In 1982, the California Legislature enacted a new Enforcement of Judgments Law\(^1\) with conforming changes in the Attachment Law,\(^2\) which became effective on July 1, 1983.\(^3\) Chapter 155 was enacted, and also became operative on July 1, 1983,\(^4\) to further facilitate and coordinate the implementation of the new Enforcement of Judgments Law.\(^5\)

Reduction in Amount of Attachment

The Attachment Law provided that the amount to be secured by attachment could be reduced by all claims that would diminish plaintiff's recovery.\(^6\) To avoid the possibility of speculative or contrived tort claims being used to reduce the amount of an attachment claim, or to delay the


\(^{2}\) CAL. CIV. PROC. CODE §482.010 (short title), §§481.010-493.060; Recommendation, supra note 1, at 2179; see also Review of Selected 1982 California Legislation, 14 PAC. L.J.441 (1983) (analysis of conforming changes to the Attachments Law).

\(^{3}\) 1982 Cal. Stat. c. 1364, §3, at ___; id. c. 1198, §70, at ___.

\(^{4}\) 1983 Cal. Stat. c. 155, §32, at ___.

\(^{5}\) Id. c. 155, §31, at ___.

\(^{6}\) 1982 Cal. Stat. c. 1198, §28(b), at (enacting CAL. CIV. PROC. CODE §483.015); see also Recommendation, supra note 1, at 2179.
issuance of a writ of attachment, Chapter 155 specifies claims that can be used to reduce the amount to be attached. These specified claims include the following: (1) unsatisfied and enforceable money judgments in favor of the defendant against the plaintiff; (2) indebtedness of the plaintiff to the defendant claimed in a cross-complaint upon which an attachment could issue; and (3) the amount of any claim asserted by the defendant as a defense in the answer upon which an attachment could have issued prior to the barring of the claim by the statute of limitations. Furthermore, Chapter 155 conforms related provisions to allow the defendant to seek a reduction of the amount to be secured through attachment by asserting only the newly specified claims.

Registered Process Servers

The Attachment Law and the new Enforcement of Judgments Law required a registered process server, when levying a writ of execution or attachment, to file the writ, relevant instructions, and an affidavit of actions taken in executing the writ, within five days after levying the writ. Chapter 155 requires the registered process server to deposit a copy of the writ with the levying officer and to pay the required fee before levying. In addition, Chapter 155 exempts registered process servers from liability for actions taken in the proper performance of their duties.

Liens Extinguished

Existing law provides for attachment of the equipment of a going business, including vehicles, vessels, mobile homes, and commerc-
cial coaches. Chapter 155 conforms provisions for attaching this equipment to the new Enforcement of Judgments Law and the Attachment Law by specifying that an attachment lien is extinguished if the equipment becomes a fixture.

Furthermore, under existing law, if tangible personal property in the custody of a levying officer is transferred or encumbered, the property remains subject to the outstanding execution lien. Chapter 155 mandates, however, that if tangible personal property of a going business is levied upon and placed in the control of a keeper, the execution lien is extinguished if the property is sold in the ordinary course of business.

**Exemptions**

Various exemptions from attachment are limited by a maximum dollar amount under existing law. Chapter 155 clarifies the application of these exemptions to a married couple by providing that the two spouses together are entitled to one exemption limited to the maximum dollar amount, unless the exemption provision specifically states otherwise. In addition, while existing law generally exempts unemployment insurance benefits from attachment, Chapter 155 conforms the new Enforcement of Judgments Law to other recently enacted legislation by permitting the attachment of these benefits to enforce a judgment for child support and child support obligations.

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23. CAL. CIV. PROC. CODE §488.385; see also CAL. HEALTH & SAFETY CODE §18001.8 (definition of commercial coach).
24. Compare CAL. CIV. PROC. CODE §488.375(e) and id. §488.385(d) with id. §488.405(e) and id. §697.530(e).
25. Id. §481.225 (definition of tangible personal property).
26. Id. §697.730(a).
27. Id. §488.395(a), (b) (provisions for the installation of a keeper).
28. Id. §697.730(b).
29. See, e.g., id. §§704.010(a) (motor vehicle exempt to a maximum amount of $1,200), 704.040 (jewelry, heirlooms, and works of art exempt to aggregate maximum of $2,500).
30. Id. §703.110(a).
31. See, e.g., id. §§704.060 (personal property used in trade, business, or profession), 704.090 (inmate's trust fund), 704.100 (life insurance policies).
32. Id. §704.120.
34. Compare CAL. CIV. PROC. CODE §704.120(e), (f) with CAL. UNEMP. INS. CODE §1255.7 and CAL. WELF. & INST. CODE §11350.5. Furthermore, Chapter 155 explicitly removes any exemption that a declared homestead may have had from the attachment of a state tax lien. Compare CAL. CIV. PROC. CODE §704.950 with CAL. CIV. PROC. CODE §704.730 (providing that a declared homestead normally is exempt up to a maximum dollar amount from an attachment lien); see also CAL. CIV. PROC. CODE §704.910(a) (definition of declared homestead).
Levy on Deposit Accounts

Under existing law, a deposit account\textsuperscript{35} may be levied upon in the enforcement of a judgment.\textsuperscript{36} Chapter 155 specifies that the amount subject to the execution lien is limited to the amount in the account at the time the writ of execution and the notice of levy are served on the financial institution.\textsuperscript{37} Furthermore, while existing law requires the levying officer to serve copies of the writ of execution and the notice of levy on any third person named on the deposit account,\textsuperscript{38} Chapter 155 specifies that persons named only as beneficiaries of Totten trust accounts, or as payees in a pay-on-death provision in the account, are not third persons requiring notice.\textsuperscript{39}

Moreover, Chapter 155 provides alternative procedures for levying on a deposit account when the account stands only in the names of the judgment debtor and spouse,\textsuperscript{40} or when the account stands in a fictitious business name, and the fictitious business name statement lists only the judgment debtor or the judgment debtor and spouse.\textsuperscript{41} These alternative provisions delete the requirement that an undertaking\textsuperscript{42} be provided, as required when levying on an account not standing in the name of the judgment debtor alone.\textsuperscript{43}

Garnishee's Liability

A third person served with a writ of attachment or execution and notice of levy must provide specified information, under existing law, to the levying officer in a garnishee's memorandum.\textsuperscript{44} Chapter 155 exempts the third person from liability for disclosing information required in the memorandum.\textsuperscript{45} Furthermore, Chapter 155 exempts a financial institution from liability while performing duties as garnishee when relying in good faith on information provided under the new alternative provisions for levying on a deposit account.\textsuperscript{46}

\textsuperscript{35} CAL. CIV. PROC. CODE \S\S 481.080 (definition of a deposit account).
\textsuperscript{36} Id. \S488.455.
\textsuperscript{37} Id. \S\S488.455(a), 700.140(a); see also id. \S481.113 (definition of a financial institution).
\textsuperscript{38} Id. \S\S488.455(b), 700.140(b).
\textsuperscript{39} Id. \S\S488.455(f), 700.140(f).
\textsuperscript{40} See id. \S700.165.
\textsuperscript{41} See id. \S700.167.
\textsuperscript{42} Id. \S995.190 (definition of an undertaking).
\textsuperscript{43} Compare id. \S700.165 with id. \S700.165 and id. \S700.167. To use the alternative provisions, however, the levying officer must provide the financial institution with notice that the judgment creditor has elected to use the alternative provisions, and either specify the name of the judgment debtor's spouse, or provide a copy of the fictitious business name statement. Id. \S\S700.165(b), 700.167(b).
\textsuperscript{44} Id. \S701.030.
\textsuperscript{45} Id. \S\S488.620, 701.035.
\textsuperscript{46} Id. \S\S700.165(d), 700.167(d).
Undertakings

Existing law provides for a stay of enforcement while perfecting an appeal from various judgments and orders. Furthermore, existing law requires that an undertaking be given by the appellant before the enforcement of certain judgments and orders is stayed. Chapter 155 additionally requires that an undertaking be given before the enforcement of a right to attach order is stayed while perfecting an appeal. If the appeal does not result in a reversal of the judgment, Chapter 155 specifies the procedures to be followed and the liabilities of the surety and appellant.

47. Id. §916.
48. See, e.g., id. §§917.1(a) (appeal from money judgment), 917.4 (appeal of judgment or order directing sale or delivery of realty).
49. See id. §484.010 (application procedures for right to attach order).
50. Id. §917.65.
51. Id. §§95.185 (definition of surety).
52. Id. §917.65.

Civil Procedure; motions to strike

AB 299 (Goggin); 1983 STAT. Ch 1167
Support: Attorney General

In 1982, the California Legislature expanded the grounds for and modified procedures governing motions to strike. Chapter 1167 clarifies and supplements these provisions. In addition, Chapter 1167 establishes a waiver of objections to an answer when the opposing party fails to demur.

Leave to Amend or File Answer

Under existing law, the court may allow a party filing a demurrer to a complaint or cross-complaint to file an answer if the demurrer is overruled. If the demurrer is sustained, the court may grant leave to amend

4. CAL. CIV. PROC. CODE §472a(b).
the attacked pleading. Similarly, Chapter 1167 provides that when a motion to strike is granted, the court may allow the party who filed the complaint or cross complaint to file an amended pleading. If the motion to strike is denied, the court must allow the party who filed the motion to file an answer.

Dismissal after Motion to Strike

Existing law provides that a court may dismiss a case when specified circumstances exist. Under Chapter 1167, a court now may dismiss a case when (1) a motion to strike the entire complaint is granted without leave to amend, or (2) a motion to strike all or part of a complaint is granted with leave to amend, but the plaintiff fails to amend within the time allowed. In addition, the court must render a judgment as though the defendant had failed to file an answer if (1) a motion to strike the entire answer is granted without leave to amend, or (2) a motion to strike all or part of an answer is granted with leave to amend but the defendant fails to amend within the time allowed.

Issues of Law

Prior to the enactment of Chapter 1167, statutory law specifically stated that an issue of law was raised when a motion to strike was based on the grounds that the objectionable material in the pleading was irrelevant, false, or improper. The law was unclear, however, as to whether an issue of law or fact was involved when a motion to strike was based on other grounds. Chapter 1167 clarifies this ambiguity by stating that an issue of law is raised when a motion to strike is based on the grounds that (1) the material is irrelevant, false, or improper; (2) the material does not conform to state law, court rules, or court orders; or (3) justice requires the

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5. Id. §472a(c); see also 3 B. Witkin, California Procedure, Pleading §§841-46 (2d ed. 1971) (sustaining demurrer with or without leave to amend).
6. CAL. CIV. PROC. CODE §472a(d).
7. Id.; see also id. §435(c) (automatically extends time in which to file an answer if a party filed a motion to strike without demurring to the complaint).
8. A court may dismiss a case when a party fails to appear, when a demurrer has been sustained without leave to amend the defective complaint, and when a demurrer has been sustained with leave to amend the defective complaint but the plaintiff fails to amend within the time allowed. Id. §581(3).
9. Id.
10. Id.
11. Id. §586(7).
14. CAL. CIV. PROC. CODE §589(b) (motion to strike made pursuant to CAL. CIV. PROC. CODE §436).
15. Id. (motion to strike made pursuant to CAL. CIV. PROC. CODE §436).
court to allow a party to add, strike, or correct a name, or to correct other mistakes in the pleading.\textsuperscript{16}

\textit{Objections to Answer Waived}

Existing law specifies that a party failing to answer or demur to a \textit{complaint} or \textit{cross-complaint} waives all later objections except those concerning a (1) lack of subject matter jurisdiction, or (2) failure to state a claim upon which the court can grant relief.\textsuperscript{17} Chapter 1167 extends this waiver of objections to situations in which a party receiving an answer fails to demur.\textsuperscript{18} Consequently, the only objection that is not waived under Chapter 1167 is the failure to state sufficient facts to constitute a defense in the answer.\textsuperscript{19}

\begin{itemize}
\item \textsuperscript{17} \textit{Cal. Civ. Proc. Code} §430.80(a).
\item \textsuperscript{18} \textit{Compare id.} §430.80 with 1971 Cal. Stat. c. 244, §29, at 385 (enacting \textsc{Cal. Civ. Proc. Code} §430.80).
\item \textsuperscript{19} \textit{Id.} §430.80(b).
\end{itemize}

\textbf{Civil Procedure; writs of mandate}

Civil Procedure Code §§1088.5, 1089.5, 1094.6 (amended).

AB 1146 (Campbell); 1983 STAT. Ch 818

Support: Judicial Counsel; League of California Cities, Office of Local Government Affairs

Chapter 818 modifies existing law regarding applications for writs of mandate\textsuperscript{1} and expands the types of administrative decisions by local agencies subject to judicial review.\textsuperscript{2} In addition, Chapter 818 provides an exception to the provisions specifying the circumstances under which local law is to prevail over state and federal law.\textsuperscript{3}

\textit{Writs of Mandate}

Legislative changes enacted in 1982 conformed the procedures used in seeking a writ of mandate to the procedures for obtaining relief in an ordi-

\begin{itemize}
\item \textsuperscript{1} \textit{Compare CAL. CIV. PROC. CODE §§1088.5, 1089.5 with 1982 Cal. Stat. c. 193, §§1-2, at ——} (enacting \textsc{Cal. Civ. Proc. Code} §§1088.5, 1089.5).
\item \textsuperscript{2} \textit{Compare CAL. CIV. PROC. CODE §§1094.6(e), (f) with 1976 Cal. Stat. c. 276, §1, at 581} (enacting \textsc{Cal. Civ. Proc. Code} §1094.6).
\item \textsuperscript{3} \textit{Compare CAL. CIV. PROC. CODE §1094.6(g) with 1976 Cal. Stat. c. 276, §1, at 581} (enacting \textsc{Cal. Civ. Proc. Code} §1094.6).
\end{itemize}
Pursuant to these changes, proof of service need not be filed with a petition for a peremptory writ of mandate, but this proof must be filed prior to a hearing or action by the court. Furthermore, a respondent has thirty days to reply after service of the petition if a record of the hearing is not required or was filed with the petition. If a hearing record is required and the record was not filed with the petition, then the respondent must reply within thirty days after receiving a copy of the hearing record to be reviewed. Chapter 818 specifies that these provisions apply only to applications for a writ of mandate in a trial court.

Administrative Mandamus

Existing law allows local agencies to formally adopt an ordinance or resolution limiting to ninety days the time in which a person may petition for judicial review of a final decision. Prior law defined a final decision as an adjudicatory administrative decision. Chapter 818 clarifies the meaning of decision by referring to specified decisions subject to review. Under existing law, decisions subject to review include actions (1) suspending, demoting, or dismissing an officer or employee, (2) denying an application for retirement benefits, and (3) revoking or denying an application for a permit or license. Chapter 818 expands this list to include decisions denying or revoking an application for entitlements, as well as permits or licenses. Similarly, existing law defines a party as (1) an officer or employee who has been suspended, demoted, or dismissed, (2) a person who has been denied retirement benefits, or (3) a person whose application...
tion for a license or permit has been revoked or denied. Under Chapter 818, the definition of a party also includes a person whose application for other entitlements has been revoked or denied.

Local Law To Prevail

Existing law states that an ordinance or resolution adopted pursuant to the procedures governing administrative mandamus will prevail over conflicting related laws. Under Chapter 818, when the conflicting provision is a state or federal law providing a shorter statute of limitations for a writ of mandate, the local law will not prevail.

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15. CAL. CIV. PROC. CODE §1094.6(f).
17. CAL. CIV. PROC. CODE §1094.6(g).

Civil Procedure; motion to compel further responses

AB 1254 (Calderon); 1983 STAT. Ch 141
Support: State Bar of California

Under existing law, a party submitting interrogatories or requests for admissions may move the court to compel further responses. This motion is appropriate when the addressed party objects to the requested admissions or interrogatories, or when the propounding party deems that further response is required. The moving party, however, must have made a reasonable attempt to resolve the disputed issues with opposing counsel prior to filing the motion to compel. Under prior law, a motion to compel could be filed within thirty days after the responses or objections were served. Chapter 141 extends this filing period to forty-five days.

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1. CAL. CIV. PROC. CODE §§2030(a) (interrogatories), 2033(a) (request for admission).
2. Id.
3. CAL. CT., rule 222.1; see also CAL. CIV. PROC. CODE §2034(a) (sanctions).
5. Compare CAL. CIV. PROC. CODE §§2030(a) and id. §2033(a) with 1980 Cal. Stat. c. 677, §2(a), at 2060 (amending CAL. CIV. PROC. CODE §2030) and 1981 Cal. Stat. c. 225, §1(a), at 1130 (amending CAL. CIV. PROC. CODE §2033). The court may extend the filing time of a motion to compel further response for good cause shown, CAL. CIV. PROC. CODE §§2030(a), 2033(a).
Civil Procedure; special verdicts and filing of cross-complaints

AB 486 (Nolan); 1983 STAT. Ch 176
Support: Association of California Insurance Companies; Los Angeles County Municipal Court Judges Association
Opposition: Association for California Tort Reform; California Judges Association; Pacific Telephone

Prior to the enactment of Chapter 176, a party was required to obtain leave of the court before filing a cross-complaint,1 unless the cross-complaint was filed before or with the answer.2 In an apparent response to the increasing use of cross-complaints,3 Chapter 176 provides that only the party against whom a complaint or cross-complaint has been filed must file a responding cross-complaint before or with the answer.4 Other cross-complaints may be filed at any time before the trial.5 Leave of the court, however, is still required to file a cross-complaint during the course of the trial.6

Existing law authorizes a court to direct a jury to issue a special verdict7 on all or part of the issues presented in an action.8 Chapter 176 requires the court, in cases involving the issue of punitive damages, to direct the jury to render a special verdict that distinguishes punitive damages from compensatory damages.9

1. CAL. CIV. PROC. CODE §425.10 (definition of cross-complaint); see also 3 B. WITKIN, CALIFORNIA PROCEDURE, Pleading §976 (Supp. 1981). California has abolished the counter claim and the relief formerly sought by this pleading is now asserted by the cross-complaint. Id.
2. CAL. CIV. PROC. CODE §431.30(b) (definition of an answer) 1971 Cal. Stat. c. 244, §23, at 381 (enacting CAL. CIV. PROC. Code §428.50).
3. In American Motorcycle Association v. Superior Court, the California Supreme Court recognized comparative partial indemnity, allowing third persons to bring cross-complaints in order to recover compensation for judgments awarded against them. Compare American Motorcycle Association v. Superior Court, 20 Cal. 3d 578, 590, 578 P.2d 899, 906, 146 Cal. Rptr. 182, 198 with CAL. CIV. PROC. CODE §877(b).
4. CAL. CIV. PROC. CODE §428.50.
5. Id.
6. Id.
7. Id. §624 (definition of a special verdict). The special verdict must be in writing.
8. Id. §625.
9. Id.
Civil Procedure; summary judgment

Under existing law, a motion for summary judgment may be granted when a party contends that an action or proceeding has no merit or defense.\(^1\) Chapter 490 addresses various procedural aspects of a motion for summary judgment by establishing new notice procedures,\(^2\) specifying new requirements for the court and the parties,\(^3\) and allowing appellate review when the motion is denied.\(^4\)

Notice Procedures

Prior law required that notice of a motion for summary judgment and the supporting papers\(^5\) be served on the other party at least ten days before the hearing date.\(^6\) Chapter 490 extends this time to twenty-eight days,\(^7\) and requires that service also be made on all other parties to the action.\(^8\) Additionally, papers in opposition\(^9\) must be served and filed at least fourteen days prior to the hearing date.\(^10\) Any reply to the opposing papers must be served and filed not less than five days before the hearing date.\(^11\) Furthermore, Chapter 490 reduces the time prior to trial within which the

\(^1\) CAL. CIV. PROC. CODE §437c(a). Any party to the action may move for summary judgment. Id. See also 4 B. WITKIN, CALIFORNIA PROCEDURE, Proceedings Without Trial §173 (2nd ed. 1971) (summary judgments).

\(^2\) See CAL. CIV. PROC. CODE §437c(a), (b).

\(^3\) See id. §437c(a), (b), (f), (g).

\(^4\) See id. §437c(l).

\(^5\) Supporting papers may include affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice may be taken. Id. §437c(b).

\(^6\) 1982 Cal. Stat. c. 1510, §1(a), at ___ (amending CAL. CIV. PROC. CODE §437c).

\(^7\) Compare CAL. CIV. PROC. CODE §437c(a) with 1982 Cal. Stat. c. 1510, §(a), at ___ (amending CAL. CIV. PROC. CODE §437c). Chapter 490 specifies, however, that if the motion is served by mail, this period must be increased by (1) 5 days if service is within California, (2) 10 days if service is outside California but within the United States, or (3) 20 days if service is outside the United States. CAL. CIV. PROC. Code §437c(a).

\(^8\) CAL. CIV. PROC. CODE §437c(a).

\(^9\) Papers in opposition may include affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice may be taken. Id. §437c(b).

\(^10\) Id.

\(^11\) Id. These periods may be reduced upon a showing of good cause. Id. The time provisions of Chapter 490 are excluded from the additional time allowances for mailed notice established by existing law. Id. See id. §§1005, 1013(a) (time allowances for mailed notice); see also Taylor v. Jones, 121 Cal. App. 3d 885, 888, 175 Cal. Rptr. 678, 679 (1981) (CAL. CIV. PROC. CODE §1013(a) does not operate to extend notice period of CAL. CIV. PROC. CODE §437(e)).
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hearing on the motion must be held from forty-five to thirty days.\textsuperscript{12}

\textit{Additional Requirements}

To assist the court in determining whether to grant or deny the motion, Chapter 490 requires the moving party to provide a separate statement setting forth all material facts believed to be undisputed, with reference to the submitted evidence supporting that contention.\textsuperscript{13} Failure to comply with this requirement may be sufficient grounds, in the discretion of the court, for a denial of the motion.\textsuperscript{14} Similarly, the opposing party must provide a separate statement responding either in agreement or disagreement to the material facts that are contended by the moving party to be undisputed.\textsuperscript{15} The opposing party must also set forth additional material facts believed to be disputed, along with references to supporting evidence.\textsuperscript{16} Failure to comply with this requirement may constitute, in the discretion of the court, sufficient grounds for granting the motion.\textsuperscript{17}

In an apparent attempt to aid the disposition of appeals from the denial of a motion for summary judgment, Chapter 490 requires the court, either by written or recorded oral order, to specify at least one material fact establishing a triable controversy.\textsuperscript{18} This determination must refer specifically to the submitted evidence establishing the controversy.\textsuperscript{19}

Upon determining a motion for summary judgment, prior law required the court to make a partial adjudication of those issues found to be without substantial controversy.\textsuperscript{20} Chapter 490 requires a motion for summary adjudication of the issues, by itself or in the alternative, before the court is required to address all controverted issues.\textsuperscript{21} Furthermore, the court must specify, by written or recorded oral order, the issues determined to present

\textsuperscript{12} Compare \textit{CAL. CIV. PROC. CODE} §437c(a) \textit{with} 1982 Cal. Stat. c. 1510, §1(a), at ——— (amending \textit{CAL. CIV. PROC. CODE} §437c). The court may reduce the time restriction upon a showing of good cause. \textit{CAL. CIV. PROC. CODE} §437c(a). See, e.g., Mann v. Columbia Pictures, Inc., 128 Cal. App. 3d 628, 632-33, 180 Cal. Rptr. 522, 525 (1982) (motion for summary judgment heard less than 30 days prior to trial was within the courts discretion of delay for “good cause” since opposing party caused continuance of hearing by objecting to the judge); Taylor v. Jones, 121 Cal. App. 3d 885, 890, 175 Cal. Rptr. 678, 681 (1981) (continuance of hearing within 45 days of trial was for “good cause” when done to allow opposing party and counsel an opportunity to appear). Furthermore, Chapter 490 mandates that it is not to be construed to extend the time restrictions set for trial of a forcible entry and detainer action, and that subdivisions (a) and (b) of Section 437c of the California Code of Civil Procedure do not apply to any forcible entry and detainer action. \textit{CAL. CIV. PROC. CODE} §437c(m), (n).

\textsuperscript{13} \textit{CAL. CIV. PROC. CODE} §437c(b).

\textsuperscript{14} Id.

\textsuperscript{15} Id.

\textsuperscript{16} Id.

\textsuperscript{17} Id.

\textsuperscript{18} Id. §437c(g).

\textsuperscript{19} Id.


\textsuperscript{21} Compare \textit{CAL. CIV. PROC. CODE} §437c(f) \textit{with} 1982 Cal. Stat. c. 1510, §l(f), at ——— (amending \textit{CAL. CIV. PROC. CODE} §437c).

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a material, triable controversy, with reference to the submitted evidence establishing the triable issue of fact.\textsuperscript{22}

\textit{Appellate Review}

Existing law states that the entry of an order granting a summary judgment is an appealable judgment.\textsuperscript{23} Chapter 490 additionally provides for appellate review of other orders besides the granting of summary judgment.\textsuperscript{24} Consequently, the denial of a motion for summary judgment,\textsuperscript{25} and a determination made in a partial adjudication of the issues, are now appealable.\textsuperscript{26} To obtain this review, however, the aggrieved party must petition an appropriate reviewing court for a peremptory writ\textsuperscript{27} within ten days after being served with written notice of the entry of the order.\textsuperscript{28}

\begin{itemize}
  \item \textsuperscript{22} \textsc{Cal. CIV. PROC. CODE §437c(f)}.
  \item \textsuperscript{23} \textsc{id. §437c(f)}.
  \item \textsuperscript{24} \textsc{id.}.
  \item \textsuperscript{25} See Lerner v. Superior Court, 70 Cal. App. 3d 656, 658, 139 Cal. Rptr. 51, 54 (1977); Whitney's at the Beach v. Superior Court, 3 Cal. App. 3d 258, 271-72, 83 Cal. Rptr. 237, 246 (1970) (writ of mandate issued to vacate denial of motions for summary judgment).
  \item \textsuperscript{26} \textsc{Cal. CIV. PROC. CODE §437c(l); see also Nazaroff v. Superior Court, 80 Cal. App. 3d 553, 557-58, 145 Cal. Rptr. 657, 660 (1978) (writ of mandate issued to vacate partial adjudication of issues).}
  \item \textsuperscript{27} The two forms of peremptory writs which may issue are the writ of mandate and the writ of prohibition. See id. §§1087, 1104; see also 5 B. Witkin, California Procedure, Extraordinary Writs §§35 (prohibition may be used to restrain judgments or orders of a court), 61 (the basic dual requirements for mandamus are (1) a clear, present (and usually ministerial) duty on the part of the respondent, and (2) a clear, present and beneficial right in the petitioner to the performance of that duty).
  \item \textsuperscript{28} \textsc{Cal. CIV. PROC. CODE §437c(l).} The court may allow an additional 20 days upon a showing of good cause. If the notice of the order is served by mail, the 10 day period shall be increased by (1) 5 days if service is within California, (2) 10 days if outside California but within the United States, and (3) 20 days if outside the United States. \textsc{id.}
\end{itemize}

\textbf{Civil Procedure; jury request to rehear testimony}

Code of Civil Procedure 614.5 (new); Penal Code 1138 (new).

SB418 (Robbins); 1983 STAT. Ch. 472

Support: Attorney General; Los Angeles County; Los Angeles County Municipal Judges

Existing law provides that if a jury has retired for deliberation and a disagreement exists among the jurors regarding any portion of the testimony, the jury may return to the court for clarification of the disputed evidence.\textsuperscript{1} Chapter 472 allows a judge the discretion, except for good cause, to be ab-

\begin{itemize}
  \item \textsuperscript{1} \textsc{Cal. CIV. PROC. CODE §614 (civil trial); Cal. PENAL CODE §1138 (criminal trial).}
\end{itemize}

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sent from the courtroom when testimony previously admitted into evidence is read to the jury.\(^2\) Chapter 472 remains in effect until January 1, 1987, and is then repealed unless a statute extending or deleting that date is enacted prior to January 1, 1987.\(^3\)

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\(^2\) CAL. CIV. PROC. CODE §614.5 (civil trial); CAL. PENAL CODE §1138.5 (criminal trial).

\(^3\) 1983 Cal. Stat. c. 472, §§1, 2, at ___

Civil Procedure; attorneys' fees in contract actions.

Civil Code §1717 (amended).
SB 886 (Petris); 1983 STAT. Ch 1073
Support: Attorney General; Department of Consumer Affairs

Under existing law, when a contract states that attorneys' fees and costs will be recoverable in any action to enforce the contract, the prevailing party\(^1\) is entitled to reasonable attorneys' fees and costs as fixed by the court.\(^2\) Case law has construed this provision to limit the availability of an award to those sections of the contract specified as being subject to an award of attorneys' fees.\(^3\) Chapter 1073 appears to abrogate this case law\(^4\) by providing that when a contract includes a provision for attorneys' fees, the provision will be construed to apply to the entire contract unless each party was represented by counsel during the negotiation and execution of the contract, and the fact of that representation is specified in the contract.\(^5\)

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\(^1\) Chapter 1073 applies to the party determined to be the prevailing party whether named in the contract or not. CAL. CIV. CODE §1717(a).

\(^2\) Id.


\(^4\) Id.

\(^5\) CAL. CIV. CODE §1717(a).

Civil Procedure; enforcement of child support judgments

SB 1093 (Hart); 1983 STAT. Ch 1010
Support: Department of Health Services; Department of Insurance;
Franchise Tax Board

Prior to the enactment of Chapter 1010, money owed to a judgment debtor by a public entity could be used toward the satisfaction of a money judgment against the judgment debtor, unless the amounts owed resulted from the overpayment of taxes, penalties, interest, or interest allowable with respect to an overpayment (hereinafter referred to as overpayment of tax). Chapter 1010 specifically authorizes a district attorney enforcing a child support judgment to attach debts owed to judgment debtors as a result of the overpayment of tax.

Existing law provides that if money is owing and unpaid to a judgment debtor by a public entity, the judgment creditor may file an abstract or certified copy of the money judgment with the agency owing the debt, together with an affidavit stating (1) that the judgment creditor desires relief pursuant to the Enforcement of Judgments Law, and (2) the exact amount required to satisfy the judgment. The judgment creditor is required to promptly serve the judgment debtor with notice of the filing, either in person or by mail. Chapter 1010 provides that district attorneys enforcing a judgment for child support by seeking to attach money owing and unpaid as a result of an overpayment of tax must file the affidavit with the State Department of Social Services (hereinafter referred to as the Department). Chapter 1010 specifically exempts district attorneys from filing an abstract or certified copy of the judgment with the affidavit, requiring instead that the affidavit state that an abstract can be obtained.

Under Chapter 1010, the affidavit may incorporate all judgment debtors. The affidavit does not have to identify each judgment debtor separately, nor state the exact amount required to satisfy the judgment, if the affidavit incorporates by reference forms or other automated data transmittals containing this information. Chapter 1010 also permits the Di-
rector of the Department, or a designee, to act in lieu of the judgment creditor in serving the notice of filing on the judgment debtor.\textsuperscript{15} Furthermore, filing the affidavit with the Department subjects all overpayments of tax subsequently claimed by the judgment debtor to seizure for a period of one year after the filing, or until October I of the year following the filing, whichever occurs later.\textsuperscript{16} In addition, the filing is sufficient to require the Controller to transfer the funds claimed by the judgment debtor, notwithstanding that the claim has been filed with another state agency.\textsuperscript{17}

Existing law requires that after receipt of the affidavit, and upon presenting the judgment debtor’s claim to the Controller,\textsuperscript{18} the state agency must (1) take notice of the filing of the certified copy or abstract of the judgment and the affidavit,\textsuperscript{19} and (2) state the amount required to satisfy the judgment as shown by the affidavit.\textsuperscript{20} The agency must state any amounts advanced to the judgment debtor by the state, or owed to the state by the judgment debtor for any other purpose.\textsuperscript{21} When an affidavit stating the existence of a child support obligation has been submitted to the Department, Chapter 1010 provides that the Controller must direct payment to the county agency designated in the affidavit by the district attorney.\textsuperscript{22}

If the judgment is not being enforced by a district attorney, the judgment creditor must file an abstract or certified copy of the judgment with the district attorney of the county in which the child support judgment was entered.\textsuperscript{23} The district attorney must then file the judgment creditor’s claim with the Department.\textsuperscript{24} When the funds are received, the district attorney is required to discharge the judgment debtor’s claim by depositing with the court\textsuperscript{25} the amount due the judgment debtor\textsuperscript{26} to satisfy the money judgment as shown by the affidavit.\textsuperscript{27} If a balance remains after the judgment is satisfied, the district attorney must pay that balance to the judgment debtor.\textsuperscript{28} Chapter 1010 further states that any claim honored in behalf of a judgment creditor shall be considered a refund for the overpay-
ment of tax by the judgment debtor.\textsuperscript{29}

After presenting the judgment creditor's claim to the Controller, the state agency must send a notice of deposit to the judgment debtor.\textsuperscript{30} This notice must instruct the judgment debtor to file any and all requests for relief with the district attorney filing the affidavit, or if the seizure is one of amounts due pursuant to an overpayment of tax, to the county clerk.\textsuperscript{31} If the seizure does not include the overpayment of tax, the judgment debtor must file the request for relief within fifteen days after the notice of deposit is served by the public agency.\textsuperscript{32} Failure to request this relief within the prescribed period of time will result in the waiver of a claim for relief that the judgment debtor might have asserted.\textsuperscript{33}

Finally, if an obligation owing the judgment debtor is less than ten dollars, Chapter 1010 allows the Controller to disregard the claim of the judgment creditor asserted in the affidavit.\textsuperscript{34} If two or more district attorneys submit claims, the Controller may select the claim or claims that will be honored.\textsuperscript{35}

\textsuperscript{29} Id. §708.740(h).
\textsuperscript{30} Id. §708.770(g).
\textsuperscript{31} Id. (giving force to existing provisions for allowing a judgment debtor to assert a claim of exemption and applying them to situations where an overpayment of tax is the subject of the seizure).
\textsuperscript{32} Id. §708.770(g).
\textsuperscript{33} Id. The judgment creditor is responsible for any and all notices otherwise required of a judgment creditor or the clerk of the court, the same as if service had been directly on the Controller without the intervention of the district attorney in situations where an overpayment of tax is not the subject of the seizure. Id. §708.740(e).
\textsuperscript{34} Id. §708.740(f).
\textsuperscript{35} Id. §708.740(g); see also 1983 Cal. Stat. c. 1010, §6, at —- (providing that chapter 1010 contains no repealer as required by CAL. REV. & TAX. CODE §2231.5).

Civil Procedure; mechanic's lien release bonds

Civil Code §3144.5 (new).
SB 432 (Speraw); 1983 STAT. Ch 351
Support: Department of Consumer Affairs; Orange County Bar Association; Southern California Rock Products Association; State Bar Association

Existing law provides that a lienholder must institute an action to foreclose on a claim of lien\textsuperscript{1} within ninety days of its recordation.\textsuperscript{2} The owner of any interest in property sought to be charged with a claim of lien, how-

\textsuperscript{1} CAL. CIV. CODE §3084 (definition of claim of lien).
\textsuperscript{2} Id. §3144.
ever, may record a lien release bond\(^3\) to free the property described in the bond from any action brought to foreclose the lien.\(^4\)

Chapter 351 specifies that any action on the lien release bond must be commenced within six months of recording the bond.\(^5\) Furthermore, a person who obtains a lien release bond must notify the lienholder of the recordation by mailing the lienholder a copy of the bond.\(^6\) Although failure to notify the lienholder of the recordation does not affect the validity of the bond,\(^7\) the statute of limitations is tolled for an action on the bond until notice is given.\(^8\)

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3. *Id.* §3143.
4. *Id.* The bond may be recorded at any time before or after the commencement of an action to enforce the claim of lien. The bond must have a penal sum equal to one and one-half the amount allocated in the claim of lien to the subject real property. A corporation authorized to issue surety bonds in California must issue the lien release bond. The bond must be conditioned for the payment of any sum the claimant may recover, together with the claimant's costs of suit in a successful action. *Id.*
5. *Id.* §3144.5.
6. *Id.* A copy of the bond is to be mailed to the lienholder at the address appearing on the lien and service of the notice must be by certified or registered mail, return receipt requested. *Id.*
7. *Id.*
8. *Id.*

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**Civil Procedure; durable powers of attorney for health care**

Civil Code §§2430, 2431, 2432, 2433, 2434, 2435, 2436, 2436.5, 2437, 2438, 2439, 2440, 2441, 2442, 2443 (new); 2356, 2402, 2410, 2411, 2412, 2417, 2419, 2421 (amended).

SB 762 (Keene); 1983 STAT. Ch 1204

Support: Bioethics Committee of the Los Angeles County Bar Association; California Law Revision Commission

Opposition: Health and Welfare Agency

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The Uniform Durable Power of Attorney Act\(^1\) states that a principal\(^2\) may designate a person\(^3\) as the principal's attorney-in-fact\(^4\) to act on the principal's behalf even after the principal becomes incapacitated.\(^5\) Chapter 1204 provides that a principal may authorize the attorney-in-fact to

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2. *Id.* §2410(d) (definition of principal).
3. *Id.* §2430(e) (definition of person).
4. *Id.* §2410(a) (definition of attorney-in-fact).
5. *Id.* §§2400, 2401.
make health care decisions. To be effective, powers of attorney for health care (hereinafter referred to as powers of attorney) must specifically authorize the attorney-in-fact to make health care decisions. In addition, the power of attorney must contain the date of execution and be appropriately witnessed. Finally, Chapter 1204 prohibits certain persons from being designated as the attorney-in-fact.

Chapter 1204 provides that a power of attorney may not authorize an attorney-in-fact to consent on behalf of the principal to (1) commitment to or placement in a mental health treatment facility, (2) convulsive treatment, (3) psychosurgery, (4) sterilization, or (5) abortion. Moreover, the attorney-in-fact is prohibited from making particular health care decisions if the principal is able to make these decisions. Unless the power of

6. Id. §2430(b) (definition of health care).
7. Id. §2430(c) (definition of health care decision). Id. §2430(a).
8. The specifications of Chapter 1204 apply only to powers of attorney executed after December 31, 1983. Id. §2431. Those powers of attorney executed after January 1, 1984, that specifically authorize the attorney-in-fact to make health care decisions, are deemed valid after January 1, 1984, notwithstanding their failure to comply with certain provisions of Chapter 1204. Id. Chapter 1204 does not affect the validity of decisions made under a power of attorney prior to January 1, 1984. Id.
9. Id. §§2430-2443 (Durable Powers of Attorney for Health Care).
10. Id. §2432(a)(1). Chapter 1204 details a set of warnings that must be included in a printed form used to create a power of attorney for a person who does not have the advice of counsel. Id. §2433. If, however, a printed form is not used to create the power of attorney, Chapter 1204 requires that (1) a certificate of counsel representing the principal, or (2) the substance of the required warnings be included in any other document used to create the power of attorney. Id. §2433(c) (certificate states that counsel advised principal of the significance of the power of attorney).
11. Id. §2432(a)(2). The power of attorney must be (i) witnessed by at least two persons who swear to the validity of the principal’s signature, and that the principal appeared of sound mind and under no duress, fraud, or undue influence, or (2) acknowledged before a notary public who certifies that the principal was of sound mind and not under duress, fraud, or undue influence. Id. Chapter 1204 prohibits (1) a health care provider, (2) the employee of a health care provider, (3) the attorney-in-fact, (4) the operator of a community care facility, or (5) the employee of the operator of a community care facility, from being used as a witness to the signing by the principal of a power of attorney. Id. §2432(d). At least one of the witnesses must be nonrelated to the principal and not entitled to any portion of the principal’s estate upon the principal’s death. Id. §2432(e).
12. Chapter 1204 prohibits (i) the treating health care provider, (2) an employee of treating health care provider, (3) an operator of a community care facility, or (4) an employee of a community care facility from being designated as the attorney-in-fact to make health care decisions. Id. §2432(b).
13. Id. Chapter 1204 also prohibits a conservator from being designated as an attorney-in-fact by a person who is a conservatee unless (i) the power of attorney is otherwise valid, (2) the conservatee is represented by legal counsel, and (3) the conservatee’s lawyer signs a statement showing that the conservatee executed the power of attorney after having been fully advised of the consequences. Id. §2432(e). See CAL. WELF. & INST. CODE, §5350 (definition of conservator, conservatee). Chapter 1204 states that a power of attorney executed by a patient in a skilled nursing facility must be witnessed by at least one patient advocate or ombudsman. CAL. CIV. CODE §2432(f). See CAL. HEALTH & SAFETY CODE §1250(o) (definition of skilled nursing facility), CAL. WELF. & INST. CODE §5500(a) (definition of patient advocate).
14. CAL. WELF. & INST. CODE §§§326.7, 5326.75, 5326.8 (definition of convulsive treatment).
15. Id. §326.6 (definition of psychosurgery).
16. CAL. CIV. CODE §2435.
17. Id. §2434(a). An attorney-in-fact has the same right as the principal to receive and disclose medical records and information regarding the health care of the principal. Id.
attorney indicates otherwise, the attorney-in-fact may make health care decisions for the principal before or after the principal's death, as long as the attorney-in-fact acts (1) consistently with the expressed desires of the principal, or (2) in the absence of an expression of the principal's desires, in the best interests of the principal.

Unless the power of attorney designates a shorter period, a power of attorney executed after January 1, 1984, expires seven years after execution. If, at the time the power expires, the principal lacks the capacity to make health care decisions, the power of attorney will remain in effect until the principal is able to make those decisions. Chapter 1204 also provides for revocation of a power of attorney. When a principal has the capacity to create a power of attorney, the principal may revoke that power (1) by notifying the health care provider orally or in writing, (2) by executing a subsequent valid power of attorney, or (3) by dissolving the marriage, if the principal's spouse is the attorney-in-fact.

Under Chapter 1204, a health care provider may not be subjected to criminal prosecution, civil liability, or professional disciplinary action for relying on a health care decision made by an attorney-in-fact if the health care provider believes in good faith that (1) the attorney-in-fact is authorized to make the decision, and (2) the decision is not inconsistent with the desires of the principal. Furthermore, Chapter 1204 provides that a health care provider may not be held liable for failing to withdraw health care necessary to keep the principal alive, even after a request by the attorney-in-fact to discontinue this care. Although Chapter 1204 does not condone or authorize any act to end the life of another, the withholding or withdrawal of health care pursuant to a power of attorney is allowed to permit the natural process of dying.

To facilitate court review of powers of attorney, Chapter 1204 allows a

§2436. Moreover, if the health care decision concerns health care necessary to keep the principal alive, the attorney-in-fact may not consent to the health care, nor consent to the withholding of the health care if the principal objects. Id. §2440.

18. Health care decisions made after the death of the principal include disposition of the body or parts thereof. Id. §2434(b).

19. Id.

20. Id. §2436.5.

21. Id.

22. Id. §2437.

23. Id.

24. The health care provider is not liable, except to the same extent the provider would be liable if the principal had made the health care decision rather than the attorney-in-fact. Id. §2438(a).

25. Id. Chapter 1204 does not authorize the health care provider to perform illegal acts. Id. §2438(b). No health care provider or insurance plan may condition (1) admission to a health care facility, (2) the provision of treatment, or (3) insurance, on the requirement that a patient execute a power of attorney. Id. §2441.

26. Id. §2438(c).

27. Id. §2443. Any act intended to cause the withdrawal or withholding of health care necessary to keep the principal alive that is contrary to the principal's desires, and in

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petition to be filed by specified individuals\textsuperscript{28} for (1) a determination of whether the acts or proposed acts of the attorney-in-fact are consistent with the principal's desires, or are in the principal's best interests, (2) a determination of whether the power of attorney is in effect or has terminated, (3) the purpose of compelling attorneys-in-fact to report their acts, after a failure to report within ten days of a request by the petitioner, or (4) termination of the power of attorney after a court has made specified determinations concerning the acts of the attorney-in-fact.\textsuperscript{29} If a petition is filed, Chapter 1204 outlines procedures for (1) notice to the parties,\textsuperscript{30} (2) commencement of the hearing,\textsuperscript{31} and (3) temporary health care for the principal.\textsuperscript{32}

\textsuperscript{28} Individuals who may file a petition include (1) a treating health care provider, (2) a parent of the principal, (3) the conservator of the person of the principal, or (4) the attorney-in-fact. CAL. CIV. CODE §§2411(h), (i), 2421(c), (d).

\textsuperscript{29} Id. §2412.5. The power of attorney may be declared terminated upon a determination by the court that the attorney-in-fact has made a health care decision that authorized anything illegal, or upon a determination by the court that (1) the attorney in fact has committed an act inconsistent with the desires of the principal, or if the principal's desires are unknown, in a manner clearly contrary to the principal's best interests, and (2) at the time of the above determination, the principal lacks the capacity to give or revoke a power of attorney. Id. §2412.5(d).

\textsuperscript{30} Id. §2417(b) (notice must be served on specified persons at least 30 days before the time set for the hearing).

\textsuperscript{31} Id. §2417(c).

\textsuperscript{32} Id. §2417(h) (the court, in its discretion and upon a showing of good cause, may temporarily prescribe the health care of the principal). Reasonable attorney's fees may be awarded. Id. §2417(g).

\section*{Civil Procedure; judicial arbitration}

Code of Civil Procedure §§141.12, 1141.16, 1141.17 (amended).

AB 341 (Harris); 1983 STAT. Ch 123

Support: California Judges Association; State Bar of California

Existing law provides that in all municipal and justice courts, and in superior courts not enforcing a mandatory judicial arbitration program,\textsuperscript{1} a plaintiff may elect to submit a case to judicial arbitration upon agreeing that the award shall not exceed $15,000.\textsuperscript{2} The California Rules of Court indicate that a plaintiff's election to arbitrate must be filed at the same

\textsuperscript{1} See CAL. CIV. PROC. CODE §1141.11(a) (civil actions in a superior court with ten or more judges must be submitted to arbitration if the amount in controversy does not exceed $15,000); see also id. §1141.11(b), (c) (superior courts with less than ten judges and municipal courts may by local rule provide for mandatory arbitration).

\textsuperscript{2} Id. §§1141.12(b)(ii).
time as the at-issue memorandum, or at a later date by permission of the court. Chapter 123 specifically states that the election to arbitrate cannot be filed before the filing of the at-issue memorandum, or later than ninety days before trial, unless otherwise permitted by the court.

Pursuant to existing law, a civil action must be dismissed if not brought to trial within five years of the filing date. Under prior law, this five-year period could be tolled only if (1) the case was submitted to arbitration within six months of the expiration of the five-year period, or (2) upon a showing that bringing the matter to trial within the five-year period was impracticable, impossible, or futile for the plaintiff. Chapter 123 clarifies the tolling of the five-year period in all actions submitted to or pending arbitration. The tolling of the five-year period commences four and one-half years after the action is filed, and expires on the date that a request for a trial de novo is filed.

3. See CAL. R. CT. §§206(a), 507(a) (definition of at-issue memorandum).
5. CAL. CIV. PROC. CODE §1141.12(c).
7. In cases brought to arbitration by stipulation of the parties or by election of a plaintiff, the courts have interpreted 'submission to arbitration' to refer to court-ordered arbitration, and have strictly held that the five-year period can only be tolled when the action is submitted within six months of the expiration of the limitation period. Fluor Drilling Service, Inc. v. Superior Court, 135 Cal. App.3d 1009, 1012, 186 Cal. Rptr. 11(1982); Castorena v. Superior Court, 135 Cal. App.3d 1014, 1017, 186 Cal. Rptr. 14, 15(1982). But see Crawford v. Hoffman, 132 Cal. App.3d 1015, 1018, 183 Cal. Rptr. 599, 601 (1982) (the court stated that "submission to arbitration" plainly means that a matter is pending in court-ordered arbitration at that time and held that the time between the order for arbitration and the arbitration award is not tolled when the case is pending in arbitration within six months of the expiration of the five-year period); see also CAL. R. CT. §1601(d).
10. CAL. CIV. PROC. CODE §1141.17(b).
11. See id. §1141.20 (procedure for requesting a trial de novo). In cases where arbitration is ordered at the request of a plaintiff or stipulation of the parties, a trial de novo is subsequently available because if arbitration is not entirely voluntary, the plaintiff's right to a jury trial would be violated if there were not, ultimately, a right to a trial under conventional procedures. See Halperin, supra note 4, at 474; CAL. CONST. art. I, §16 (right to jury trial guaranteed).
12. CAL. CIV. PROC. CODE §1141.17(b).

Civil Procedure; representation of indigent clients

AB 1389 (Harris); 1983 STAT. Ch 279
Support: American Civil Liberties Union; California Judges Associa-
Under existing law, legal counsel in a civil action or special proceeding may be changed upon the consent of both the client and attorney, or upon a court order requested by either. An attorney's decision to withdraw from representation, however, is governed by ethical considerations. A recent state bar ethics opinion indicates that cutbacks in publicly funded legal services may create serious ethical dilemmas for legal services attorneys whose ability to dutifully represent a client is jeopardized by a reduction or cessation in funding. In an apparent response to this opinion, Chapter 279 establishes requirements for a change of counsel when a reduction in public funding for legal services materially impairs the ability of a legal services attorney to represent an indigent client. Chapter 279 provides that the court, on its own motion or on the motion of either the attorney or client, will permit a legal services attorney to withdraw if (1) public funds are inadequate to continue effective representation, (2) a good faith effort is made to find alternative representation, and (3) all reasonable steps to reduce legal prejudice to the indigent client are taken. Chapter 279 further provides that upon granting the motion for withdrawal, the court may toll the running of any statute of limitations, filing requirement, statute for mandatory dismissal, notice of appeal, or discovery requirement for up to 90 days. This action may be taken upon motion of the court, a party, or an attorney when the court finds that tolling is required to prevent the attorney's withdrawal from...
causing the client legal prejudice.12

Upon the granting of a motion for the withdrawal of a legal services attorney, under the provisions of Chapter 279,13 the court may appoint any law firm, law corporation, or member of the bar to represent the indigent client for good cause and without compensation.14 When determining good cause, the court may consider the merits of the client's claim,15 the client's financial ability to pay for legal services,16 the client's ability to represent himself,17 and the irreparable legal prejudice that might result if counsel is not appointed.18 The court also may consider the prospective appointed attorney's workload,19 present and recent pro bono work,20 ability to represent the client,21 and the availability of alternative legal representation.22

Comment

Free legal services for the poor is a tradition that dates back at least as far as the fifteenth century.23 An attorney's obligation to serve the poor is reflected by existing law.24 The constitutional issues surrounding free legal services, however, frequently have been the subject of controversy25 and litigation.26 Chapter 279 provides for the appointment of legal counsel to serve without compensation in a civil case to represent an indigent defendant or plaintiff.27 While the appointment of uncompensated counsel for an indigent person in certain selected civil actions has been upheld in California,28 the California Supreme Court has not ruled on the consti-

12. Id.
13. See id. §285.2.
14. Id. §285.4.
15. Id. §285.4(a).
16. Id. §285.4(b).
17. Id. §285.4(c).
18. Id. §285.4(d).
19. Id. §285.4(e).
20. Id. §285.4(f).
21. Id. §285.4(g).
22. Id. §285.4(h).
23. See Comment, Current Prospects for an Indigent's right to Appointed Counsel, and a Free Transcript in Civil Litigation, 7 PAC. L. J. 149,164 (citing and discussing In Forma Pauperis Act, II Hen. VII, c. 12 (1495). A statute promulgated in 1495 by Henry VII provided that the judge should appoint counsel for the poor in civil suits. Id.
26. See id. and cases cited therein.
27. CAL. CIV. PROC. CODE §285.4.
tutionality of appointing uncompensated counsel for indigent plaintiffs or defendants in all civil suits.\footnote{29}