

1-1-1985

Civil Procedure

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Recommended Citation

University of the Pacific; McGeorge School of Law, *Civil Procedure*, 17 PAC. L. J. 627 (1986).

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Civil Procedure

Civil Procedure; arbitrator immunity

Code of Civil Procedure §1141.3 (amended); §1280.1 (new).
SB 1001 (Dills); 1985 STAT. Ch 709
Support: State Bar of California

Existing law provides for the arbitration of disputes as an alternative to judicial proceedings.¹ Under prior law, an arbitrator could be held liable for damages for failure to render a timely decision.² Chapter 709 extends the immunity afforded judicial officers³ to any person acting as an arbitrator under statute or contract.⁴

1. CAL. CIV. PROC. CODE §§1280-1295 (provisions governing the arbitration of disputes).

2. *Baar v. Tigerman*, 140 Cal. App. 3d 979, 984-5, 189 Cal. Rptr. 834, 839 (1983) (an arbitrator who failed to render a timely decision was held liable for breach of contract).

3. *Perry v. Meikle*, 102 Cal. App. 2d 602, 605, 228 P.2d 17, 19 (1951) (judicial officers are not amenable to any civil action for damages when they are acting within their jurisdiction).

4. CAL. CIV. PROC. CODE §1280.1.

Civil Procedure; amount in controversy

Code of Civil Procedure §§86, 91, 1141.11 (amended); Government Code §72602.20 (new); §§72602.4, 73641, 73672, 73681, 74001, 74131, 74341, 74601, 74801, 74921, 74961 (amended).
AB 82 (Harris); 1985 STAT. Ch 1383
Support: Governor's Legal Affairs Unit; Los Angeles County Bar Association; Judicial Council; Fresno County; San Diego County; Attorney General

Prior law limited the original jurisdiction of municipal and justice courts in civil proceedings¹ to cases involving an amount in controversy

1. Municipal and justice courts had jurisdiction over all cases at law, actions to dissolve a partnership, actions to cancel or rescind a contract, all proceedings in forcible entry, or forcible or unlawful detainer, actions to enforce or foreclose liens on personal property, actions to enforce or foreclose mechanics liens, and actions to enforce the liability of a judgment debtor, or for the recovery of an interest in personal property, provided that the amount in controversy in each case did not exceed \$15,000. 1984 Cal. Stat. c. 1719, §1.1, at ____ (amending CAL. CIV. PROC. CODE §86).

of \$15,000 or less.² Prior law further provided for the use of special procedures³ in justice and municipal courts if the amount in controversy did not exceed \$15,000.⁴ Chapter 1383 increases the municipal court, justice court, and special proceedings monetary jurisdictional limit to \$25,000.⁵ Prior law also permitted civil actions to be submitted to arbitration if the amount in controversy did not exceed \$15,000.⁶ Additionally, prior law specified that municipal and justice courts had original jurisdiction over arbitration-related petitions⁷ if the amount in controversy did not exceed \$15,000.⁸ With the enactment of Chapter 1383, municipal and superior courts may submit a civil action to arbitration if the amount in controversy does not exceed \$25,000.⁹ Furthermore, Chapter 1383 increases the monetary jurisdictional limit for arbitration-related petitions to \$25,000,¹⁰ except proceedings involving uninsured motorists.¹¹

2. *Id.*

3. CAL. CIV. PROC. CODE §§90 (application of law to civil actions), 91 (application of law to municipal and justice court actions), 92 (pleadings, answers, motions), 93 (questionnaire), 94 (discovery), 95 (additional discovery), 96 (statements of witnesses and descriptions and copies of evidence), 97 (witnesses), 98 (prepared testimony in lieu of direct testimony), 99 (judgment or final order), 100 (appeals).

4. 1983 Cal. Stat. c. 102, §1, at 871 (amending CAL. CIV. PROC. CODE §91).

5. CAL. CIV. PROC. CODE §§86, 91.

6. 1983 Cal. Stat. c. 928, at 321 (amending CAL. CIV. PROC. CODE §1141.11).

7. *See* CAL. CIV. PROC. CODE §1292 (filing of arbitration related petitions).

8. 1984 Cal. Stat. c. 1719, §1.1, at ____ (amending CAL. CIV. PROC. CODE §86).

9. CAL. CIV. PROC. CODE §1141.11.

10. *Id.* §86. *See generally* CAL. INS. CODE §11580.2 (uninsured motorist endorsement or coverage).

11. CAL. CIV. PROC. CODE §91(a).

Civil Procedure; denial of allegations

Code of Civil Procedure §431.30 (amended).

AB 276 (Stirling); 1985 STAT. Ch 621

Support: San Diego County Bar Association

If an unverified¹ complaint or cross-complaint is filed in municipal or justice court, existing law provides that a general denial² is sufficient to place all material allegations in the complaint at issue.³ If

1. CAL. CIV. PROC. CODE §446 (definition of verification). *See generally*, 3 B. WITKIN, CALIFORNIA PROCEDURE, *Pleading* §347 (2nd ed. 1971) (discussion of verification).

2. A general denial is a simple statement that denies all the allegations of the complaint in one sentence. 3 B. WITKIN, CALIFORNIA PROCEDURE, *Pleading* §882 (2nd ed. 1971).

3. CAL. CIV. PROC. CODE §431.30(d).

the complaint is verified, however, the allegations must be denied specifically⁴ or according to the information and belief of the defendant.⁵ Chapter 621 modifies existing law by providing that a verified or unverified complaint that is subject to the economic litigation procedures⁶ prescribed for municipal and justice courts may be denied generally.⁷ Chapter 621 further provides that a general denial to a verified complaint is sufficient to place each allegation in issue, if the cause of action is a claim assigned to a third party for collection.⁸

4. See, 3 B. WITKIN, CALIFORNIA PROCEDURE, *Pleading* §883 (2nd ed. 1971). "The strict form of specific denial requires a step-by-step restatement and denial of each allegation of the complaint to be controverted. Each material allegation of the complaint should be denied or admitted, and denials should be explicit and unequivocal."

5. CAL. CIV. PROC. CODE §431.30(d).

6. *Id.* §§90-100 (economic litigation procedures for Municipal and Justice Courts). See *id.* §91 (jurisdictional requirements of the economic litigation procedures in Municipal or Justice courts provide that the amount in controversy may not exceed \$25,000).

7. See *id.* §431.30(d).

8. *Id.*

Civil Procedure; peremptory challenges

Code of Civil Procedure §170.6 (amended).

AB 1213 (Robinson); 1985 STAT. Ch 715

Support: California Trial Lawyers Association; American Civil Liberties Union

Opposition: California Judges Association

Existing law specifies the time period within which a peremptory challenge to disqualify a trial court judge, commissioner, or referee must be made.¹ A peremptory challenge is made by motion and must be supported by an affidavit stating a belief that the judge, commissioner, or referee is prejudiced against the party, the attorney, or the interest of either.² Upon filing of the peremptory challenge motion, the judicial officer challenged is prohibited from presiding over the proceeding.³ Chapter 715 extends the use of a peremptory challenge to cases in which the trial judge who rendered the original decision has been assigned to re-try the case after reversal by an appellate court.⁴

1. CAL. CIV. PROC. CODE §170.6(2).

2. *Id.*

3. *Id.* §170.6(1).

4. *Id.* §170.6(2). The motion for a peremptory challenge must be made within 60 days after the moving party has been notified of the judge's assignment. *Id.*

Civil Procedure; subpoena duces tecum, notice of termination of conservatorship

Education Code §41020.1 (new); Government Code §26826 (amended); Code of Civil Procedure §1987.5 (amended); Welfare and Institutions Code §5362 (amended).

AB 514 (Frazee); 1985 STAT. Ch 1239

Support: County Clerks Association; Orange County Bar Association; Office of Local Government Affairs; Department of Finance

Existing law provides that service of a subpoena duces tecum is invalid unless a copy of the affidavit supporting the subpoena is served upon the person receiving the subpoena.¹ Prior law required the party requesting a subpoena duces tecum to file the original affidavit in support of the subpoena with the court not less than five days before the date on which the materials were to be produced.² Under Chapter 1239, the party requesting the subpoena must retain the original affidavit until final judgment in the action and is required to file the affidavit with the court only upon a reasonable request by an affected party or witness.³

Existing law requires the clerk of the superior court to notify each conservator, the conservatee, the person in charge of the facility where the conservatee resides, and the attorney of the conservatee sixty days before the termination of a one year conservatorship.⁴ Prior law provided that the notice of termination of conservatorship had to be signed by a superior court judge.⁵ Chapter 1239 requires that the notice of termination of conservatorship be signed by the clerk of the superior court.⁶

1. CAL. CIV. PROC. CODE §1987.5.

2. 1982 Cal. Stat. c. 452, §2, at 2605 (amending CAL. CIV. PROC. CODE §1987.5).

3. CAL. CIV. PROC. CODE §1987.5.

4. CAL. WELF. & INST. CODE §5362.

5. 1983 Cal. Stat. c. 464, §4, at 2830 (amending CAL. WELF. & INST. CODE §5362).

6. CAL. WELF. & INST. CODE §5362.

Civil Procedure; validation of public proceedings

Code of Civil Procedure §870 (amended).
SB 479 (Beverly); 1985 STAT. Ch 229
Support: Governor's Legal Affairs Unit

Existing law provides that the judgment of a superior court validating the decision of a public agency is binding and conclusive as to any matter that was adjudicated or that could have been adjudicated, if an appeal is not taken or if the judgment is affirmed on appeal.¹ Prior to the enactment of Chapter 229, an appeal from a judgment validating a decision of a public agency could be taken within sixty days after the date of notice of entry of judgment was mailed or 180 days after entry of judgment, whichever was earlier.² Under Chapter 229, however, an appeal from a judgment validating the decision of a public agency must be taken within sixty days after notice of entry of judgment, or within sixty days after the entry of judgment if there is no answering party.³

1. CAL. CIV. PROC. CODE §870; *Star v. San Francisco* 72 Cal. App. 3d 164, 179, 140 Cal. Rptr. 73, 81 (1977) (the judgment permanently enjoins the institution of any action raising any issue adjudicated or which could have been adjudicated against the agency or other persons).

2. CAL. R. CT. Rule 2(a).

3. CAL. CIV. PROC. CODE §870(b).

Civil Procedure; judicial arbitration—discovery

Code of Civil Procedure §1141.24 (amended).
AB 1011 (Robinson); 1985 STAT. Ch 94
Support: Judge Richard Todd, Orange County Superior Court

Existing law provides that post-award discovery is prohibited in cases that have been submitted to mandatory judicial arbitration unless the parties stipulate otherwise or leave is granted by the court.¹ If the cause goes on to trial after arbitration, an inconsistency arises because existing law provides that a demand for an exchange of expert witness lists² may be made.³ Chapter 94 provides an exception to the pro-

1. CAL. CIV. PROC. CODE §1141.24.

2. *Id.* §2037 (any party may serve on any other party a demand to exchange lists of expert witnesses).

3. *Id.* (a demand for an exchange of expert witness lists must be filed within 10 days

hibition of discovery after the filing of the arbitration award by permitting a party to demand an exchange of expert witness lists and identification of the reports and writings of experts if the case is brought to trial.⁴

after a trial date is selected or 70 days prior to the date set for commencement of trial).

4. *Id.* §1141.24.

Civil Procedure; sexual conduct—admissibility

Code of Civil Procedure §2036.1 (new); Evidence Code §§783, 1106 (new); Government Code §§11507.6, 11513 (amended).

SB 1057 (Lockyer); 1985 STAT. Ch 1328

Support: Commission on the Status of Women; Department of General Services; Fair Employment and Housing; State Personnel Board

In specified *criminal* proceedings,¹ existing law provides that before evidence of the sexual conduct of a complaining witness may be admitted to attack the credibility of that witness certain procedures must be followed.² With the enactment of Chapter 1328, before the sexual conduct of a plaintiff in a *civil* action alleging conduct that constitutes sexual harassment, sexual assault, or sexual battery may be admitted to attack the credibility of the plaintiff, the defendant must submit a written motion to the court and the plaintiff's attorney stating that the defense has an offer of proof of the relevancy of the evidence.³ Chapter 1328 further requires that an affidavit stating the offer of proof be attached to the motion.⁴ Thereafter, if the court finds the offer of proof sufficient, the court must order a hearing out of the presence of the jury to question the complaining witness concerning the offer of proof.⁵ If the court determines at the conclusion of the hearing that the evidence is relevant and admissible the court may allow the evidence to be introduced for the purpose of attacking the credibility of the witness.⁶

1. CAL. EVID. CODE §782 (proceedings under sections 261, 264.1, 286, 288a, and 289 of the Penal Code).

2. *Id.* The specific procedural requirements of Penal Code section 782 (criminal proceedings) are the same as for section 783 (civil proceedings). Compare CAL. EVID. CODE §782 with *id.* §783. See *infra* notes 3-6 and accompanying text.

3. *Id.* §783(a).

4. *Id.* §783(b).

5. *Id.* §783(c).

6. *Id.* 783(d) (evidence must be relevant pursuant to Penal Code section 780 and not inadmissible under Penal Code section 352).

Chapter 1328 further provides that evidence of sexual conduct of the plaintiff may not be admitted to prove consent by the plaintiff or the absence of injury to the plaintiff⁷ in any civil action alleging sexual harassment, sexual assault, or sexual battery.⁸ If the plaintiff introduces testimony that relates to the sexual conduct of the plaintiff, however, Chapter 1328 provides that the defendant may cross-examine the witness and offer evidence, but only to rebut the evidence introduced by the plaintiff.⁹ Chapter 1328 provides that discovery regarding the sexual conduct of the plaintiff with individuals other than the alleged perpetrator may not be obtained to prove consent or the absence of injury to the plaintiff unless good cause¹⁰ is shown.¹¹

Chapter 1328 additionally provides that in adjudicatory hearings¹² conducted by state agencies, evidence of the sexual conduct of the plaintiff may not be introduced to attack the credibility of the complainant.¹³ Finally, Chapter 1328 provides that evidence of specific instances of the sexual conduct of the complainant with individuals other than the alleged perpetrator may be admitted only after submission of an offer of proof that establishes the relevance and reliability of the evidence.¹⁴ The offer of proof must also establish that the probative value of the evidence is not substantially outweighed by the probability that admission of the evidence would create substantial danger of undue prejudice or confusion of the issues.¹⁵

7. If the injury alleged by the plaintiff is in the nature of loss of consortium, however, evidence of the plaintiff's sexual conduct may be admitted. *Id.* §1106(a).

8. *Id.* §1106(a). Chapter 1328 is not applicable to sexual conduct of the plaintiff with the alleged perpetrator. *Id.* §1106(b).

9. *Id.* §1106(c).

10. See CAL. CIV. PROC. CODE §2036 (definition of good cause).

11. *Id.* §2036.1.

12. See generally CAL. GOV'T CODE §§11500-11528 (adjudicatory proceedings). Chapter 1328 is applicable to actions brought pursuant to sections 19572 (causes for discipline), 19702 (types of prohibited discrimination) and 12940 (unlawful employment practices) of the Government Code. *Id.* §11507.6(g).

13. *Id.* § 11507.6(g).

14. *Id.* §11513(j).

15. *Id.*

Civil Procedure; bad faith

Code of Civil Procedure §128.5 (amended).

SB 379 (Ellis); 1985 STAT. Ch 296

Support: San Diego Trial Lawyers; League of California Cities; California Judges Association; California State Building and Construction Trades Council

Opposition: California Trial Lawyers Association; California Attorneys for Criminal Justice; California Public Defenders Association; American Civil Liberties Union

A party, or the attorney of a party, that has engaged in bad faith tactics or actions that are frivolous or cause unnecessary delay may be ordered under existing law to pay reasonable expenses¹ incurred by other parties to the action.² Chapter 296 expands the number of situations in which expenses may be imposed against a party by defining frivolous to include actions or tactics that are completely without merit or for the sole purpose of harrassing an opposing party.³ The liability provided by Chapter 296 is in addition to any other liability imposed by law for acts or omissions that are included within the purview of Chapter 296.⁴ Finally, Chapter 296 provides that the filing of a complaint without serving an opposing party does not constitute a bad faith action or tactic.⁵

1. CAL. CIV. PROC. CODE §128.5(c) (expenses pursuant to this section may only be imposed on notice contained in the moving papers of a party or on the motion of the court).

2. *Id.* §128.5(a). *See id.* §128.5(b) (actions or tactics include, but are not limited to, making or opposing motions and filing and serving complaints or cross-complaints). *See generally* Atchison, Topeka, & Santa Fe Ry. v. Stockton Port District, 140 Cal. App. 3d 111, 117, 189 Cal. Rptr. 208 (1983) (“where an action is initiated for an improper motive, or a party knows or should know the facts or law or both preclude recovery and continues to prosecute the action, the question of a frivolous action is raised”).

3. CAL. CIV. PROC. CODE §128.5(b)(2).

4. *Id.* §128.5(d).

5. *Id.* §128.5(b)(1).

Civil Procedure; videotaped depositions—costs

Code of Civil Procedure §§1032.7, 2019 (amended).

AB 1399 (Mojonnier); 1985 STAT. Ch 444

Support: Court Vision Communications

Existing law permits the videotaping of depositions before a notary

public, judge, or other specified person.¹ Under prior law, the cost of videotaping a deposition was not recoverable by the party taking the deposition.² Chapter 444 provides that the costs of videotaping a deposition, and making one copy, are recoverable unless the court finds that videotaping the deposition was unnecessary.³

1. CAL. CIV. PROC. CODE §2019(c). A party may videotape a deposition if notice of the deposition states that the deposition will be taped or if all the parties agree that the deposition will be taped. *Id.* See also *id.* §2018 (persons before whom a deposition may be taken). Chapter 444 adds videotape operators as persons before whom a deposition may be taken. *Id.*

2. 1982 Cal. Stat. c. 192, §1, at 765 (amending CAL. CIV. PROC. CODE §2019).

3. CAL. CIV. PROC. CODE §1032.7.

Civil Procedure; powers of attorney

Civil Code §§2400.5, 2444, 2457, 2503.5, 2510, 2510.5, 2511, 2512, 2513 (new); §§2400, 2432, 2432.5, 2433, 2440, 2450, 2451, 2500 (amended); Corporations Code §702 (amended).
SB 1270 (Lockyer); 1985 STAT. Ch 403

Existing law provides that third persons who rely in good faith upon a power of attorney¹ are immune from liability in specified situations.² Chapter 403 extends immunity from liability to persons that rely in good faith upon a power of attorney³ if the power of attorney (1) is presented by the person named therein as the attorney in fact,⁴ (2) appears valid on its face,⁵ and (3) includes an acknowledgement by a notary public.⁶

Under prior law, the power to exercise the voting rights of a principal⁷ in a corporation was specifically excluded from a durable power of attorney.⁸ With the enactment of Chapter 403, a principal

1. CAL. CIV. CODE §2410(c) (definition of power of attorney); Civ. Code §2400(a) (definition of durable power of attorney).

2. See, e.g., CAL. CIV. CODE §§2403 (lack of knowledge of death of principal); 2404 (lack of knowledge of termination of power); 2437 (lack of knowledge of revocation of durable power of attorney for health care); 2438 (immunity of health care provider).

3. CAL. CIV. CODE §2512 (applies to both durable and nondurable powers of attorney).

4. *Id.* §2512(a)(1).

5. *Id.* §2512(a)(2).

6. *Id.* §2512(a)(3). *Id.* §1185 (a notary public must not acknowledge a power of attorney unless the notary personally knows, or has satisfactory evidence that, the person who executed the power of attorney is in fact the person upon whose behalf the document is being executed).

7. *Id.* §2410(d) (definition of principal).

8. 1981 Cal. Stat. c. 511, §4, at 1867 (enacting CAL. CIV. CODE §2400).

may give an attorney in fact⁹ the power to exercise the voting rights of the principal in corporate shares,¹⁰ either in person or by proxy.¹¹

Existing law is unclear as to whether a durable power of attorney may cover transactions involving real or personal property if the property was acquired after the power of attorney was given.¹² With the enactment of Chapter 403, a power of attorney may apply to all or part of the real and personal property of the principal acquired at any time¹³ without including a specific description of each item.¹⁴

9. CAL. CIV. CODE §2410(a) (definition of attorney in fact).

10. CAL. CORP. CODE §194.5 (description of shareholder's voting power).

11. CAL. CIV. CODE §2400.5 (a proxy given by an attorney in fact to a third person is governed by the Corporations Code, and is not itself a durable power of attorney); CAL. CORP. CODE §702(e) (an attorney in fact may, if authorized by a power of attorney, exercise the voting rights of the principal in corporate shares held in the name of the principal). *Id.* §178 (definition of proxy).

12. *Jay v. Dollarhide*, 3 Cal. App. 3d 1001, 1020, 84 Cal. Rptr. 538, 549-50 (1970) (power of attorney to convey land must contain a description of the land authorized to be sold or conveyed, thereby precluding the holder of the power of attorney from exercising authority over after-acquired property). But see CAL. CIV. CODE §§2460-2472 (provisions governing the general authority of an attorney in fact over transactions involving real and personal property; contains no restrictions regarding the effect of a power of attorney over after-acquired property).

13. CAL. CIV. CODE §2513 (applies to property acquired both before and after the power of attorney was given).

14. *Id.* §2513.

Civil Procedure; unlicensed activities—treble damages

Code of Civil Procedure §1029.8 (new); Insurance Code §253 (new).
SB 486 (Davis); 1985 STAT. Ch 895

Support: Department of Consumer Affairs; Governor's Legal Affairs
Unit

Chapter 895 provides that an unlicensed person who causes injury or damage to another person as a result of performing services or providing goods for which a license is required,¹ may be liable for treble the amount of damages awarded in the civil action.² The court also has the discretion to award the injured person costs and attorney's fees if the injured person prevails.³ Chapter 895, however, excludes certain unlicensed persons from liability for treble damages.⁴ Finally,

1. CAL. CIV. PROC. CODE §1029.8(a) (applicable license requirements are under Division 2, Division 3, and Chapter 2 and 3 of Division 8 of the Business and Professions Code).

2. *Id.* §1029.8(a). The additional damages provided for by Chapter 895 may not exceed \$10,000. *Id.* §1029.8(c).

3. *Id.* §1029.8 (a).

4. *Id.* §1029.8 (d). For the purposes of Chapter 895, the term unlicensed person does

Chapter 895 prohibits insurers from issuing or amending insurance contracts to provide coverage to unlicensed persons in the event treble damages are awarded.⁵

not include (1) any entity providing goods or services under the good faith belief the entity is properly licensed and acting within the proper scope of the license; (2) any entity whose license has expired for nonpayment of license renewal fees but that is eligible to renew the license without the necessity of applying and qualifying for an original license; or (3) any person, partnership, or corporation licensed under Chapter 6 or 6.5 of the Business and Professions Code that provides professional nursing services under an existing license, provided that the action arises from a claim that the licensee exceeded the scope of practice authorized by the license. *Id.* Chapter 895 does not apply to any action for unfair trade practices brought against an unlicensed person under Chapter 4 of Part 2 of Division 7 of the Business and Professions Code, by a person holding a license that is required, or closely related to the license required to engage in the activities performed by the unlicensed person. *Id.* §1029.8(e). Chapter 895 is not to be construed to confer an additional cause of action or to affect or limit any other remedy, including but not limited to a claim for exemplary damages. *Id.* §1029.8(b).

5. CAL. INS. CODE §253 (no insurer may issue or amend contracts of insurance to provide coverage for damages awarded pursuant to Section 1028.9 of the Code of Civil Procedure on and after January 1, 1986).

Civil Procedure; personal appearance in small claims court

Code of Civil Procedure §117.40 (new).

AB 373 (Frazee); 1985 STAT. Ch 216

Support: Department of Consumer Affairs

Existing law provides that an incarcerated plaintiff¹ may (1) waive a personal appearance in small claims court and submit a written declaration as evidence supporting the claim of the plaintiff or (2) allow another person to appear on behalf of the plaintiff.² Chapter 216 extends these rights to members of the United States armed forces on active duty, provided that they were transferred out of the state after the cause of action accrued.³ In addition, Chapter 216 permits a defendant in a proceeding under Chapter 216 to file a counterclaim against the nonappearing plaintiff in the same proceeding.⁴

1. CAL. CIV. PROC. CODE §117.4. Plaintiffs must be incarcerated in a county jail, a Department of Corrections facility, or a Youth Authority facility. *Id.*

2. *Id.*

3. CAL. CIV. PROC. CODE §117.40. A person chosen to represent the nonappearing plaintiff may not be an attorney. Additionally, the person chosen must file an affidavit with the court stating that no compensation will be accepted and that the person has presented no more than four claims on behalf of another person within the state during the preceding 12 months. The plaintiff does not have the right to waive a personal appearance if the transfer is for a definite period of less than six months. *Id.*

4. *Id.* 117.40. The counterclaim may not exceed the jurisdictional limit of the court as provided in the Code of Civil Procedure §116.8. *Id.*

