

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

## Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases

February 2001

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

NOTE

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

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STATE OF CALIFORNIA

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CALIFORNIA LAW REVISION COMMISSION

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February 1, 2001

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

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

- (1) The same rules for pleading damages should apply in all actions for personal injury or wrongful death, regardless of the jurisdictional classification of the case. Code Civ. Proc. §§ 425.10, 425.11.
- (2) The distinction between attachment undertakings in limited and unlimited civil cases should be eliminated, and the amount of the initial undertaking increased to \$10,000. Code Civ. Proc. § 489.220.
- (3) The clerk of court should be permitted to record a satisfaction of judgment where there is an interest deficit of \$10 or less in an unlimited civil case, not just in a limited civil case. Code Civ. Proc. § 685.030.
- (4) The differentiation between limited and unlimited civil cases as to the amount of a creditor's undertaking where there is a third-party claim should be eliminated. Code Civ. Proc. §§ 720.160, 720.260.
- (5) The same filing fee should be required for all confessions of judgment, regardless of the size of the claim. Code Civ. Proc. § 1134.
- (6) The same filing fee should be required for the first paper in all limited civil cases, regardless of the size of the demand. Gov't Code § 72055.

This recommendation was prepared pursuant to Government Code Section 70219.

Respectfully submitted,

David Huebner  
*Chairperson*

## UNNECESSARY PROCEDURAL DIFFERENCES BETWEEN LIMITED AND UNLIMITED CIVIL CASES

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

### **Background**

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

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

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

3. See, e.g., former Cal. Const. art. VI, § 10 ("Superior courts have original jurisdiction in all causes except those given by statute to other trial courts"); 1997 Cal. Stat. ch. 527, § 2 (former Code Civ. Proc. § 86) (civil cases within original jurisdiction of municipal court); 1985 Cal. Stat. ch. 1383, § 2 (former Code Civ. Proc. § 91) (economic litigation procedures in municipal court). See also Code Civ. Proc. § 85 Comment.

4. Cal. Const. art. VI, § 5(e).

Numerous statutory revisions were necessary to implement trial court unification. At the direction of the Legislature,<sup>5</sup> the Law Revision Commission reviewed the codes and drafted extensive implementing legislation.<sup>6</sup> The statutory revisions<sup>7</sup> were narrowly limited to generally preserve existing procedures but make them workable in the context of unification.<sup>8</sup>

To that end, the term “limited civil case” was introduced to refer to civil actions traditionally within the jurisdiction of the municipal court,<sup>9</sup> and the term “unlimited civil case” was introduced to refer to civil actions traditionally within the jurisdiction of the superior court.<sup>10</sup> Provisions prescribing municipal court procedures were revised to apply to limited civil cases;<sup>11</sup> provisions prescribing traditional superior court procedures were revised to apply to unlimited civil cases.<sup>12</sup>

The Law Revision Commission recommended, however, that the procedural distinctions between limited civil cases and unlimited civil cases be reviewed to identify opportunities for simplification.<sup>13</sup> The Legislature directed the Commission

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

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

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

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

9. *Id.* at 64-65; see also Code Civ. Proc. §§ 85-85.1 & Comments.

10. Code Civ. Proc. § 88 & Comment.

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

12. See, e.g., Code Civ. Proc. § 564.

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

and the Judicial Council to jointly undertake this work, as well as to reexamine other aspects of civil procedure in light of trial court unification.<sup>14</sup>

### **Methodology**

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

The Commission and the Administrative Office of the Courts (“AOC”) analyzed the remaining provisions, assessing

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

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

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

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

whether the distinctions between limited and unlimited civil cases should be eliminated, and whether the provisions should be revised in other respects. Having studied the provisions, the Law Revision Commission recommends reforms in the following areas:<sup>18</sup>

- Pleading personal injury and wrongful death damages
- Undertaking to obtain writ of attachment or protective order
- Satisfaction of judgment
- Undertaking of creditor in case of third-party claim
- Confession of judgment
- Filing fee for the first paper in a limited civil case

Each topic is addressed in order below.<sup>19</sup>

**Pleading Personal Injury and Wrongful Death Damages (Code Civ. Proc. §§ 425.10, 425.11)**

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

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

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

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

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18. The Judicial Council supports the legislation proposed in this report, but it has not taken an official position on the remainder of the report.

19. Additional reforms may be proposed at a later date.



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

The Legislature first enacted the statutory prohibition on pleading damages for personal injury or wrongful death in 1974.<sup>20</sup> The California Medical Association supported the legislation, which addressed a concern that inflated claims in multimillion dollar malpractice lawsuits tend to attract sensational media coverage and unfairly cast physicians in a bad light.<sup>21</sup>

The provision presents due process and fairness issues, because it does not put the defendant on notice of the extent of potential liability. Those issues are addressed in Code of Civil Procedure Section 425.11, which provides for a separate notice of the claimed damages.<sup>22</sup> A default judgment in a case

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20. See 1974 Cal. Stat. ch. 1481, § 1 (amending Code Civ. Proc. § 425.10).

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

22. Section 425.11 provides:

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 in the superior court 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, except in a limited civil case. 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 party, 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), 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.

governed by this section may not exceed the amount that the plaintiff claims in the statement of damages.<sup>23</sup>

Like the prohibition on pleading damages, the requirement of a separate notice of damages does not apply in a limited civil case.<sup>24</sup> To the Commission's knowledge, the reason for excluding such cases from the special pleading rules is nowhere expressly stated. It is likely, however, that the concern about grossly inflated damage claims is less acute in a limited civil case than in an unlimited civil case, because the maximum amount in controversy in a limited civil case is \$25,000.<sup>25</sup>

It does not appear productive to consider eliminating the prohibition on pleading damages or the requirement of a separate notice of damages in an unlimited case for personal injury or wrongful death. These special rules are politically based. There is no indication that those who obtained their enactment are dissatisfied with the rules. Although the rules

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(2) If a party has appeared in the action, the statement shall be served upon his or her attorney, or upon the party if he or she 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.

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

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

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

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

have received some criticism from other sources,<sup>26</sup> it is unlikely that they could be eliminated.

What about the converse? In an effort to attain consistency between limited and unlimited civil cases, should pleadings in limited civil cases be conformed to pleadings in unlimited cases? The pleadings would not include the amount of damages claimed in a personal injury or wrongful death case, but

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

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

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

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

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

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

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

a statement by the plaintiff would be provided on demand. Of course, consistency between limited and unlimited cases in this respect would simultaneously create internal inconsistency among pleadings in various types of limited civil cases.

But for the practitioner, as well as for judges, it is probably better to have the same pleading rules for personal injury and wrongful death cases, regardless of the jurisdictional classification of the case as limited or unlimited. Moreover, if the jurisdictional amounts are increased in the future, some of the same policy concerns about inflated claims in unlimited civil cases might surface in limited civil cases. For these reasons, the proposed law would revise Sections 425.10 and 425.11 to conform the pleading requirements for all personal injury and wrongful death cases.<sup>27</sup> Regardless of the jurisdictional classification of the case, the prohibition on pleading damages and the requirement of a separate notice of damages would apply.

**Undertaking for Writ of Attachment or Protective Order (Code Civ. Proc. § 489.220)**

Code of Civil Procedure Section 489.220 provides for an undertaking as a prerequisite to issuance of a writ of attachment. The undertaking is \$2,500 in a limited civil case and \$7,500 in an unlimited civil case.<sup>28</sup>

This provision has its origin in the pre-1974 attachment statute, which provided simply for an undertaking in one-half the principal amount of the total indebtedness or damages claimed, excluding attorney's fees.<sup>29</sup> The court was permitted

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

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

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

to decrease the amount on ex parte application of the plaintiff, if the court was satisfied that a lower amount would adequately protect the defendant.<sup>30</sup> The court could also increase the required undertaking on the defendant's motion, but the statute gave no guidance as to the increased amount.<sup>31</sup>

This scheme was changed in the Attachment Law of 1974 to provide for a fixed undertaking amount: \$2,500 in municipal court proceedings, and \$7,500 in superior court proceedings.<sup>32</sup> The defendant could object to the amount of the undertaking on the ground that it was less than the probable recovery for wrongful attachment. If the court determined that the amount was insufficient, the undertaking was to be increased to the amount of the probable recovery for wrongful attachment.<sup>33</sup>

This approach had several advantages over the earlier scheme. Because the fixed undertaking amounts were "arbitrary but modest,"<sup>34</sup> they were affordable for plaintiffs. This was not always true under the previous scheme, because the undertaking amount depended on the amount of the plaintiff's claim, which could be so large as to prohibit an attachment.<sup>35</sup> By permitting the defendant to seek an increase in the undertaking amount, but expressly tying the amount of any increase to the probable recovery for wrongful attachment, the new provision also protected the defendant to a more appropriate and more predictable extent than the previous statute.<sup>36</sup>

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

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

32. 1974 Cal. Stat. ch. 1516, § 9.

33. *Id.*; see also *Prejudgment Attachment*, *supra* note 31, at 738, 833-34.

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

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

36. *Id.* at 4-5.

The new approach was also simple to administer, because the initial undertaking amounts were always the same and the amounts could only be increased, not decreased.

Trial court unification led to the current scheme in 1998. The undertaking is \$2,500 in a limited civil case, and \$7,500 in an unlimited civil case.<sup>37</sup> As before, if the fixed amount is insufficient, the court may increase the undertaking to the amount of the probable recovery for wrongful attachment.

Is it still useful to distinguish between limited and unlimited civil cases in fixing the initial amount of the attachment undertaking? The function of the undertaking is to ensure that funds are available to compensate the defendant for any damages that may result from a wrongful attachment.<sup>38</sup> For this purpose, the jurisdictional classification of the case as limited (\$25,000 or less in controversy) or unlimited (more than \$25,000 in controversy)<sup>39</sup> bears little or no relationship to the amount of damage that the defendant may sustain due to a wrongful attachment.

Moreover, the amount of the initial undertaking in today's dollars is even more modest in light of its intended purpose than it was in 1974.<sup>40</sup> It provides very little protection to the defendant against the potentially devastating effects of a wrongful attachment (e.g., forcing the defendant out of busi-

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

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

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

40. Inflation has eroded the protection provided by the statute. A \$2,500 undertaking in 1974 would be the equivalent of over \$9,000 in 1999 dollars. This amount was determined using "The Inflation Calculator" found at <<http://www.westegg.com/inflation/>>, a website created and maintained by S. Morgan Friedman, as modified Jan. 19, 2000. The adjustments are based on the Consumer Price Index from 1800-1999.

ness). The defendant's only real protection lies in the ability to obtain a court-ordered increase in the amount of the undertaking.

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

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

#### **Satisfaction of Judgment (Code Civ. Proc. § 685.030)**

In 1991, the satisfaction of judgment statute was amended to allow entry of a satisfaction in cases in which the only

amount left unsatisfied is an interest deficit of less than \$10.<sup>41</sup> This rule initially applied only in municipal court.<sup>42</sup> As presently worded to reflect trial court unification, Code of Civil Procedure Section 685.030(e) applies only in a limited civil case:

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

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

Section 685.030(a)(2) currently provides that interest continues to accrue on money judgments until the date the levying officer actually receives the proceeds. Since there is often turnaround time of 2-3 days between the service of the writ and the actual receipt of the proceeds by the levying officer, the amount stated on the writ is often understated by the daily interest amount which continues to accrue during the turnaround period. In these instances, the clerk's office is unable to record in the Register of Actions that the judgment is fully satisfied. Some persistent judgment creditors have returned to the clerk's office seeking the additional interest owing on the writ, which is typically under \$10. This statute causes additional workload for the clerk's office with minimal benefit to the judgment creditor.<sup>43</sup>

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41. 1991 Cal. Stat. ch. 1090, § 4.5.

42. *Id.*

43. Memorandum from Kiri Torre, Contra Costa County Municipal Court Administrator, to Claude L. Van Marter, Ass't County Administrator (Jan. 25, 1991). This memorandum is at State Archives in the Assembly Judiciary Com-



The sponsor limited the proposal to municipal court cases because “judgments in superior court are substantially higher and the daily interest accruing is much greater.”<sup>44</sup>

The amount of a judgment is irrelevant, however, so long as all that remains unpaid is an interest deficit of \$10 or less.<sup>45</sup> Because that situation could arise in a superior court case as well as in a municipal court case, the California State Sheriffs’ Association suggested that the proposal “cover all money judgment civil writs issued from both municipal and Superior Courts.”<sup>46</sup> The legislative history does not disclose why the Legislature did not adopt that approach.<sup>47</sup>

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

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mittee’s file on Assembly Bill 1484 (1991 Cal. Stat. ch. 1090). The explanation in the memorandum is repeated almost verbatim in the Senate Judiciary Committee analysis (July 16, 1991) and the Senate Floor analysis (Aug. 29, 1991) of AB 1484.

44. Memorandum from Kiri Torre, Contra Costa County Municipal Court Administrator, to Claude L. Van Marter, Ass’t County Administrator (Jan. 25, 1991). For the location of this memorandum, see *supra* note 43.

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

46. *Id.*

47. The satisfaction of judgment provision was amended into AB 1484 on July 10, 1991, just before the bill was heard in the Senate Judiciary Committee.

less remains, regardless of the jurisdictional classification of the case.

**Undertaking of Creditor in Case of Third-Party Claim (Code Civ. Proc. §§ 720.160, 720.260)**

Code of Civil Procedure Sections 720.160<sup>48</sup> and 720.260<sup>49</sup> require a creditor's undertaking to maintain a levy on property where there has been a third-party claim to the property. The amount of the undertaking is \$2,500 in a limited civil case and \$7,500 in an unlimited civil case (or the creditor can elect to give an undertaking in the amount of twice the enforcement lien). The beneficiary may object to the undertaking as insufficient,<sup>50</sup> and the court may order the undertaking increased if it is shown to be necessary.<sup>51</sup> The principal may not seek a reduction of the undertaking amount.<sup>52</sup>

Before enactment of this scheme in 1982, the law provided for a creditor's undertaking in third-party claim proceedings in an amount twice the value of the property claimed.<sup>53</sup> This was changed in 1982 on recommendation of the Law Revision Commission to a flat amount of \$2,500 for actions pending or judgments rendered in municipal court, and \$7,500 for

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

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

50. Code Civ. Proc. § 995.920.

51. Code Civ. Proc. § 995.960.

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

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

actions pending or judgments rendered in superior court. The rationale for a flat amount undertaking was that it would eliminate the need for the courts to consider objections to the amount of an undertaking based on the value of the property.<sup>54</sup> The amounts selected were based on the amounts for an attachment undertaking.

Trial court unification led to the current scheme in 1998. The initial undertaking amount now depends on the jurisdictional classification of the case (whether it is a limited civil case or an unlimited civil case), rather than on the type of court in which the case is pending.<sup>55</sup>

To maintain the current pattern, Code of Civil Procedure Sections 720.160 and 720.260 should track the undertaking amount given by a creditor for an attachment. Because the proposed attachment undertaking is \$10,000,<sup>56</sup> the same amount should apply to third-party claim situations.

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

#### **Confession of Judgment (Code Civ. Proc. § 1134)**

Code of Civil Procedure Section 1134 establishes fees for filing a confession of judgment that differ depending on the

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

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

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

jurisdictional classification of the case. The filing fee is \$15 except in a limited civil case, where the filing fee is \$10.<sup>57</sup>

The drafting of this provision is anomalous. Technically, a confession of judgment in an amount of \$25,000 or less cannot be “in a limited civil case,” because no case is actually filed. Before 1998, the statute provided a lower fee in municipal and justice courts; the 1998 substitution of the reference to a “limited civil case” was made to accommodate trial court unification.<sup>58</sup> At a minimum, this section requires correction to refer to a fee of \$10 where the amount confessed does not exceed \$25,000.

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

Historically, the \$15 fee was charged in superior court and the \$10 fee was charged in municipal court. While it is possible there once was a fiscal justification for this differential, the actual costs now involved to process the filing of a con-

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57. The statute provides:

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

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

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

fession of judgment are independent of the jurisdictional classification of the case.

As a matter of policy, there may be a sentiment that in a smaller case, the costs charged against the parties should remain proportionately smaller. When the fee structure was enacted in 1872, the differential may have been significant. At that time, there was a proliferation of trial courts, including district courts, county courts, and justice courts. The general fee for filing a confession of judgment at that time was \$10; in justice courts the fee was \$3.<sup>59</sup> The equivalents in current dollars would be about \$135 and \$40, respectively.<sup>60</sup>

That fee structure remained unchanged for 85 years until the 1950s, when the fees were changed to \$10 in superior court, \$9 in municipal court, and \$5 in justice court.<sup>61</sup> In the 1970s the fees were raised to what they are today (\$15 in superior court and \$10 in municipal court).<sup>62</sup> The \$5 difference in filing fees in today's dollars is so small that it is not worth maintaining.

While a lower fee in smaller cases may be viewed as a populist measure, this is illusory. The law on confessions of judgment has evolved to the point that as a practical matter the confession of judgment is no longer of any use for a small claim. A confession of judgment is not valid unless an attorney, independently representing the defendant, signs a certificate that the attorney has examined the proposed judgment and has advised the defendant with respect to the waiver of rights and defenses under the confession of

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59. 1872 Code Civ. Proc. §§ 1134, 1135.

60. These amounts were determined using "The Inflation Calculator," *supra* note 40.

61. 1957 Cal. Stat. ch. 1982, §§ 1, 2.

62. 1974 Cal. Stat. ch. 1285, § 1; 1975 Cal. Stat. ch. 766, § 1; 1977 Cal. Stat. ch. 1257, § 37. The justice court filing fee was increased to \$10 (1977 Cal. Stat. ch. 1257, § 37), and then eliminated when the justice court was abolished in 1995.

judgment procedure and has advised the defendant to utilize the confession of judgment procedure.<sup>63</sup> The cost of obtaining the attorney's certificate renders the confession of judgment procedure practically useless for a claim for a small amount.<sup>64</sup> Whether the filing fee were \$15 as opposed to \$10 would make no difference, because the cost of the attorney's certificate, not the nominal filing fee, is prohibitive for such a claim.

In the interest of simplicity, the Commission recommends elimination of the filing fee differential, and adoption of a standard \$15 filing fee for all confessions of judgment.<sup>65</sup> Because an attorney's certificate is now a prerequisite to entry of a confession of judgment, the proposed amendment of Section 1134 would also require that the certificate be made part of the judgment roll.

#### **Filing Fee for First Paper in a Limited Civil Case**

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

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

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63. Code Civ. Proc. § 1132.

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

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

It is appropriate to examine whether the seven-dollar difference (\$90 versus \$83) between the fee where the demand exceeds \$10,000, and the fee where the demand is \$10,000 or less, is warranted.<sup>66</sup>

The differentiation between larger and smaller limited civil cases is of recent origin. Until 1992, the fee for filing the first paper in a civil case in municipal court was set by the board of supervisors, but Government Code Section 72055 limited this fee to a maximum of either \$40 or \$29, depending on whether a fee was collected for the court reporter fund.<sup>67</sup> In 1992, the statute was amended to establish a uniform \$80 fee for filing the first paper in a civil case in municipal court.<sup>68</sup> Not until 1997 was the amount of the fee linked to the amount demanded. In that year the Legislature enacted the Lockyer-Isenberg Trial Court Funding Act, which made major reforms relating to trial court funding but also amended Section 72055. Effective January 1, 1998, the fee for filing the first paper in a civil case in municipal court was raised to \$83 where the demand is \$10,000 or less and \$90 where the demand exceeds \$10,000.<sup>69</sup> To accommodate trial court unification, the provision was further amended the following year, to apply to limited civil cases rather than municipal court cases.<sup>70</sup>

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

67. 1983 Cal. Stat. ch. 969, § 10.

68. 1992 Cal. Stat. ch. 696, § 73.

69. 1997 Cal. Stat. ch. 850, § 37.

70. 1998 Cal. Stat. ch. 931, § 315; see also *Revision of Codes, supra* note 6, at 377-78.

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

Court personnel have reported, however, that differentiating between limited civil cases where the demand is \$10,000 or less, and limited civil cases where the demand exceeds \$10,000, creates problems. The increased complexity makes it more difficult for court clerks to determine what fee is due and harder for the Judicial Council and Administrative Office of the Courts to develop forms that clearly identify what fee should be charged. Trial court unification has exacerbated these problems, because in a unified superior court the clerks collect filing fees for unlimited civil cases (for which the initial filing fee is \$185),<sup>71</sup> as well as for both categories of limited civil cases.

Amending Section 72055 to set a uniform fee for filing the first paper in a limited civil case would alleviate the administrative burdens and potential for confusion in applying the statute. According to the Administrative Office of the Courts, if the fee were set at \$87 such an amendment probably would neither increase nor decrease the revenue of the courts.<sup>72</sup>

The statute should be further amended to delete the requirement that the amount of the demand be stated on the first page of the first paper immediately below the caption. If the same filing fee were charged for all limited civil cases, that requirement would no longer be necessary, because the amount of the demand would no longer affect the amount due under the statute.<sup>73</sup> To permit differentiation between limited

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71. Gov't Code § 26820.4.

72. The Commission has not independently analyzed this point.

73. Eliminating the requirement that the demand be stated on the first page of the first pleading in a limited civil case would also eliminate the conflict



and unlimited civil cases, however, a plaintiff in a limited civil case would still be required to state in the caption that the case is a limited civil case.<sup>74</sup>

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between Government Code Section 72055 and the proposal to extend to a limited civil case the prohibition in Code of Civil Procedure Section 425.10 on pleading personal injury or wrongful death damages. See *supra* notes 27, 66.

74. Code Civ. Proc. § 422.30.



## PROPOSED LEGISLATION

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

SECTION 1. Section 425.10 of the Code of Civil Procedure is amended to read:

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

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

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

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

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

SEC. 2. 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 ~~in the superior court~~ 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, ~~except in a limited civil case~~. 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 party *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), 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 ~~his or her~~ *the party's* attorney, or upon the party if ~~he or she~~ *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.** Section 425.11 is amended to conform to the pleading requirements of limited and unlimited civil cases. See Section 425.10. Technical changes are also made for conformity with preferred drafting style.

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

SEC. 3. Section 489.220 of the Code of Civil Procedure is amended to read:

489.220. (a) Except as provided in subdivision (b), the amount of an undertaking filed pursuant to this article shall be ~~two thousand five hundred dollars (\$2,500) in a limited civil~~

case, and seven thousand five hundred dollars (\$7,500) otherwise *ten thousand dollars (\$10,000)*.

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

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

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

SEC. 4. Section 685.030 of the Code of Civil Procedure is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 5. Section 720.160 of the Code of Civil Procedure is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 6. Section 720.260 of the Code of Civil Procedure is amended to read:

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

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

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

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

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

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

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

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



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

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

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

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

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

SEC. 7. Section 1134 of the Code of Civil Procedure is amended to read:

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

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

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

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

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

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

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

SEC. 8. Section 72055 of the Government Code is amended to read:

72055. (a) The total fee for filing of the first paper in a limited civil case, *case* shall be ~~ninety dollars (\$90), except that in cases where the amount demanded, excluding attorney’s fees and costs, is ten thousand dollars (\$10,000) or less, the fee shall be eighty-three dollars (\$83).~~ The amount of the demand shall be stated on the first page of the paper immediately below the caption *eighty-seven dollars (\$87)*.

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

(c) The term “total fee” as used in this section and Section 72056 includes any amount allocated to the Judges’ Retirement Fund pursuant to Section 72056.1, any automation fee imposed pursuant to Section 68090.7, any construction fee

imposed pursuant to Section 76238, and the law library fee established pursuant to Article 2 (commencing with Section 6320) of Chapter 5 of Division 3 of the Business and Professions Code. The term “total fee” as used in this section and Section 72056 also includes any dispute resolution fee imposed pursuant to Section 470.3 of the Business and Professions Code, but the board of supervisors of each county may exclude any portion of this dispute resolution fee from the term “total fee.”

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

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

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

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

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