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Civil Procedure

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Civil Procedure

Civil Procedure; access to public records

Government Code §§ 6258, 6259 (amended).

SB 2272 (Roberti); 1990 STAT. Ch. 908

Support: California Newspaper Publishers' Association, California Association of Licensed Investigators, City of Berkeley.

Opposition: California District Attorneys' Association, City of Oakland.

Under existing law, state and local agencies must keep their records open for public inspection.¹ Existing law allows a person to request injunctive or declarative relief allowing inspection or receipt of a copy of any public record.² Under Chapter 908, a person may also request a writ of mandate to inspect or receive a copy of a public record.³

Under existing law, when a court determines that an improperly withheld record should be disclosed, the decision is not appealable as a final judgment,⁴ but must be reviewed upon petition to the appellate court as an extraordinary writ of review.⁵ Under Chapter 908, any action filed under this section will be considered an extraordinary writ⁶ rather than an extraordinary writ of review.⁷ Chapter 908 requires the petitioner to file a petition within ten days

1. See CAL. GOV'T CODE § 6253(a) (West Supp. 1990) (public records are open to inspection during normal business hours). See also *id.* §§ 6252(d) (definition of public records); 6253.5-6254.25 (exceptions to disclosure requirement). See generally Swanson, *Privacy Limitations On Civil Discovery in Federal and California Practice*, 17 PAC. L.J. 1 (1985) (discussion of constitutional privacy rights, disclosure requirements, and case law exceptions).

2. CAL. GOV'T CODE § 6258 (amended by Chapter 908).

3. *Id.*

4. See CAL. CIV. PROC. CODE § 904.1 (West Supp. 1990) (definition of a final judgment); *People v. Ketchel*, 63 Cal. 2d 859, 864, 409 P.2d 694, 697, 48 Cal. Rptr. 614, 617 (1966) (a final judgment occurs when the courts can no longer review a decision).

5. CAL. GOV'T CODE § 6259(a)-(c) (amended by Chapter 908). See CAL. CIV. PROC. CODE § 1067 (West 1980) (definition of writ of review).

6. Extraordinary writs include certiorari (review of judicial action), prohibition (restraint of judicial action), mandamus (compulsion of ministerial duty), supersedeas (stay of enforcement of judgment pending appeal), habeas corpus (release from illegal restraint), and coram nobis (to vacate judgment). 8 B. WITKIN, CALIFORNIA PROCEDURE, § 1, at 640-41 (3rd ed. 1985).

7. See CAL. GOV'T CODE § 6259(c) (amended by Chapter 908).

of the court's determination⁸ in order to obtain review of the order.⁹ Additionally, Chapter 908 prohibits a stay of judgment unless the petitioning party shows a stay is necessary to prevent irreparable damage, and that there is a probability of success on the merits.¹⁰

MJF

Civil Procedure--attorney's fees

Code of Civil Procedure § 1033.5 (amended).

AB 3331 (Peace); 1990 STAT. Ch. 804

Support: State Bar of California

Existing law allows the prevailing party¹ in a lawsuit to recover costs.² Recoverable costs include attorney's fees only where authorized by statute.³ Prior case law held that these costs, when authorized by a contract, could be recovered even though the prevailing party had not filed a noticed motion.⁴ Chapter 804 states that the court must award attorney's fees authorized by a contract, upon the filing of a noticed motion or the entry of a default

8. The petition must be filed within 10 days after service of a written notice of the order. *Id.* The court may exceed this time limit by up to 20 days with a showing of good cause. *Id.* If the notice is served by mail, the time limit is increased by 5 days. *Id.*

9. *Id.*

10. *Id.* Chapter 908 applies only to actions filed after Jan. 1, 1991. *Id.*

1. See CAL. CIV. PROC. CODE § 1032(a)(4) (West Supp. 1990) (definition of a prevailing party).

2. *Id.* § 1032(b).

3. *Id.* § 1033.5(a)(10) (amended by Chapter 804). See, e.g., CAL. LAB. CODE § 1197.5(g) (West 1989) (allowing reasonable attorney's fees to be awarded where the employer has discriminated in salary practices on the basis of gender).

4. See *Simpson v. Smith*, 214 Cal. App. 3d Supp. 7, 10-11, 263 Cal. Rptr. 110, 112 (1989). In *Simpson*, the court concluded that a recently amended statute that eliminated a provision relating to a noticed motion invalidated a court rule that required the filing of a noticed motion in order to recover attorney's fees. *Id.* at 10-11, 263 Cal. Rptr. at 112. A noticed motion must state the grounds upon which it is based unless it is a motion for a new trial. CAL. CIV. PROC. CODE § 1010 (West 1980).

judgment, unless the parties stipulate otherwise.⁵ Thus, Chapter 804 abrogates prior case law.⁶

DAG

Civil Procedure; childhood sexual abuse-- commencement of actions and proof of intent

Code of Civil Procedure § 340.1 (amended).
SB 108 (Lockyer); 1990 STAT. Ch. 1578
Sponsor: National Action Against Rape
Opposition: California Defense Counsel

Existing law allows a minor who is subjected to sexual abuse to file a civil complaint against the abuser,¹ and states that a civil action for childhood sexual abuse has to be commenced within three years² of the injury.³ Prior to the enactment of Chapter

5. CAL. CIV. PROC. CODE § 1033.5(c)(5) (amended by Chapter 804).

6. *See id.* (abrogating the holding in *Simpson*, discussed note in 4 *supra* and accompanying text). *Cf.* CAL. R. CT. 870.2 (West 1990) (noticed motion required for an award of attorney's fees).

1. *See* CAL. CIV. CODE § 1714 (West 1985) (general tort responsibility for injury to others). *See, e.g.,* *DeRose v. Carswell*, 196 Cal. App. 3d 1011, 242 Cal. Rptr. 368 (1988). *See also* CAL. PENAL CODE § 288 (West Supp. 1990) (criminal liability for lewd and lascivious conduct with a minor). *See generally* Comment, *Civil Remedies for Victims of Child Abuse*, 13 OHIO N.U.L. REV. 223 (1986); Comment, *Tort Remedies for Incestuous Abuse*, 13 GOLDEN GATE U.L. REV. 609 (1983) (discussing causes of action available to victims of child abuse).

2. The statute of limitations is tolled while a plaintiff is under the age of majority, and therefore an action for childhood sexual molestation must be brought within three years of the plaintiff's 18th birthday. *See* CAL. CIV. PROC. CODE § 352 (West Supp. 1990). *See also* Colleen L. v. Howard M., 209 Cal. App. 3d 542, 546, 257 Cal. Rptr. 263, 266 (1989) (holding that statute granting sexually abused minors three years to file a cause of action did not deny them the benefit of the tolling of the statute of limitations until attaining age 18). *But cf.* *Tyson v. Tyson*, 107 Wash. 2d 72, 73-74, 727 P.2d 226, 227 (1986) (holding statute of limitations does not toll in a case where plaintiff's actions are based on a memory of childhood sexual abuse).

3. CAL. CIV. PROC. CODE § 340.1(a) (amended by Chapter 1578) (including any action for injury from lewd or lascivious acts with a child under age 14, fornication, sodomy, or other sexual acts occurring before the victim attains age 18). Existing law provides that courts can apply the delayed discovery doctrine to a cause of action brought for sexual molestation of a minor. *Id.* *But see* *DeRose v. Carswell*, 196 Cal. App. 3d 1011, 1020-21, 242 Cal. Rptr. 368, 373 (1987) (holding that the delayed discovery doctrine was not applicable in all sexual abuse cases, and precluding the

1578, the statute of limitation only applied if the abuser was a family member.⁴

Chapter 1578 provides that an action for sexual abuse of a child must be commenced within eight years after the plaintiff reaches the age of majority,⁵ or within three years of discovering the injury is the result of sexual abuse,⁶ whichever occurs later.⁷ Chapter 1578 also applies to acts of sexual abuse by any individual, not being limited to family members.⁸

EDS

action of a 24 year old woman for sexual abuse as a child by her step-grandparent). In *DeRose*, the victim was aware at the time of the sexual abuse of all the facts necessary to state a cause of action, but failed to bring the cause of action for more than four years after reaching age 18. *Id.*

4. 1986 Cal. Stat. ch. 914, sec. 1, at 3165 (enacting CIV. PROC. CODE § 340.1(a)) (amended by Chapter 1578). *See id.* § 340.1(c) (amended by Chapter 1578) (definition of household family member). Limiting the provision to household members barred the action of a 19 year old male against his former Boy Scout troop leader for sexual assault. *Snyder v. Boy Scouts of America, Inc.*, 205 Cal. App. 3d 1318, 1325, 253 Cal. Rptr. 156, 160 (1988).

5. *See* CAL. CIV. CODE § 25.1 (West 1982) (definition of age of majority).

6. *See* CAL. CIV. PROC. CODE § 340.1(b) (amended by Chapter 1578) (acts included in definition of childhood sexual abuse).

7. *Id.* § 340.1(a) (amended by Chapter 1578). A "certificate of merit" must be filed if the plaintiff is over the age of 26 at the time the action for sexual abuse is filed based on delayed discovery. *Id.* § 340.1(e) (amended by Chapter 1578). The certificate requires the attorney for the plaintiff and a mental health practitioner selected by the plaintiff to review the facts of the case, interview the plaintiff, and certify that there is a reasonable and meritorious cause for filing the action. *Id.* § 340.1(f) (amended by Chapter 1578).

8. *See id.* § 340.1(a) (amended by Chapter 1578).

Civil Procedure; civil liability--architects and engineers

Civil Procedure Code § 411.35 (amended).

SB 2089 (Davis); 1990 STAT. Ch. 204

Support: California Council of Civil Engineers and Land Surveyors

Under existing law, an attorney for a party filing a negligence action¹ against an architect,² professional engineer,³ or land surveyor⁴ must file a certificate of merit.⁵ Chapter 204 specifies that this provision applies to equitable indemnity actions⁶ against these persons, whether or not the complaint or the cross-complaint specifically alleges “professional negligence” or “negligence”.⁷

SAJ

1. See CAL. CIV. PROC. CODE § 411.35(a) (amended by Chapter 204) (negligence action includes cross-complaints for damages or indemnity).

2. See CAL. BUS. & PROF. CODE §§ 5500 (West 1990) (definition of architect); 5500.1 (conditions for licensure).

3. See *id.* § 6701 (West Supp. 1990) (definition of professional engineer).

4. See *id.* §§ 8701 (definition of land surveyor); 8708 (conditions for licensure).

5. CAL. CIV. PROC. CODE § 411.35(a), (b) (amended by Chapter 204). The certificate must declare one of the following: (1) The attorney has reviewed the facts of the case, consulted with at least one qualified design professional, and concluded that there is reasonable and meritorious cause for filing the action; (2) the attorney was unable to obtain the consultation with a design professional before the certificate was filed to meet the statute of limitations; or (3) the attorney was unable to obtain the consultation after making three good faith attempts with three separate design professionals. *Id.* § 411.35(b) (amended by Chapter 204). Failure to file a certificate may be grounds for discipline against the attorney, as well as grounds for a demurrer or a motion to strike. *Id.* § 411.35(f), (g) (amended by Chapter 204).

6. See *Rossmoor Sanitation, Inc. v. Pylon, Inc.*, 13 Cal. 3d 622, 628, 532 P.2d 97, 100, 119 Cal. Rptr. 449, 452 (1975) (defining equitable indemnity as “the obligation resting on one party to make good a loss or damage another party has incurred.”). See also *San Francisco Examiner Div. v. Sweat*, 248 Cal. App. 2d 493, 497, 56 Cal. Rptr. 711, 713-14 (1967) (holding that equitable indemnity ensures the payment of damages incurred by the initial and active negligence of another). See generally *Munoz v. Davis*, 141 Cal. App. 3d 420, 190 Cal. Rptr. 400 (1983) (reviewing the history of the doctrine of equitable indemnity).

7. *Id.* § 411.35(i) (amended by Chapter 204).

Civil Procedure; collection agencies--injunction against unlicensed operation

Business & Professions Code § 6872 (amended).

SB 2101 (Deddeh); 1990 STAT. Ch. 503

Support: Building Industry Credit and Supply Coalition, California Association of Collectors.

Existing law allows a superior court to issue an injunction, upon application of the Director of Consumer Affairs, against a person who operates a collection agency¹ without a license.² Under Chapter 503, the attorney general and any district attorney, city attorney, or city prosecutor may also bring an action for an injunction.³ Chapter 503 also provides for the disposition of any fines collected under this statute.⁴

MJF

1. See CAL. BUS. & PROF. CODE § 6852 (West Supp. 1990) (definition of collection agency).

2. *Id.* § 6872(a) (amended by Chapter 503). Any licensed collection agency, association representing collection agencies, or member of the general public may also make an application for an injunction. *Id.* See *id.* § 6870 (West 1975) (prohibiting operation of a collection agency without licensing by the Department of Consumer Affairs). See generally *Royal Co. Auctioneers v. Coast Printing Equipment Co.*, 193 Cal. App. 3d 868, 873, 238 Cal. Rptr. 538, 541 (1987) (a one-time assignment for collection purposes does not constitute operation of a collection agency).

3. CAL. BUS. & PROF. CODE § 6872(b) (amended by Chapter 503).

4. *Id.* If a city attorney or city prosecutor brings the action, one-half of the fine goes to the city, and one-half to the county. *Id.* If a district attorney brings the action, the entire fine goes to the county. *Id.* If the attorney general brings the action, the entire fine goes to the state. *Id.*

Civil Procedure; disposition of exhibits

Civil Procedure Code §§ 1952, 1952.3 (amended); Penal Code §§ 1417, 1417.3 (amended).
AB 3408 (Frazee); 1990 STAT. Ch. 382

Under existing law, a court may order the destruction or other disposition of any exhibit or deposition left with the court clerk after determination or dismissal of a civil action.¹ Existing law requires the clerk to mail a notice of disposition to all parties² involved in the case, and imposes a sixty day waiting period before disposition of the exhibit or deposition.³ Chapter 382 requires the court to order any exhibit or deposition left with the court clerk to be destroyed or disposed of sixty days after a post trial hearing has been concluded, or after a civil action has reached a final determination⁴ or has been dismissed.⁵ Chapter 382 also requires the clerk to give the parties written notice of disposition by first-class mail.⁶

Under prior law, a court could order the disposition of any exhibit or deposition left with the court clerk after a case had been remanded to the trial court for a new trial subsequent to an appeal, and the new trial had not begun within five years of filing a

1. 1984 Cal. Stat. ch. 27, sec. 2, at 89-90 (enacting CAL. CIV. PROC. CODE § 1952(b)). A civil action includes a civil proceeding filed in a civil action. CAL. CIV. PROC. CODE § 1952(a) (amended by Chapter 382). *See id.* § 1952(a) (amended by Chapter 382) (requiring the court clerk to keep any exhibit or deposition introduced into a civil action or proceeding until the case is determined by the court or dismissed, unless the court orders the exhibit or deposition returned to the party that introduced the item).

2. The clerk must notify all attorneys of record and all parties who do not have an attorney of record by mail. *Id.* § 1952(c) (amended by Chapter 382).

3. *Id.* If a party to an action files a written notice requesting preservation of the exhibit or deposition, the court must hold the item for the requested time, up to one year. *Id.* § 1952(d) (amended by Chapter 382). After one year, the court may order destruction or disposition of the item unless another notice is filed. *Id.*

4. Final determination includes a determination of a civil action on appeal. *Id.* § 1952(c) (amended by Chapter 382).

5. *Id.* §§ 1952(c) (amended by Chapter 382) (civil action or proceeding); 1952(d) (amended by Chapter 382) (post-trial hearing).

6. *Id.*

remittitur.⁷ Notwithstanding the provisions for destruction after sixty days notice, Chapter 382 allows a court to order the destruction or other disposition of any exhibit or deposition within five years after the time for appeal has expired,⁸ after an appeal has reached final determination, after the action has been dismissed, or after a motion for a new trial has been granted and no new action has been taken.⁹ Additionally, Chapter 382 allows a party to request that the court preserve an exhibit or deposition for up to one year.¹⁰

Under existing law, any exhibit offered by the prosecution or defendant in a criminal trial must be returned to the offering party when the court determines that the item poses a security, storage, safety, or health problem.¹¹ Chapter 382 requires the court to retain a portion¹² of the exhibit, if a portion may be severed.¹³ Chapter 382 also provides that if an exhibit is toxic by nature and poses a health hazard to humans, the exhibits must be introduced by photographic record with a certified written analysis of its contents.¹⁴

MJF

7. 1985 Cal. Stat. ch. 875, sec. 1, at 2787-88 (amending CAL. CIV. PROC. CODE § 1952.3(b)). See CAL. CIV. PROC. CODE § 1952.3(a) (amended by Chapter 382) (allowing an exhibit or deposition to be destroyed or disposed of after a motion for a new trial has been granted and when no action to set the case for trial has occurred within five years); § 1952.3(c) (amended by Chapter 382) (exhibit or deposition may be destroyed or disposed of within five years after an action or proceeding has been dismissed). The court may also order any exhibit or deposition destroyed or disposed of 10 years after the item was introduced in a civil action or proceeding and the court, in its discretion, decides the item should be destroyed. *Id.* § 1952.3 (amended by Chapter 382).

8. CAL. CIV. PROC. CODE § 1952.3 (amended by Chapter 382).

9. *Id.*

10. *Id.* However, the court is not required to keep the item for over one year, even if subsequent requests are made. *Id.*

11. CAL. PENAL CODE § 1417.3 (amended by Chapter 382).

12. The portion is not to exceed three pounds by weight, or one cubic foot by volume. *Id.*

13. *Id.* § 1417.3(a) (amended by Chapter 382). The clerk is required to substitute a photographic record of the exhibit or portion of the exhibit returned. *Id.* A photographic record must be provided by the party to whom the clerk returns the exhibit. *Id.*

14. *Id.* § 1417.3(b) (amended by Chapter 382).

Civil Procedure; expert witness fees

Civil Procedure Code § 2034 (amended); Government Code § 68092.5 (amended).

AB 3136 (McClintock); 1990 STAT. Ch. 1392

Under existing law, a party to a suit may make pre-trial discovery of the opposing party's expert witness, treating physician, or health care practitioner.¹ The party desiring to depose the witness is required to pay the reasonable and customary fee² for the actual time consumed in deposition.³ Chapter 1392 adds architects, professional engineers, and licensed land surveyors to the list of professionals that may charge the reasonable and customary fee when testifying or appearing for a deposition.⁴ Chapter 1392 further limits the amount that an expert witness or specified professional may charge the opposing party during deposition to a rate not exceeding the rate the witness billed the hiring party.⁵

JCM

1. CAL. CIV. PROC. CODE § 2034(a) (amended by Chapter 1392). *See id.* § 2034(a)-(g) (amended by Chapter 1392) (provisions regulating discovery of expert witnesses). *See also* CAL. BUS. & PROF. CODE § 900(f) (West 1990) (definition of health care practitioner).

2. *See* CAL. CIV. PROC. CODE § 2034(i)(2) (amended by Chapter 1392) (reasonable and customary fee is that which is appropriate to the respective profession).

3. *Id.* § 2034(i)(3). Existing law limits the compensation of non-designated experts to \$35 per day. CAL. GOV'T CODE § 68093 (West Supp. 1990). *See id.* § 68092.5 (amended by Chapter 1392) (compensation of expert witnesses).

4. CAL. CIV. PROC. CODE § 2034(i)(2) (amended by Chapter 1392).

5. CAL. CIV. PROC. CODE § 2034(i)(2) (amended by Chapter 1392). Chapter 1392 makes an exception where the expert's services are donated to a non-profit organization. *Id.* *See also* CAL. GOV'T CODE § 68092.5(a) (amended by Chapter 1392) (identical provisions relating to expert testimony before a court).

Civil Procedure; hazardous substances--judicial review of final remedial action plans

Health and Safety Code §§ 25356.1, 25356.3, 25356.5 (amended).

AB 2824 (Jones); 1990 STAT. Ch. 532

Support: Department of Health Services.

Under existing law, the Department of Health Services¹ or a regional water quality control board² is required to prepare or approve remedial action³ plans for cleanup of hazardous substance release sites.⁴ Existing law allows a potentially responsible party⁵ named in the final remedial action plan to seek judicial review of the plan within thirty days after the final plan is issued.⁶

Chapter 532 requires the party requesting judicial review to file a petition for a writ of mandate⁷ within thirty days after the final plan is issued.⁸ Chapter 532 also requires any other person who has a right to seek judicial review⁹ to file a petition for a writ of mandate within one year.¹⁰ An action for review after the expiration of the specified time limits is specifically prohibited.¹¹ Chapter 532 also provides that the filing of a petition for a writ of

1. See CAL. HEALTH & SAFETY CODE §§ 100-103 (Deering 1990) (establishment and duties of Department of Health Services).

2. See CAL. WATER CODE § 13201 (Deering Supp. 1990) (establishment and makeup of regional water quality control boards). See also *id.* § 13200 (Deering 1977) (establishing nine water quality control regions in California).

3. See CAL. HEALTH & SAFETY CODE § 25322 (Deering 1980) (definition of remedial action).

4. *Id.* § 25356.1(a) (amended by Chapter 532). See *id.* §§ 25316 (Deering 1988) (definition of hazardous substance); 25320 (definition of release).

5. See *id.* § 25323.5 (definition of responsible party).

6. *Id.* § 25356.1(f) (amended by Chapter 532).

7. See CAL. CIV. PROC. CODE § 1085 (Deering 1973) (authorizing courts to issue writs of mandate). See generally *City and County of San Francisco v. Superior Court*, 94 Cal. App. 318, 320, 271 P. 121, 122 (1928) (a writ of mandate is an extraordinary remedy compelling an inferior tribunal to perform an act required by law).

8. CAL. HEALTH & SAFETY CODE § 25356.1(f) (amended by Chapter 532).

9. See 8 B. WITKIN, CALIFORNIA PROCEDURE, § 65, at 702 (3rd ed. 1985) (a person has a right to request a writ of mandate if there is a clear, present, and ministerial duty on respondent, and a clear, present, and beneficial right to petitioner to have that duty performed).

10. CAL. HEALTH & SAFETY CODE § 25356.1(f) (amended by Chapter 532).

11. *Id.*

mandate does not stay the remedial action specified in the final plan.¹²

MJF

Civil Procedure; prejudgment attachment--secured obligations

Civil Procedure Code §§ 483.010, 483.015 (amended, repealed, and new).

SB 2170 (Doolittle); 1990 STAT. Ch. 943

Source: State Bar of California

Under existing law, prejudgment attachments¹ are not generally available to enforce an obligation secured by real or personal property in a civil action.² However, in cases where the security interest has diminished in value to such an extent that, independent of any act of the creditor, the security interest is of less value than the amount due, an attachment is available.³ Chapter 943 makes prejudgment attachments generally available in a civil action to enable collection on obligations secured by personal property or commercial fixtures, to the extent that the obligation is not covered by the security interest.⁴ Chapter 943 excludes from the amount secured by the attachment any decrease in the value of the security interest caused by the plaintiff.⁵

JCM

12. *Id.*

1. See *National Gen. Corp. v. Dutch Inns of America, Inc.*, 15 Cal. App. 3d 490, 495, 93 Cal. Rptr. 346, 347 (1971) (definition of prejudgment attachments).

2. CAL. CIV. PROC. CODE § 483.010(b) (amended by Chapter 943).

3. *Id.* § 483.010(b)(1) (amended by Chapter 943).

4. *Id.* § 483.010 (amended by Chapter 943). This revision gives under-secured creditors the same rights as unsecured creditors who could, previously, secure attachments more easily. *Id.*

5. *Id.* § 483.010(b)(1) (amended by Chapter 943).

Civil Procedure; punitive damages for frivolous actions

Civil Procedure Code § 128.5 (amended).

SB 2766 (Royce); 1990 STAT. Ch. 887

Existing law allows a court to impose sanctions¹ upon a party who engages in bad faith or frivolous² actions or tactics³ causing unnecessary delay.⁴ Chapter 887 authorizes a court to impose punitive damages⁵ against a plaintiff if the plaintiff is a felon who maintains an action against the victim of the felony,⁶ for injuries incurred by the acts for which the felon plaintiff was convicted.⁷ The court must find that the plaintiff is guilty of fraud⁸ in bringing the action.⁹

SAJ

1. See CAL. CIV. PROC. CODE § 128.5(a) (amended by Chapter 887) (sanctions include reasonable expenses, including attorney's fees, incurred because of delay tactics).

2. See *id.* § 128.5(b)(2) (amended by Chapter 887) (definition of frivolous).

3. See *id.* § 128.5(b)(1) (amended by Chapter 887) (definition of actions or tactics).

4. *Id.* § 128.5(a) (amended by Chapter 887). See *Lavine v. Hospital of the Good Samaritan*, 169 Cal. App. 3d 1019, 1028, 215 Cal. Rptr. 708, 715 (1985) (imposition of sanctions for actions that are frivolous or that cause unnecessary delay is constitutional).

5. See CAL. CIV. CODE § 3294(a) (West Supp. 1990) (provides for punitive damages in addition to compensating damages if the defendant's fraudulent or malicious acts are proven by clear and convincing evidence). See *Esparza v. Specht*, 55 Cal. App. 3d 1, 6, 127 Cal. Rptr. 493, 495-96 (1976) (the requirement of actual damage is to insure that a tortious act is proven before assessing punitive damages).

6. See CAL. CIV. PROC. CODE § 128.5(d) (amended by Chapter 887). This provision also applies to actions against the victim's heirs, relatives, or estate. *Id.*

7. *Id.* § 128.5(d) (amended by Chapter 887). Cf. Van Patten & Willard, *Limits of Advocacy: A Proposal for the Tort of Malicious Defense in Civil Litigation*, 35 HASTINGS L.J. 391 (1984) (discussion of the problem of condemning only the malicious prosecution, and advocacy of the sanctioning meritless or malicious defense).

8. See CAL. CIV. PROC. CODE § 128.5(d) (amended by Chapter 887) (the court may alternatively find the plaintiff guilty of oppression or malice under this provision).

9. *Id.*

Civil Procedure; small claims court--jurisdiction

Civil Procedure Code §§ 116.25, 116.231, 116.531, 117.2 (new); 116.2, 116.220, 116.710, 116.790, 117.8, 117.12 (amended). AB 3916 (Lempert); 1990 STAT. Ch. 1683

Existing law provides for monetary jurisdiction of small claims courts.¹ Chapter 1683 increases the monetary jurisdiction to \$5,000.² Chapter 1683 also specifies that no person may file more than two small claims actions exceeding \$2,500 each in one calendar year.³

Existing law provides grounds for appeal from judgments in small claims court.⁴ In cases of judgments exceeding \$2,500, the insurer of the defendant may appeal with respect to the plaintiff's claim.⁵ Chapter 1683 also allows the superior court to award attorney's fees of up to \$1,000, if the court finds that the appeal was without substantial merit and not based on good faith.⁶

SAJ

1. See CAL. CIV. PROC. CODE § 116.2 (amended by Chapter 1683).

2. *Id.* §§ 116.2 (amended by Chapter 1683); 116.220 (enacted by 1990 Cal. Legis. Serv. ch. 1305, sec. 3, at ____ (West) (amended by Chapter 1683).

3. *Id.* § 116.710(c) (enacted by 1990 Cal. Legis. Serv. ch. 1305, sec. 3, at ____ (West) (amended by Chapter 1683).

4. *Id.* § 117.8 (amended by Chapter 1683) The plaintiff may appeal with respect to the defendant's claim, and the defendant may appeal with respect to the plaintiff's claim. *Id.* Under Chapter 1683, the plaintiff may not appeal the judgment on the plaintiff's claim, but may file a motion to vacate if he or she did not appear at the hearing. *Id.* § 116.710(a) (enacted by 1990 Cal. Stat. ch. 1305, sec. 3, at ____ (amended by Chapter 1683). A defendant who did not appear at the hearing may file a motion to vacate, but cannot appeal. *Id.* § 116.710(d) (amended by Chapter 1683). Chapter 1683 does not prohibit testimony or assistance by experts or representatives of insurers. *Id.* § 116.531 (enacted by Chapter 1683).

5. *Id.* § 116.710(c) (enacted by 1990 Cal. Legis. Serv. ch. 1305, sec. 3, at ____ (West) (amended by Chapter 1683).

6. *Id.* § 116.790 (enacted by 1990 Cal. Legis. Serv. ch. 1305, sec. 3, ____ (West) (amended by Chapter 1683).

Civil Procedure; summary judgment and summary adjudication

Code of Civil Procedure § 437c (amended).

SB 2594 (Robbins); 1990 STAT. Ch. 1561

Support: California Judges Association, California Trial Lawyers Association

Existing law allows a court to grant summary judgment in an action if the court determines there is no merit or defense to the action.¹ Existing law also provides for summary adjudication as part of, or an alternative to, a summary judgment.² Prior to the enactment of Chapter 1561, a court could grant summary adjudication of individual issues relating to the cause of action.³ Under Chapter 1561, a court may grant summary adjudication only as to one or more causes of action in the case, an affirmative defense, or a claim for punitive damages.⁴

Under Chapter 1561, evidentiary objections and objections regarding the sufficiency of affidavits or declarations are deemed waived unless made at the court hearing on the motion for summary judgment.⁵ Additionally, Chapter 1561 provides that the court must set forth with specificity any document in the court's

1. CAL. CIV. PROC. CODE § 437c(a) (amended by Chapter 1561). The court must grant a motion for summary judgment if the court finds there is no triable issue on any material fact. *Id.* § 437c(c) (amended by Chapter 1561). See generally O'Brien, *Effective Summary Judgment Motions*, 7 L.A. LAW., Feb. 1986, at 26.

2. CAL. CIV. PROC. CODE § 437c(f) (amended by Chapter 1561).

3. 1989 Cal. Legis. Serv. ch. 1416, sec. 16, at ____ (amending CAL. CIV. PROC. CODE § 437c(f)) (West) (amended by Chapter 1561).

4. CAL. CIV. PROC. CODE § 437c(f) (amended by Chapter 1561). A court may also grant a summary adjudication of the issue of whether a defendant owed a duty to the plaintiff. *Id.* If one or more elements of a cause of action cannot be established, the cause of action has no merit and warrants summary adjudication. *Id.* Without the support of a newly discovered fact, a party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication which had been previously denied by the court. *Id.*

5. *Id.* § 437c(b), (d) (amended by Chapter 1561). But cf. *Witchell v. De Korne*, 179 Cal. App. 3d 965, 974, 225 Cal. Rptr. 176, 182 (1986); *Zuckerman v. Pacific Savings Bank*, 187 Cal. App. 3d 1394, 1404, 232 Cal. Rptr. 458, 462 (1986) (objections to the competency of a witness are not waived even if a party fails to make the objections at the hearing).

file that is being incorporated by reference, and may not incorporate the entire file.⁶

SAJ

Civil Procedure; temporary restraining orders

Civil Code §§ 4359, 7020; Civil Procedure Code § 545.5 (new), §§ 412.21 (amended); Penal Code § 136.2 (amended).

AB 3593 (Speier); 1990 STAT. Ch. 935

Support: California Judges Association, Judicial Council of California, Commission on the Status of Women, District Attorney of Sacramento, City Attorney of Los Angeles, Sheriff of the County of Los Angeles, District Attorney of San Francisco, ACLU, City of Los Angeles, Family Violence Law Center, Battered Women's Alternatives, Queens's Bench, California Alliance Against Domestic Violence, Tri-Valley Haven for Women, County Clerks Association of California, San Mateo Advisory Council of Women, Mid-Peninsula Support Network for Battered Women, Women's Crisis Support, Legal Services of Northern California, Inc.

Under existing law, a summons issued in an action for the dissolution or annulment of a marriage must contain temporary mutual restraining orders barring the parties from taking minor children out of the state and from transferring any property.¹ Under prior law, these temporary restraining orders were

6. CAL. CIV. PROC. CODE § 437c(b) (amended by Chapter 1561).

1. CAL. CIV. PROC. CODE § 412.21(a) (amended by Chapter 935). The provisions also apply to summons for legal separation, and to actions brought under the Uniform Parentage Act. *Id.* See CAL. CIV. CODE §§ 7000-7021 (West 1983 & Supp. 1990) (Uniform Parentage Act).

confidential, and disclosing the existence of the order could have resulted in a penalty.²

Chapter 935 provides that a court may issue a mutual order restraining the parties from battering or threatening one another only if both parties personally appear and each presents evidence of abuse³ or domestic violence.⁴ Chapter 935 also deletes the provisions deeming the temporary restraining order confidential and imposing a penalty for disclosure of its existence.⁵

Existing law provides that a court may issue a restraining order to exclude one party from the dwelling of another party during the pendency of a proceeding brought under the Uniform Parentage Act.⁶ Under Chapter 935, the period of restraint may not exceed three years.⁷

Under existing law, the court may issue a restraining order in a criminal proceeding if it has a good cause to believe that a victim⁸ or witness will be dissuaded or intimidated.⁹ Chapter 935 requires the court to consider issuing a restraining order on its own motion in cases charging the defendant with domestic violence.¹⁰

SAJ

2. 1989 Cal. Legis. Serv. ch. 1105, sec. 7, at ____ (West) (amending CAL. CIV. PROC. CODE § 412.21) (amended by Chapter 935). The penalty for disclosure consisted of a fine not exceeding \$1,000, imprisonment for not more than five days, or both. CAL. CIV. PROC. CODE § 1218 (West Supp. 1990).

3. See CAL. PENAL CODE § 13700 (West Supp. 1990) (definition of abuse).

4. CAL. CIV. PROC. CODE § 545.5 (enacted by Chapter 935). See CAL. PENAL CODE § 13700 (definition of domestic violence). The order may restrain the parties from contacting, molesting, attacking, battering, or disturbing the peace of each other. CAL. CIV. PROC. CODE § 545.5 (amended by Chapter 935). The court may also issue an order against other family or household members upon a showing of good cause. *Id.*

5. CAL. CIV. PROC. CODE § 412.21 (amended by Chapter 935).

6. CAL. CIV. CODE § 7020(b) (amended by Chapter 935).

7. *Id.* § 7020(d) (amended by Chapter 935). The court may issue the order upon the defendant's failure to attend a hearing required by the Uniform Parentage Act. *Id.* Prior law limited the period of restraint to one year. 1988 Cal. Stat. ch. 271, sec. 3, at 803 (amending CAL. CIV. CODE § 7020) (amended by Chapter 935).

8. See CAL. PENAL CODE § 13700 (definition of victim).

9. See *id.* § 136.2 (amended by Chapter 935) (the order may require that the defendant have no communication with a witness or victim, or that a law enforcement agency within the court's jurisdiction provide protection for the witness or victim).

10. *Id.* § 136.2(g) (amended by Chapter 935).

Civil Procedure; trial court delay reduction

Code of Civil Procedure §§ 36.5, 222.5 (new);
Government Code §§ 68600, 68601, 68602, 68603, 68604,
68605, 68606, 68607, 68608, 68609, 68609.5, 68610, 68611,
68612, 68612.5, 68613, 68614, 68615, 68616, 68618, 68618.5,
68619 (repealed and new); §§ 69908, 74145, 75103.5 (new); §§
69907, 73642, 73952, 74342, 74742 (amended).
AB 3820 (Brown); 1990 STAT. Ch. 1232

Under existing law, it is the duty of the trial court to examine jurors to select a fair and impartial jury in criminal cases.¹ Chapter 1232 mandates that the trial judge shall examine prospective jurors in civil cases.² Upon completion of the judge's examination, counsel for each party may examine the prospective jurors.³ Under Chapter 1232, each party's counsel, upon stipulation, may examine prospective jurors outside the judge's presence in civil cases.⁴

SAJ

1. CAL. CIV. PROC. CODE § 223 (West Supp. 1990).

2. *Id.* § 222.5 (enacted by Chapter 1232).

3. *Id.* Counsel may examine jurors by direct oral questioning. *Id.* Counsel may exercise the use of peremptory challenges and challenges for cause upon completion of the examination. *Id.* Judges should allow liberal and probing examination to discover prejudice or bias. *Id.* Under Chapter 1232, the scope of examination must be within reasonable time limits set by the judge. *Id.* The judge may not impose any unreasonable or arbitrary examination time limits. *Id.* The trial judge should consider any unique or complex elements when considering voir dire questions, and should not require counsel to submit questions prior to conducting voir dire examination, unless the questions are improper. *Id.* See *id.* (defining "improper question" as any question, the dominant purpose of which is to precondition a prospective juror to a particular result, or questions regarding pleading or the applicable law).

4. *Id.*

Civil Procedure; vexatious litigants

Code of Civil Procedure § 391.7 (new); §§ 391, 391.1 (amended).

SB 2675 (Marks); 1990 STAT. Ch. 621

Support: Attorney General; California Association of Independent Business, Inc.; California Judges Association

Existing law defines a “vexatious litigant” as a person who has prosecuted at least five litigations¹ in the past seven years that have ended adversely to that person, or who has unjustifiably allowed a suit to remain pending for at least two years without having been brought to trial or hearing.² Chapter 621 expands the definition of “vexatious litigant” to include a person who continuously files frivolous motions or pleadings, engages in discovery abuse, or acts in other ways that are frivolous or solely intended to cause unnecessary delay.³ Also included in the definition of a vexatious litigant are persons who have been declared vexatious litigants in any other court of record in a proceeding based upon substantially similar facts.⁴

Existing law allows a defendant to file a motion for an order requiring a plaintiff to furnish security on the grounds that the plaintiff is a vexatious litigant.⁵ Under Chapter 621, a court may, upon its own motion, enter a prefilings order prohibiting a vexatious

1. For purposes of these sections, “litigation” is defined as a civil action or proceeding begun, maintained, or pending in any state or federal court of record. CAL. CIV. PROC. CODE § 391(a) (amended by Chapter 621).

2. *Id.* § 391(b) (amended by Chapter 621). The litigant must have filed suit *in propria persona*. *Id.* A litigant files suit *in propria persona* when the litigant appears without counsel. BLACK’S LAW DICTIONARY 712 (5th ed. 1979).

3. CAL. CIV. PROC. CODE § 391(b)(3) (amended by Chapter 621).

4. *Id.* § 391(b)(4) (amended by Chapter 621).

5. *Id.* § 391.1 (amended by Chapter 621).

litigant from filing, *in propria persona*, any further suits in California courts without obtaining leave of the trial judge.⁶

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6. *Id.* § 391.7(a) (enacted by Chapter 621). Violation of the order constitutes contempt of court. *Id.* The judge may allow the suit to be filed only if it appears that the suit has merit, and was not commenced for an improper purpose. *Id.* § 391.7(b) (enacted by Chapter 621). There will be an automatic stay of suits filed by a vexatious litigant which the clerk filed without leave of the court. *Id.* § 391.7(c) (enacted by Chapter 621). Chapter 621 requires the Judicial Council to keep and maintain a record of vexatious litigants. *Id.* § 391.7(d) (enacted by Chapter 621). *Cf.* N.Y. CIV. RIGHTS LAW § 70 (McKinney 1976) (a person who files a vexatious suit in another person's name is liable to that person, and guilty of a misdemeanor); TEX. CIV. PRAC. & REM. CODE ANN. § 9.012(e) (Vernon Supp. 1990) (the court may impose sanctions for pleadings and motions which are groundless and brought in bad faith, filed in order to harass the opponent, or filed for any improper purpose, such as causing needless delay). *See generally* Comment, *The Vexatious Litigant*, 54 CALIF. L. REV. 1769 (1966) (general discussion of California's vexatious litigant statute and remedies available against the vexatious litigant).