

Assembly Bill No. 3027

Passed the Assembly August 30, 2002

Chief Clerk of the Assembly

Passed the Senate August 30, 2002

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2002, at _____ o'clock __M.

Private Secretary of the Governor

Second enrollment



CHAPTER _____

An act to amend Sections 1812.10 and 2984.4 of the Civil Code, to amend Sections 116.340, 116.370, 116.570, 116.940, 392, 395, 396, 396a, 575.2, 631, 1005, and 2094 of, to repeal Section 402.5 of, and to repeal and add Section 402 of, the Code of Civil Procedure, to amend Sections 1030, 1031, 1032, 1033, and 1034 of, and to amend the heading of Article 8 (commencing with Section 1030) of Chapter 4 of Division 8 of, the Evidence Code, and to amend Section 818.9 of the Government Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

AB 3027, Committee on Judiciary. Courts.

(1) Existing law provides that a public entity, its employees, and volunteers are not liable under the Governmental Tort Liability Act for advice provided to small claims litigants.

This bill would provide that independent contractors, as well as employees and volunteers, who provide advice to small claims litigants or potential litigants as a public service on behalf of a court or county are not liable for that advice under that act.

(2) Existing law specifies the deadlines for service of a claim and order on a defendant in small claims court.

This bill would extend those deadlines, as specified, set a deadline for the postponement of a small claims court hearing, and require a request for postponement to be for good cause.

(3) Existing law provides for the unification of municipal and superior courts.

This bill would delete obsolete provisions regarding the transfer of cases between a municipal and superior court.

(4) Existing law authorizes a superior court in a county in which there is no municipal court to transfer a limited civil case to another branch or location of the superior court in the county.

This bill would repeal this provision and enact new provisions regarding the proper location of the superior court in a county in which a particular matter shall be heard. The bill would authorize a superior court, by local rules, to designate the nearest or most accessible location for the trial of specified cases, and to provide



for the transfer of cases to the proper location in the county. The bill would also make related changes.

(5) Existing law authorizes a trial court, on the motion of a party or its own motion, to strike a pleading, dismiss an action, enter a default judgment, or impose lesser penalties, as well as to require the opposing party or his or her counsel to pay the reasonable expenses of the moving party.

This bill would prohibit the imposition of any penalty under this provision without prior notice to, and an opportunity to be heard by, the party against whom the penalty is sought to be imposed.

(6) Existing law provides for the advance deposit of jury fees and mileage or transportation allowance, and the ways in which a jury trial may be waived for failure to provide these advance deposits, in a civil action. Existing law also provides the ways in which an opposing party may reinstate the jury trial following waiver by the party who originally requested a jury trial.

This bill would revise the provisions for the advance deposit of jury fees and mileage or transportation allowance, and the ways in which a jury trial may be waived for failure to provide these advance deposits, in a civil action. The bill would also delete the provisions for an opposing party to reinstate a jury trial following waiver by the party who originally requested a jury trial.

(7) Existing law prescribes the form of an oath, affirmation, or declaration in an action or proceeding.

This bill would make a technical, nonsubstantive change in that provision.

(8) Existing law specifies the methods for service of papers opposing a motion and all reply papers.

This bill would extend these provisions to apply to opposition and reply papers regarding motions for summary judgment or summary adjudication.

(9) Existing law establishes the evidentiary privilege between the clergy and their penitents.

This bill would make technical, nonsubstantive changes in those provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 1812.10 of the Civil Code is amended to read:



1812.10. (a) An action on a contract or installment account under this chapter shall be tried in the superior court in the county where the contract was in fact signed by the buyer, where the buyer resided at the time the contract was entered into, where the buyer resides at the commencement of the action, or where the goods purchased pursuant to the contract have been so affixed to real property as to become a part of that real property.

(b) In the superior court designated as the proper court in subdivision (a), the proper court location for trial of an action under this chapter is the location where the court tries that type of action that is nearest or most accessible to where the contract was in fact signed by the buyer, where the buyer resided at the time the contract was entered into, where the buyer resides at the commencement of the action, or where the goods purchased pursuant to the contract have been so affixed to real property as to become a part of that real property. Otherwise, any location of the superior court designated as the proper court in subdivision (a) is the proper court location for the trial of the action. The court may specify by local rule the nearest or most accessible court location where the court tries that type of case.

(c) In any action subject to this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a superior court and court location described in this section as a proper place for the trial of the action. Those facts may be stated in a verified complaint and shall not be stated on information or belief. When that affidavit is filed with the complaint, a copy thereof shall be served with the summons. If a plaintiff fails to file the affidavit or state facts in a verified complaint required by this section, no further proceedings may occur, but the court shall, upon its own motion or upon motion of any party, dismiss the action without prejudice. The court may, on terms that are just, permit the affidavit to be filed subsequent to the filing of the complaint and a copy of the affidavit shall be served on the defendant. The time to answer or otherwise plead shall date from that service.

SEC. 2. Section 2984.4 of the Civil Code is amended to read:

2984.4. (a) An action on a contract or purchase order under this chapter shall be tried in the superior court in the county where the contract or purchase order was in fact signed by the buyer, where the buyer resided at the time the contract or purchase order



was entered into, where the buyer resides at the commencement of the action, or where the motor vehicle purchased pursuant to the contract or purchase order is permanently garaged.

In any action involving multiple claims, or causes of action, venue shall lie in those courts if there is at least one claim or cause of action arising from a contract subject to this chapter.

(b) In the superior court designated as the proper court in subdivision (a), the proper court location for trial of an action under this chapter is the location where the court tries that type of action that is nearest or most accessible to where the contract, conditional sale contract, or purchase order was in fact signed by the buyer, where the buyer resided at the time the contract, conditional sale contract, or purchase order was entered into, where the buyer resides at the commencement of the action, or where the motor vehicle purchased pursuant to the contract is permanently garaged. Otherwise, any location of the superior court designated as the proper superior court in subdivision (a) is the proper court location for the trial of the action. The court may specify by local rule the nearest or most accessible court location where the court tries that type of case.

(c) In any action subject to this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a superior court and court location described in this section as a proper place for the trial of the action. Those facts may be stated in a verified complaint and shall not be stated on information or belief. When that affidavit is filed with the complaint, a copy shall be served with the summons. If a plaintiff fails to file the affidavit or state facts in a verified complaint required by this section, no further proceedings may occur, but the court shall, upon its own motion or upon motion of any party, dismiss the action without prejudice. The court may, on terms that are just, permit the affidavit to be filed subsequent to the filing of the complaint and a copy of the affidavit shall be served on the defendant. The time to answer or otherwise plead shall date from that service.

SEC. 3. Section 116.340 of the Code of Civil Procedure is amended to read:

116.340. (a) Service of the claim and order on the defendant may be made by any one of the following methods:



(1) The clerk may cause a copy of the claim and order to be mailed to the defendant by any form of mail providing for a return receipt.

(2) The plaintiff may cause a copy of the claim and order to be delivered to the defendant in person.

(3) The plaintiff may cause service of a copy of the claim and order to be made by substituted service as provided in subdivision (a) or (b) of Section 415.20 without the need to attempt personal service on the defendant. For these purposes, substituted service as provided in subdivision (b) of Section 415.20 may be made at the office of the sheriff or marshal who shall deliver a copy of the claim and order to any person authorized by the defendant to receive service, as provided in Section 416.90, who is at least 18 years of age, and thereafter mailing a copy of the claim and order to the defendant's usual mailing address.

(4) The clerk may cause a copy of the claim to be mailed, the order to be issued, and a copy of the order to be mailed as provided in subdivision (b) of Section 116.330.

(b) Service of the claim and order on the defendant shall be completed at least 15 days before the hearing date if the defendant resides within the county in which the action is filed, or at least 20 days before the hearing date if the defendant resides outside the county in which the action is filed.

(c) Service by the methods described in subdivision (a) shall be deemed complete on the date that the defendant signs the mail return receipt, on the date of the personal service, as provided in Section 415.20, or as established by other competent evidence, whichever applies to the method of service used.

(d) Service shall be made within this state, except as provided in subdivisions (e) and (f).

(e) The owner of record of real property in California who resides in another state and who has no lawfully designated agent in California for service of process may be served by any of the methods described in this section if the claim relates to that property.

(f) A nonresident owner or operator of a motor vehicle involved in an accident within this state may be served pursuant to the provisions on constructive service in Sections 17450 to 17461, inclusive, of the Vehicle Code without regard to whether the defendant was a nonresident at the time of the accident or when



the claim was filed. Service shall be made by serving both the Director of the California Department of Motor Vehicles and the defendant, and may be made by any of the methods authorized by this chapter or by registered mail as authorized by Section 17454 or 17455 of the Vehicle Code.

(g) If an action is filed against a principal and his or her guaranty or surety pursuant to a guarantor or suretyship agreement, a reasonable attempt shall be made to complete service on the principal. If service is not completed on the principal, the action shall be transferred to the court of appropriate jurisdiction.

SEC. 4. Section 116.370 of the Code of Civil Procedure is amended to read:

116.370. (a) Venue and court location requirements in small claims actions shall be the same as in other civil actions. The court may prescribe by local rule the proper court locations for small claims actions.

(b) A defendant may challenge venue or court location by writing to the court and mailing a copy of the challenge to each of the other parties to the action, without personally appearing at the hearing.

(c) In all cases, including those in which the defendant does not either challenge venue or court location or appear at the hearing, the court shall inquire into the facts sufficiently to determine whether venue and court location are proper, and shall make its determination accordingly.

(1) If the court determines that the action was not commenced in the proper venue, the court, on its own motion, shall dismiss the action without prejudice, unless all defendants are present and agree that the action may be heard. If the court determines that the action was not commenced in the proper court location, the court may transfer the action to a proper location pursuant to local rule.

(2) If the court determines that the action was commenced in the proper venue and court location, the court may hear the case if all parties are present. If the defendant challenged venue or court location and all parties are not present, the court shall postpone the hearing for at least 15 days and shall notify all parties by mail of the court's decision and the new hearing date, time, and place.

SEC. 5. Section 116.570 of the Code of Civil Procedure is amended to read:



116.570. (a) Any party may submit a written request to postpone a hearing date for good cause.

(1) The written request may be made either by letter or on a form adopted or approved by the Judicial Council.

(2) The request shall be filed at least 10 days before the hearing date, unless the court determines that the requesting party has good cause to file the request at a later date.

(3) On the date of making the written request, the requesting party shall mail or personally deliver a copy to each of the other parties to the action.

(4) (A) If the court finds that the interests of justice would be served by postponing the hearing, the court shall postpone the hearing, and shall notify all parties by mail of the new hearing date, time, and place.

(B) On one occasion, upon the written request of a defendant guarantor, the court shall postpone the hearing for at least 30 days, and the court shall take this action without a hearing. This subparagraph does not limit the discretion of the court to grant additional postponements under subparagraph (A).

(5) The court shall provide a prompt response by mail to any person making a written request for postponement of a hearing date under this subdivision.

(b) If service of the claim and order upon the defendant is not completed within the number of days before the hearing date required by subdivision (b) of Section 116.340, and the defendant has not personally appeared and has not requested a postponement, the court shall postpone the hearing for at least 15 days. If a postponement is ordered under this subdivision, the clerk shall promptly notify all parties by mail of the new hearing date, time, and place.

(c) This section does not limit the inherent power of the court to order postponements of hearings in appropriate circumstances.

(d) A fee of ten dollars (\$10) shall be charged and collected for the filing of a request for postponement and rescheduling of a hearing date after timely service pursuant to subdivision (b) of Section 116.340 has been made upon the defendant.

SEC. 6. Section 116.940 of the Code of Civil Procedure is amended to read:

116.940. (a) Except as otherwise provided in this section or in rules adopted by the Judicial Council, the characteristics of the



small claims advisory service required by Section 116.260 shall be determined by each county in accordance with local needs and conditions.

(b) Each advisory service shall provide the following services:

(1) Individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance.

(2) Recorded telephone messages may be used to supplement the individual personal advisory services, but shall not be the sole means of providing advice available in the county.

(3) Adjacent counties may provide advisory services jointly.

(c) In any county in which the number of small claims actions filed annually is 1,000 or less as averaged over the immediately preceding two fiscal years, the county may elect to exempt itself from the requirements set forth in subdivision (b). This exemption shall be formally noticed through the adoption of a resolution by the board of supervisors. If a county so exempts itself, the county shall nevertheless provide the following minimum advisory services in accordance with rules adopted by the Judicial Council:

(1) Recorded telephone messages providing general information relating to small claims actions filed in the county shall be provided during regular business hours.

(2) Small claims information booklets shall be provided in the court clerk's office of each superior court, the county administrator's office, other appropriate county offices, and in any other location that is convenient to prospective small claims litigants in the county.

(d) The advisory service shall operate in conjunction and cooperation with the small claims division, and shall be administered so as to avoid the existence or appearance of a conflict of interest between the individuals providing the advisory services and any party to a particular small claims action or any judicial officer deciding small claims actions.

(e) Advisors may be volunteers, and shall be members of the State Bar, law students, paralegals, or persons experienced in resolving minor disputes, and shall be familiar with small claims court rules and procedures. Advisors may not appear in court as an advocate for any party.

(f) Advisors, including independent contractors, other employees, and volunteers have the immunity conferred by



Section 818.9 of the Government Code with respect to advice provided as a public service on behalf of a court or county to small claims litigants and potential litigants under this chapter.

SEC. 7. Section 392 of the Code of Civil Procedure is amended to read:

392. (a) Subject to the power of the court to transfer actions and proceedings as provided in this title, the superior court in the county where the real property that is the subject of the action, or some part thereof, is situated, is the proper court for the trial of the following actions:

(1) For the recovery of real property, or of an estate or interest therein, or for the determination in any form, of that right or interest, and for injuries to real property.

(2) For the foreclosure of all liens and mortgages on real property.

(b) In the court designated as the proper court in subdivision (a), the proper court location for trial of a proceeding for an unlawful detainer, as defined in Section 1161, is the location where the court tries that type of proceeding that is nearest or most accessible to where the real property that is the subject of the action, or some part thereof, is situated. Otherwise any location of the superior court designated as the proper court in subdivision (a) is a proper court location for the trial. The court may specify by local rule the nearest or most accessible court location where the court tries that type of case.

SEC. 8. Section 395 of the Code of Civil Procedure is amended to read:

395. (a) Except as otherwise provided by law and subject to the power of the court to transfer actions or proceedings as provided in this title, the superior court in the county where the defendants or some of them reside at the commencement of the action is the proper court for the trial of the action. If the action is for injury to person or personal property or for death from wrongful act or negligence, the superior court in either the county where the injury occurs or the injury causing death occurs or the county where the defendants, or some of them reside at the commencement of the action, is a proper court for the trial of the action. In a proceeding for dissolution of marriage, the superior court in the county where either the petitioner or respondent has been a resident for three months next preceding the



commencement of the proceeding is the proper court for the trial of the proceeding. In a proceeding for nullity of marriage or legal separation of the parties, the superior court in the county where either the petitioner or the respondent resides at the commencement of the proceeding is the proper court for the trial of the proceeding. In a proceeding to enforce an obligation of support under Section 3900 of the Family Code, the superior court in the county where the child resides is the proper court for the trial of the action. In a proceeding to establish and enforce a foreign judgment or court order for the support of a minor child, the superior court in the county where the child resides is the proper court for the trial of the action. Subject to subdivision (b), if a defendant has contracted to perform an obligation in a particular county, the superior court in the county where the obligation is to be performed, where the contract in fact was entered into, or where the defendant or any defendant resides at the commencement of the action is a proper court for the trial of an action founded on that obligation, and the county where the obligation is incurred is the county where it is to be performed, unless there is a special contract in writing to the contrary. If none of the defendants reside in the state or if they reside in the state and the county where they reside is unknown to the plaintiff, the action may be tried in the superior court in any county that the plaintiff may designate in his or her complaint, and, if the defendant is about to depart from the state, the action may be tried in the superior court in any county where either of the parties reside or service is made. If any person is improperly joined as a defendant or has been made a defendant solely for the purpose of having the action tried in the superior court in the county where he or she resides, his or her residence shall not be considered in determining the proper place for the trial of the action.

(b) Subject to the power of the court to transfer actions or proceedings as provided in this title, in an action arising from an offer or provision of goods, services, loans or extensions of credit intended primarily for personal, family or household use, other than an obligation described in Section 1812.10 or Section 2984.4 of the Civil Code, or an action arising from a transaction consummated as a proximate result of either an unsolicited telephone call made by a seller engaged in the business of consummating transactions of that kind or a telephone call or



electronic transmission made by the buyer or lessee in response to a solicitation by the seller, the superior court in the county where the buyer or lessee in fact signed the contract, where the buyer or lessee resided at the time the contract was entered into, or where the buyer or lessee resides at the commencement of the action is the proper court for the trial of the action. In the superior court designated in this subdivision as the proper court, the proper court location for trial of a case is the location where the court tries that type of case that is nearest or most accessible to where the buyer or lessee resides, where the buyer or lessee in fact signed the contract, where the buyer or lessee resided at the time the contract was entered into, or where the buyer or lessee resides at the commencement of the action. Otherwise, any location of the superior court designated as the proper court in this subdivision is a proper court location for the trial. The court may specify by local rule the nearest or most accessible court location where the court tries that type of case.

(c) Any provision of an obligation described in subdivision (b) waiving that subdivision is void and unenforceable.

SEC. 9. Section 396 of the Code of Civil Procedure is amended to read:

396. (a) If an action or proceeding is commenced in a court that lacks jurisdiction of the subject matter thereof, as determined by the complaint or petition, if there is a court of this state that has subject matter jurisdiction, the action or proceeding shall not be dismissed (except as provided in Section 399, and paragraph (1) of subdivision (b) of Section 581) but shall, on the application of either party, or on the court's own motion, be transferred to a court having jurisdiction of the subject matter that may be agreed upon by the parties, or, if they do not agree, to a court having subject matter jurisdiction that is designated by law as a proper court for the trial or determination thereof, and it shall thereupon be entered and prosecuted in the court to which it is transferred as if it had been commenced therein, all prior proceedings being saved. In that case, if summons is served prior to the filing of the action or proceeding in the court to which it is transferred, as to any defendant, so served, who has not appeared in the action or proceeding, the time to answer or otherwise plead shall date from service upon that defendant of written notice of filing of the action or proceeding in the court to which it is transferred.



(b) If an action or proceeding is commenced in or transferred to a court that has jurisdiction of the subject matter thereof as determined by the complaint or petition, and it thereafter appears from the verified pleadings, or at the trial, or hearing, that the determination of the action or proceeding, or of a cross-complaint, will necessarily involve the determination of questions not within the jurisdiction of the court, in which the action or proceeding is pending, the court, whenever that lack of jurisdiction appears, must suspend all further proceedings therein and transfer the action or proceeding and certify the pleadings (or if the pleadings be oral, a transcript of the same), and all papers and proceedings therein to a court having jurisdiction thereof that may be agreed upon by the parties, or, if they do not agree, to a court having subject matter jurisdiction that is designated by law as a proper court for the trial or determination thereof.

(c) An action or proceeding that is transferred under the provisions of this section shall be deemed to have been commenced at the time the complaint or petition was filed in the court from which it was originally transferred.

(d) This section may not be construed to preclude or affect the right to amend the pleadings as provided in this code.

(e) Upon the making of an order for transfer, proceedings shall be had as provided in Section 399, the costs and fees thereof, and of filing the case in the court to which transferred, to be paid by the party filing the pleading in which the question outside the jurisdiction of the court appears unless the court ordering the transfer shall otherwise direct.

SEC. 10. Section 396a of the Code of Civil Procedure is amended to read:

396a. In a case that is subject to Sections 1812.10 and 2984.4 of the Civil Code, or subdivision (b) of Section 395 of the Code of Civil Procedure, or in an action or proceeding for an unlawful detainer as defined in Section 1161 of the Code of Civil Procedure:

(a) The plaintiff shall state facts in the complaint, verified by the plaintiff's oath, or the oath of the plaintiff's attorney, or in an affidavit of the plaintiff or of the plaintiff's attorney filed with the complaint, showing that the action has been commenced in the proper superior court and the proper court location for the trial of the action or proceeding, and showing that the action is subject to the provisions of Sections 1812.10 and 2984.4 of the Civil Code



or subdivision (b) of Section 395 of the Code of Civil Procedure, or is an action for an unlawful detainer. When the affidavit is filed with the complaint, a copy thereof shall be served with the summons. Except as provided in this section, if the complaint or affidavit is not filed pursuant to this subdivision, no further proceedings may occur in the action or proceeding, except to dismiss the action or proceeding without prejudice. However, the court may, on terms that are just, permit the affidavit to be filed after the filing of the complaint, and a copy of the affidavit shall be served on the defendant and the time to answer or otherwise plead shall date from that service.

(b) If it appears from the complaint or affidavit, or otherwise, that the superior court or court location where the action or proceeding is commenced is not the proper court or court location for the trial, the court where the action or proceeding is commenced, or a judge thereof, shall, whenever that fact appears, transfer it to the proper court or court location, on its own motion, or on motion of the defendant, unless the defendant consents in writing, or in open court (consent in open court being entered in the minutes or docket of the court), to the keeping of the action or proceeding in the court or court location where commenced. If that consent is given, the action or proceeding may continue in the court or court location where commenced. Notwithstanding the provisions of Section 1801.1 and subdivision (f) of Section 2983.7 of the Civil Code, that consent may be given by a defendant who is represented by counsel at the time the consent is given, and if an action or proceeding is subject to subdivision (b) of Section 395 or is for an unlawful detainer, that consent may only be given by a defendant who is represented by counsel at the time the consent is given.

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

(d) If it appears from the complaint or affidavit of the plaintiff that the superior court and court location where the action or proceeding is commenced are a proper court and court location for



the trial thereof, all proper proceedings may be had, and the action or proceeding may be tried in that court at that location.

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

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

(f) If a motion is made for transfer of an action or proceeding to a different court location within the same superior court as provided in this section, proceedings shall be had as provided by local rules of the superior court.

SEC. 11. Section 402 of the Code of Civil Procedure is repealed.

SEC. 12. Section 402 is added to the Code of Civil Procedure, to read:

402. (a) Except as otherwise provided by law:

(1) A superior court may specify by local rule the locations where certain types of actions or proceedings are to be filed.

(2) A superior court may specify by local rule the locations where certain types of actions or proceedings are to be heard or tried.

(3) A superior court may not dismiss a case, and the clerk may not reject a case for filing, because it is filed, or a person seeks to file it, in a court location other than the location specified by local rule. However, the court may transfer the case on its own motion to the proper court location.

(b) A superior court may transfer an action or proceeding filed in one location to another location of the superior court. This section does not affect the authority of the presiding judge to apportion the business of the court as provided by the California Rules of Court.

SEC. 13. Section 402.5 of the Code of Civil Procedure is repealed.

SEC. 14. Section 575.2 of the Code of Civil Procedure is amended to read:



575.2. (a) Local rules promulgated pursuant to Section 575.1 may provide that if any counsel, a party represented by counsel, or a party if in pro se, fails to comply with any of the requirements thereof, the court on motion of a party or on its own motion may strike out all or any part of any pleading of that party, or, dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party, or impose other penalties of a lesser nature as otherwise provided by law, and may order that party or his or her counsel to pay to the moving party the reasonable expenses in making the motion, including reasonable attorney fees. No penalty may be imposed under this section without prior notice to, and an opportunity to be heard by, the party against whom the penalty is sought to be imposed.

(b) It is the intent of the Legislature that if a failure to comply with these rules is the responsibility of counsel and not of the party, any penalty shall be imposed on counsel and shall not adversely affect the party's cause of action or defense thereto.

SEC. 15. Section 631 of the Code of Civil Procedure is amended to read:

631. (a) The right to a trial by jury as declared by Section 16 of Article I of the California Constitution shall be preserved to the parties inviolate. In civil cases, a jury may only be waived pursuant to subdivision (d).

(b) Each party demanding a jury trial shall deposit advance jury fees with the clerk or judge. The total amount of the advance jury fees may not exceed one hundred fifty dollars (\$150) for each party. The deposit shall be made at least 25 calendar days before the date initially set for trial, except that in unlawful detainer actions the fees shall be deposited at least five days before the date set for trial.

(c) The parties demanding a jury trial shall deposit with the clerk or judge, at the beginning of the second and each succeeding day's session, a sum equal to that day's fees and mileage of the jury, including the fees and mileage for the trial jury panel if the trial jury has not yet been selected and sworn. If more than one party has demanded a jury, the respective amount to be paid daily by each party demanding a jury shall be determined by stipulation of the parties or by order of the court.

(d) A party waives trial by jury in any of the following ways:

(1) By failing to appear at the trial.



- (2) By written consent filed with the clerk or judge.
- (3) By oral consent, in open court, entered in the minutes.
- (4) By failing to announce that a jury is required, at the time the cause is first set for trial, if it is set upon notice or stipulation, or within five days after notice of setting if it is set without notice or stipulation.
- (5) By failing to deposit with the clerk, or judge, advance jury fees as provided in subdivision (b).
- (6) By failing to deposit with the clerk or judge, at the beginning of the second and each succeeding day's session, the sum provided in subdivision (c).
- (e) The court may, in its discretion upon just terms, allow a trial by jury although there may have been a waiver of a trial by jury.

SEC. 16. Section 1005 of the Code of Civil Procedure is amended to read:

1005. (a) Written notice shall be given, as prescribed in subdivisions (b) and (c), for the following motions:

- (1) Notice of Application and Hearing for Writ of Attachment under Section 484.040.
- (2) Notice of Application and Hearing for Claim and Delivery under Section 512.030.
- (3) Notice of Hearing for Claim of Exemption under Section 706.105.
- (4) Motion to Quash Summons pursuant to subdivision (b) of Section 418.10.
- (5) Motion for Determination of Good Faith Settlement pursuant to Section 877.6.
- (6) Hearing for Discovery of Peace Officer Personnel Records pursuant to Section 1043 of the Evidence Code.
- (7) Notice of Hearing of Third-Party Claim pursuant to Section 720.320.
- (8) Motion for an Order to Attend Deposition more than 150 miles from deponent's residence pursuant to paragraph (3) of subdivision (e) of Section 2025.
- (9) Notice of Hearing of Application for Relief pursuant to Section 946.6 of the Government Code.
- (10) Motion to Set Aside Default or Default Judgment and for Leave to Defend Actions pursuant to Section 473.5.
- (11) Motion to Expunge Notice of Pendency of Action pursuant to Section 405.30.



(12) Motion to Set Aside Default and for Leave to Amend pursuant to Section 585.5.

(13) Any other proceeding under this code in which notice is required and no other time or method is prescribed by law or by court or judge.

(b) Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 21 calendar days before the hearing. The moving and supporting papers served shall be a copy of the papers filed or to be filed with the court. However, if the notice is served by mail, the required 21-day period of notice before the hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, and if the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the required 21-day period of notice before the hearing shall be increased by two calendar days. Section 1013, which extends the time within which a right may be exercised or an act may be done, does not apply to a notice of motion, papers opposing a motion, or reply papers governed by this section. All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least 10 calendar days, and all reply papers at least five calendar days before the hearing.

The court, or a judge thereof, may prescribe a shorter time.

(c) Notwithstanding any other provision of this section, all papers opposing a motion and all reply papers shall be served by personal delivery, facsimile transmission, express mail, or other means consistent with Sections 1010, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties not later than the close of the next business day after the time the opposing papers or reply papers, as applicable, are filed. This subdivision applies to the service of opposition and reply papers regarding motions for summary judgment or summary adjudication, in addition to the motions listed in subdivision (a).

The court, or a judge thereof, may prescribe a shorter time.

SEC. 17. Section 2094 of the Code of Civil Procedure is amended to read:



2094. (a) An oath, affirmation, or declaration in an action or a proceeding, may be administered by obtaining an affirmative response to one of the following questions:

(1) “Do you solemnly state that the evidence you shall give in this issue (or matter) shall be the truth, the whole truth, and nothing but the truth, so help you God?”

(2) “Do you solemnly state, under penalty of perjury, that the evidence that you shall give in this issue (or matter) shall be the truth, the whole truth, and nothing but the truth?”

(b) In the alternative to the forms prescribed in subdivision (a), the court may administer an oath, affirmation, or declaration in an action or a proceeding in a manner that is calculated to awaken the person’s conscience and impress the person’s mind with the duty to tell the truth. The court shall satisfy itself that the person testifying understands that his or her testimony is being given under penalty of perjury.

SEC. 18. The heading of Article 8 (commencing with Section 1030) of Chapter 4 of Division 8 of the Evidence Code is amended to read:

Article 8. Clergy Penitent Privileges

SEC. 19. Section 1030 of the Evidence Code is amended to read:

1030. As used in this article, a “member of the clergy” means a priest, minister, religious practitioner, or similar functionary of a church or of a religious denomination or religious organization.

SEC. 20. Section 1031 of the Evidence Code is amended to read:

1031. As used in this article, “penitent” means a person who has made a penitential communication to a member of the clergy.

SEC. 21. Section 1032 of the Evidence Code is amended to read:

1032. As used in this article, “penitential communication” means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who, in the course of the discipline or practice of the clergy member’s church, denomination, or organization, is authorized or accustomed to hear those communications and, under the



discipline or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret.

SEC. 22. Section 1033 of the Evidence Code is amended to read:

1033. Subject to Section 912, a penitent, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a penitential communication if he or she claims the privilege.

SEC. 23. Section 1034 of the Evidence Code is amended to read:

1034. Subject to Section 912, a member of the clergy, whether or not a party, has a privilege to refuse to disclose a penitential communication if he or she claims the privilege.

SEC. 24. Section 818.9 of the Government Code is amended to read:

818.9. A court or county, its employees, independent contractors, and volunteers shall not be liable because of any advice provided to small claims court litigants or potential litigants as a public service on behalf of the court or county pursuant to the Small Claims Act (Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure).



Approved _____, 2002

Governor

