

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Elimination of Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases

July 2000

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

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN September 25, 2000.

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

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SUMMARY OF TENTATIVE RECOMMENDATION

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

- (1) The same rules for pleading damages should apply in all actions for personal injury or wrongful death, regardless of the jurisdictional classification of the case. Code Civ. Proc. §§ 425.10, 425.11.
- (2) The distinction between attachment undertakings in limited and unlimited civil cases should be eliminated, and the amount of the initial undertaking increased to \$10,000. Code Civ. Proc. § 489.220.
- (3) The statutory protection regarding waiver of a jury demand should be extended to limited civil cases. Code Civ. Proc. § 631.
- (4) The clerk of court should be permitted to record a satisfaction of judgment where there is an interest deficit of \$10 or less in an unlimited civil case, not just in a limited civil case. Code Civ. Proc. § 685.030.
- (5) The differentiation between limited and unlimited civil cases as to the amount of a creditor's undertaking where there is a third party claim should be eliminated. Code Civ. Proc. §§ 720.160, 720.260.
- (6) The same filing fee should be required for all confessions of judgment, regardless of the size of the claim. Code Civ. Proc. § 1134.
- (7) A provision on statutory interpretation should be added to negate any implied limitation on court authority in limited and unlimited civil cases. Proposed Code Civ. Proc. § 89.

This recommendation was prepared pursuant to Government Code Section 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

METHODOL OGY

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. J. Clark Kelso (McGeorge School of Law), Prof. David Jung (Hastings College 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 2000-54, 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 Each topic is addressed in order below.

11 It should be noted that this statutory review and simplification effort is prompted
12 by unification of the trial courts. The trial courts in two counties remain non-
13 unified.²⁰ However, the simplifications recommended here are limited to those that
14 will work well and will modestly improve court procedures, regardless of whether
15 the courts in a county have unified.

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

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

23 425.10. A complaint or cross-complaint shall contain both of the following:

- 24 (a) A statement of the facts constituting the cause of action, in ordinary and
25 concise language.
- 26 (b) A demand for judgment for the relief to which the pleader claims to be
27 entitled. If the recovery of money or damages be demanded, the amount thereof
28 shall be stated, unless the action is brought in the superior court to recover actual
29 or punitive damages for personal injury or wrongful death, in which case the
30 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 only. They do not reflect official positions of the Judicial Council, the AOC, or AOC staff.

20. As of the date of this tentative recommendation, the courts in Kings and Monterey counties had not yet unified. Each has indicated its intent to unify, pending preclearance 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, 808 P.2d 226, 280 Cal. Rptr. 83 (1991) (Mosk, J., dissenting).

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

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

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

1 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 condition to issuance of a writ of attachment. The undertaking varies in amount
20 depending on whether the case in which the attachment is issued is a limited or an
21 unlimited civil case:

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

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 This provision has its origin in the pre-1974 attachment statute, which provided
32 simply for a undertaking in one-half the principal amount of the total indebtedness
33 or damages claimed, excluding attorneys' fees.²⁹ The court was permitted to
34 increase or decrease this amount on an appropriate showing.

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.

29. 1973 Cal. Stat. ch. 20, § 6 (former Code Civ. Proc. § 539(a)).

1 This scheme was changed in the Attachment Law of 1974 to provide a fixed
2 undertaking in a relatively low amount, with provision for court-ordered increase
3 in an appropriate case.³⁰ The fixed amount differed with the court: \$2,500 in
4 municipal court proceedings, and \$7,500 in superior court proceedings.

5 Trial court unification led to the current scheme in 1998. The undertaking is
6 \$2,500 in a limited civil case, and \$7,500 in an unlimited civil case.³¹

7 Is it still useful to distinguish between limited and unlimited civil cases in fixing
8 the initial amount of the attachment undertaking? The function of the undertaking
9 is to ensure that funds are available to compensate the defendant for any damages
10 that may result from a wrongful attachment.³² For this purpose, the jurisdictional
11 classification of the case as limited (\$25,000 or less in controversy) or unlimited
12 (more than \$25,000 in controversy)³³ bears little or no relationship to the amount
13 of damage that the defendant may sustain due to a wrongful attachment.

14 The amount of the initial undertaking is relatively small, and provides no real
15 protection to the defendant for the substantial damages that can result from a
16 wrongful attachment.³⁴ The defendant's real protection lies in the ability to obtain
17 a court-ordered increase in the amount of the undertaking.

18 The amounts of the undertakings required by Section 489.220 are inadequate,
19 and the rationale for the undertakings does not support a differential based on the
20 jurisdictional classification of the case. The Commission recommends that the
21 distinction between attachment undertakings in limited and unlimited civil cases
22 be eliminated, and that the amount of the initial undertaking be increased to
23 \$10,000. Although this figure may not be adequate in every case, it would be more
24 realistic than the current \$2,500 and \$7,500 amounts, it would be subject to
25 adjustment where needed, and it would be simpler than having two different
26 undertaking amounts.

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

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

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

33. 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).

34. Inflation has eroded the protection provided by the statute. A \$2,500 undertaking in 1974 would be the equivalent of over \$9,000 in today's dollars. (This amount was determined using "The Inflation Calculator" found at <<http://www.westegg.com/inflation/>> (a website created and maintained by S. Morgan Friedman, as modified Jan. 19, 2000). The adjustments are based on the Consumer Price Index from 1800-1999. The pre-1975 data are the Consumer Price Index statistics from *Historical Statistics of the United States* (USGPO, 1975). Data from 1975 forward are from the annual *Statistical Abstracts of the United States*.)

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

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

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

11 This language was added to the statute in 1941 to overturn case law holding that
12 a party who relies on an adverse party's jury demand is not entitled to a jury if the
13 demand is withdrawn or abandoned.³⁵ As the court explained in *DeCastro v. Row*,
14 the 1941 amendment "eliminated such a harsh rule."³⁶ The amendment's "purpose
15 and philosophy was to permit a party to rely on another party's demand and
16 deposit of fees."³⁷

17 It is not clear why the 1941 legislation cured the problem only as to cases in
18 superior court, and not as to cases in other courts. The reference in subdivision (b)
19 to superior court cases was revised in 1998 to exclude limited civil cases, in order
20 to accommodate trial court unification.³⁸ But the policy supporting this limitation
21 was not reexamined.³⁹

22 The limitation to superior court cases was criticized immediately on enactment.
23 In *The Work of the 1941 California Legislature*,⁴⁰ Professor Stanley Howell
24 observes:

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

30 The Commission is not aware of any policy basis for distinguishing between
31 limited and unlimited civil cases on this point. In fact, California Rule of Court
32 521 (made applicable to limited civil cases in superior court by Rule 709) provides

35. 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).

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

37. *Id.* at 561.

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

39. See "Background" *supra*.

40. 15 So. Cal. L. Rev. 1, 14-15 (1941).

1 the same type of protection for limited civil cases that the statute provides for
2 unlimited civil cases:

3 521. If a jury is demanded by either party in the memorandum to set a civil case
4 for trial and such party thereafter by announcement or by operation of law waives
5 a trial by jury, any and all adverse party or parties shall be given 10 days' written
6 notice by the clerk of the court of such waiver. Such adverse party or parties shall
7 have not exceeding five days immediately following the receipt of such notice of
8 waiver, within which to file and serve a demand for a trial by jury and deposit
9 advance jury fees for the first day's trial whenever such deposit is required by
10 law. If it is impossible for the clerk of the court to give such 10 days' notice by
11 reason of the trial date, or if for any cause such notice is not given, the trial of said
12 action shall be continued by the court for a sufficient length of time to enable the
13 giving of such notice by the clerk of the court to such adverse party.⁴¹

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

17 The statute should also be revised to delete the reference to the memorandum to
18 set the cause for trial (commonly known as the "at-issue memorandum"). That
19 reference is obsolete because an at-issue memorandum is not required in cases that
20 are subject to case management, although it may still be required in cases that are
21 exempt from case management.⁴²

22 Finally, the statute should specify that the party who waives a jury after
23 demanding one is responsible for promptly notifying all other parties of the
24 waiver. As a leading treatise points out, the provision is currently silent on who is
25 to provide the notice.⁴³ Previously, the court clerk was required to notify the
26 parties.⁴⁴ This requirement was deleted from the statute in 1988,⁴⁵ but still applies
27 to limited civil cases pursuant to court rule.⁴⁶ To conserve court resources in both
28 limited and unlimited civil cases, the proposed law would place the burden of
29 providing notice on the party whose action creates the need for notice.⁴⁷ If that
30 party fails to provide notice of the waiver as required, other parties (or the clerk or
31 judge) would be permitted but not required to provide the notice instead, so that
32 they can promptly ascertain whether to plan for a jury trial.

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

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

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

44. 1941 Cal. Stat. ch. 1191, § 1.

45. 1988 Cal. Stat. ch. 10, §§ 2, 3.

46. Cal. R. Ct. 521, 709.

47. 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).

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

1 In 1991, the satisfaction of judgment statute was amended to allow entry of a
2 satisfaction in cases in which the only amount left unsatisfied is an interest deficit
3 of less than \$10.⁴⁸ This rule initially applied only in municipal court.⁴⁹ As
4 presently worded to reflect trial court unification, Code of Civil Procedure Section
5 685.030(e) applies only in a limited civil case:

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

11 The proposal to amend the satisfaction of judgment statute to permit the clerk to
12 ignore a trivial interest deficit in a municipal court case was sponsored by the
13 Administrative Office of the Municipal Courts, which explained the need for the
14 proposal as follows:

15 Section 685.030(a)(2) currently provides that interest continues to accrue on
16 money judgments until the date the levying officer actually receives the proceeds.
17 Since there is often turnaround time of 2-3 days between the service of the writ
18 and the actual receipt of the proceeds by the levying officer, the amount stated on
19 the writ is often understated by the daily interest amount which continues to
20 accrue during the turnaround period. In these instances, the clerk's office is unable
21 to record in the Register of Actions that the judgment is fully satisfied. Some
22 persistent judgment creditors have returned to the clerk's office seeking the
23 additional interest owing on the writ, which is typically under \$10. This statute
24 causes additional workload for the clerk's office with minimal benefit to the
25 judgment creditor.⁵⁰

26 The sponsor limited the proposal to municipal court cases because "judgments in
27 superior court are substantially higher and the daily interest accruing is much
28 greater."⁵¹

29 The amount of a judgment is irrelevant, however, so long as all that remains
30 unpaid is an interest deficit of \$10 or less.⁵² Because that situation could arise in a

48. 1991 Cal. Stat. ch. 1090, § 4.5.

49. *Id.*

50. Memorandum from Kiri Torre, County Municipal Court Administrator, to Claude L. Van Marter, Ass't County Administrator (Jan. 25, 1991). This memorandum is in the Assembly Judiciary Committee's file on Assembly Bill 1484 (1991 Cal. Stat. ch. 1090), which is kept at State Archives. 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.

51. Memorandum from Kiri Torre, 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 49.

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

1 superior court case as well as in a municipal court case, the California State
2 Sheriffs' Association suggested that the proposal "cover all money judgment civil
3 writs issued from both municipal and Superior Courts."⁵³

4 The legislative history does not disclose why the Legislature did not adopt that
5 approach. The answer may relate more to the timing of the legislative process than
6 to the substance of the suggestion. The proposal to amend the satisfaction of
7 judgment statute was part of the Assembly Judiciary Committee's 1991 omnibus
8 civil practice bill. It was one of the last provisions added to the bill,⁵⁴ so the
9 suggestion to extend the proposal to superior court cases may not have received as
10 much consideration as it would have if the suggestion were made earlier in the
11 legislative process.

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

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

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

26 720.160. (a) If the creditor files with the levying officer an undertaking that
27 satisfies the requirements of this section within the time allowed under
28 subdivision (b) of Section 720.140:

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

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

53. *Id.*

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

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

4 (1) Except as provided in paragraph (2), seven thousand five hundred dollars
5 (\$7,500), or twice the amount of the execution lien as of the date of levy or other
6 enforcement lien as of the date it was created, whichever is the lesser amount.

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

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

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

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

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

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

21 720.260. (a) If the creditor within the time allowed under subdivision (b) of
22 Section 720.240 either files with the levying officer an undertaking that satisfies
23 the requirements of this section and a statement that satisfies the requirements of
24 Section 720.280 or makes a deposit with the levying officer of the amount
25 claimed under Section 720.230:

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

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

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

36 (1) Except as provided in paragraph (2), seven thousand five hundred dollars
37 (\$7,500), or twice the amount of the execution lien as of the date of levy or other
38 enforcement lien as of the date it was created, whichever is the lesser amount.

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

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

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

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

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

49 (d) If the creditor is a public entity exempt from giving an undertaking, the
50 public entity shall, in lieu of filing the undertaking, file with the levying officer a

1 notice stating that the public entity opposes the claim of the third person. When so
2 filed, the notice is deemed to satisfy the requirement of this section that an
3 undertaking be filed.

4 Before enactment of this scheme in 1982, the law provided for a creditor's
5 undertaking in third party claim proceedings in an amount twice the value of the
6 property claimed.⁵⁵ This was changed in 1982 on recommendation of the Law
7 Revision Commission to a flat amount of \$2,500 for actions pending or judgments
8 rendered in municipal court, and \$7,500 for actions pending or judgments rendered
9 in superior court. The rationale for a flat amount undertaking was that it would
10 eliminate the need for the courts to consider objections to the amount of an
11 undertaking based on the value of the property.⁵⁶ The amounts selected were based
12 on the amounts for an attachment undertaking.

13 Trial court unification led to the current scheme in 1998. The undertaking is
14 \$2,500 in a limited civil case, and \$7,500 in an unlimited civil case.⁵⁷

15 To maintain the current pattern, Code of Civil Procedure Sections 720.160 and
16 720.260 should track the undertaking amount given by a creditor for an
17 attachment. Because the proposed attachment undertaking is \$10,000,⁵⁸ the same
18 amount should apply to third party claim situations.

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

19 Code of Civil Procedure Section 1134 establishes fees for filing a confession of
20 judgment that differ depending on the jurisdictional classification of the case. The
21 filing fee is \$15 except in a limited civil case, in which case the filing fee is \$10.⁵⁹

22 The drafting of this provision is anomalous, since technically speaking it cannot
23 be said that a confession of judgment in an amount of \$25,000 or less is “in a
24 limited civil case,” no case ever having been filed. Before 1998, the statute
25 provided a lower fee in municipal and justice courts; the 1998 substitution of the
26 reference to a “limited civil case” was made to accommodate trial court

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

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

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

58. See discussion of “Undertaking for Writ of Attachment or Protective Order” *supra*.

59. 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.

1 unification.⁶⁰ At a minimum, this section requires correction to refer to a fee of
2 \$10 where the amount confessed does not exceed \$25,000.

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

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

13 As a matter of policy, there may be a sentiment that in a smaller case, the costs
14 charged against the parties should remain proportionately smaller. When the fee
15 structure was enacted in 1872, the differential may have been significant. At that
16 time, there was a proliferation of trial courts, including district courts, county
17 courts, and justice courts. The general fee for filing a confession of judgment at
18 that time was \$10; in justice courts the fee was \$3.⁶¹ The equivalents in current
19 dollars would be about \$135 and \$40.⁶²

20 That fee structure remained unchanged for 85 years until the 1950s, when the
21 fees were changed to \$10 in superior court, \$9 in municipal court, and \$5 in justice
22 court.⁶³ In the 1970s the fees were raised to what they are today (\$15 in superior
23 court and \$10 in municipal court).⁶⁴ The \$5 difference in filing fees in today's
24 dollars is so small that it is not worth maintaining.

25 While a lower fee in smaller cases may be viewed as a populist measure, this is
26 illusory. The law on confessions of judgment has evolved to the point that as a
27 practical matter the confession of judgment is no longer of any use for small
28 claims. A confession of judgment is not valid unless an attorney representing the
29 defendant signs a certificate that the attorney has examined the proposed judgment
30 and has advised the defendant with respect to the waiver of rights and defenses
31 under the confession of judgment procedure and has advised the defendant to
32 utilize the confession of judgment procedure.⁶⁵ The cost of obtaining the

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.

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

61. 1872 Code Civ. Proc. §§ 1134, 1135.

62. These amounts were determined using "The Inflation Calculator" found at <http://www.westegg.com/inflation/>. See *supra* note 33.

63. 1957 Cal. Stat. ch. 1982, §§ 1, 2.

64. 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.

65. Code Civ. Proc. § 1132.

1 attorney's certificate renders the confession of judgment procedure practically
2 useless for the small claim.⁶⁶ Whether the filing fee were \$15 as opposed to \$10
3 would make no difference, because the cost of the attorney's certificate, not the
4 nominal filing fee, is prohibitive for small claims.

5 In the interest of simplicity, the Commission recommends elimination of the
6 filing fee differential, and adoption of a standard \$15 filing fee for all confessions
7 of judgment.⁶⁷ Because an attorney's certificate is now a prerequisite to entry of a
8 confession of judgment, the proposed amendment of Section 1134 would also
9 require that the certificate be made part of the judgment roll.

IMPLIED COURT AUTHORITY IN LIMITED AND UNLIMITED CIVIL CASES

10 Some statutes expressly relate to court authority in a limited civil case or an
11 unlimited civil case. For example, Code of Civil Procedure Section 402.5 permits
12 a unified superior court to transfer a limited civil case to another branch or location
13 of that court:⁶⁸

14 402.5. The superior court in a county in which there is no municipal court may
15 transfer a limited civil case to another branch or location of the superior court in
16 the same county.

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

23 Such interpretations may be wholly unwarranted. For example, Section 402.5
24 was added in 1998 to implement trial court unification.⁶⁹ The purpose of the
25 provision was to underscore that unification would not undercut existing authority
26 to transfer a traditional municipal court case (now known as a limited civil case)
27 within a county:

28 In specified circumstances, existing law allows transfer of a case from one
29 municipal court to another municipal court in the same county. In a county with a
30 unified superior court, there are no municipal court districts; the proposed law

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

67. 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.

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

69. 1998 Cal. Stat. ch. 931, § 68; see *Revision of Codes*, *supra* note 6, at 71, 181.

1 would preserve the ability of the court to transfer a case from one location to
2 another location within the county.⁷⁰

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

6 To guard against improper negative inferences under circumstances such as
7 these, a provision should be added to the Code of Civil Procedure clarifying that
8 the existence of a statute relating to the authority of the court in a limited civil case
9 does not, by itself, imply that the same court authority does or does not exist in an
10 unlimited civil case. The provision should further direct that the existence of a
11 statute relating to the authority of the court in an unlimited civil case does not, by
12 itself, imply that the same court authority does or does not exist in a limited civil
13 case.

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

PROPOSED LEGISLATION

1 **Code Civ. Proc. § 89 (added). Implied court 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 court authority does or does not
5 exist 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 court authority does or does not
8 exist 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. _____. 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. _____. 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. _____. 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 a single attachment undertaking,
32 regardless of the jurisdictional classification of the case.

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

34 SEC. _____. Section 631 of the Code of Civil Procedure is amended to read:
35 631. (a) Trial by jury may be waived by the several parties to an issue of fact in
36 any of the following ways:

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

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

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

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

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

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

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

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

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

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

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

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

44 As amended, subdivision (b) also clarifies that the party who waives a jury after demanding one
45 is responsible for providing notice of the waiver. If that party fails to provide notice of the waiver

1 as required, another party (or the clerk or judge) is permitted but not required to provide the
2 notice instead. Failure to provide timely notice may be grounds for a continuance or other
3 remedial action. See *Leslie v. Roe*, 52 Cal. App. 3d 686, 688, 125 Cal. Rptr. 157 (1975).

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

5 SEC. _____. Section 685.030 of the Code of Civil Procedure is amended to read:
6 685.030. (a) If a money judgment is satisfied in full pursuant to a writ under this
7 title, interest ceases to accrue on the judgment:

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

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

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

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

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

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

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

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

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

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

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

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

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

35 SEC. _____. Section 720.160 of the Code of Civil Procedure is amended to read:
36 720.160. (a) If the creditor files with the levying officer an undertaking that
37 satisfies the requirements of this section within the time allowed under subdivision
38 (b) of Section 720.140:

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

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

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

7 ~~(1) Except as provided in paragraph (2), seven thousand five hundred dollars~~
8 ~~(\$7,500), or twice the amount of the execution lien as of the date of levy or other~~
9 ~~enforcement lien as of the date it was created, whichever is the lesser amount.~~

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

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

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

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

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

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

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

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

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

32 720.260. (a) If the creditor within the time allowed under subdivision (b) of
33 Section 720.240 either files with the levying officer an undertaking that satisfies
34 the requirements of this section and a statement that satisfies the requirements of
35 Section 720.280 or makes a deposit with the levying officer of the amount claimed
36 under Section 720.230:

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

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

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

4 ~~(1) Except as provided in paragraph (2), seven thousand five hundred dollars~~
5 ~~(\$7,500), or twice the amount of the execution lien as of the date of levy or other~~
6 ~~enforcement lien as of the date it was created, whichever is the lesser amount.~~

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

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

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

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

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

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

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

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

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

28 1134. ~~In all courts the~~ (a) The statement required by Section 1133 must be filed
29 with the clerk of the court in which the judgment is to be entered, who must
30 endorse upon it, and enter a judgment of the court for the amount confessed with
31 the costs ~~hereinafter set forth~~ provided in subdivision (b).

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

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

39 **Comment.** Section 1134 is amended to divide the section into subdivisions and to eliminate the
40 \$10 filing fee for a limited civil case. Under this amendment, the filing fee is \$15 regardless of
41 the jurisdictional classification of the case.

42 The reference to "all courts" in subdivision (a) is deleted as obsolete. It derived from an era
43 when a confession of judgment might have been entered in any of several courts, depending on

1 the amount of the judgment and the jurisdiction of the court. *Cf.* Section 1132(a) (“Such judgment
2 may be entered in any court having jurisdiction for like amounts”).

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