN LIMITED AND
UNLIMITED CIVIL CASES

1 Some statutes expressly relate to court authority in a limited civil case or an
2 unlimited civil case. For example, Code of Civil Procedure Section 402.5 permits
3 a unified superior court to transfer a limited civil case to another branch or location
4 of that court:⁷⁹

5 402.5. The superior court in a county in which there is no municipal court may
6 transfer a limited civil case to another branch or location of the superior court in
7 the same county.

8 The provision is silent as to transfer of an unlimited civil case. Thus, it might be
9 interpreted, by negative implication, to mean that a unified superior court is not
10 permitted to transfer an unlimited civil case to another branch or location of that
11 court. Similarly, if a statute confers authority in an unlimited civil case, it might be
12 inferred merely from the existence of the statute that the court lacks such authority
13 in a limited civil case.

14 Such interpretations may be wholly unwarranted. For example, Section 402.5
15 was added in 1998 to implement trial court unification.⁸⁰ The purpose of the
16 provision was to underscore that unification would not undercut existing authority
17 to transfer a traditional municipal court case (now known as a limited civil case)
18 within a county:

19 In specified circumstances, existing law allows transfer of a case from one
20 municipal court to another municipal court in the same county. In a county with a
21 unified superior court, there are no municipal court districts; the proposed law
22 would preserve the ability of the court to transfer a case from one location to
23 another location within the county.⁸¹

24 The provision was not intended to imply anything, one way or the other, about a
25 superior court's authority to transfer a traditional superior court case (now known
26 as an unlimited civil case) from one location to another within the county.

27 To guard against improper negative inferences under circumstances such as
28 these, a provision should be added to the Code of Civil Procedure clarifying that
29 the existence of a statute relating to the authority of the court in a limited civil case
30 does not, by itself, imply that the same authority does or does not exist in an
31 unlimited civil case. The provision should further direct that the existence of a
32 statute relating to the authority of the court in an unlimited civil case does not, by
33 itself, imply that the same authority does or does not exist in a limited civil case.

79. Similarly, Code of Civil Procedure Section 116.620 provides for payment of a small claims judgment in installments.

80. 1998 Cal. Stat. ch. 931, § 68; see *Revision of Codes*, *supra* note 6, at 71, 181.

81. *Revision of Codes*, *supra* note 6, at 71 (footnotes omitted).

1 FILING FEE FOR FIRST PAPER IN A LIMITED CIVIL CASE

2 Government Code Section 72055 specifies the fee for filing the first paper in a
3 limited civil case. The amount of the fee depends on the amount of the demand:

4 72055. The total fee for filing of the first paper in a limited civil case, shall be
5 ninety dollars (\$90), except that in cases where the amount demanded, excluding
6 attorney’s fees and costs, is ten thousand dollars (\$10,000) or less, the fee shall be
7 eighty-three dollars (\$83). The amount of the demand shall be stated on the first
8 page of the paper immediately below the caption.

9

10 It is appropriate to examine whether the seven dollar difference (\$90 versus \$83)
11 between the fee where the demand exceeds \$10,000, and the fee where the demand
12 is \$10,000 or less, is warranted.⁸²

13 The differentiation between larger and smaller limited civil cases is of recent
14 origin. Until 1992, the fee for filing the first paper in a civil case in municipal
15 court was set by the board of supervisors, but Government Code Section 72055
16 limited this fee to a maximum of either \$40 or \$29, depending on whether a fee
17 was collected for the court reporter fund.⁸³ In 1992, the statute was amended to
18 establish a uniform \$80 fee for filing the first paper in a civil case in municipal
19 court.⁸⁴ Not until 1997 was the amount of the fee linked to the amount demanded.
20 In that year the Legislature enacted the Lockyer-Isenberg Trial Court Funding Act,
21 which made major reforms relating to trial court funding but also amended Section
22 72055. Effective January 1, 1998, the fee for filing the first paper in a civil case in
23 municipal court was raised to \$83 where the demand is \$10,000 or less and \$90
24 where the demand exceeds \$10,000.⁸⁵ To accommodate trial court unification, the
25 provision was further amended the following year, to apply to limited civil cases
26 rather than municipal court cases.⁸⁶

27 It is not clear why the provision was amended to distinguish between cases
28 based on the amount of the demand. The bill analyses for the Lockyer-Isenberg
29 Trial Court Funding Act focus on more significant aspects of that legislation and
30 do not address this point.

31 Court personnel have reported, however, that differentiating between limited
32 civil cases where the demand is \$10,000 or less, and limited civil cases where the

82. This issue arose in the context of this study because Government Code Section 72055 as presently drafted would conflict with the Commission’s proposed amendment of Code of Civil Procedure Section 425.10 (the requirement that the amount of the demand be stated on the first page of the first pleading in a limited civil case would conflict with the proposal to extend the prohibition on pleading personal injury or wrongful death damages to a limited civil case). See “Pleading Personal Injury and Wrongful Death Damages” *supra*. Other issues relating to simplification of filing fees are being studied in other contexts.

83. 1983 Cal. Stat. ch. 969, § 10.

84. 1992 Cal. Stat. ch. 696, § 73.

85. 1997 Cal. Stat. ch. 850, § 37.

86. 1998 Cal. Stat. ch. 931, § 315; see also *Revision of Codes, supra* note 6, at 377-78.

1 demand exceeds \$10,000, creates problems. The increased complexity makes it
2 more difficult for court clerks to determine what fee is due and harder for the
3 Judicial Council and Administrative Office of the Courts to develop forms that
4 clearly identify what fee should be charged. Trial court unification has exacerbated
5 these problems, because in a unified superior court the clerks collect filing fees for
6 unlimited civil cases (for which the initial filing fee is \$185),⁸⁷ as well as for both
7 categories of limited civil cases.

8 Amending Section 72055 to set a uniform fee for filing the first paper in a
9 limited civil case would alleviate the administrative burdens and potential for
10 confusion in applying the statute. According to the Administrative Office of the
11 Courts, if the fee were set at \$85 such an amendment probably would neither
12 increase nor decrease the revenue of the courts.

13 The statute should be further amended to delete the requirement that the amount
14 of the demand be stated on the first page of the first paper immediately below the
15 caption. If the same filing fee were charged for all limited civil cases, that
16 requirement would no longer necessary, because the amount of the demand would
17 no longer affect the amount due under the statute.⁸⁸ To permit differentiation
18 between limited and unlimited civil cases, however, a plaintiff in a limited civil
19 case would still required to state in the caption that the case is a limited civil
20 case.⁸⁹

87. Gov't Code § 26820.4.

88. Eliminating the requirement that the demand be stated on the first page of the first pleading in a limited civil case would also eliminate the conflict between Government Code Section 72055 and the proposal to extend Code of Civil Procedure Section 425.10's prohibition on pleading personal injury or wrongful death damages to a limited civil case. See notes 28, 82 *supra*.

89. Code Civ. Proc. § 422.30.

PROPOSED LEGISLATION

1 **Code Civ. Proc. § 89 (added). Implied authority in limited and unlimited civil cases**

2 SECTION 1. Section 89 is added to the Code of Civil Procedure, to read:

3 89. (a) The existence of a statute relating to the authority of the court in a limited
4 civil case does not, by itself, imply that the same authority does or does not exist
5 in an unlimited civil case.

6 (b) The existence of a statute relating to the authority of the court in an unlimited
7 civil case does not, by itself, imply that the same authority does or does not exist
8 in a limited civil case.

9 **Comment.** Section 89 is added to provide guidance in interpreting statutory provisions that
10 expressly authorize particular conduct in a limited civil case but are silent as to an unlimited civil
11 case, or vice versa. See, e.g., Section 402.5 (transfer of limited civil case).

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

13 SEC. 2. Section 425.10 of the Code of Civil Procedure is amended to read:

14 425.10. A complaint or cross-complaint shall contain both of the following:

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

17 (b) A demand for judgment for the relief to which the pleader claims to be
18 entitled. If the recovery of money or damages ~~be is~~ demanded, the amount thereof
19 demanded shall be stated, unless the action is brought ~~in the superior court~~ to
20 recover actual or punitive damages for personal injury or wrongful death, in which
21 case the amount thereof demanded shall not be stated, ~~except in a limited civil case~~
22 but the caption shall comply with Section 422.30.

23 **Comment.** Section 425.10 is amended to conform the pleading requirements in limited and
24 unlimited civil cases. In an action for personal injury or wrongful death, the amount demanded
25 should not be stated in the complaint, but if the case is a limited civil case the caption of the
26 complaint must identify it as such as required by Section 422.30. Technical changes are also
27 made for conformity with preferred drafting style.

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

29 SEC. 3. Section 425.11 of the Code of Civil Procedure is amended to read:

30 425.11. (a) As used in this section:

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

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

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

34 (b) When a complaint is filed in an action ~~in the superior court~~ to recover
35 damages for personal injury or wrongful death, the defendant may at any time
36 request a statement setting forth the nature and amount of damages being sought,
37 ~~except in a limited civil case.~~ The request shall be served upon the plaintiff, who
38 shall serve a responsive statement as to the damages within 15 days. In the event
39 that a response is not served, the party defendant, on notice to the plaintiff, may

1 petition the court in which the action is pending to order the plaintiff to serve a
2 responsive statement.

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

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

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

9 (2) If a party has appeared in the action, the statement shall be served upon ~~his or~~
10 ~~her~~ the party's attorney, or upon the party if ~~he or she~~ the party has appeared
11 without an attorney, in the manner provided for service of a summons or in the
12 manner provided by Chapter 5 (commencing with Section 1010) of Title 14 of Part
13 2.

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

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

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

21 SEC. 4. Section 489.220 of the Code of Civil Procedure is amended to read:

22 489.220. (a) Except as provided in subdivision (b), the amount of an undertaking
23 filed pursuant to this article shall be ~~two thousand five hundred dollars (\$2,500) in~~
24 ~~a limited civil case, and seven thousand five hundred dollars (\$7,500) otherwise~~
25 ten thousand dollars (\$10,000).

26 (b) If, upon objection to the undertaking, the court determines that the probable
27 recovery for wrongful attachment exceeds the amount of the undertaking, it shall
28 order the amount of the undertaking increased to the amount it determines to be
29 the probable recovery for wrongful attachment if it is ultimately determined that
30 the attachment was wrongful.

31 **Comment.** Section 489.220 is amended to provide for the same attachment undertaking,
32 regardless of the jurisdictional classification of the case. Formerly, the amount of the initial
33 undertaking depended on whether the case was a limited civil case or an unlimited civil case.
34 1998 Cal. Stat. ch. 931, § 74.

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

36 SEC. 5. Section 631 of the Code of Civil Procedure is amended to read:

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

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

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

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

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

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

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

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

15 ~~(b) In a superior court action, other than a limited civil case, if~~ If a jury is
16 demanded by either party in the memorandum to set the cause for trial a party and
17 the party, prior to trial, by announcement or by operation of law, waives a trial by
18 jury, then all adverse parties shall have five days following receipt of the notice of
19 the waiver that party shall promptly notify all other parties of the waiver, in
20 writing or in open court. Each party adverse to the party who waived the trial by
21 jury has five days after notice of the waiver is given to file and serve a demand for
22 a trial by jury and to deposit any advance jury fees that are then due. If the party
23 who waived a trial by jury does not promptly notify all other parties of the waiver,
24 any other party, or the clerk or judge, may provide notice of the waiver, but is not
25 required to do so. Where more than one notice of the same waiver is given to a
26 party, the five-day period to file and serve a demand for a trial by jury and to
27 deposit advance jury fees commences on giving of the first notice.

28 (c) When the party who has demanded trial by jury either (1) waives the trial
29 upon or after the assignment for trial to a specific department of the court, or upon
30 or after the commencement of the trial, or (2) fails to deposit the fees as provided
31 in paragraph (6) of subdivision (a), trial by jury shall be waived by the other party
32 by either failing promptly to demand trial by jury before the judge in whose
33 department the waiver, other than for the failure to deposit the fees, was made, or
34 by failing promptly to deposit the fees described in paragraph (6) of subdivision
35 (a).

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

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

42 Subdivision (b) is also amended to delete the reference to the memorandum to set the cause for
43 trial. The reference is unnecessary and may also be obsolete because in many cases an at-issue

1 memorandum is no longer required. See R. Weil & I. Brown, Jr., California Practice Guide: Civil
2 Procedure Before Trial, *Case Management and Trial Setting* § 12:101, at 12(I)-36 (2000).

3 As amended, subdivision (b) also clarifies that the party who waives a jury after demanding one
4 is responsible for providing notice of the waiver. If that party fails to provide notice of the waiver
5 as required, another party (or the clerk or judge) is permitted but not required to provide the
6 notice instead. Failure to provide timely notice may be grounds for a continuance or other
7 remedial action. See *Leslie v. Roe*, 52 Cal. App. 3d 686, 688, 125 Cal. Rptr. 157 (1975).

8 Where a party is given multiple notices of the same jury waiver, the five-day period to demand
9 a jury is triggered by the first notice. Where more than one jury demand is made and later waived,
10 notice of each waiver is required. For example, suppose:

11 (1) Party A requests a jury trial but later waives that right.

12 (2) Party B requests a jury trial within five days after Party A gives notice of Party A's jury
13 waiver.

14 (3) Party C relies on Party B's jury demand.

15 (4) Party B ultimately decides to waive a jury.

16 Under Section 631(b), Party B must notify the other parties of Party B's jury waiver and Party C
17 has five days from the giving of that notice within which to demand a jury trial. (For guidance on
18 whether Party A may request a jury despite Party A's previous jury waiver, see Section 631(d);
19 *Taylor v. Union Pac. R.R. Corp.*, 16 Cal. 3d 893, 549 P.2d 855, 130 Cal. Rptr. 23 (1976);
20 *Simmons v. Prudential Life Ins. Co.*, 123 Cal. App. 3d 833, 836, 177 Cal. Rptr. 37 (1981).)

21 Finally, the amendment provides that the time period for demanding a jury trial and depositing
22 jury fees runs from the date of giving notice rather than from the date of receiving notice. This is
23 intended to facilitate proof of whether a jury demand is timely. For extension of the five-day
24 period where notice is given by mail or Express Mail, see Section 1013.

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

26 SEC. 6. Section 685.030 of the Code of Civil Procedure is amended to read:

27 685.030. (a) If a money judgment is satisfied in full pursuant to a writ under this
28 title, interest ceases to accrue on the judgment:

29 (1) If the proceeds of collection are paid in a lump sum, on the date of levy.

30 (2) If the money judgment is satisfied pursuant to an earnings withholding order,
31 on the date and in the manner provided in Section 706.024 or Section 706.028.

32 (3) In any other case, on the date the proceeds of sale or collection are actually
33 received by the levying officer.

34 (b) If a money judgment is satisfied in full other than pursuant to a writ under
35 this title, interest ceases to accrue on the date the judgment is satisfied in full.

36 (c) If a money judgment is partially satisfied pursuant to a writ under this title or
37 is otherwise partially satisfied, interest ceases to accrue as to the part satisfied on
38 the date the part is satisfied.

39 (d) For the purposes of subdivisions (b) and (c), the date a money judgment is
40 satisfied in full or in part is the earliest of the following times:

41 (1) The date satisfaction is actually received by the judgment creditor.

42 (2) The date satisfaction is tendered to the judgment creditor or deposited in
43 court for the judgment creditor.

44 (3) The date of any other performance that has the effect of satisfaction.

45 (e) ~~In a limited civil case, the~~ The clerk of a court may enter in the Register of
46 Actions a writ of execution on a money judgment as returned wholly satisfied

1 when the judgment amount, as specified on the writ, is fully collected and only an
2 interest deficit of no more than ten dollars (\$10) exists, due to automation of the
3 continual daily interest accrual calculation.

4 **Comment.** Subdivision (e) of Section 685.030 is amended to eliminate the difference in
5 treatment between limited and unlimited civil cases.

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

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

10 SEC. 7. Section 720.160 of the Code of Civil Procedure is amended to read:

11 720.160. (a) If the creditor files with the levying officer an undertaking that
12 satisfies the requirements of this section within the time allowed under subdivision
13 (b) of Section 720.140:

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

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

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

23 ~~(1) Except as provided in paragraph (2), seven thousand five hundred dollars~~
24 ~~(\$7,500), or twice the amount of the execution lien as of the date of levy or other~~
25 ~~enforcement lien as of the date it was created, whichever is the lesser amount.~~

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

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

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

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

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

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

41 **Comment.** Section 720.160 is amended to provide for an undertaking of \$10,000 (or twice the
42 amount of the execution lien, whichever is less), regardless of the jurisdictional classification of

1 the case. The \$10,000 undertaking amount is the same as the amount of an attachment
2 undertaking. See Section 489.220 (attachment undertaking).

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

5 SEC. 8. Section 720.260 of the Code of Civil Procedure is amended to read:

6 720.260. (a) If the creditor within the time allowed under subdivision (b) of
7 Section 720.240 either files with the levying officer an undertaking that satisfies
8 the requirements of this section and a statement that satisfies the requirements of
9 Section 720.280 or makes a deposit with the levying officer of the amount claimed
10 under Section 720.230:

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

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

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

21 ~~(1) Except as provided in paragraph (2), seven thousand five hundred dollars~~
22 ~~(\$7,500), or twice the amount of the execution lien as of the date of levy or other~~
23 ~~enforcement lien as of the date it was created, whichever is the lesser amount.~~

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

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

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

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

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

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

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

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

2 SEC. 9. Section 1134 of the Code of Civil Procedure is amended to read:

3 1134. ~~In all courts the~~ (a) The statement required by Section 1133 must be filed
4 with the clerk of the court in which the judgment is to be entered, who must
5 endorse upon it, and enter a judgment of the court for the amount confessed with
6 the costs hereinafter set forth provided in subdivision (b).

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

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

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

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

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

24 **Gov’t Code § 72055 (amended). First filing fee in limited civil case**

25 SEC. 10. Section 72055 of the Government Code is amended to read:

26 72055. (a) The total fee for filing of the first paper in a limited civil case, case
27 shall be ~~ninety dollars (\$90), except that in cases where the amount demanded,~~
28 ~~excluding attorney’s fees and costs, is ten thousand dollars (\$10,000) or less, the~~
29 ~~fee shall be eighty-three dollars (\$83). The amount of the demand shall be stated~~
30 ~~on the first page of the paper immediately below the caption~~ eighty-five dollars
31 (\$85).

32 (b) This section applies to the initial complaint, petition, or application, and any
33 papers transmitted from another court on the transfer of a civil action or
34 proceeding, but does not include documents filed pursuant to Section 491.150,
35 704.750, or 708.160 of the Code of Civil Procedure.

36 (c) The term “total fee” as used in this section and Section 72056 includes any
37 amount allocated to the Judges’ Retirement Fund pursuant to Section 72056.1, any
38 automation fee imposed pursuant to Section 68090.7, any construction fee
39 imposed pursuant to Section 76238, and the law library fee established pursuant to
40 Article 2 (commencing with Section 6320) of Chapter 5 of Division 3 of the
41 Business and Professions Code. The term “total fee” as used in Section 72056
42 includes any dispute resolution fee imposed pursuant to Section 470.3 of the
43 Business and Professions Code. The term “total fee” as used in this section also
44 includes any dispute resolution fee imposed pursuant to Section 470.3 of the

1 Business and Professions Code, but the board of supervisors of each county may
2 exclude any portion of this dispute resolution fee from the term “total fee.”

3 (d) The fee shall be waived in any action for damages against a defendant, based
4 upon the defendant’s commission of a felony offense, upon presentation to the
5 clerk of the court of a certified copy of the abstract of judgment of conviction of
6 the defendant of the felony giving rise to the claim for damages. If the plaintiff
7 would have been entitled to recover those fees from the defendant had they been
8 paid, the court may assess the amount of the waived fees against the defendant and
9 order the defendant to pay that sum to the county.

10 **Comment.** For purposes of simplification, Section 72055 is amended to establish a uniform
11 filing fee for filing the first paper in a limited civil case, regardless of the amount of the demand.
12 Formerly, the amount of the fee depended on whether the demand exceeded \$10,000, or was
13 \$10,000 or less. 1998 Cal. Stat. ch. 931, § 315; see also 1992 Cal. Stat. ch. 696, § 73; 1997 Cal.
14 Stat. ch. 850, § 37.

15 Section 72055 is further amended to delete the requirement that the amount of the demand be
16 stated on the first page of the first paper immediately below the caption. This requirement is no
17 longer necessary, because the amount of the demand no longer affects the amount due under the
18 statute. To permit differentiation between limited and unlimited civil cases, however, a plaintiff in
19 a limited civil case is still required to state in the caption that the case is a limited civil case. Code
20 Civ. Proc. § 422.30 (caption).

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