

# CALIFORNIA LAW REVISION COMMISSION

## TENTATIVE RECOMMENDATION

### Civil Procedure: Technical Corrections

October 2000

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

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **January 15, 2001.****

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

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

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

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

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

This recommendation was prepared pursuant to Government Code Section 70219.

## CIVIL PROCEDURE: TECHNICAL CORRECTIONS

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

### CLARIFICATION OF JURISDICTIONAL CLASSIFICATION

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

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

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

20 Although this statute provides general guidance, a number of provisions require  
21 revision to clarify the jurisdictional classification of the actions to which they per-  
22 tain. These include the provisions governing a petition to release a mechanic’s  
23 lien,<sup>5</sup> a proceeding to determine claims to the proceeds of a sale under a deed of  
24 trust,<sup>6</sup> and a petition for relief from claim-filing requirements of the Tort Claims  
25 Act.<sup>7</sup>

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1. Gov’t Code § 70219; see also *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 82-83 (1998).

2. Code Civ. Proc. § 32.5.

3. See, e.g., Code Civ. Proc. §§ 85 & Comment (limited civil cases), 91 (application of economic litigation procedures), 904.1 (taking appeal), 904.2 (taking appeal in limited civil case); see also *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 64-65 (1998). In a county with a municipal court, the municipal court has original jurisdiction in a limited civil case. Code Civ. Proc. § 85.1.

4. For restrictions on the relief awardable in a limited civil case, see Code Civ. Proc. § 580(b).

5. Civ. Code § 3154.

6. Civ. Code § 2924j.

7. Gov’t Code § 946.6.

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

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

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

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

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

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

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

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

34 If a public entity rejects an application to file a late claim under the Tort Claims  
35 Act, Government Code Section 946.6 permits the claimant to petition the court for

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8. Civ. Code § 2924j(c).

9. Code Civ. Proc. § 86(a)(1).

1 relief from the requirement that the claim be presented to the public entity before  
2 filing suit. The proper court for filing the petition is “a court which would be a  
3 competent court for the trial of an action on the cause of action to which the claim  
4 relates and which is located in a county or judicial district which would be a  
5 proper place for the trial of the action.”

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

#### OBSOLETE REFERENCES TO DOCKET

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

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10. Penal Code § 1428.

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

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

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



PROPOSED LEGISLATION

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

3 SECTION 1. Section 2924j of the Civil Code is amended to read:

4 2924j. (a) Unless an interpleader action has been filed, within 30 days of the  
5 execution of the trustee's deed resulting from a sale in which there are proceeds  
6 remaining after payment of the amounts required by paragraphs (1) and (2) of  
7 subdivision (a) of Section 2924k, the trustee shall send written notice to all  
8 persons with recorded interests in the real property as of the date immediately  
9 prior to the trustee's sale who would be entitled to notice pursuant to subdivisions  
10 (b) and (c) of Section 2924b. The notice shall be sent by first-class mail in the  
11 manner provided in paragraph (1) of subdivision (c) of Section 2924b and inform  
12 each entitled person of each of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

22 ☞ **Note.** If the municipal and superior courts in all counties unify, the references to municipal  
23 court will need to be deleted from this provision. The Commission may also propose other  
24 technical clean-up at that time (e.g., labeling unlabeled paragraphs).

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

26 SEC. 2. Section 86 of the Code of Civil Procedure is amended to read:

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

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

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

38 (3) Actions to cancel or rescind a contract when the relief is sought in connection  
39 with an action to recover money not exceeding twenty-five thousand dollars  
40 (\$25,000) or property of a value not exceeding twenty-five thousand dollars  
41 (\$25,000), paid or delivered under, or in consideration of, the contract; actions to

1 revise a contract where the relief is sought in an action upon the contract if the  
2 action otherwise is a limited civil case.

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

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

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

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

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

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

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

38 (9) Actions under Article 3 (commencing with Section 708.210) of Chapter 6 of  
39 Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property  
40 or to enforce the liability of the debtor of a judgment debtor where the interest  
41 claimed adversely is of a value not exceeding twenty-five thousand dollars  
42 (\$25,000) or the debt denied does not exceed twenty-five thousand dollars  
43 (\$25,000).

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

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

10 (B) To confirm, correct, or vacate a fee arbitration award between an attorney  
11 and client that is binding or has become binding, pursuant to Article 13  
12 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and  
13 Professions Code, where the arbitration award is twenty-five thousand dollars  
14 (\$25,000) or less.


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

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

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

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

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

26  **Note.** If the municipal and superior courts in all counties unify, the references to municipal  
27 court will need to be deleted from this provision.

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

29 SEC. 3. Section 396a of the Code of Civil Procedure is amended to read:

30 396a. (a) In a limited civil case that is subject to Sections 1812.10 and 2984.4 of  
31 the Civil Code, or subdivision (b) of Section 395 of the Code of Civil Procedure,  
32 or is an action or proceeding for an unlawful detainer as defined in Section 1161 of  
33 the Code of Civil Procedure, the plaintiff shall state facts in the complaint, verified  
34 by the plaintiff's oath, or the oath of the plaintiff's attorney, or in an affidavit of  
35 the plaintiff or of the plaintiff's attorney filed with the complaint, showing that the  
36 action has been commenced in the proper court for the trial of the action or  
37 proceeding, and showing that the action is subject to the provisions of Sections  
38 1812.10 and 2984.4 of the Civil Code or subdivision (b) of Section 395 of the  
39 Code of Civil Procedure, or is an action for an unlawful detainer. When the  
40 affidavit is filed with the complaint, a copy thereof shall be served with the  
41 summons. Except as herein provided, if the complaint or affidavit be not so filed,  
42 no further proceedings shall be had in the action or proceeding, except to dismiss

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

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


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

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

35 **Comment.** Section 396a is amended to delete the reference to a “docket,” because courts no  
36 longer maintain a record denominated a “docket” in civil cases. Formerly, justice courts  
37 maintained a docket in civil cases, which was a record of actions taken in open court, as well as  
38 documents filed and other proceedings in the case. See former Gov’t Code §§ 71614 (1953 Cal.  
39 Stat. ch. 206, § 1, repealed by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a  
40 book denominated a “docket”), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat.  
41 ch. 1257, § 72) (clerk or judge of justice court shall keep the “docket” and other records of the  
42 court). Now actions taken in open court are recorded in the minutes of a municipal or superior  
43 court. Gov’t Code §§ 69844 (minutes of superior court), 71280.2 (minutes of municipal court);  
44 see also *Copley Press v. Superior Court*, 6 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992).  
45 Documents filed or lodged and other proceedings in a civil case are recorded in the register of

1 actions. See Code Civ. Proc. §§ 1052 (clerk of municipal court may keep a register of civil  
2 actions), 1052.1 (alternative methods of keeping register of actions in municipal court); Gov't  
3 Code §§ 69845 (clerk of superior court may keep a register of actions), 69845.5 (alternative to  
4 maintaining register of actions in superior court). Because the minutes are the proper record for  
5 reflecting consent in open court, and Section 396a already refers to the minutes, the reference to  
6 the “docket” may be deleted without substituting a reference to the register of actions. For  
7 preparation of a “docket” in criminal actions and proceedings in municipal court, see Penal Code  
8 § 1428.

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

10  **Note.** The proposed law would delete the reference to a “docket” without substituting a  
11 reference to the “register of actions.” As explained in the Comment, it does not appear necessary  
12 to refer to the register of actions, because the provision already refers to the minutes and the  
13 minutes are the proper record for reflecting consent in open court. If you are aware of a reason for  
14 inserting a reference to the register of actions, please notify the Commission.

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

16 SEC. 4. Section 398 of the Code of Civil Procedure is amended to read:

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

24 (b) If an action or proceeding is commenced in a court, other than one  
25 designated as a proper court for the trial ~~thereof~~ by the provisions of this title, and  
26 the same be ordered transferred for that reason, it ~~must~~ shall be transferred to any  
27 ~~such~~ proper court which the parties may agree upon by stipulation in writing, or  
28 made in open court and entered in the minutes ~~or docket~~; if the parties do not so  
29 agree, then to any ~~such~~ proper court in the county in which the action or  
30 proceeding was commenced which the defendant may designate, or, if there be no  
31 ~~such~~ proper court in ~~such~~ the county, to any ~~such~~ proper court, in a proper county,  
32 designated by the defendant; if the parties do not so agree, and the defendant does  
33 not so designate the court, as herein provided, or where the court orders the  
34 transfer of an action on its own motion as provided in this title, to ~~such~~ the proper  
35 court as the court in which the action or proceeding is pending may determine.


36 (c) The designation of the court by the defendant, herein provided for, may be  
37 made in the notice of motion for change of venue or in open court, entered in the  
38 minutes or ~~docket~~, at the time the order for transfer is made.

39 **Comment.** Section 398 is amended to delete the references to a “docket,” because courts no  
40 longer maintain a record denominated a “docket” in civil cases. Formerly, justice courts  
41 maintained a docket in civil cases, which was a record of actions taken in open court, as well as  
42 documents filed and other proceedings in the case. See former Gov't Code §§ 71614 (1953 Cal.  
43 Stat. ch. 206, § 1, repealed by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a  
44 book denominated a “docket”), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat.  
45 ch. 1257, § 72) (clerk or judge of justice court shall keep the “docket” and other records of the



1 court). Now actions taken in open court are recorded in the minutes of a municipal or superior  
2 court. Gov't Code §§ 69844 (minutes of superior court), 71280.2 (minutes of municipal court);  
3 see also *Copley Press v. Superior Court*, 6 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992).  
4 Documents filed or lodged and other proceedings in a civil case are recorded in the register of  
5 actions. See Code Civ. Proc. §§ 1052 (clerk of municipal court may keep a register of civil  
6 actions), 1052.1 (alternative methods of keeping register of actions in municipal court); Gov't  
7 Code §§ 69845 (clerk of superior court may keep a register of actions), 69845.5 (alternative to  
8 maintaining register of actions in superior court). Because the minutes are the proper record for  
9 reflecting an agreement in open court, and Section 398 already refers to the minutes, the  
10 references to the "docket" may be deleted without substituting references to the register of  
11 actions. For preparation of a "docket" in criminal actions and proceedings in municipal court, see  
12 Penal Code § 1428.

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

15  **Note.** The proposed law would delete the references to a "docket" without substituting  
16 references to the "register of actions." As explained in the Comment, it does not appear necessary  
17 to refer to the register of actions, because the provision already refers to the minutes and the  
18 minutes are the proper record for reflecting an agreement in open court. If you are aware of a  
19 reason for inserting references to the register of actions, please notify the Commission.

20 The proposed law would leave the references to the "proper court in the county" intact. If the  
21 municipal and superior courts in all counties unify, these references will need to be deleted.

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

23 SEC. 5. Section 472b of the Code of Civil Procedure is amended to read:

24 472b. When a demurrer to any pleading is sustained or overruled, and time to  
25 amend or answer is given, the time so given runs from the service of notice of the  
26 decision or order, unless the notice is waived in open court, and the waiver entered  
27 in the minutes ~~or docket~~. When an order sustaining a demurrer without leave to  
28 amend is reversed or otherwise remanded by any order issued by a reviewing  
29 court, any amended complaint shall be filed within 30 days after the clerk of the  
30 reviewing court mails notice of the issuance of the remittitur.

31 **Comment.** Section 472b is amended to delete the reference to a "docket," because courts no  
32 longer maintain a record denominated a "docket" in civil cases. Formerly, justice courts  
33 maintained a docket in civil cases, which was a record of actions taken in open court, as well as  
34 documents filed and other proceedings in the case. See former Gov't Code §§ 71614 (1953 Cal.  
35 Stat. ch. 206, § 1, repealed by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a  
36 book denominated a "docket"), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat.  
37 ch. 1257, § 72) (clerk or judge of justice court shall keep the "docket" and other records of the  
38 court). Now actions taken in open court are recorded in the minutes of a municipal or superior  
39 court. Gov't Code §§ 69844 (minutes of superior court), 71280.2 (minutes of municipal court);  
40 see also *Copley Press v. Superior Court*, 6 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992).  
41 Documents filed or lodged and other proceedings in a civil case are recorded in the register of  
42 actions. See Code Civ. Proc. §§ 1052 (clerk of municipal court may keep a register of civil  
43 actions), 1052.1 (alternative methods of keeping register of actions in municipal court); Gov't  
44 Code §§ 69845 (clerk of superior court may keep a register of actions), 69845.5 (alternative to  
45 maintaining register of actions in superior court). Because the minutes are the proper record for  
46 reflecting a waiver in open court, and Section 472b already refers to the minutes, the reference to  
47 the "docket" may be deleted without substituting a reference to the register of actions. For  
48 preparation of a "docket" in criminal actions and proceedings in municipal court, see Penal Code  
49 § 1428.

1 ☞ **Note.** The proposed law would delete the reference to a “docket” without substituting a  
2 reference to the “register of actions.” As explained in the Comment, it does not appear necessary  
3 to refer to the register of actions, because the provision already refers to the minutes and the  
4 minutes are the proper record for reflecting a waiver in open court. If you are aware of a reason  
5 for inserting a reference to the register of actions, please notify the Commission.

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

7 SEC. 6. Section 631 of the Code of Civil Procedure is amended to read:

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

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

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

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

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

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

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

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

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

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

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

**Comment.** Section 631 is amended to delete the reference to a “docket,” because courts no longer maintain a record denominated a “docket” in civil cases. Formerly, justice courts maintained a docket in civil cases, which was a record of actions taken in open court, as well as documents filed and other proceedings in the case. See former Gov’t Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a book denominated a “docket”), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk or judge of justice court shall keep the “docket” and other records of the court). Now actions taken in open court are recorded in the minutes of a municipal or superior court. Gov’t Code §§ 69844 (minutes of superior court), 71280.2 (minutes of municipal court); see also *Copley Press v. Superior Court*, 6 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992). Documents filed or lodged and other proceedings in a civil case are recorded in the register of actions. See Code Civ. Proc. §§ 1052 (clerk of municipal court may keep a register of civil actions), 1052.1 (alternative methods of keeping register of actions in municipal court); Gov’t Code §§ 69845 (clerk of superior court may keep a register of actions), 69845.5 (alternative to maintaining register of actions in superior court). Because the minutes are the proper record for reflecting oral consent in open court, and Section 631 already refers to the minutes, the reference to the “docket” may be deleted without substituting a reference to the register of actions. For preparation of a “docket” in criminal actions and proceedings in municipal court, see Penal Code § 1428.

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

The proposed law would delete the reference to a “docket” without substituting a reference to the “register of actions.” As explained in the Comment, it does not appear necessary to refer to the register of actions, because the provision already refers to the minutes and the minutes are the proper record for reflecting oral consent in open court. If you are aware of a reason for inserting a reference to the register of actions, please notify the Commission.

For other possible revisions of Section 631, see Tentative Recommendation on *Elimination of Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases*, pp. 8-9, 18-20 (July 2000).

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

SEC. 7. Section 638 of the Code of Civil Procedure is amended to read:

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

(a) To hear and determine any or all of the issues in an action or proceeding, whether of fact or of law, and to report a statement of decision thereon.

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


(c) In any matter in which a referee is appointed pursuant to this section, a copy of the order shall be forwarded to the office of the presiding judge. The Judicial Council shall, by rule, collect information on the use of these referees. The Judicial Council shall also collect information on fees paid by the parties for the use of referees to the extent that information regarding those fees is reported to the court.



1 The Judicial Council shall report thereon to the Legislature by January 1, 2003.  
2 This subdivision shall become inoperative on January 1, 2004.

3 **Comment.** Section 638 is amended to delete the reference to a “docket,” because courts no  
4 longer maintain a record denominated a “docket” in civil cases. Formerly, justice courts  
5 maintained a docket in civil cases, which was a record of actions taken in open court, as well as  
6 documents filed and other proceedings in the case. See former Gov’t Code §§ 71614 (1953 Cal.  
7 Stat. ch. 206, § 1, repealed by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a  
8 book denominated a “docket”), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat.  
9 ch. 1257, § 72) (clerk or judge of justice court shall keep the “docket” and other records of the  
10 court). Now actions taken in open court are recorded in the minutes of a municipal or superior  
11 court. Gov’t Code §§ 69844 (minutes of superior court), 71280.2 (minutes of municipal court);  
12 see also *Copley Press v. Superior Court*, 6 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992).  
13 Documents filed or lodged and other proceedings in a civil case are recorded in the register of  
14 actions. See Code Civ. Proc. §§ 1052 (clerk of municipal court may keep a register of civil  
15 actions), 1052.1 (alternative methods of keeping register of actions in municipal court); Gov’t  
16 Code §§ 69845 (clerk of superior court may keep a register of actions), 69845.5 (alternative to  
17 maintaining register of actions in superior court). Because the minutes are the proper record for  
18 reflecting an agreement in open court, and Section 638 already refers to the minutes, the reference  
19 to the “docket” may be deleted without substituting a reference to the register of actions. For  
20 preparation of a “docket” in criminal actions and proceedings in municipal court, see Penal Code  
21 § 1428.

22 A technical change is also made for conformity with preferred drafting style.

23  **Note.** Section 638 was amended by Assembly Bill 2912 (Assembly Judiciary Committee),  
24 2000 Cal. Stat. ch. 644, § 1, effective January 1, 2001. The provision is shown here as so  
25 amended.

26 The proposed law would delete the reference to a “docket” without substituting a reference to  
27 the “register of actions.” As explained in the Comment, it does not appear necessary to refer to  
28 the register of actions, because the provision already refers to the minutes and the minutes are the  
29 proper record for reflecting an agreement in open court. If you are aware of a reason for inserting  
30 a reference to the register of actions, please notify the Commission.

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

32 SEC. 8. Section 912 of the Code of Civil Procedure is amended to read:

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

42 **Comment.** Section 912 is amended to delete the reference to a “docket,” because courts no  
43 longer maintain a record denominated a “docket” in civil cases. See former Gov’t Code §§ 71614  
44 (1953 Cal. Stat. ch. 206, § 1, repealed by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court  
45 shall keep a book denominated a “docket”), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by  
46 1977 Cal. Stat. ch. 1257, § 72) (clerk or judge of justice court shall keep the “docket” and other  
47 records of the court). Formerly, justice courts maintained a docket in civil cases, which was a  
48 record of actions taken in open court, as well as documents filed and other proceedings in the

1 case. See former Gov't Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed by 1977 Cal. Stat.  
2 ch. 1257, § 71) (judge of justice court shall keep a book denominated a "docket"), 71614.5 (1959  
3 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk or judge of justice court  
4 shall keep the "docket" and other records of the court). Now actions taken in open court are  
5 recorded in the minutes of a municipal or superior court. Gov't Code §§ 69844 (minutes of  
6 superior court), 71280.2 (minutes of municipal court); see also Copley Press v. Superior Court, 6  
7 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992). Documents filed or lodged and other  
8 proceedings in a civil case are recorded in the register of actions. See Code Civ. Proc. §§ 1052  
9 (clerk of municipal court may keep a register of civil actions), 1052.1 (alternative methods of  
10 keeping register of actions in municipal court); Gov't Code §§ 69845 (clerk of superior court may  
11 keep a register of actions), 69845.5 (alternative to maintaining register of actions in superior  
12 court). For preparation of a "docket" in criminal actions and proceedings in municipal court, see  
13 Penal Code § 1428.

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

16 SEC. 9. Section 1206 of the Code of Civil Procedure is amended to read:

17 1206. (a) Upon the levy under a writ of attachment or execution not founded  
18 upon a claim for labor, any miner, mechanic, salesman, servant, clerk, laborer or  
19 other person who has performed work or rendered personal services for the  
20 defendant within 90 days prior to the levy may file a verified statement of the  
21 claim therefor with the officer executing the writ, file a copy thereof with the court  
22 that issued the writ, and give copies thereof, containing his or her address, to the  
23 plaintiff and the defendant, or any attorney, clerk or agent representing them, or  
24 mail copies to them by registered mail at their last known address, return of which  
25 by the post office undelivered shall be deemed a sufficient service if no better  
26 address is available, and that claim, not exceeding nine hundred dollars (\$900),  
27 unless disputed, must be paid by the officer, immediately upon the expiration of  
28 the time for dispute of the claim as prescribed in Section 1207, from the proceeds  
29 of the levy remaining in the officer's hands at the time of the filing of the  
30 statement or collectible by the officer on the basis of the writ.

31 (b) The court issuing the writ must make a notation ~~on its docket~~ in the register  
32 of actions of every preferred labor claim of which it receives a copy and must  
33 endorse on any writ of execution or abstract of judgment issued subsequently in  
34 the case that it is issued subject to the rights of a preferred labor claimant or  
35 claimants ~~thereunder~~ and giving the names and amounts of all preferred labor  
36 claims of which it has notice. In levying under any writ of execution the officer  
37 making the levy shall include in the amount due under the execution any and all  
38 preferred labor claims that have been filed in the action and of which the officer  
39 has notice, except any claims that may have been finally disallowed by the court  
40 under the procedure provided for herein and of which disallowance the officer has  
41 actual notice. The amount due on preferred labor claims that have not been finally  
42 disallowed by the court shall be considered a part of the sum due under any writ of  
43 attachment or execution in augmentation of the amount thereof and it shall be the  
44 duty of any person, firm, association or corporation on whom a writ of attachment  
45 or execution is levied to immediately pay to the levying officer the amount of the

1 preferred labor claims, out of any money belonging to the defendant in the action,  
2 before paying the principal sum called for in the writ.

3 (c) If any claim is disputed within the time, and in the manner prescribed in  
4 Section 1207, and a copy of the dispute is mailed by registered mail to the  
5 claimant or the claimant's attorney at the address given in the statement of claim  
6 and the registry receipt is attached to the original of the dispute when it is filed  
7 with the levying officer, or is handed to the claimant or the claimant's attorney, the  
8 claimant, or the claimant's assignee, must within 10 days after the copy is  
9 deposited in the mail or is handed to the claimant or the claimant's attorney  
10 petition the court having jurisdiction of the action on which the writ is based, for a  
11 hearing before it to determine the claim for priority, or the claim to priority is  
12 barred. If more than one attachment or execution is involved, the petition shall be  
13 filed in the court having jurisdiction over the senior attachment or execution. The  
14 hearing shall be held within 20 days from the filing of the petition unless the court  
15 continues it for good cause. Ten days' notice of the hearing shall be given by the  
16 petitioner to the plaintiff and the defendant, and to all parties claiming an interest  
17 in the property, or their attorneys. The notice may be informal and need specify  
18 merely the name of the court, names of the principal parties to the senior  
19 attachment or execution and name of the wage claimant or claimants on whose  
20 behalf it is filed but shall specify that the hearing is for the purpose of determining  
21 the claim for priority. The plaintiff or the defendant, or any other party claiming an  
22 interest may contest the amount or validity of the claim in spite of any confession  
23 of judgment or failure to appear or to contest the claim on the part of any other  
24 person.

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

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

37 **Comment.** Section 1206 is amended to replace the term "docket" with "register of actions,"  
38 because courts no longer maintain a record denominated a "docket" in civil cases. Formerly,  
39 justice courts maintained a docket in civil cases, which was a record of actions taken in open  
40 court, as well as documents filed and other proceedings in the case. See former Gov't Code §§  
41 71614 (1953 Cal. Stat. ch. 206, § 1, repealed by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice  
42 court shall keep a book denominated a "docket"), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed  
43 by 1977 Cal. Stat. ch. 1257, § 72) (clerk or judge of justice court shall keep the "docket" and  
44 other records of the court). Now actions taken in open court are recorded in the minutes of a

1 municipal or superior court. Gov't Code §§ 69844 (minutes of superior court), 71280.2 (minutes  
 2 of municipal court); see also *Copley Press v. Superior Court*, 6 Cal. App. 4th 106, 110, 7 Cal.  
 3 Rptr. 2d 841 (1992). Documents filed or lodged and other proceedings in a civil case are recorded  
 4 in the register of actions. See Code Civ. Proc. §§ 1052 (clerk of municipal court may keep a  
 5 register of civil actions), 1052.1 (alternative methods of keeping register of actions in municipal  
 6 court); Gov't Code §§ 69845 (clerk of superior court may keep a register of actions), 69845.5  
 7 (alternative to maintaining register of actions in superior court). For preparation of a "docket" in  
 8 criminal actions and proceedings in municipal court, see Penal Code § 1428.

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

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

11 SEC. 10. Section 11937 of the Food and Agricultural Code is amended to read:

12 11937. Upon the expiration of 30 days after any judgment becomes final, which  
 13 is not stayed or satisfied in any action which results in a judgment for damages,  
 14 the clerk of a court, ~~or the judge of a court which has no clerk~~, shall forward to the  
 15 director a certified copy of the judgment or a certified copy of the ~~docket entries in~~  
 16 ~~the action~~ register of actions, and a certificate of facts relative to such the  
 17 judgment, on a form which is provided by the director.

18 **Comment.** Section 11937 is amended to delete the reference to "docket entries," and substitute  
 19 a reference to the register of actions, because courts no longer maintain a record denominated a  
 20 "docket" in civil cases. Formerly, justice courts maintained a docket in civil cases, which was a  
 21 record of actions taken in open court, as well as documents filed and other proceedings in the  
 22 case. See former Gov't Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed by 1977 Cal. Stat.  
 23 ch. 1257, § 71) (judge of justice court shall keep a book denominated a "docket"), 71614.5 (1959  
 24 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk or judge of justice court  
 25 shall keep the "docket" and other records of the court). Now actions taken in open court are  
 26 recorded in the minutes of a municipal or superior court. Gov't Code §§ 69844 (minutes of  
 27 superior court), 71280.2 (minutes of municipal court); see also *Copley Press v. Superior Court*, 6  
 28 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992). Documents filed or lodged and other  
 29 proceedings in a civil case are recorded in the register of actions. See Code Civ. Proc. §§ 1052  
 30 (clerk of municipal court may keep a register of civil actions), 1052.1 (alternative methods of  
 31 keeping register of actions in municipal court); Gov't Code §§ 69845 (clerk of superior court may  
 32 keep a register of actions), 69845.5 (alternative to maintaining register of actions in superior  
 33 court). For preparation of a "docket" in criminal actions and proceedings in municipal court, see  
 34 Penal Code § 1428.

35 The amendment also deletes the clause authorizing the judge to substitute for the clerk if there  
 36 is no clerk. That provision is obsolete because every municipal and superior court has a clerk. See  
 37 Gov't Code §§ 24000(c) (county clerk), 26800 (county clerk as clerk of superior court), 73398  
 38 (clerk of Kings County Municipal Court), 73565 (clerk of Monterey County Municipal Court).  
 39 Additionally, a judge has authority to perform any act that a court clerk is allowed to perform.  
 40 Code Civ. Proc. § 167.

41 ☞ **Note.** Section 11937 is not the only provision that includes a clause authorizing the judge to  
 42 substitute for the clerk if there is no clerk. See Bus. & Prof. Code § 21710; Civ. Code § 3154;  
 43 Code Civ. Proc. §§ 222, 573, 585, 644, 990, 995.160, 1011, 1015, 1169, 1986; Evid. Code §  
 44 1560; Penal Code §§ 1196, 1205, 1207, 1213, 1326; Veh. Code § 1803.3, 23140, 23229.1; see  
 45 also Veh. Code § 16373, *infra*. These other provisions may be addressed in another clean-up  
 46 proposal.

1 **Gov't Code § 946.6 (amended). Petition following public entity's rejection of application to**  
2 **present late claim**

3 SEC. 11. Section 946.6 of the Government Code is amended to read:

4 946.6. (a) Where an application for leave to present a claim is denied or deemed  
5 to be denied pursuant to Section 911.6, a petition may be made to the court for an  
6 order relieving the petitioner from Section 945.4. The proper court for filing the  
7 petition is a court which would be a competent court for the trial of an action on  
8 the cause of action to which the claim relates and which is located in a county or  
9 judicial district which would be a proper place for the trial of the action, and if the  
10 petition is filed in a court which is not a proper court for the determination of the  
11 matter, the court, on motion of any party, shall transfer the proceeding to a proper  
12 court. Where an action on the cause of action to which the claim relates would be a  
13 limited civil case, a proceeding pursuant to this section is a limited civil case.

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

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

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

19 (3) The information required by Section 910.

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

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

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

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

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

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

38 (d) A copy of the petition and a written notice of the time and place of hearing  
39 thereof shall be served before the hearing as prescribed by subdivision (b) of  
40 Section 1005 of the Code of Civil Procedure on (1) the clerk or secretary or board  
41 of the local public entity, if the respondent is a local public entity, or (2) the  
42 Attorney General, if the respondent is the state. However, if the petition involves a  
43 claim arising out of alleged actions or inactions of the Department of




1 Transportation, service of the petition and notice of the hearing shall be made on  
2 the Attorney General or the Director of Transportation. Service on the Attorney  
3 General may be accomplished at any of the Attorney General's offices in Los  
4 Angeles, Sacramento, San Diego, or San Francisco. Service on the Director of  
5 Transportation may be accomplished only at the Department of Transportation's  
6 headquarters office in Sacramento.

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

11 (f) If the court makes an order relieving the petitioner from Section 945.4, suit  
12 on the cause of action to which the claim relates shall be filed with the court within  
13 30 days thereafter.

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

19  **Note.** If the municipal and superior courts in all counties unify, this provision will require  
20 further clean-up (e.g., deletion of the reference to "judicial district").

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

23 SEC. 12. Section 16370 of the Vehicle Code is amended to read:

24 16370. The department shall suspend the privilege of any person to operate a  
25 motor vehicle upon receiving a certified copy of a judgment, or a certified copy of  
26 the ~~docket entries~~ register of actions (or a comparable court record of another  
27 jurisdiction) in an action resulting in a judgment for damages, and a certificate of  
28 facts relative to the judgment, on a form provided by the department, indicating  
29 that the person has failed for a period of 30 days to satisfy a judgment rendered  
30 against him or her.

31 **Comment.** Section 16370 is amended to delete the reference to "docket entries," and substitute  
32 a reference to the register of actions, because courts no longer maintain a record denominated a  
33 "docket" in civil cases. Formerly, justice courts maintained a docket in civil cases, which was a  
34 record of actions taken in open court, as well as documents filed and other proceedings in the  
35 case. See former Gov't Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed by 1977 Cal. Stat.  
36 ch. 1257, § 71) (judge of justice court shall keep a book denominated a "docket"), 71614.5 (1959  
37 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk or judge of justice court  
38 shall keep the "docket" and other records of the court). Now actions taken in open court are  
39 recorded in the minutes of a municipal or superior court. Gov't Code §§ 69844 (minutes of  
40 superior court), 71280.2 (minutes of municipal court); see also *Copley Press v. Superior Court*, 6  
41 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992). Documents filed or lodged and other  
42 proceedings in a civil case are recorded in the register of actions. See Code Civ. Proc. §§ 1052  
43 (clerk of municipal court may keep a register of civil actions), 1052.1 (alternative methods of  
44 keeping register of actions in municipal court); Gov't Code §§ 69845 (clerk of superior court may  
45 keep a register of actions), 69845.5 (alternative to maintaining register of actions in superior  
46 court). Section 16370 is amended to refer not only to the register of actions but also to a

1 comparable court record of another jurisdiction, because the provision applies to judgments  
2 rendered by courts in other states, not just judgments rendered by the municipal and superior  
3 courts. See Section 16250 (“judgment” defined); see also Section 16251 (“cause of action”  
4 defined).

5 For preparation of a “docket” in criminal actions and proceedings in municipal court, see Penal  
6 Code § 1428.

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

8 SEC. 13. Section 16373 of the Vehicle Code is amended to read:

9 16373. (a) The clerk of a court, ~~or the judge of a court which has no clerk,~~ shall,  
10 subject to subdivision (b), issue upon the request of a judgment creditor a certified  
11 copy of any judgment or a certified copy of the ~~docket entries~~ register of actions  
12 (or a comparable court record of another jurisdiction) in an action resulting in a  
13 judgment for damages, and a certificate of facts relative to the judgment on a form  
14 provided by the department.

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

21 **Comment.** Section 16373 is amended to delete the reference to “docket entries,” and substitute  
22 a reference to the register of actions, because courts no longer maintain a record denominated a  
23 “docket” in civil cases. Formerly, justice courts maintained a docket in civil cases, which was a  
24 record of actions taken in open court, as well as documents filed and other proceedings in the  
25 case. See former Gov’t Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed by 1977 Cal. Stat.  
26 ch. 1257, § 71) (judge of justice court shall keep a book denominated a “docket”), 71614.5 (1959  
27 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk or judge of justice court  
28 shall keep the “docket” and other records of the court). Now actions taken in open court are  
29 recorded in the minutes of a municipal or superior court. Gov’t Code §§ 69844 (minutes of  
30 superior court), 71280.2 (minutes of municipal court); see also *Copley Press v. Superior Court*, 6  
31 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992). Documents filed or lodged and other  
32 proceedings in a civil case are recorded in the register of actions. See Code Civ. Proc. §§ 1052  
33 (clerk of municipal court may keep a register of civil actions), 1052.1 (alternative methods of  
34 keeping register of actions in municipal court); Gov’t Code §§ 69845 (clerk of superior court may  
35 keep a register of actions), 69845.5 (alternative to maintaining register of actions in superior  
36 court). Section 16373 is amended to refer not only to the register of actions but also to a  
37 comparable court record of another jurisdiction, because the provision applies to judgments  
38 rendered by courts in other states, not just judgments rendered by the municipal and superior  
39 courts. See Section 16250 (“judgment” defined); see also Section 16251 (“cause of action”  
40 defined). For preparation of a “docket” in criminal actions and proceedings in municipal court,  
41 see Penal Code § 1428.

42 The amendment also deletes the clause authorizing the judge to substitute for the clerk if there  
43 is no clerk. That provision is obsolete because every municipal and superior court has a clerk. See  
44 Gov’t Code §§ 24000(c) (county clerk), 26800 (county clerk as clerk of superior court), 73398  
45 (clerk of Kings County Municipal Court), 73565 (clerk of Monterey County Municipal Court).  
46 Additionally, a judge has authority to perform any act that a court clerk is allowed to perform.  
47 Code Civ. Proc. § 167.

1 ☞ **Note.** Section 16373 is not the only provision that includes a clause authorizing the judge to  
2 substitute for the clerk if there is no clerk. See Bus. & Prof. Code § 21710; Civ. Code § 3154;  
3 Code Civ. Proc. §§ 222, 573, 585, 644, 990, 995.160, 1011, 1015, 1169, 1986; Evid. Code §  
4 1560; Penal Code §§ 1196, 1205, 1207, 1213, 1326; Veh. Code § 1803.3, 23140, 23229.1; see  
5 also Food & Agric. § 11937, *infra*. These other provisions may be addressed in another clean-up  
6 proposal.

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

8 SEC. 14. Section 16379 of the Vehicle Code is amended to read:

9 16379. (a) The department shall not suspend a license and shall restore any  
10 suspended license following nonpayment of a final judgment when the judgment  
11 debtor gives proof of financial responsibility for future damages and when the trial  
12 court in which the judgment was rendered orders the payment of the judgment in  
13 installments and while the payment of any installment payment is not in default.

14 (b) Whenever the trial court orders the payment of a judgment in installments as  
15 provided in this section, upon payment of the required fees by the judgment  
16 creditor, it shall forward a certified copy of the order to the department, together  
17 with a certified copy of the judgment or a certified copy of the docket entries  
18 register of actions (or a comparable court record of another jurisdiction) in an  
19 action resulting in a judgment for damages and a certificate of facts relative to the  
20 judgment on a form provided by the department.

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

23 **Comment.** Section 16379 is amended to amended to delete the reference to “docket entries,”  
24 and substitute a reference to the register of actions, because courts no longer maintain a record  
25 denominated a “docket” in civil cases. Formerly, justice courts maintained a docket in civil cases,  
26 which was a record of actions taken in open court, as well as documents filed and other  
27 proceedings in the case. See former Gov’t Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed  
28 by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a book denominated a  
29 “docket”), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk  
30 or judge of justice court shall keep the “docket” and other records of the court). Now actions  
31 taken in open court are recorded in the minutes of a municipal or superior court. Gov’t Code §§  
32 69844 (minutes of superior court), 71280.2 (minutes of municipal court); see also *Copley Press v.*  
33 *Superior Court*, 6 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992). Documents filed or lodged  
34 and other proceedings in a civil case are recorded in the register of actions. See Code Civ. Proc.  
35 §§ 1052 (clerk of municipal court may keep a register of civil actions), 1052.1 (alternative  
36 methods of keeping register of actions in municipal court); Gov’t Code §§ 69845 (clerk of  
37 superior court may keep a register of actions), 69845.5 (alternative to maintaining register of  
38 actions in superior court). Section 16379 is amended to refer not only to the register of actions but  
39 also to a comparable court record of another jurisdiction, because the provision applies to  
40 judgments rendered by courts in other states, not just judgments rendered by the municipal and  
41 superior courts. See Section 16250 (“judgment” defined); see also Section 16251 (“cause of  
42 action” defined).

43 For preparation of a “docket” in criminal actions and proceedings in municipal court, see Penal  
44 Code § 1428.