

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Technical and Minor Substantive Statutory Corrections

August 2006

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. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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August 18, 2006

To: The Honorable Arnold Schwarzenegger
Governor of California, and
The Legislature of California

The Commission recommends technical and minor substantive revisions to address:

- (1) Incorrect cross-references.
- (2) An obsolete reference to a docket in a civil case.
- (3) Obsolete language authorizing a judge to substitute for the clerk.
- (4) Anomalous references to a victim-counselor privilege instead of a counselor-victim privilege.
- (5) A statute that requires “he” to perform duties without specifying who “he” is.
- (6) A significant typographical mistake.
- (7) Anomalous use of the term “disassociation” in the Corporations Code.
- (8) Several provisions that are obsolete due to expiration of deadlines or similar events.

This recommendation was prepared pursuant to Government Code Section 8298.

Respectfully submitted,

Edmund L. Regalia
Chairperson

TECHNICAL AND MINOR SUBSTANTIVE STATUTORY CORRECTIONS

The Law Revision Commission is authorized by Government Code Section 8298 to study and recommend revisions correcting technical and minor substantive defects in California statutes. This recommendation proposes statutory revisions addressing the following:

- Incorrect cross-references.
- An obsolete reference to a docket in a civil case.
- Obsolete language authorizing a judge to substitute for the clerk.
- Anomalous references to a victim-counselor privilege instead of a counselor-victim privilege.
- A statute that requires “he” to perform duties without specifying who “he” is.
- A significant typographical mistake.
- Anomalous use of the term “disassociation” in the Corporations Code.
- Several provisions that are obsolete due to expiration of deadlines or similar events.

Statutes With An Incorrect Cross-Reference

The Commission has identified a number of provisions that contain an incorrect cross-reference to another statute. Most of these refer to a statute that has been repealed. In some instances, the Commission recommends that the cross-reference to the repealed statute be replaced with a cross-reference to the modern provision most similar in substance to the repealed statute.¹ In one instance, the cross-references

1. See the proposed amendment to Corp. Code § 16914 *infra*.

should simply be deleted, because there is no modern counterpart to the repealed provisions.² In another statute, the cross-references should be deleted because they are merely illustrative and several of the cross-referenced provisions have been repealed.³

The Commission has also found a few provisions that contain a cross-reference that is erroneous from the context. The Commission recommends that these cross-references be revised to refer to the proper statutory material.⁴

Obsolete Reference to a Docket in a Civil Case

The historical term “docket” is no longer used to refer to a record kept by a trial court in a civil case.⁵ Instead, a court in

Another example is Education Code Section 17595, which cross-refers to former Government Code Section 14814. Education Code Section 17595 is a clarifying statute that does not directly provide any affirmative right, remedy, or obligation. The provision’s cross-reference to former Government Code Section 14814 was apparently intended to highlight that Section 14814 was then the primary statutory authority governing purchases made by the Department of General Services (“DGS”) for a public entity. This objective would be best continued by replacing the reference to the repealed provision with a reference to the most comparable existing provision governing purchases made by DGS for a school district, Public Contract Code Section 10299.

2. See the proposed amendment to Code Civ. Proc. § 904 *infra*.

3. See the proposed amendment to Code Civ. Proc. § 12a *infra*.

4. See the proposed amendments to Code Civ. Proc. § 425.11 & Corp. Code §§ 16701, 16701.5 *infra*.

Corporations Code Sections 16701 and 16701.5 each contain the phrase “damages for wrongful dissociation under subdivision (b) of Section 16602.” Although subdivision (b) of Section 16602 discusses the *elements* of a wrongful dissociation, it is actually subdivision (c) that discusses *damages* for wrongful dissociation. Rather than revising Sections 16701 and 16701.5 to refer to subdivision (c) of Section 16602, the Commission recommends revising them to refer simply to Section 16602. This will avoid the need to update the cross-references in the event that the subdivisions in Section 16602 are relabeled in the future.

5. Formerly, a justice court was required to maintain a “docket” in a civil case. See 1953 Cal. Stat. ch. 206, § 1 (former Gov’t Code § 71614); 1959 Cal.

a civil case prepares a “register of actions.”⁶ However, Code of Civil Procedure Section 396a continues to refer to a “docket” as a record kept by a court in a civil case. The Commission recommends that the provision be amended to delete the obsolete reference.

Statutes That Authorize a Judge to Substitute for the Clerk

Several statutes delegate a described ministerial task to a court clerk, and then provide in slightly varying language that “where there is no clerk,” the task may be performed by a judge. Statutes containing that language were for the most part drafted more than fifty years ago, when some counties or courts may not have had a court clerk. However, the language is now obsolete, as all trial courts now have the statutory authority to appoint any clerks deemed necessary.⁷ Moreover, Code of Civil Procedure Section 167 now provides that “Any act required or permitted to be performed by the clerk of a court may be performed by a judge thereof.”

The Commission recommends that various statutes be amended to delete obsolete language authorizing a judge to perform various ministerial duties in place of a clerk.⁸

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 a civil case. 1977 Cal. Stat. ch. 1257, §§ 71, 72.

The term “docket” is still used to refer to a civil court’s pending caseload. The term is also sometimes used to refer to a record kept by a trial court, in a criminal case. See Penal Code § 1428.

6. See Gov’t Code §§ 69845, 69845.5.

7. See Gov’t Code § 71620(a).

8. See the proposed amendments to Bus. & Prof. Code § 21710, Civ. Code § 3154, Code Civ. Proc. §§ 222, 585, 618, 644, 990, 1011, 1015, 1169, 1986, Penal Code §§ 1196, 1207, 1213, 1326 & Veh. Code §§ 1803.3, 23229.1 *infra*.

Statutes Referring to a Victim-Counselor Privilege Instead of a Counselor-Victim Privilege

Most statutory provisions referencing an evidentiary privilege for a communication between a professional and a client label the privilege by listing the professional first, and the client second (e.g., lawyer-client privilege, physician-patient privilege, psychotherapist-patient privilege). The Legislature took the opposite approach when it enacted two relatively new privileges: (1) a privilege for a communication between a sexual assault victim and the victim's counselor,⁹ and (2) a privilege for a communication between a domestic violence victim and the victim's counselor.¹⁰ To achieve consistency, the Legislature recently revised some references to these privileges, such that the professional is listed first and then the client (the "sexual assault counselor-victim privilege" and the "domestic violence counselor-victim privilege").¹¹ But other references remain in the reverse order. The Commission recommends that these references be amended to standardize the order of the terms.¹²

Statute Requiring that "He" Perform Duties Without Specifying Who "He" Is

Former Government Code Section 26800, relating to duties of a county clerk, used to be the lead section of a chapter in the Government Code. It provided context for the next provision in the chapter (Section 26801), which says: "Except as otherwise provided by law, *he* shall act as clerk of the board of supervisors in his county."¹³ Former Government

9. 1980 Cal. Stat. ch. 917, § 1 (enacting Evid. Code §§ 1035-1036.2).

10. 1986 Cal. Stat. ch. 854, § 1 (enacting Evid. Code §§ 1037-1037.8).

11. 2004 Cal. Stat. ch. 405, § 1.

12. See the proposed amendments to Evid. Code § 917, Penal Code § 11163.3 & two article headings in the Evid. Code *infra*.

13. Emphasis added.

Code Section 26800 was repealed in 2002.¹⁴ The Commission thus recommends that Section 26801 be amended to refer to the county clerk, instead of “he.”

Statute That Appears to Contain a Typographical Mistake

Civil Code Section 1812.515, which relates to bonding requirements for job listing services, contains two typographical errors.

Section 1812.515 is part of a title in the Civil Code that sets forth requirements for employment agencies, employment counseling services, and nursing registries, as well as job listing services.¹⁵ Three other sections in the title,¹⁶ all enacted in the same bill with Section 1812.515,¹⁷ prescribe bonding requirements for the other agencies or services governed by the title.

The other three referenced sections all contain the following provision: “The bond shall be for the benefit of any person or persons damaged by any violation of *this title or by fraud, dishonesty*, misstatement, misrepresentation, deceit, unlawful acts *or* omissions, or failure to provide the services of”¹⁸

The parallel provision in Section 1812.515, however, omits or alters the words italicized above, thus: “The bond shall be for the benefit of any person or persons damaged by any violation of misrepresentation, deceit, unlawful acts of omissions, or failure to provide the services of”

In light of the overall similarity of language used in all four sections, it appears this omission and alteration was

14. 2002 Cal. Stat. ch. 784, § 180.

15. Title 2.91 of Part 4 of Division 3 (commencing with § 1812.500).

16. Civ. Code §§ 1812.503, 1812.510, 1812.525.

17. 1989 Cal. Stat. ch. 704, § 2.

18. Emphasis added.

inadvertent, and that the Legislature intended the quoted provision in Section 1812.515 to mirror the parallel provisions in the other three sections. The Commission therefore recommends that Section 1812.515 be amended to conform to the language used in the other three sections.

Anomalous Use of the Term “Disassociation” in the Corporations Code

The term “dissociation” or one of its word forms appears in many Corporations Code sections, referring to a partner’s separation from a partnership.¹⁹ However, one provision in the Corporations Code uses the term “*disassociation*” in two places, while also using “dissociation” in several other places.²⁰

The terms “dissociation” and “disassociation” are synonymous when used in this context, and neither is a misspelling.²¹ To achieve consistency throughout the Corporations Code, the Commission recommends that the two references to “disassociation” be replaced with the term “dissociation.”²²

Statutes That Are Obsolete Due to Expiration of a Deadline or Similar Event

The Commission has found a number of provisions that are wholly or partially obsolete. For example, two provisions relate to a 1987 election approving special assessments in

19. There are 68 uses of the term “dissociation” in the Corporations Code, in 21 different sections.

20. Corp. Code § 16914.

21. See Oxford English Dictionary at <<http://dictionary.oed.com>>; Webster’s Dictionary at <<http://www.websters-online-dictionary.org>>.

22. Unlike the Corporations Code, the Business and Professions Code uses the term “disassociation” more often (13 uses, in five different sections) than the term “dissociation” (only one use). The Commission does not propose to change the usage of these terms in the Business and Professions Code.

certain school districts.²³ The assessments were invalidated in litigation that was final long ago.²⁴ Accordingly, one of the provisions failed to become operative and the other has been rendered obsolete.

Similarly, two other provisions²⁵ relate to a special one-time compensation program under the Marine Resources Protection Act.²⁶ One of these provisions became inoperative by its own terms in 1995.²⁷ The other is obsolete because the acts required to obtain compensation had to be performed by January 1, 1994.²⁸

The Commission recommends that all four provisions be repealed.

Along the same lines, the Commission recommends deletion of language in Government Code Section 7910 setting a special time limit for a fiscal determination for the 1980-81 fiscal year. The Commission also recommends deletion of language in Vehicle Code Section 23229.1 specifying an operative date of July 1, 1989.

23. Educ. Code §§ 43040.5, 43060.

24. See California Bldg. Industry Ass'n v. Governing Bd., 206 Cal. App. 3d 212, 253 Cal. Rptr. 497 (1988).

25. Fish & Game Code §§ 8610.7, 8610.8.

26. Cal. Const. art. XB.

27. See Fish & Game Code § 8610.8(f).

28. Fish & Game Code § 8610.7.

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PROPOSED LEGISLATION

BUSINESS AND PROFESSIONS CODE

Bus. & Prof. Code § 21710 (amended). Enforcement of owner's lien

SEC. _____. Section 21710 of the Business and Professions Code is amended to read:

21710. If a declaration in opposition to the lien sale is received prior to the date set forth in the notice of lien sale, the owner may enforce the lien as follows:

(a) An action to enforce the owner's lien shall be commenced by the filing of a verified complaint setting forth the facts upon which the claim of lien is based. The summons and complaint may be served by certified mail, postage prepaid, addressed to the occupant at ~~his or her~~ *the occupant's* last known address, in which case service shall be deemed completed on the fifth day after the mailing, or in any other manner authorized by Chapter 4 (commencing with Section 413.10) of Title 2 of Part 2 of the Code of Civil Procedure.

(b) The occupant shall have 10 days in which to respond to the complaint after service of the summons is completed, which time may be extended for good cause shown.

(c) If the occupant has not responded to the complaint by answer or demurrer within the time allowed after service is completed, the clerk, ~~or the judge if there is no clerk,~~ upon application of the owner, shall enter the default of the occupant, and thereafter, the owner may apply to the court for judgment in the amount of the lien, including costs.

(d) Any judgment entered on the action on the lien in favor of the owner may be enforced by sale of the property by the owner. The sale shall be conducted in a commercially reasonable manner, and shall take place 10 days or more from the entry of judgment, unless within that time period, or at

any time prior to the sale, the occupant pays to the owner the full amount of the judgment.

(e) Enforcement of the judgment may be stayed, pending appeal, by the posting of a bond by the occupant in an amount one and one-half times the amount of the judgment, in which case the property may be released to the occupant.

Comment. Subdivision (c) of Section 21710 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Section 21710 is also amended to make a stylistic revision.

CIVIL CODE

Civ. Code § 1812.515 (amended). Bonding requirement for job listing service

SEC. _____. Section 1812.515 of the Civil Code is amended to read:

1812.515. (a) Every job listing service subject to this title shall maintain a bond issued by a surety company admitted to do business in this state. The principal sum of the bond shall be ten thousand dollars (\$10,000) for each location. A copy of the bond shall be filed with the Secretary of State.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California, and shall be conditioned that the person obtaining the bond will comply with this title and will pay all sums due any individual or group of individuals when the person or his or her representative, agent, or employee has received those sums. The bond shall be for the benefit of any person or persons damaged by any violation of *this title or by fraud, dishonesty, misstatement*, misrepresentation, deceit, unlawful acts ~~of~~ or omissions, or failure to provide the services of the job listing service in performance of the contract with the jobseeker, by

the job listing service or its agent, representatives, or employees while acting within the scope of their employment.

(c)(1) No job listing service shall conduct any business without having a current surety bond in the amount prescribed by this chapter and filing a copy of the bond with the Secretary of State, identifying the bond and the date of cancellation or termination.

(2) Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send a written notice of that cancellation or termination to both the job listing service and the Secretary of State, identifying the bond and the date of cancellation or termination.

(3) If any job listing service fails to obtain a new bond and file a copy of that bond with the Secretary of State by the effective date of the cancellation or termination of the former bond, the job listing service shall cease to conduct any business unless and until a new surety bond is obtained and a copy of that bond is filed with the Secretary of State.

(d) When a deposit has been made in lieu of a bond pursuant to Section 995.710 of the Code of Civil Procedure, the person asserting a claim against the deposit shall, in lieu of Section 996.430 of the Code of Civil Procedure, establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in subdivision (b).

(e) When a person has established the claim with the Secretary of State, the Secretary of State shall review and approve the claim and enter the date of approval on the claim. The claim shall be designated an “approved claim.”

(f) When the first claim against a particular deposit has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Secretary of State. Subsequent claims that are approved by the Secretary of State within the same 240-day period shall

similarly not be paid until the expiration of the 240-day period. Upon the expiration of the 240-day period, the Secretary of State shall pay all approved claims from that 240-day period in full unless the deposit is insufficient, in which case each approved claim shall be paid in a pro rata share of the deposit.

(g) When the Secretary of State approves the first claim against a particular deposit after the expiration of the 240-day period, the date of approval of that claim shall begin a new 240-day period to which subdivision (f) shall apply with respect to the amount remaining in the deposit.

(h) After a deposit is exhausted, no further claims shall be paid by the Secretary of State. Claimants who have had their claims paid in full or in part pursuant to subdivisions (f) and (g) shall not be required to return funds received from the deposit for the benefit of other claimants.

(i) When a deposit has been made in lieu of a bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the job listing service, other than as to an amount as no longer needed or required for the purpose of this title that would otherwise be returned to the job listing service by the Secretary of State.

(j) The Secretary of State shall retain a cash deposit for two years from the date the Secretary of State receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business of a job listing service or has filed a bond pursuant to subdivision (a), provided that there are no outstanding claims against the deposit. Written notification to the Secretary of State shall include all of the following: (1) name, address, and telephone number of the assignor; (2) name, address, and telephone number of the bank at which the deposit is located; (3) account number of the deposit; and (4) a statement whether the assignor is

ceasing to engage in the business of a job listing service or has filed a bond with the Secretary of State. The Secretary of State shall forward an acknowledgment of receipt of the written notice to the assignor at the address indicated therein, specifying the date of receipt of the written notice and anticipated date of release of the deposit, provided there are no outstanding claims against the deposit.

(k) A judge of a superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit or order the Secretary of State to retain the deposit for a specified period beyond the two years pursuant to subdivision (j) to resolve outstanding claims against the deposit account.

(l) The Secretary of State shall charge a filing fee not to exceed the cost of filing the bond or deposit filed in lieu of a bond pursuant to Section 995.710 of the Code of Civil Procedure.

(m) The Secretary of State shall enforce the provisions of this chapter that govern the filing and maintenance of bonds and deposits in lieu of bonds.

Comment. Subdivision (b) of Section 1812.515 is amended to correct typographical mistakes. This is not a substantive change. For provisions with similar language, see Section 1812.503 (bonding requirement for employment agency), Section 1812.510 (bonding requirement for employment counseling service), and Section 1812.525 (bonding requirement for nurses' registry).

Civ. Code § 3154 (amended). Petition to release property from lien

SEC. _____. Section 3154 of the Civil Code is amended to read:

3154. (a) At any time after the expiration of the time period specified by Section 3144 with regard to the period during which property is bound by a lien after recordation of a claim of lien, where no action has been brought to enforce that lien,

the owner of the property or the owner of any interest therein may petition the proper court for a decree to release the property from the lien.

(b) The petition shall be verified and shall allege all of the following:

(1) The date of recordation of the claim of lien.

(2) The legal description of the property affected by the claim of lien.

(3) That no action to foreclose the lien is pending, or that no extension of credit has been recorded, and that the time period during which suit can be brought to foreclose the lien has expired.

(4) That the lien claimant is unable or unwilling to execute a release of the lien or cannot with reasonable diligence be found.

(5) That the owner of the property or interest in the property has not filed for relief under any law governing bankruptcy, and that there exists no other restraint to prevent the lien claimant from filing to foreclose ~~his or her~~ *the* lien. A certified copy of the claim of lien shall be attached to the petition. The petition shall be deemed controverted by the lien claimant.

(c) Upon the filing of the petition, and before any further proceedings are had, the clerk, ~~or if there is no clerk, the judge~~ shall set a date for the hearing not more than 30 days following the filing of the petition. The court may continue the hearing beyond the 30-day period, but good cause shall be shown for any continuance.

(d) A copy of the petition and the notice setting the date for the hearing shall be served upon the lien claimant at least 10 days prior to the date set for hearing, in the manner in which a summons is required to be served, or by certified or registered mail, postage prepaid, return receipt requested, addressed to

the lien claimant at the claimant's address as shown on any of the following:

(1) The preliminary 20-day notice served by the claimant pursuant to Section 3097.

(2) In the records of the registrar of contractors.

(3) The contract on which the lien is based.

(4) The claim of lien itself.

(e) When service is made by mail as provided in this section, service is complete on the fifth day following the day of the deposit of the mail. No decree shall issue in favor of the petitioner unless the petitioner proves that service of the petition and the order fixing the date for hearing was made in compliance with this subdivision. The issue of compliance with this subdivision shall be deemed controverted by the lien claimant.

(f) In the event judgment is rendered in favor of the petitioner, the decree shall indicate all of the following:

(1) The date the lien was recorded.

(2) The county and city, if any, in which the lien was recorded.

(3) The book and page of the place in the official records where the lien is recorded.

(4) The legal description of the property affected. Upon the recordation of a certified copy of the decree, the property described in the decree shall be released from the lien.

(g) The prevailing party shall be entitled to attorneys' fees not to exceed two thousand dollars (\$2,000).

(h) Nothing in this section shall be construed to bar any other cause of action or claim for relief by the owner of the property or an interest in the property, nor shall a decree canceling a claimant's lien bar the lien claimant from bringing any other cause of action or claim for relief, other than an action foreclosing the lien. However, no other action

or claim shall be joined with the claim for relief established by this section.

(i) The provisions of Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure do not apply to causes commenced pursuant to this section.

Comment. Subdivision (c) of Section 3154 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Section 3154 is also amended to make a stylistic revision.

CODE OF CIVIL PROCEDURE

Code Civ. Proc. § 12a (amended). Calculation of time

SEC. _____. Section 12a of the Code of Civil Procedure is amended to read:

12a. (a) If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day ~~which~~ *that* is not a holiday. For purposes of this section, "holiday" means all day on Saturdays, all holidays specified in Section 135 and, to the extent provided in Section 12b, all days ~~which~~ *that* by terms of Section 12b are required to be considered as holidays.

(b) ~~This section applies also to Sections 659, 659a, 946, and 974 to 982, inclusive, and the periods of time severally therein prescribed or provided for, and to all other provisions of law, however stated or wherever expressed, to all provisions of law providing or requiring an act to be performed on a particular day or within a specified period of time. The mention of these sections is not intended and shall not be construed to exclude the application of this section to~~

~~any other provisions of law, whether the latter are, whether~~ expressed in this or any other code or statute, ordinance, rule, or regulation.

Comment. Subdivision (b) of Section 12a is amended to delete cross-references that were included in the statute for illustrative purposes. This is not a substantive change. Several of the deleted cross-references are not only surplusage, but are also obsolete. See 1968 Cal. Stat. ch. 385, § 1 (repealing Section 946); 1963 Cal. Stat. ch. 871, § 15 (repealing Sections 974 to 982).

Section 12a is also amended to make grammatical corrections.

Code Civ. Proc. § 222 (amended). Selection of juror names

SEC. _____. Section 222 of the Code of Civil Procedure is amended to read:

222. (a) Except as provided in subdivision (b), when an action is called for trial by jury, the clerk, ~~or the judge where there is no clerk,~~ shall randomly select the names of the jurors for voir dire, until the jury is selected or the panel is exhausted.

(b) When the jury commissioner has provided the court with a listing of the trial jury panel in random order, the court shall seat prospective jurors for voir dire in the order provided by the panel list.

Comment. Section 222 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Code Civ. Proc. § 396a (amended). Transfer of actions

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

396a. In a case that is subject to Sections 1812.10 and 2984.4 of the Civil Code, or subdivision (b) of Section 395 of the Code of Civil Procedure, or in an action or proceeding for

an unlawful detainer as defined in Section 1161 of the Code of Civil Procedure:

(a) The plaintiff shall state facts in the complaint, verified by the plaintiff's oath, or the oath of the plaintiff's attorney, or in an affidavit of the plaintiff or of the plaintiff's attorney filed with the complaint, showing that the action has been commenced in the proper superior court and the proper court location for the trial of the action or proceeding, and showing that the action is subject to the provisions of Sections 1812.10 and 2984.4 of the Civil Code or subdivision (b) of Section 395 of the Code of Civil Procedure, or is an action for an unlawful detainer. When the affidavit is filed with the complaint, a copy thereof shall be served with the summons. Except as provided in this section, if the complaint or affidavit is not filed pursuant to this subdivision, no further proceedings may occur in the action or proceeding, except to dismiss the action or proceeding without prejudice. However, the court may, on terms that are just, permit the affidavit to be filed after the filing of the complaint, and a copy of the affidavit shall be served on the defendant and the time to answer or otherwise plead shall date from that service.

(b) If it appears from the complaint or affidavit, or otherwise, that the superior court or court location where the action or proceeding is commenced is not the proper court or court location for the trial, the court where the action or proceeding is commenced, or a judge thereof, shall, whenever that fact appears, transfer it to the proper court or court location, on its own motion, or on motion of the defendant, unless the defendant consents in writing, or in open court (consent in open court being entered in the minutes ~~or docket~~ of the court), to the keeping of the action or proceeding in the court or court location where commenced. If that consent is given, the action or proceeding may continue in the court or court location where commenced. Notwithstanding the

provisions of Section 1801.1 and subdivision (f) of Section 2983.7 of the Civil Code, that consent may be given by a defendant who is represented by counsel at the time the consent is given, and if an action or proceeding is subject to subdivision (b) of Section 395 or is for an unlawful detainer, that consent may only be given by a defendant who is represented by counsel at the time the consent is given.

(c) In any case where the transfer of the action or proceeding is ordered under the provisions of subdivision (a) or (b), if summons is served prior to the filing of the action or proceeding in the superior court or court location to which it is transferred, as to any defendant, so served, who has not appeared in the action or proceeding, the time to answer or otherwise plead shall date from service upon that defendant of written notice of the filing.

(d) If it appears from the complaint or affidavit of the plaintiff that the superior court and court location where the action or proceeding is commenced are a proper court and court location for the trial thereof, all proper proceedings may be had, and the action or proceeding may be tried in that court at that location.

(e) A motion for a transfer of the action or proceeding to a different superior court may be made as in other cases, within the time, upon the grounds, and in the manner provided in this title, and if upon that motion it appears that the action or proceeding is not pending in the proper court, or should for other cause be transferred, the action or proceeding shall be ordered transferred as provided in this title.

If any action or proceeding is ordered transferred to another court as provided in this section, proceedings shall be had, and the costs and fees shall be paid, as provided in Sections 398 and 399.

(f) If a motion is made for transfer of an action or proceeding to a different court location within the same

superior court as provided in this section, proceedings shall be had as provided by local rules of the superior court.

Comment. Subdivision (b) of Section 396a is amended to delete the reference to a “docket,” because courts no longer maintain a record denominated a “docket” in civil cases. Actions taken in open court are now recorded in the minutes of a superior court. See Gov’t Code § 69844 (minutes of superior court); see also *Copley Press v. Superior Court*, 6 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992).

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

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

425.11. (a) As used in this section:

- (1) “Complaint” includes a cross-complaint.
- (2) “Plaintiff” includes a cross-complainant.
- (3) “Defendant” includes a cross-defendant.

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

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

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

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

(2) If a party has appeared in the action, the statement shall be served upon the party’s attorney, or upon the party if the party has appeared without an attorney, in the manner

provided for service of a summons or in the manner provided by Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

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

Comment. Subdivision (c) of Section 425.11 is amended to correct an erroneous cross-reference.

Code Civ. Proc. § 585 (amended). Judgment by default

SEC. _____. Section 585 of the Code of Civil Procedure is amended to read:

585. Judgment may be had, if the defendant fails to answer the complaint, as follows:

(a) In an action arising upon contract or judgment for the recovery of money or damages only, if the defendant has, or if more than one defendant, if any of the defendants have, been served, other than by publication, and no answer, demurrer, notice of motion to strike (of the character hereinafter specified), notice of motion to transfer pursuant to Section 396b, notice of motion to dismiss pursuant to Article 2 (commencing with Section 583.210) of Chapter 1.5 of Title 8, notice of motion to quash service of summons or to stay or dismiss the action pursuant to Section 418.10, or notice of the filing of a petition for writ of mandate as provided in Section 418.10 has been filed with the clerk ~~or judge~~ of the court within the time specified in the summons, or ~~such~~ *within* further time as may be allowed, the clerk, ~~or the judge if there is no clerk,~~ upon written application of the plaintiff, and proof of the service of summons, shall enter the default of the defendant or defendants, so served, and immediately thereafter enter judgment for the principal amount demanded in the complaint, in the statement required by Section 425.11, or in the statement provided for in Section 425.115, or a lesser amount if credit has been acknowledged, together with

interest allowed by law or in accordance with the terms of the contract, and the costs against the defendant, or defendants, or against one or more of the defendants. If, by rule of court, a schedule of attorneys' fees to be allowed has been adopted, the clerk may include in the judgment attorneys' fees in accordance with ~~such~~ *the* schedule (1) if the contract provides that attorneys' fees shall be allowed in the event of an action thereon, or (2) if the action is one in which the plaintiff is entitled by statute to recover attorneys' fees in addition to money or damages. The plaintiff shall file a written request at the time of application for entry of the default of the defendant or defendants, to have attorneys' fees fixed by the court, whereupon, after the entry of the default, the court shall hear the application for determination of the attorneys' fees and shall render judgment for ~~such~~ *the attorneys'* fees and for the other relief demanded in the complaint, in the statement required by Section 425.11, or in the statement provided for in Section 425.115, or a lesser amount if credit has been acknowledged, and the costs against the defendant, or defendants, or against one or more of the defendants.

(b) In other actions, if the defendant has been served, other than by publication, and no answer, demurrer, notice of motion to strike (of the character hereinafter specified), notice of motion to transfer pursuant to Section 396b, notice of motion to dismiss pursuant to Article 2 (commencing with Section 583.210) of Chapter 1.5 of Title 8, notice of motion to quash service of summons or to stay or dismiss the action pursuant to Section 418.10 or notice of the filing of a petition for writ of mandate as provided in Section 418.10 has been filed with the clerk ~~or judge~~ of the court within the time specified in the summons, or ~~such~~ *within* further time as may be allowed, the clerk, ~~or the judge if there is no clerk,~~ upon written application of the plaintiff, shall enter the default of the defendant. The plaintiff thereafter may apply to the court

for the relief demanded in the complaint; the court shall hear the evidence offered by the plaintiff, and shall render judgment in ~~his or her favor for such sum~~ *the plaintiff's favor for that relief* (not exceeding the amount stated in the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115), as appears by ~~such~~ *the* evidence to be just. If the taking of an account, or the proof of any fact, is necessary to enable the court to give judgment or to carry the judgment into effect, the court may take the account or hear the proof, or may, in its discretion, order a reference for that purpose. If the action is for the recovery of damages, in whole or in part, the court may order the damages to be assessed by a jury; or if, to determine the amount of damages, the examination of a long account is involved by a reference as above provided.

(c) In all actions where the service of the summons was by publication, upon the expiration of the time for answering, and upon proof of the publication and that no answer, demurrer, notice of motion to strike (of the character hereinafter specified), notice of motion to transfer pursuant to Section 396b, notice of motion to dismiss pursuant to Article 2 (commencing with Section 583.210) of Chapter 1.5 of Title 8, notice of motion to quash service of summons or to stay or dismiss the action pursuant to Section 418.10, or notice of the filing of a petition for writ of mandate as provided in Section 418.10 has been filed, ~~the clerk, or the judge if there is no clerk,~~ upon written application of the plaintiff, shall enter the default of the defendant. The plaintiff thereafter may apply to the court for the relief demanded in the complaint; and the court shall hear the evidence offered by the plaintiff, and shall render judgment in ~~his or her favor for such sum~~ *the plaintiff's favor for that relief* (not exceeding the amount stated in the complaint, in the statement required by Section 425.11, or in the statement provided for in Section 425.115),

as appears by ~~such~~ *the* evidence to be just. If the defendant is not a resident of the state, the court shall require the plaintiff, or ~~his or her~~ *the plaintiff's* agent, to be examined, on oath, respecting any payments that have been made to the plaintiff, or to anyone for ~~his or her~~ *the plaintiff's* use, on account of any demand mentioned in the complaint, in the statement required by Section 425.11, or in the statement provided for in Section 425.115, and may render judgment for the amount ~~which he or she~~ *that the plaintiff* is entitled to recover. In all cases affecting the title to or possession of real property, where the service of the summons was by publication and the defendant has failed to answer, no judgment shall be rendered upon proof of mere occupancy, unless ~~such~~ *the* occupancy ~~shall have~~ *has* continued for the time and ~~shall have~~ *has* been of the character necessary to confer title by prescription. In all cases where the plaintiff bases ~~his or her~~ *a* claim upon a paper title, the court shall require evidence establishing plaintiff's equitable right to judgment before rendering judgment. In actions involving only the possession of real property where the complaint is verified and shows by proper allegations that no party to the action claims title to the real property involved, either by prescription, accession, transfer, will, or succession, but only the possession thereof, the court may render judgment upon proof of occupancy by plaintiff and ouster by defendant.

(d) In the cases referred to in subdivisions (b) and (c), or upon an application to have attorneys' fees fixed by the court pursuant to subdivision (a), the court in its discretion may permit the use of affidavits, in lieu of personal testimony, as to all or any part of the evidence or proof required or permitted to be offered, received, or heard in ~~such~~ *those* cases. The facts stated in ~~such~~ *the* affidavit or affidavits shall be within the personal knowledge of the affiant and shall be set forth with particularity, and each affidavit shall show

affirmatively that the affiant, if sworn as a witness, can testify competently thereto.

(e) If a defendant files a cross-complaint against another defendant or the plaintiff, a default may be entered against that party on that cross-complaint if the plaintiff or that cross-defendant has been served with that cross-complaint and ~~he or she~~ ~~she~~ has failed to file an answer, demurrer, notice of motion to strike of the character specified in subdivision (f), notice of motion to transfer pursuant to Section 396b, notice of motion to dismiss pursuant to Article 2 (commencing with Section 583.210) of Chapter 1.5 of Title 8, notice of motion to quash service of summons or to stay or dismiss the action pursuant to Section 418.10, or notice of the filing of a petition for a writ of mandate as provided in Section 418.10 within the time specified in the summons, or ~~such~~ *within* other time as may be allowed. However, no judgment may separately be entered on that cross-complaint unless a separate judgment may, in fact, be properly awarded on that cross-complaint and the court finds that a separate judgment on that cross-complaint would not substantially delay the final disposition of the action between the parties.

(f) A notice of motion to strike within the meaning of this section is a notice of motion to strike the whole or any part of a pleading filed within the time which the moving party is required otherwise to plead to ~~such~~ *that* pleading. The notice of motion to strike shall specify a hearing date set in accordance with Section 1005. The filing of a notice of motion does not extend the time within which to demur.

Comment. Section 585 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Section 585 is also amended to make stylistic revisions.

Code Civ. Proc. § 618 (amended). Receipt of verdict

SEC. _____. Section 618 of the Code of Civil Procedure is amended to read:

618. When the jury, or three-fourths of them, have agreed upon a verdict, they must be conducted into court and the verdict rendered by their ~~foreman~~ *foreperson*. The verdict must be in writing, signed by the ~~foreman~~ *foreperson*, and must be read to the jury by the clerk, ~~or by the court, if there be no clerk,~~ and the inquiry made whether it is their verdict. Either party may require the jury to be polled, which is done by the court or clerk, asking each juror if it is ~~his~~ *the juror's* verdict. If upon ~~such~~ inquiry or polling, more than one-fourth of the jurors disagree thereto, the jury must be sent out again, but if no ~~such~~ disagreement ~~be is~~ expressed, the verdict is complete and the jury discharged from the case.

Comment. Section 618 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Section 618 is also amended to make stylistic revisions and make the statute gender neutral.

Code Civ. Proc. § 644 (amended). Decision of referee or commissioner

SEC. _____. Section 644 of the Code of Civil Procedure is amended to read:

644. (a) In the case of a consensual general reference pursuant to Section 638, the decision of the referee or commissioner upon the whole issue must stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, ~~or with the judge where there is no clerk,~~ judgment may be entered thereon in the same manner as if the action had been tried by the court.

(b) In the case of all other references, the decision of the referee or commissioner is only advisory. The court may adopt the referee's recommendations in whole or in part after independently considering the referee's findings and any objections and responses thereto filed with the court.

Comment. Section 644 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Code Civ. Proc. § 904 (amended). Appeal in a civil action or proceeding

SEC. _____. Section 904 of the Code of Civil Procedure is amended to read:

904. An appeal may be taken in a civil action or proceeding as provided in Sections 904.1, 904.2, ~~904.3, 904.4~~ and 904.5.

Comment. Section 904 is amended to delete obsolete cross-references. Former Sections 904.3 and 904.4, relating to appeals from justice and small claims courts, were repealed by 1976 Cal. Stat. ch. 1288, §§ 13, 14.

Code Civ. Proc. § 990 (amended). Summons

SEC. _____. Section 990 of the Code of Civil Procedure is amended to read:

990. The summons specified in Section 989 shall be issued by the clerk, ~~or by the judge if there be no clerk,~~ upon presentation of the affidavit specified in Section 991, ~~and~~ . *The summons* must describe the judgment, and require the person summoned to show cause why ~~he~~ *the person* should not be bound by it, and must be served in the same manner, and returnable no later than ninety (90) days after the time specified for the return of the original summons. It is not necessary to file a new complaint.

Comment. Section 990 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Section 990 is also amended to make stylistic revisions and make the statute gender neutral.

Code Civ. Proc. § 1011 (amended). Service of papers

SEC. _____. Section 1011 of the Code of Civil Procedure is amended to read:

The service may be personal, by delivery to the party or attorney on whom the service is required to be made, or it may be as follows:

(a) If upon an attorney, service may be made at the attorney's office, by leaving the notice or other papers in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or with a person having charge thereof. When there is no person in the office with whom the notice or papers may be left for purposes of this subdivision at the time service is to be effected, service may be made by leaving them between the hours of nine in the morning and five in the afternoon, in a conspicuous place in the office, or, if the attorney's office is not open so as to admit of that service, then service may be made by leaving the notice or papers at the attorney's residence, with some person of not less than 18 years of age, if the attorney's residence is in the same county with his or her office, and, if the attorney's residence is not known or is not in the same county with his or her office, or being in the same county it is not open, or there is not found thereat any person of not less than 18 years of age, then service may be made by putting the notice or papers, enclosed in a sealed envelope, into the post office or a mail box, subpost office, substation, or mail chute or other like facility regularly maintained by the Government

of the United States directed to the attorney at his or her office, if known and otherwise to the attorney's residence, if known. If neither the attorney's office nor residence is known, service may be made by delivering the notice or papers to the address of the attorney or party of record as designated on the court papers, or by delivering the notice or papers to the clerk of the court, ~~or to the judge where there is no clerk,~~ for the attorney.

(b) If upon a party, service shall be made in the manner specifically provided in particular cases, or, if no specific provision is made, service may be made by leaving the notice or other paper at the party's residence, between the hours of eight in the morning and six in the evening, with some person of not less than 18 years of age. If at the time of attempted service between those hours a person 18 years of age or older cannot be found at the party's residence, the notice or papers may be served by mail. If the party's residence is not known, then service may be made by delivering the notice or papers to the clerk of the court ~~or the judge, if there is no clerk,~~ for that party.

Comment. Section 1011 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Code Civ. Proc. § 1015 (amended). Service on nonresident party

SEC. _____. Section 1015 of the Code of Civil Procedure is amended to read:

1015. When a plaintiff or a defendant, who has appeared, resides out of the State, and has no attorney in the action or proceeding, the service may be made on the clerk *of the court* ~~or on the judge where there is no clerk,~~ for ~~him~~ *that party*. But in all cases where a party has an attorney in the action or

proceeding, the service of papers, when required, must be upon the attorney instead of the party, except service of subpoenas, of writs, and other process issued in the suit, and of papers to bring ~~him~~ *the party* into contempt. If the sole attorney for a party is removed or suspended from practice, then the party has no attorney within the meaning of this section. If ~~his~~ *the party's* sole attorney has no known office in this State, notices and papers may be served by leaving a copy thereof with the clerk of the court ~~or with the judge where there is no clerk~~, unless ~~such~~ *the* attorney ~~shall have~~ *has* filed in the cause an address of a place at which notices and papers may be served on ~~him~~ *the attorney*, in which event they may be served at ~~such~~ *that* place.

Comment. Section 1015 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Section 1015 is also amended to make stylistic revisions and make the statute gender neutral.

Code Civ. Proc. § 1169 (amended). Default and default judgment

SEC. _____. Section 1169 of the Code of Civil Procedure is amended to read:

1169. If at the time appointed any defendant served with a summons does not appear and defend, the clerk, ~~or the judge if there is no clerk~~, upon written application of the plaintiff and proof of the service of summons and complaint, shall enter the default of any defendant so served, and, if requested by the plaintiff, immediately shall enter judgment for restitution of the premises and shall issue a writ of execution thereon. The application for default judgment and the default judgment shall include a place to indicate that the judgment includes tenants, subtenants, if any, named claimants, if any, and any other occupants of the premises. Thereafter, the

plaintiff may apply to the court for any other relief demanded in the complaint, including the costs, against the defendant, or defendants, or against one or more of the defendants.

Comment. Section 1169 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Code Civ. Proc. § 1986 (amended). Obtaining of subpoena

SEC. _____. Section 1986 of the Code of Civil Procedure is amended to read:

1986. A subpoena is obtainable as follows:

(a) To require attendance before a court, or at the trial of an issue therein, or upon the taking of a deposition in an action or proceeding pending therein, it is obtainable from the clerk of the court in which the action or proceeding is pending, ~~or if there is no clerk then from a judge or justice of such court.~~

(b) To require attendance before a commissioner appointed to take testimony by a court of a foreign country, or of the United States, or of any other state in the United States, or before any officer or officers empowered by the laws of the United States to take testimony, it may be obtained from the clerk of the superior court of the county in which the witness is to be examined.

(c) To require attendance out of court, in cases not provided for in subdivision (a), before a judge, justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this state, it is obtainable from the judge, justice, or other officer before whom the attendance is required.

If the subpoena is to require attendance before a court, or at the trial of an issue therein, it is obtainable from the clerk, as of course, upon the application of the party desiring it. If it is

obtained to require attendance before a commissioner or other officer upon the taking of a deposition, it must be obtained, as of course, from the clerk of the superior court of the county wherein the attendance is required upon the application of the party requiring it.

Comment. Section 1986 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

CORPORATIONS CODE

Corp. Code § 16701 (amended). Buyout of dissociated partner's interest

SEC. _____. Section 16701 of the Corporations Code is amended to read:

16701. Except as provided in Section 16701.5, all of the following shall apply:

(a) If a partner is dissociated from a partnership, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subdivision (b).

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under subdivision (b) of Section 16807 if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership was wound up as of that date. Interest shall be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under ~~subdivision (b) of~~ Section 16602, and all other amounts owing, whether or not presently due, from the dissociated partner to the

partnership, shall be offset against the buyout price. Interest shall be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under Section 16702.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subdivision (c).

(f) If a deferred payment is authorized under subdivision (h), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subdivision (c), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subdivision (e) or (f) shall be accompanied by all of the following:

(1) A statement of partnership assets and liabilities as of the date of dissociation.

(2) The latest available partnership balance sheet and income statement, if any.

(3) An explanation of how the estimated amount of the payment was calculated.

(4) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subdivision (c), or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment shall be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to subparagraph (B) of paragraph (2) of subdivision (b) of Section 16405, to determine the buyout price of that partner's interest, any offsets under subdivision (c), or other terms of the obligation to purchase. The action shall be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subdivision (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subdivision (h), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subdivision (g).

Comment. Subdivision (c) of Section 16701 is amended to correct a cross-reference.

Corp. Code § 16701.5 (amended). Dissociation within 90 days prior to dissolution

SEC. _____. Section 16701.5 of the Corporations Code is amended to read:

16701.5. (a) Section 16701 shall not apply to any dissociation that occurs within 90 days prior to a dissolution under Section 16801.

(b) For dissociations occurring within 90 days prior to the dissolution, both of the following shall apply:

(1) All partners who dissociated within 90 days prior to the dissolution shall be treated as partners under Section 16807.

(2) Any damages for wrongful dissociation under ~~subdivision (b)~~ of Section 16602 and all other amounts owed by the dissociated partner to the partnership, whether or not presently due, shall be taken into account in determining the amount distributable to the dissociated partner under Section 16807.

Comment. Section 16701.5 is amended to correct a cross-reference.

Corp. Code § 16914 (amended). Rights and obligations following merger

SEC. _____. Section 16914 of the Corporations Code of Civil Procedure is amended to read:

16914. (a) When a merger takes effect, all of the following apply:

(1) The separate existence of the disappearing partnerships and disappearing other business entities ceases and the surviving partnership or surviving other business entity shall succeed, without other transfer, act or deed, to all the rights and property whether real, personal, or mixed, of each of the disappearing partnerships and disappearing other business entities and shall be subject to all the debts and liabilities of each in the same manner as if the surviving partnership or surviving other business entity had itself incurred them.

(2) All rights of creditors and all liens upon the property of each of the constituent partnerships and constituent other business entities shall be preserved unimpaired and may be enforced against the surviving partnership or the surviving other business entity to the same extent as if the debt, liability or duty that gave rise to that lien had been incurred or contracted by it, provided that those liens upon the property of a disappearing partnership or disappearing other business entity shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(3) Any action or proceeding pending by or against any disappearing partnership or disappearing other business entity may be prosecuted to judgment, which shall bind the surviving partnership or surviving other business entity, or the surviving partnership or surviving other business entity may be proceeded against or be substituted in the disappearing partnership's or the disappearing other business entity's place.

(b)(1) Unless a certificate of merger has been filed to effect the merger, the surviving foreign entity shall promptly notify the Secretary of State of the mailing address of its agent for service of process, its chief executive office, and of any change of address. To enforce an obligation of a partnership that has merged with a foreign partnership or foreign other business entity, the Secretary of State shall only be the agent for service of process in an action or proceeding against the surviving foreign partnership or foreign other business entity, if the agent designated for the service of process for that entity is a natural person and cannot be located with due diligence or if the agent is a corporation and no person to whom delivery may be made can be located with due diligence, or if no agent has been designated and if no one of the officers, partners, managers, members, or agents of the entity can be located after diligent search, and it is so shown

by affidavit to the satisfaction of the court. The court then may make an order that service be made by personal delivery to the Secretary of State or to an assistant or deputy Secretary of State of two copies of the process together with two copies of the order, and the order shall set forth an address to which the process shall be sent by the Secretary of State. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.

(2) Upon receipt of the process and order and the fee set forth in ~~Section 12206~~ *subdivision (c) of Section 12197* of the Government Code, the Secretary of State shall give notice to the entity of the service of the process by forwarding by certified mail, return receipt requested, a copy of the process and order to the address specified in the order.

(3) The Secretary of State shall keep a record of all process served upon the Secretary of State and shall record therein the time of service and the Secretary of State's action with respect thereto. The certificate of the Secretary of State, under the Secretary of State's official seal, certifying to the receipt of process, the giving of notice thereof to the entity, and the forwarding of the process, shall be competent and prima facie evidence of the matters stated therein.

(c) A partner of the surviving partnership or surviving limited partnership, a member of the surviving limited liability company, a shareholder of the surviving corporation, or a holder of equity securities of the surviving other business entity, is liable for all of the following:

(1) All obligations of a party to the merger for which that person was personally liable before the merger.

(2) All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity.

(3) All obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied

only out of property of the entity if that person is a limited partner, a shareholder in a corporation, or, unless expressly provided otherwise in the articles of organization or other constituent documents, a member of a limited liability company or a holder of equity securities in a surviving other business entity.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or surviving other business entity, the general partners of that party immediately before the effective date of the merger, to the extent that party was a partnership or a limited partnership, shall contribute the amount necessary to satisfy that party's obligations to the surviving entity in the manner provided in Section 16807 or in the limited partnership act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

(e) A partner of a domestic disappearing partnership who does not vote in favor of the merger and does not agree to become a partner, member, shareholder, or holder of interest or equity securities of the surviving partnership or surviving other business entity shall have the right to dissociate from the partnership as of the date the merger takes effect. Within 10 days after the approval of the merger by the partners as required under this article, each domestic disappearing partnership shall send notice of the approval of the merger to each partner that has not approved the merger, accompanied by a copy of Section 16701 and a brief description of the procedure to be followed under that section if the partner wishes to dissociate from the partnership. A partner that desires to dissociate from a disappearing partnership shall send written notice of that dissociation within 30 days after the date of the notice of the approval of the merger. The disappearing partnership shall cause the partner's interest in

the entity to be purchased under Section 16701. The surviving entity is bound under Section 16702 by an act of a general partner dissociated under this subdivision, and the partner is liable under Section 16703 for transactions entered into by the surviving entity after the merger takes effect. The ~~disassociation~~ *dissociation* of a partner in connection with a merger pursuant to the terms of this subdivision shall not be deemed a wrongful ~~disassociation~~ *dissociation* under Section 16602.

Comment. Paragraph (2) of subdivision (b) of Section 16914 is amended to correct a cross-reference. Former Government Code Section 12206 was repealed by 1999 Cal. Stat. ch. 1000, § 53, and replaced by subdivision (c) of Government Code Section 12197.

Subdivision (e) of Section 16914 is amended to conform with existing usage of the term “dissociation” throughout the Corporations Code.

EDUCATION CODE

Educ. Code § 17595 (amended). School district purchase through Department of General Services

SEC. _____. Section 17595 of the Education Code is amended to read:

17595. Nothing in this code shall preclude the governing board of any school district from purchasing materials, equipment or supplies through the Department of General Services pursuant to Section ~~14814 of the Government Code~~ *10299 of the Public Contract Code*.

Comment. Section 17595 is amended to correct a cross-reference. Former Government Code Section 14814, enacted by 1965 Cal. Stat. ch. 371, § 179, was repealed by 1983 Cal. Stat. ch. 1231, § 1.5. It was replaced by former Public Contract Code Section 10324, which in turn was repealed by 2000 Cal. Stat. ch. 918, § 8. The provision now most similar to former Government Code Section 14814 is Public Contract Code Section 10299.

Educ. Code § 43040.5 (repealed). Application of chapter

SEC. _____. Section 43040.5 of the Education Code is repealed.

~~43040.5. Notwithstanding Section 43040, this chapter shall apply to any one or more of the following school districts that, no later than 90 days after this section becomes operative as to that school district or school districts, adopts a schedule that specifies the use of the proceeds of the measure approved by the voters of the district, as described in Section 43041: the William S. Hart Union High School District, the Castaic Union School District, the Newhall School District, the Saugus Union School District, and the Sulphur Springs Elementary School District.~~

Comment. Section 43040.5 is repealed as obsolete. As a result of litigation in *California Bldg. Industry Ass'n v. Governing Bd.*, 206 Cal. App. 3d 212, 253 Cal. Rptr. 497 (1988), Section 43040.5 never became operative. See former Section 43060(c).

Educ. Code § 43060 (repealed). Litigation to determine validity of special election of June 2, 1987

SEC. _____. Section 43060 of the Education Code is repealed.

~~43060. (a) In the action of California Building Industry Association v. Governing Board of the Newhall School District, et al., (Los Angeles County Superior Court (c658159)) brought to determine the validity of the special election of June 2, 1987, held in the William S. Hart Union High School District, the Castaic Union School District, the Newhall School District, the Saugus Union School District, or the Sulphur Springs Elementary School District, including the hearing of the action on appeal from the decision of a lower court, all courts where the action is or may hereafter be pending shall give the action preference over all other civil actions, with respect to setting the action for hearing or trial~~

~~and hearing the action, to the end that the action shall be quickly heard and determined.~~

~~(b) If the action described in subdivision (a) is appealed, at the completion of the filing of briefs, the appellant shall notify the reviewing court that the briefs have been filed. Upon receipt of notice that the briefs have been filed, the clerk of the reviewing court shall set the appeal for hearing on the first available date on the court calendar.~~

~~(c) Section 43040.5, as added by Section 1 of the act adding this section, shall become operative only if the school districts named in Section 43040.5 prevail in the litigation described in subdivision (a).~~

~~(d) No city or county shall condition the issuance of a building permit on the payment of any tax required by special election as described in subdivision (a) unless Section 43040.5 becomes operative, as provided in subdivision (c), or unless a court of competent jurisdiction so orders.~~

~~(e) No school district enumerated in Section 43040.5 shall condition the collection of, or certification of compliance with, any developer fee or other requirement levied by the governing board of that school district under Section 53080 of the Government Code on the payment of any tax required by special election as described in subdivision (a) unless Section 43040.5 becomes operative, as provided in subdivisions (c), or unless a court of competent jurisdiction so orders, so long as the applicant for the building permit agrees in writing to pay the special tax, together with interest from the date of issuance of the building permit at a reasonable rate as determined by the court, in the event that the school district prevails in the litigation described in subdivision (a).~~

Comment. Section 43060 is repealed as obsolete. The litigation described in subdivision (a), *California Bldg. Industry Ass'n v. Governing Bd.*, 206 Cal. App. 3d 212, 253 Cal. Rptr. 497 (1988), overturned the assessment upon which the section is based, and was final on December 29, 1988.

EVIDENCE CODE

Evid. Code § 917 (amended). Presumption of privilege

SEC. _____. Section 917 of the Evidence Code is amended to read:

917. (a) Whenever a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of the lawyer-client, physician-patient, psychotherapist-patient, clergy-penitent, husband-wife, sexual assault ~~victim-counselor~~ *counselor-victim*, or domestic violence ~~victim-counselor~~ *counselor-victim* relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential.

(b) A communication between persons in a relationship listed in subdivision (a) does not lose its privileged character for the sole reason that it is communicated by electronic means or because persons involved in the delivery, facilitation, or storage of electronic communication may have access to the content of the communication.

(c) For purposes of this section, “electronic” has the same meaning provided in Section 1633.2 of the Civil Code.

Comment. Subdivision (a) of Section 917 is amended to make the references to the sexual assault counselor-victim privilege and the domestic violence counselor-victim privilege conform with usage in the remainder of the code.

Heading of Article 8.5 (commencing with Section 1035) (amended)

SEC. _____. The heading of Article 8.5 (commencing with Section 1035) of Chapter 4 of Division 8 of the Evidence Code is amended to read:

Article 8.5. Sexual Assault ~~Victim-Counselor~~ *Counselor-Victim* Privilege

Comment. The heading “Article 8.5. Sexual Assault Victim-Counselor Privilege” is amended to conform with usage in the remainder of the code.

Heading of Article 8.7 (commencing with Section 1037) (amended)

SEC. _____. The heading of Article 8.7 (commencing with Section 1037) of Chapter 4 of Division 8 of the Evidence Code is amended to read:

Article 8.7. Domestic Violence ~~Victim-Counselor~~
Counselor-Victim Privilege

Comment. The heading “Article 8.7. Domestic Violence Victim-Counselor Privilege” is amended to conform with usage in the remainder of the code.

FISH AND GAME CODE

Fish & Game Code § 8610.7 (repealed). Compensation for discontinued fishing

SEC. _____. Section 8610.7 of the Fish and Game Code is repealed.

~~8610.7. (a) Commencing on July 1, 1993, there shall be paid to any person who submitted the form required by Section 7 of Article XB of the California Constitution within the 90 day period specified in subdivision (a) of that section, holds a permit issued pursuant to Section 5 of Article XB, who operates in the zone established pursuant to that article, who surrenders that permit to the department between July 1, 1993, and January 1, 1994, inclusive, and who agrees to permanently discontinue fishing with gill and trammel nets within the zone, a one-time compensation consisting of the average annual ex vessel value of the fish other than any species of rockfish landed by a fisherman, which were taken pursuant to a valid general gill net or trammel net permit issued pursuant to Sections 8681 and 8682 within the zone during the years 1983 to 1987, inclusive. The department~~

~~shall determine the amount of compensation to be paid by reviewing logs and landing receipts submitted to the department.~~

~~(b) Any person who did not submit the form required by Section 7 of Article XB of the California Constitution within the 90 day period specified in subdivision (a) of that section, or whose claim to compensation cannot be verified, shall not be compensated.~~

~~(c) Any person who is denied compensation by the department, as a result of the department's failure to verify landings, may appeal that decision to the commission.~~

~~(d) The State Board of Control shall, prior to the disbursement of any funds, verify the eligibility of each person seeking compensation and the amount of the compensation to be provided in order to ensure compliance with this section.~~

~~(e) Notwithstanding any other provision of law, any legal action or proceeding to challenge the validity of subdivision (b) of Section 3, or of Section 7, of Article XB of the California Constitution shall be commenced on or before April 1, 1993. In all actions brought to challenge the validity of subdivision (b) of Section 3, or of Section 7, of Article XB of the California Constitution, including the hearing of any such action on appeal from the decision of a lower court, all courts where those actions are filed or pending shall give preference to those actions over all other civil actions filed or pending in that court, with respect to setting the action for trial or hearing, and in trying or hearing the matter, to the end that all such actions shall be heard and determined as expeditiously as possible.~~

~~(f) If subdivision (b) of Section 3, or Section 7, of Article XB of the California Constitution is held invalid, any compensation paid to a person pursuant to this section shall~~

~~be repaid to the state. No person shall be issued any permit or license pursuant to this article until repayment has been made.~~

Comment. Section 8610.7 is repealed as obsolete. In order to obtain compensation under this section, all required acts had to be performed by January 1, 1994.

Fish & Game Code § 8610.8 (repealed). Marine resources protection account

SEC. _____. Section 8610.8 of the Fish and Game Code is repealed.

~~8610.8. (a) There is hereby created the Marine Resources Protection Account in the Fish and Game Preservation Fund. On and after January 1, 1991, the department shall collect any and all fees required by this article. All fees received by the department pursuant to this article shall be deposited in the account and shall be expended or encumbered to compensate persons who surrender permits pursuant to Section 8610.7 or to provide for administration of this article. All funds received by the department during any fiscal year pursuant to this article which are not expended during that fiscal year to compensate persons as set forth in Section 8610.7 or to provide for administration of this article shall be carried over into the following fiscal year and shall be used only for those purposes. All interest accrued from the department's retention of fees received pursuant to this article shall be credited to the account. The accrued interest may only be expended for the purposes authorized by this article. The account shall continue in existence, and the requirement to pay fees under this article shall remain in effect, until the compensation provided in Section 8610.7 has been fully funded or until January 1, 1995, whichever occurs first.~~

~~(b) An amount, not to exceed 15 percent of the total annual revenues deposited in the account excluding any interest accrued or any funds carried over from a prior fiscal year may~~

~~be expended for the administration of this article and Article XB of the California Constitution.~~

~~(c) In addition to a valid California sportfishing license issued pursuant to Section 7149, 7149.1, or 7149.2 and any applicable sport license stamp issued pursuant to this code, a person taking fish from ocean waters south of a line extending due west from Point Arguello for sport purposes shall have permanently affixed to that person's sportfishing license a marine resources protection stamp which may be obtained from the department upon payment of a fee of three dollars (\$3). This subdivision does not apply to any one-day fishing license.~~

~~(d) In addition to a valid California commercial passenger fishing boat license required by Section 7920, the owner of any boat or vessel who, for profit, permits any person to fish from the boat or vessel in ocean waters south of a line extending due west from Point Arguello, shall obtain and permanently affix to the license a commercial marine resources protection stamp which may be obtained from the department upon payment of a fee of three dollars (\$3).~~

~~(e) The department may accept contributions or donations from any person who wishes to donate money to be used for the compensation of commercial gill net and trammel net fishermen who surrender permits under this article.~~

~~(f) This section shall become inoperative on January 1, 1995.~~

Comment. Section 8610.8 is repealed as obsolete. Subdivision (f) of Section 8610.8 provides that the section shall become inoperative on January 1, 1995.

Fish & Game Code § 8610.13 (amended). Penalty for use of gill or trammel nets

SEC. _____. Section 8610.13 of the Fish & Game Code is amended to read.

~~8610.13 (a) The penalty for a first violation of Sections Section 8610.3 and or 8610.4 is a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) and a mandatory suspension of any license, permit, or stamp to take, receive, transport, purchase, sell, barter, or process fish for commercial purposes for six months. The penalty for a second or subsequent violation of Sections 8610.3 and 8610.4 is a fine of not less than two thousand five hundred dollars (\$2,500) and not more than ten thousand dollars (\$10,000) and a mandatory suspension of any license, permit, or stamp to take, receive, transport, purchase, sell, barter, or process fish for commercial purposes for one year.~~

~~(b) Notwithstanding any other provisions of law, a violation of Section 8610.8 shall be deemed a violation of Section 7145, and the penalty for such violation shall be consistent with Section 12002.2.~~

~~(c) If a person convicted of a violation of Section 8610.3, 8610.4, or 8610.8 is granted probation, the court shall impose as a term or condition of probation, in addition to any other term or condition of probation, that the person pay at least the minimum fine prescribed in this section as specified in Section 12003.5.~~

Comment. Section 8610.13 is amended to eliminate redundancy with identical language in Section 12003.5.

Fish & Game Code § 12003.5 (amended). Penalty for use of gill or trammel nets

SEC. _____. Section 12003.5 of the Fish & Game Code is amended to read:

12003.5. (a) The penalty for a first violation of Section 8610.3 or 8610.4 is a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) and a mandatory suspension of any license, permit, or stamp to take, receive, transport, purchase, sell, barter, or

process fish for commercial purposes for six months. The penalty for a second or subsequent violation of Section 8610.3 or 8610.4 is a fine of not less than two thousand five hundred dollars (\$2,500) and not more than ten thousand dollars (\$10,000) and a mandatory suspension of any license, permit, or stamp to take, receive, transport, purchase, sell, barter, or process fish for commercial purposes for one year.

~~(b) Notwithstanding any other provisions of law, a violation of Section 8610.8 shall be deemed a violation of Section 7145, and the penalty for such violation shall be as prescribed by Section 12002.2.~~

~~(c)~~ (b) If a person convicted of a violation of Section 8610.3, or 8610.4, or ~~8610.8~~ 8610.3 or 8610.4 is granted probation, the court shall impose as a term or condition of probation, in addition to any other term or condition of probation, a requirement that the person pay at least the minimum fine prescribed in this section.

Comment. Section 12003.5 is amended to reflect the repeal of former Section 8610.8.

GOVERNMENT CODE

Gov't Code § 7910 (amended). Determinations to be made by each local jurisdiction

SEC. _____. Section 7910 of the Government Code is amended to read:

7910. (a) Each year the governing body of each local jurisdiction shall, by resolution, establish its appropriations limit and make other necessary determinations for the following fiscal year pursuant to Article XIII B of the *California Constitution* at a regularly scheduled meeting or noticed special meeting. Fifteen days prior to the meeting, documentation used in the determination of the appropriations limit and other necessary determinations shall be available to

the public. The determinations made pursuant to this section are legislative acts.

~~Any judicial action or proceeding to attack, review, set aside, void, or annul the action of the governing body taken pursuant to this section for the 1980-81 fiscal year shall be commenced within 60 days of the effective date of the resolution or the effective date of the act which added this section to the Government Code, whichever date is later.~~

~~(b) For the 1981-82 fiscal year and each fiscal year thereafter, any~~ A judicial action or proceeding to attack, review, set aside, void, or annul the action of the governing body taken pursuant to this section shall be commenced within 45 days of the effective date of the resolution.

~~(c) All courts wherein such actions are or may be hereafter~~ A court in which an action described in subdivision (b) is pending, including any court reviewing ~~such~~ the action on appeal from the decision of a lower court, shall give ~~such actions~~ the action preference over all other civil actions ~~therein~~, in the manner of setting the ~~same~~ action for hearing or trial and in hearing the ~~same~~ action, to the end that ~~all such actions~~ the action shall be quickly heard and determined.

Comment. The former second paragraph of Section 7910 is deleted as obsolete. The former third paragraph (now subdivision (b)) is amended to make a conforming change.

Section 7910 is also amended to make stylistic revisions.

Gov't Code § 26801 (amended). County clerk as clerk of board of supervisors

SEC. _____. Section 26801 of the Government Code is amended to read:

26801. Except as otherwise provided by law, ~~he~~ the county clerk shall act as clerk of the board of supervisors in ~~his~~ the county.

Comment. Section 26801 is amended to reflect the repeal of Section 26800 and to make the provision gender neutral.

PENAL CODE

Penal Code § 1196 (amended). Issuance of bench warrant outside county

SEC. _____. Section 1196 of the Penal Code is amended to read:

1196. (a) The clerk, ~~or the judge or justice, if there is no clerk,~~ must at any time after the order issue a bench warrant into one or more counties.

(b) The clerk, ~~or the judge or justice,~~ shall require the appropriate agency to enter each bench warrant issued on a private surety-bonded felony case into the national warrant system (National Crime Information Center (NCIC)). If the appropriate agency fails to enter the bench warrant into the national warrant system (NCIC), and the court finds that this failure prevented the surety or bond agent from surrendering the fugitive into custody, prevented the fugitive from being arrested or taken into custody, or resulted in the fugitive's subsequent release from custody, the court having jurisdiction over the bail shall, upon petition, set aside the forfeiture of the bond and declare all liability on the bail bond to be exonerated.

Comment. Section 1196 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Penal Code § 1207 (amended). Entry of judgment

SEC. _____. Section 1207 of the Penal Code is amended to read:

1207. When judgment upon a conviction is rendered, the clerk, ~~or if there is no clerk, the judge,~~ must enter the ~~same~~ *judgment* in the minutes, stating briefly the offense for which

the conviction was had, and the fact of a prior conviction, if any. A copy of the judgment of conviction shall be filed with the papers in the case.

Comment. Section 1207 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Section 1207 is also amended to make a stylistic revision.

Penal Code § 1213 (amended). Furnishing of probationary order or judgment

SEC. _____. Section 1213 of the Penal Code is amended to read:

1213. (a) When a probationary order or a judgment, other than of death, has been pronounced, a copy of the entry of that portion of the probationary order ordering the defendant confined in a city or county jail as a condition of probation, or a copy of the entry of the judgment, or, if the judgment is for imprisonment in the state prison, either a copy of the minute order or an abstract of the judgment as provided in Section 1213.5, certified by the clerk of the court, ~~or by the judge, if there is no clerk,~~ and a Criminal Investigation and Identification (CII) number shall be forthwith furnished to the officer whose duty it is to execute the probationary order or judgment, and no other warrant or authority is necessary to justify or require its execution.

(b) If a copy of the minute order is used as the commitment document, the first page or pages shall be identical in form and content to that prescribed by the Judicial Council for an abstract of judgment, and ~~such~~ other matters as appropriate may be added thereafter.

Comment. Section 1213 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may

perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Section 1213 is also amended to insert subdivisions and make a stylistic revision.

Penal Code § 1326 (amended). Subpoenaing of witnesses

SEC. _____. Section 1326 of the Penal Code is amended to read:

1326. (a) The process by which the attendance of a witness before a court or magistrate is required is a subpoena. It may be signed and issued by any of the following:

(1) A magistrate before whom a complaint is laid or his or her clerk, the district attorney or his or her investigator, or the public defender or his or her investigator, for witnesses in the state.

(2) The district attorney, his or her investigator, or, upon request of the grand jury, any judge of the superior court, for witnesses in the state, in support of an indictment or information, to appear before the court in which it is to be tried.

(3) The district attorney or his or her investigator, the public defender or his or her investigator, *or* the clerk of the court in which a criminal action is to be tried, ~~or, if there is no clerk, the judge of the court.~~ The clerk ~~or judge~~ shall, at any time, upon application of the defendant, and without charge, issue as many blank subpoenas, subscribed by him or her, for witnesses in the state, as the defendant may require.

(4) The attorney of record for the defendant.

(b) A subpoena issued in a criminal action that commands the custodian of records or other qualified witness of a business to produce books, papers, documents, or records shall direct that those items be delivered by the custodian or qualified witness in the manner specified in subdivision (b) of Section 1560 of the Evidence Code. Subdivision (e) of

Section 1560 of the Evidence Code shall not apply to criminal cases.

(c) In a criminal action, no party, or attorney or representative of a party, may issue a subpoena commanding the custodian of records or other qualified witness of a business to provide books, papers, documents, or records, or copies thereof, relating to a person or entity other than the subpoenaed person or entity in any manner other than that specified in subdivision (b) of Section 1560 of the Evidence Code. When a defendant has issued a subpoena to a person or entity that is not a party for the production of books, papers, documents, or records, or copies thereof, the court may order an in camera hearing to determine whether or not the defense is entitled to receive the documents. The court may not order the documents disclosed to the prosecution except as required by Section 1054.3.

(d) This section shall not be construed to prohibit obtaining books, papers, documents, or records with the consent of the person to whom the books, papers, documents, or records relate.

Comment. Section 1326 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Penal Code § 11163.3 (amended). Reporting of domestic violence

SEC. _____. Section 11163.3 of the Penal Code is amended to read:

11163.3. (a) A county may establish an interagency domestic violence death review team to assist local agencies in identifying and reviewing domestic violence deaths, including homicides and suicides, and facilitating communication among the various agencies involved in

domestic violence cases. Interagency domestic violence death review teams have been used successfully to ensure that incidents of domestic violence and abuse are recognized and that agency involvement is reviewed to develop recommendations for policies and protocols for community prevention and intervention initiatives to reduce and eradicate the incidence of domestic violence.

(b) For purposes of this section, “abuse” has the meaning set forth in Section 6203 of the Family Code and “domestic violence” has the meaning set forth in Section 6211 of the Family Code.

(c) A county may develop a protocol that may be used as a guideline to assist coroners and other persons who perform autopsies on domestic violence victims in the identification of domestic violence, in the determination of whether domestic violence contributed to death or whether domestic violence had occurred prior to death, but was not the actual cause of death, and in the proper written reporting procedures for domestic violence, including the designation of the cause and mode of death.

(d) County domestic violence death review teams shall be comprised of, but not limited to, the following:

- (1) Experts in the field of forensic pathology.
- (2) Medical personnel with expertise in domestic violence abuse.
- (3) Coroners and medical examiners.
- (4) Criminologists.
- (5) District attorneys and city attorneys.
- (6) Domestic violence shelter service staff and battered women’s advocates.
- (7) Law enforcement personnel.
- (8) Representatives of local agencies that are involved with domestic violence abuse reporting.

(9) County health department staff who deal with domestic violence victims' health issues.

(10) Representatives of local child abuse agencies.

(11) Local professional associations of persons described in paragraphs (1) to (10), inclusive.

(e) An oral or written communication or a document shared within or produced by a domestic violence death review team related to a domestic violence death review is confidential and not subject to disclosure or discoverable by a third party. An oral or written communication or a document provided by a third party to a domestic violence death review team, or between a third party and a domestic violence death review team, is confidential and not subject to disclosure or discoverable by a third party. Notwithstanding the foregoing, recommendations of a domestic violence death review team upon the completion of a review may be disclosed at the discretion of a majority of the members of the domestic violence death review team.

(f) Each organization represented on a domestic violence death review team may share with other members of the team information in its possession concerning the victim who is the subject of the review or any person who was in contact with the victim and any other information deemed by the organization to be pertinent to the review.

Any information shared by an organization with other members of a team is confidential. This provision shall permit the disclosure to members of the team of any information deemed confidential, privileged, or prohibited from disclosure by any other statute.

(g) Written and oral information may be disclosed to a domestic violence death review team established pursuant to this section. The team may make a request in writing for the information sought and any person with information of the kind described in paragraph (2) of this subdivision may rely

on the request in determining whether information may be disclosed to the team.

(1) No individual or agency that has information governed by this subdivision shall be required to disclose information. The intent of this subdivision is to allow the voluntary disclosure of information by the individual or agency that has the information.

(2) The following information may be disclosed pursuant to this subdivision:

(A) Notwithstanding Section 56.10 of the Civil Code, medical information.

(B) Notwithstanding Section 5328 of the Welfare and Institutions Code, mental health information.

(C) Notwithstanding Section 15633.5 of the Welfare and Institutions Code, information from elder abuse reports and investigations, except the identity of persons who have made reports, which shall not be disclosed.

(D) Notwithstanding Section 11167.5 of the Penal Code, information from child abuse reports and investigations, except the identity of persons who have made reports, which shall not be disclosed.

(E) State summary criminal history information, criminal offender record information, and local summary criminal history information, as defined in Sections 11075, 11105, and 13300 of the Penal Code.

(F) Notwithstanding Section 11163.2 of the Penal Code, information pertaining to reports by health practitioners of persons suffering from physical injuries inflicted by means of a firearm or of persons suffering physical injury where the injury is a result of assaultive or abusive conduct, and information relating to whether a physician referred the person to local domestic violence services as recommended by Section 11161 of the Penal Code.

(G) Notwithstanding Section 827 of the Welfare and Institutions Code, information in any juvenile court proceeding.

(H) Information maintained by the Family Court, including information relating to the Family Conciliation Court Law pursuant to Section 1818 of the Family Code, and Mediation of Custody and Visitation Issues pursuant to Section 3177 of the Family Code.

(I) Information provided to probation officers in the course of the performance of their duties, including, but not limited to, the duty to prepare reports pursuant to Section 1203.10 of the Penal Code, as well as the information on which these reports are based.

(J) Notwithstanding Section 10825 of the Welfare and Institutions Code, records of in-home supportive services, unless disclosure is prohibited by federal law.

(3) The disclosure of written and oral information authorized under this subdivision shall apply notwithstanding Sections 2263, 2918, 4982, and 6068 of the Business and Professions Code, or the lawyer-client privilege protected by Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, the physician-patient privilege protected by Article 6 (commencing with Section 990) of Chapter 4 of Division 8 of the Evidence Code, the psychotherapist-patient privilege protected by Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code, the sexual assault ~~victim-counselor~~ *counselor-victim* privilege protected by Article 8.5 (commencing with Section 1035) of Chapter 4 of Division 8 of the Evidence Code, and the domestic violence ~~victim-counselor~~ *counselor-victim* privilege protected by Article 8.7 (commencing with Section 1037) of Chapter 4 of Division 8 of the Evidence Code.

Comment. Paragraph (3) of subdivision (g) of Section 11163.3 is amended to make the references to the sexual assault counselor-victim privilege and the domestic violence counselor-victim privilege conform with existing statutory references to these privileges.

VEHICLE CODE

Veh. Code § 1803.3 (amended). Notification of reversal of conviction or dismissal

SEC. _____. Section 1803.3 of the Vehicle Code is amended to read:

1803.3. (a) The clerk, ~~or judge if there is no clerk,~~ of any court which reverses a conviction for an offense described in subdivision (a) of Section 1803, which is not exempted under subdivision (b) of that section, shall prepare and forward to the department at its office in Sacramento an abstract of the record of the court covering the case in which the conviction was reversed. In addition, if a court dismisses a charge of a violation of Section 40508 for which a notice was given to the department pursuant to Section 40509 or 40509.5, the court shall notify the department of the dismissal.

(b) The abstract shall be forwarded within 30 days of the date the judgment of reversal becomes final. The notice of dismissal shall be given to the department not later than 30 days after the dismissal. Within 30 days of receiving the abstract or notice, the department shall remove any record of that conviction, or notice received pursuant to Section 40509 or 40509.5, from the driver's record.

(c) As used in this section, "reverse" includes any action by which a conviction is nullified or set aside.

Comment. Section 1803.3 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Veh. Code § 23140 (amended). Driving under the influence by person under 21

SEC. _____. Section 23140 of the Vehicle Code is amended to read:

23140. (a) It is unlawful for a person under the age of 21 years who has 0.05 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

(b) A person may be found to be in violation of subdivision (a) if the person was, at the time of driving, under the age of 21 years and under the influence of, or affected by, an alcoholic beverage regardless of whether a chemical test was made to determine that person's blood-alcohol concentration and if the trier of fact finds that the person had consumed an alcoholic beverage and was driving a vehicle while having a concentration of 0.05 percent or more, by weight, of alcohol in his or her blood.

(c) Notwithstanding any provision of law to the contrary, upon a finding that a person has violated this section, the clerk of the court, ~~or judge if there is no clerk~~, shall prepare within 10 days after the finding and immediately forward to the department an abstract of the record of the court in which the finding is made. That abstract shall be a public record and available for public inspection in the same manner as other records reported under Section 1803.

Comment. Subdivision (c) of Section 23140 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Veh. Code § 23229.1. (amended). Operating limousine for hire containing alcoholic beverage

SEC. _____. Section 23229.1 of the Vehicle Code is amended to read:

23229.1. (a) Subject to subdivision (b), Sections 23223 and 23225 do apply to any charter-party carrier of passengers, as defined in Section 5360 of the Public Utilities Code, operating a limousine for hire when the driver of the vehicle transports any passenger under the age of 21.

(b) For purposes of subdivision (a), it is not a violation of Section 23225 for any charter-party carrier of passengers operating a limousine for hire which is licensed pursuant to the Public Utilities Code to keep any bottle, can, or other receptacle containing any alcoholic beverage in a locked utility compartment within the area occupied by the driver and passengers.

(c) In addition to the requirements of Section 1803, every clerk of a court, ~~or judge if there is no clerk,~~ in which any driver in subdivision (a) was convicted of a violation of Section 23225 shall prepare within 10 days after conviction, and immediately forward to the Public Utilities Commission at its office in San Francisco, an abstract of the record of the court covering the case in which the person was convicted. If sentencing is not pronounced in conjunction with the conviction, the abstract shall be forwarded to the commission within 10 days after sentencing, and the abstract shall be certified, by the person required to prepare it, to be true and ~~correct.~~

~~For correct.~~ For the purposes of this subdivision, a forfeiture of bail is equivalent to a conviction.

~~(d) This section shall become operative on July 1, 1989.~~

Comment. Subdivision (c) of Section 23229.1 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Subdivision (c) is also amended to make a stylistic revision.

Subdivision (d) is deleted as obsolete.