

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Civil Procedure: Technical Corrections

February 2001

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative.

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CALIFORNIA LAW REVISION COMMISSION

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February 2, 2001

To: The Honorable Gray Davis
Governor of California, and
The Legislature of California

The Law Revision Commission recommends the following technical reforms relating to civil procedure:

- (1) The jurisdictional classification of a proceeding to release a mechanic's lien should be clarified (Civ. Code § 3154; Code Civ. Proc. § 86).
- (2) The jurisdictional classification of a petition for relief from claim-filing requirements of the Tort Claims Act should be clarified (Gov't Code § 946.6).
- (3) The codes should be revised to reflect that trial courts no longer maintain a record denominated a "docket" in civil cases.
- (4) 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).

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

This recommendation was prepared pursuant to Government Code Section 70219.

Respectfully submitted,

David Huebner
Chairperson

CIVIL PROCEDURE: TECHNICAL CORRECTIONS

At the direction of the Legislature, the Law Revision Commission is reexamining civil procedure in light of trial court unification.¹ In connection with this study, the Commission has been alerted to ambiguities relating to the jurisdictional classification of certain proceedings. The Commission recommends statutory reforms to clarify these points. The Commission also recommends that obsolete references to a trial court record known as the “docket” be deleted from the codes, and a provision on interpretation of certain statutes relating to court authority be added.

CLARIFICATION OF JURISDICTIONAL CLASSIFICATION

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

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

- (1) The amount in controversy does not exceed \$25,000.

1. Gov’t Code § 70219; see also *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 82-83 (1998). Much of this work is being pursued as a joint study with the Judicial Council. The instant proposal was developed by the Commission independently.

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 *Revision of Codes*, *supra* note 1, at 64-65.

- (2) The relief sought is a type that may be granted in a limited civil case.⁴
- (3) The relief sought is exclusively of a type described in one or more statutes that classify an action or special proceeding as a limited civil case or that provide that an action or special proceeding is within the original jurisdiction of the municipal court.

Although this statute provides general guidance, some provisions require revision to clarify the jurisdictional classification of the actions to which they pertain. These include the provision governing a petition to release a mechanic's lien⁵ and the provision governing a petition for relief from claim-filing requirements of the Tort Claims Act.⁶

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

Civil Code Section 3154 prescribes a procedure for obtaining the release of a mechanic's lien where the lien has expired and no action to enforce the lien has been filed. The provision directs the property owner to petition the "proper court" for a decree to release the property from the lien, but it does not define "proper court" nor does it directly specify whether such a petition is a limited civil case.

Code of Civil Procedure Section 86(a)(6) does specify that an action to enforce and foreclose a mechanic's lien of \$25,000 or less is a limited civil case. Before municipal courts were eliminated through trial court unification,⁷ such an

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

5. Civ. Code § 3154.

6. Gov't Code § 946.6. It may also be appropriate to clarify the jurisdictional classification of a proceeding to discharge the trustee and distribute the proceeds of a sale under a deed of trust (Civ. Code § 2924j). See Tentative Recommendation on *Civil Procedure: Technical Corrections* (October 2000). The Commission has not included such a reform in this proposal, because it is still studying other aspects of the pertinent statute.

7. The trial courts in Kings County unified on February 8, 2001, eliminating the last municipal courts in California. For background on trial court unification,

action was triable in municipal court.⁸ But there was confusion regarding the “proper court” for a petition for release of a mechanic’s lien of \$25,000 or less, because such a petition is not an action to enforce and foreclose a mechanic’s lien.

It is thus unclear whether a petition to release a mechanic’s lien of \$25,000 or less is to be treated as a limited civil case. To prevent confusion, Section 86(a)(6) should be amended to state that where the amount of the lien is \$25,000 or less, a proceeding to release a mechanic’s lien is a limited civil case. This would parallel the treatment of an action to foreclose a mechanic’s lien.⁹

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

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

This terminology may be confusing, because it does not directly state whether a proceeding for relief from the claim-filing requirement is a limited civil case or an unlimited civil case. The language is also outdated. Now that the trial courts in all counties have unified, there is only one trial court in each county and judicial districts no longer exist.

see *Revision of Codes*, *supra* note 1; see also *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm’n Reports 1 (1994).

8. See 1997 Cal. Stat. ch. 527, § 2 (former Code Civ. Proc. § 86); see also Code Civ. Proc. § 85 Comment.

9. The proposed amendment of Section 86 would also delete obsolete references to the municipal courts.

To improve clarity, the statute should be amended to make clear that the jurisdictional classification of a proceeding for relief from the claim-filing requirement is the same as the jurisdictional classification of a suit on the cause of action in the underlying claim. The provision should be further amended to delete the language that is obsolete due to trial court unification.

OBSOLETE REFERENCES TO DOCKET

The term “docket” is obsolete insofar as it is used to refer to a record kept by a trial court in a civil case. Municipal courts and justice courts no longer exist, and superior courts keep a “register of actions” in civil cases, not a “docket.”¹⁰ The codes should be revised to delete obsolete references to a “docket” in a civil case, and insert references to the “register of actions” where appropriate.¹¹

10. Gov’t Code §§ 69845 (clerk of superior court may keep register of actions), 69845.5 (alternative to maintaining register of actions in superior court). 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.

11. See proposed Code Civ. Proc. §§ 472b, 638, 912, 1206, *infra*; proposed Food & Agric. Code § 11937, *infra*; proposed Veh. Code §§ 16370, 16373, 16370, *infra*. Similar revisions may be appropriate in the following provisions: Code Civ. Proc. §§ 396a, 398, and 631. The Commission has not included these provisions in this proposal, because it is still studying other aspects of them. Criminal statutes are beyond the scope of this study, but will be addressed in the Commission’s general study of statutes made obsolete by trial court restructuring. See Gov’t Code § 71674.

IMPLIED COURT AUTHORITY IN LIMITED AND UNLIMITED CIVIL CASES

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

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

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

Such interpretations may be wholly unwarranted. For example, Section 402.5 was added in 1998 to implement trial court unification.¹³ The purpose of the provision was to underscore that unification would not undercut existing authority to transfer a traditional municipal court case (now known as a limited civil case) within a county:

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

12. Similarly, Code of Civil Procedure Section 116.620 provides for payment of a small claims judgment in installments. A small claims case is a limited civil case but special rules apply. See Code Civ. Proc. § 87 (limited civil case in small claims division).

13. 1998 Cal. Stat. ch. 931, § 68; see *Revision of Codes*, *supra* note 1, at 71, 181.

law would preserve the ability of the court to transfer a case from one location to another location within the county.¹⁴

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

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

14. *Revision of Codes*, *supra* note 1, at 71 (footnotes omitted).

PROPOSED LEGISLATION

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

SECTION 1. Section 86 of the Code of Civil Procedure is amended to read:

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

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

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

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

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

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

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

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

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

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

(8) Actions to issue temporary restraining orders and preliminary injunctions, to take accounts, and to appoint receivers where necessary to preserve the property or rights of

any party to a limited civil case; to appoint a receiver and to make any order or perform any act, pursuant to Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments) in a limited civil case; to determine title to personal property seized in a limited civil case.

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

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

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

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

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

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

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

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

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

Subdivision (a)(6) is also amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Article VI, Section 5(e), of the California Constitution. For reclassification of an action in a unified superior court, see Sections 403.010-403.090.

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

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

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

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

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

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

SEC. 3. Section 472b of the Code of Civil Procedure is amended to read:

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

Comment. Section 472b 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 superior court. Gov’t Code § 69844; 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 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 a waiver in open court, and Section 472b already refers to the minutes, the reference to the “docket” may be deleted without substituting a reference to the register of actions.

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

SEC. 4. 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 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. The Judicial Council shall report thereon to the Legislature by January 1, 2003. This subdivision shall become inoperative on January 1, 2004.

Comment. Section 638 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 superior court. Gov’t Code § 69844; 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 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 an agreement in open

court, and Section 638 already refers to the minutes, the reference to the “docket” may be deleted without substituting a reference to the register of actions.

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

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

SEC. 5. Section 912 of the Code of Civil Procedure is amended to read:

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

Comment. Section 912 is amended to delete the reference to a “docket,” because courts no longer maintain a record denominated a “docket” in civil cases. 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). 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 superior court. Gov’t Code §§ 69844; 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 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).

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

SEC. 6. Section 1206 of the Code of Civil Procedure is amended to read:

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

(b) The court issuing the writ must make a notation ~~on its docket~~ *in the register of actions* of every preferred labor claim of which it receives a copy and must endorse on any writ of execution or abstract of judgment issued subsequently in the case that it is issued subject to the rights of a preferred labor claimant or claimants ~~thereunder~~ and giving the names and amounts of all preferred labor claims of which it has notice. In levying under any writ of execution the officer making the

levy shall include in the amount due under the execution any and all preferred labor claims that have been filed in the action and of which the officer has notice, except any claims that may have been finally disallowed by the court under the procedure provided for herein and of which disallowance the officer has actual notice. The amount due on preferred labor claims that have not been finally disallowed by the court shall be considered a part of the sum due under any writ of attachment or execution in augmentation of the amount thereof and it shall be the duty of any person, firm, association or corporation on whom a writ of attachment or execution is levied to immediately pay to the levying officer the amount of the preferred labor claims, out of any money belonging to the defendant in the action, before paying the principal sum called for in the writ.

(c) If any claim is disputed within the time, and in the manner prescribed in Section 1207, and a copy of the dispute is mailed by registered mail to the claimant or the claimant's attorney at the address given in the statement of claim and the registry receipt is attached to the original of the dispute when it is filed with the levying officer, or is handed to the claimant or the claimant's attorney, the claimant, or the claimant's assignee, must within 10 days after the copy is deposited in the mail or is handed to the claimant or the claimant's attorney petition the court having jurisdiction of the action on which the writ is based, for a hearing before it to determine the claim for priority, or the claim to priority is barred. If more than one attachment or execution is involved, the petition shall be filed in the court having jurisdiction over the senior attachment or execution. The hearing shall be held within 20 days from the filing of the petition unless the court continues it for good cause. Ten days' notice of the hearing shall be given by the petitioner to the plaintiff and the defendant, and to all parties claiming an interest in the

property, or their attorneys. The notice may be informal and need specify merely the name of the court, names of the principal parties to the senior attachment or execution and name of the wage claimant or claimants on whose behalf it is filed but shall specify that the hearing is for the purpose of determining the claim for priority. The plaintiff or the defendant, or any other party claiming an interest may contest the amount or validity of the claim in spite of any confession of judgment or failure to appear or to contest the claim on the part of any other person.

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

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

Comment. Section 1206 is amended to replace the term "docket" with "register of actions," 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 superior court. Gov't Code § 69844; 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 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).

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

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

SEC. 7. Section 11937 of the Food and Agricultural Code is amended to read:

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

Comment. Section 11937 is amended to delete the reference to “docket entries,” and substitute a reference to the register of actions, 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 superior court. Gov't Code § 69844; 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 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).

The amendment also deletes the clause authorizing the judge to substitute for the clerk if there is no clerk. That provision is obsolete because every superior court has a clerk. See Gov't Code §§ 24000(c) (county clerk), 26800 (county clerk as clerk of superior court). Additionally, a judge has authority to perform any act that a court clerk is allowed to perform. Code Civ. Proc. § 167.

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

SEC. 8. Section 946.6 of the Government Code is amended to read:

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

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

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

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

(3) The information required by Section 910.

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

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

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

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

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

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

(d) A copy of the petition and a written notice of the time and place of hearing thereof shall be served before the hearing as prescribed by subdivision (b) of Section 1005 of the Code of Civil Procedure on (1) the clerk or secretary or board of the local public entity, if the respondent is a local public entity, or (2) the Attorney General, if the respondent is the state. However, if the petition involves a claim arising out of alleged actions or inactions of the Department of Transportation, service of the petition and notice of the hearing shall be made on the Attorney General or the Director of Transportation. Service on the Attorney General may be accomplished at any of the Attorney General's offices in Los

Angeles, Sacramento, San Diego, or San Francisco. Service on the Director of Transportation may be accomplished only at the Department of Transportation's headquarters office in Sacramento.

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

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

Comment. Section 946.6 is amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Article VI, Section 5(e), of the California Constitution, and the consequent elimination of associated judicial districts. See Section 38 (judicial districts).

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

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

SEC. 9. Section 16370 of the Vehicle Code is amended to read:

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

Comment. Section 16370 is amended to delete the reference to “docket entries,” and substitute a reference to the register of actions, 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 superior court. Gov’t Code § 69844; 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 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). Section 16370 is amended to refer not only to the register of actions but also to a comparable court record of another jurisdiction, because the provision applies to judgments rendered by courts in other states, not just judgments rendered by the California courts. See Section 16250 (“judgment” defined); see also Section 16251 (“cause of action” defined).

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

SEC. 10. Section 16373 of the Vehicle Code is amended to read:

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

(b) The judgment creditor may pay the required fees and request the documents specified in subdivision (a) upon the expiration of 30 days after the judgment has become final, if the judgment has not been stayed or satisfied within the

amounts specified in this chapter as shown by the records of the court. The court shall determine the required fees, which shall be commensurate with the cost incurred by the court in carrying out this section.

Comment. Section 16373 is amended to delete the reference to “docket entries,” and substitute a reference to the register of actions, 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 superior court. Gov’t Code § 69844; 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 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). Section 16373 is amended to refer not only to the register of actions but also to a comparable court record of another jurisdiction, because the provision applies to judgments rendered by courts in other states, not just judgments rendered by California courts. See Section 16250 (“judgment” defined); see also Section 16251 (“cause of action” defined).

The amendment also deletes the clause authorizing the judge to substitute for the clerk if there is no clerk. That provision is obsolete because every superior court has a clerk. See Gov’t Code §§ 24000(c) (county clerk), 26800 (county clerk as clerk of superior court). Additionally, a judge has authority to perform any act that a court clerk is allowed to perform. Code Civ. Proc. § 167.

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

SEC. 11. Section 16379 of the Vehicle Code is amended to read:

16379. (a) The department shall not suspend a license and shall restore any suspended license following nonpayment of a final judgment when the judgment debtor gives proof of financial responsibility for future damages and when the trial

court in which the judgment was rendered orders the payment of the judgment in installments and while the payment of any installment payment is not in default.

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

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

Comment. Section 16379 is amended to amended to delete the reference to “docket entries,” and substitute a reference to the register of actions, 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 superior court. Gov’t Code § 69844; 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 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). Section 16379 is amended to refer not only to the register of actions but also to a comparable court record of another jurisdiction, because the provision applies to judgments rendered by courts in other states, not just judgments rendered by California courts. See Section 16250 (“judgment” defined); see also Section 16251 (“cause of action” defined).
