

AMENDED IN SENATE JANUARY 18, 1996

AMENDED IN SENATE JANUARY 3, 1996

**SENATE BILL**

**No. 52**

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**Introduced by Senator Peace**

December 20, 1994

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An act to amend Sections ~~128.7, 437c, 473, 473~~ and 685.070 of the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 52, as amended, Peace. Civil procedure.

(1) ~~Under existing law, operative until January 1, 1999, every pleading, petition, written notice of motion, or other similar paper filed on or after January 1, 1995, is required to be signed by the party or his or her attorney, which signature certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, certain conditions are met. Under existing law, this provision does not apply to disclosures and discovery requests, responses, objections, and motions.~~

~~This bill would provide that this provision does not apply to a general denial in an answer to a complaint or cross-complaint.~~

(2) ~~Under existing law, any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. Existing law provides that evidentiary objections not made at the summary judgment hearing shall be deemed waived.~~

~~This bill would instead provide that evidentiary objections not made at the summary judgment hearing or in writing at least 3 days prior to the hearing shall be deemed waived, and would make a related change.~~

~~(3) Existing law imposes requirements on supporting and opposing affidavits or declarations with regard to a motion for summary judgment. Under existing law, any objections based on the failure to comply with these requirements shall be made at the summary judgment hearing or shall be deemed waived.~~

~~This bill would instead provide that any objections based on the failure to comply with these requirements shall be made at the summary judgment hearing, and that evidentiary objections not made at the hearing or in writing at least 3 days prior to the hearing shall be deemed waived.~~

~~(4) Existing law authorizes the court to allow a party to amend any pleading or proceeding, as specified, in furtherance of justice. Existing law authorizes the court to relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect, as provided.~~

~~This bill would make organizational, clarifying, changes to these provisions.~~

~~(5)~~

~~(2) Existing law authorizes a judgment creditor to claim certain costs of enforcing a judgment, and specifies procedures therefor. Existing law sets forth procedures for the service of papers by mail, Express Mail, or facsimile transmission, and provides for the extension of certain time periods depending on the method used.~~

~~This bill would expressly provide that the latter provision applies to the former provision.~~

~~Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.~~

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

~~1 SECTION 1. Section 128.7 of the Code of Civil  
2 Procedure is amended to read:~~



1 ~~128.7. (a) Every pleading, petition, written notice of~~  
2 ~~motion, or other similar paper shall be signed by at least~~  
3 ~~one attorney of record in the attorney's individual name,~~  
4 ~~or, if the party is not represented by an attorney, shall be~~  
5 ~~signed by the party. Each paper shall state the signer's~~  
6 ~~address and telephone number, if any. Except when~~  
7 ~~otherwise provided by law, pleadings need not be~~  
8 ~~verified or accompanied by affidavit. An unsigned paper~~  
9 ~~shall be stricken unless omission of the signature is~~  
10 ~~corrected promptly after being called to the attention of~~  
11 ~~the attorney or party.~~

12 ~~(b) By presenting to the court, whether by signing,~~  
13 ~~filing, submitting, or later advocating, a pleading,~~  
14 ~~petition, written notice of motion, or other similar paper,~~  
15 ~~an attorney or unrepresented party is certifying that to~~  
16 ~~the best of the person's knowledge, information, and~~  
17 ~~belief, formed after an inquiry reasonable under the~~  
18 ~~circumstances, all of the following conditions are met:~~

19 ~~(1) It is not being presented primarily for an improper~~  
20 ~~purpose, such as to harass or to cause unnecessary delay~~  
21 ~~or needless increase in the cost of litigation.~~

22 ~~(2) The claims, defenses, and other legal contentions~~  
23 ~~therein are warranted by existing law or by a nonfrivolous~~  
24 ~~argument for the extension, modification, or reversal of~~  
25 ~~existing law or the establishment of new law.~~

26 ~~(3) The allegations and other factual contentions have~~  
27 ~~evidentiary support or, if specifically so identified, are~~  
28 ~~likely to have evidentiary support after a reasonable~~  
29 ~~opportunity for further investigation or discovery.~~

30 ~~(4) The denials of factual contentions are warranted~~  
31 ~~on the evidence or, if specifically so identified, are~~  
32 ~~reasonably based on a lack of information or belief.~~

33 ~~(c) If, after notice and a reasonable opportunity to~~  
34 ~~respond, the court determines that subdivision (b) has~~  
35 ~~been violated, the court may, subject to the conditions~~  
36 ~~stated below, impose an appropriate sanction upon the~~  
37 ~~attorneys, law firms, or parties that have violated~~  
38 ~~subdivision (b) or are responsible for the violation. In~~  
39 ~~determining what sanctions, if any, should be ordered,~~



~~1 the court shall consider whether a party seeking sanctions  
2 has exercised due diligence.~~

~~3 (1) A motion for sanctions under this section shall be  
4 made separately from other motions or requests and shall  
5 describe the specific conduct alleged to violate  
6 subdivision (b). Notice of motion shall be served as  
7 provided in Section 1010, but shall not be filed with or  
8 presented to the court unless, within 30 days after service  
9 of the motion, or such other period as the court may  
10 prescribe, the challenged paper, claim, defense,  
11 contention, allegation, or denial is not withdrawn or  
12 appropriately corrected. If warranted, the court may  
13 award to the party prevailing on the motion the  
14 reasonable expenses and attorney's fees incurred in  
15 presenting or opposing the motion. Absent exceptional  
16 circumstances, a law firm shall be held jointly responsible  
17 for violations committed by its partners, associates, and  
18 employees.~~

~~19 (2) On its own motion, the court may enter an order  
20 describing the specific conduct that appears to violate  
21 subdivision (b) and directing an attorney, law firm, or  
22 party to show cause why it has not violated subdivision  
23 (b), unless, within 30 days of service of the order to show  
24 cause, the challenged paper, claim, defense, contention,  
25 allegation, or denial is withdrawn or appropriately  
26 corrected.~~

~~27 (d) A sanction imposed for violation of subdivision (b)  
28 shall be limited to what is sufficient to deter repetition of  
29 this conduct or comparable conduct by others similarly  
30 situated. Subject to the limitations in paragraphs (1) and  
31 (2), the sanction may consist of, or include, directives of  
32 a nonmonetary nature, an order to pay a penalty into  
33 court, or, if imposed on motion and warranted for  
34 effective deterrence, an order directing payment to the  
35 movant of some or all of the reasonable attorney's fees  
36 and other expenses incurred as a direct result of the  
37 violation.~~

~~38 (1) Monetary sanctions may not be awarded against a  
39 represented party for a violation of paragraph (2) of  
40 subdivision (b).~~



1 ~~(2) Monetary sanctions may not be awarded on the~~  
2 ~~court's motion unless the court issues its order to show~~  
3 ~~cause before a voluntary dismissal or settlement of the~~  
4 ~~claims made by or against the party that is, or whose~~  
5 ~~attorneys are, to be sanctioned.~~

6 ~~(e) When imposing sanctions, the court shall describe~~  
7 ~~the conduct determined to constitute a violation of this~~  
8 ~~section and explain the basis for the sanction imposed.~~

9 ~~(f) In addition to any award pursuant to this section for~~  
10 ~~conduct described in subdivision (b), the court may~~  
11 ~~assess punitive damages against the plaintiff upon a~~  
12 ~~determination by the court that the plaintiff's action was~~  
13 ~~an action maintained by a person convicted of a felony~~  
14 ~~against the person's victim, or the victim's heirs, relatives,~~  
15 ~~estate, or personal representative, for injuries arising~~  
16 ~~from the acts for which the person was convicted of a~~  
17 ~~felony, and that the plaintiff is guilty of fraud, oppression,~~  
18 ~~or malice in maintaining the action.~~

19 ~~(g) This section shall not apply to disclosures and~~  
20 ~~discovery requests, responses, objections, and motions.~~  
21 ~~This section shall not apply to a general denial, as~~  
22 ~~described in Section 431.30, in an answer to a complaint~~  
23 ~~or cross-complaint.~~

24 ~~(h) A motion for sanctions brought by a party or a~~  
25 ~~party's attorney primarily for an improper purpose, such~~  
26 ~~as to harass or to cause unnecessary delay or needless~~  
27 ~~increase in the cost of litigation, shall itself be subject to~~  
28 ~~a motion for sanctions. It is the intent of the Legislature~~  
29 ~~that courts shall vigorously use its sanctions authority to~~  
30 ~~deter such improper conduct or comparable conduct by~~  
31 ~~others similarly situated.~~

32 ~~(i) This section shall apply to a complaint or petition~~  
33 ~~filed on or after January 1, 1995, and any other pleading,~~  
34 ~~written notice of motion, or other similar paper filed in~~  
35 ~~such a matter.~~

36 ~~(j) This section shall remain in effect only until~~  
37 ~~January 1, 1999, and as of that date is repealed, unless a~~  
38 ~~later enacted statute, that is enacted before January 1,~~  
39 ~~1999, deletes or extends that date.~~



1 ~~SEC. 2. Section 437c of the Code of Civil Procedure is~~  
2 ~~amended to read:~~

3 ~~437c. (a) Any party may move for summary~~  
4 ~~judgment in any action or proceeding if it is contended~~  
5 ~~that the action has no merit or that there is no defense to~~  
6 ~~the action or proceeding. The motion may be made at any~~  
7 ~~time after 60 days have elapsed since the general~~  
8 ~~appearance in the action or proceeding of each party~~  
9 ~~against whom the motion is directed or at any earlier time~~  
10 ~~after the general appearance that the court, with or~~  
11 ~~without notice and upon good cause shown, may direct.~~  
12 ~~Notice of the motion and supporting papers shall be~~  
13 ~~served on all other parties to the action at least 28 days~~  
14 ~~before the time appointed for hearing. However, if the~~  
15 ~~notice is served by mail, the required 28-day period of~~  
16 ~~notice shall be increased by five days if the place of~~  
17 ~~address is within the State of California, 10 days if the~~  
18 ~~place of address is outside the State of California but~~  
19 ~~within the United States, and 20 days if the place of~~  
20 ~~address is outside the United States, and if the notice is~~  
21 ~~served by facsimile transmission, Express Mail, or another~~  
22 ~~method of delivery providing for overnight delivery, the~~  
23 ~~required 28-day period of notice shall be increased by two~~  
24 ~~court days. The motion shall be heard no later than 30~~  
25 ~~days before the date of trial, unless the court for good~~  
26 ~~cause orders otherwise. The filing of the motion shall not~~  
27 ~~extend the time within which a party must otherwise file~~  
28 ~~a responsive pleading.~~

29 ~~(b) The motion shall be supported by affidavits,~~  
30 ~~declarations, admissions, answers to interrogatories,~~  
31 ~~depositions, and matters of which judicial notice shall or~~  
32 ~~may be taken. The supporting papers shall include a~~  
33 ~~separate statement setting forth plainly and concisely all~~  
34 ~~material facts which the moving party contends are~~  
35 ~~undisputed. Each of the material facts stated shall be~~  
36 ~~followed by a reference to the supporting evidence. The~~  
37 ~~failure to comply with this requirement of a separate~~  
38 ~~statement may in the court's discretion constitute a~~  
39 ~~sufficient ground for denial of the motion.~~



1 ~~Any opposition to the motion shall be served and filed~~  
2 ~~not less than 14 days preceding the noticed or continued~~  
3 ~~date of hearing, unless the court for good cause orders~~  
4 ~~otherwise. The opposition, where appropriate, shall~~  
5 ~~consist of affidavits, declarations, admissions, answers to~~  
6 ~~interrogatories, depositions, and matters of which judicial~~  
7 ~~notice shall or may be taken.~~

8 ~~The opposition papers shall include a separate~~  
9 ~~statement which responds to each of the material facts~~  
10 ~~contended by the moving party to be undisputed,~~  
11 ~~indicating whether the opposing party agrees or~~  
12 ~~disagrees that those facts are undisputed. The statement~~  
13 ~~also shall set forth plainly and concisely any other material~~  
14 ~~facts which the opposing party contends are disputed.~~  
15 ~~Each material fact contended by the opposing party to be~~  
16 ~~disputed shall be followed by a reference to the~~  
17 ~~supporting evidence. Failure to comply with this~~  
18 ~~requirement of a separate statement may constitute a~~  
19 ~~sufficient ground, in the court's discretion, for granting~~  
20 ~~the motion.~~

21 ~~Any reply to the opposition shall be served and filed by~~  
22 ~~the moving party not less than five days preceding the~~  
23 ~~noticed or continued date of hearing, unless the court for~~  
24 ~~good cause orders otherwise.~~

25 ~~Evidentiary objections not made at the hearing or in~~  
26 ~~writing at least three days prior to the hearing shall be~~  
27 ~~deemed waived.~~

28 ~~Sections 1005 and 1013, extending the time within~~  
29 ~~which a right may be exercised or an act may be done, do~~  
30 ~~not apply to this section.~~

31 ~~Any incorporation by reference of matter in the court's~~  
32 ~~file shall set forth with specificity the exact matter to~~  
33 ~~which reference is being made and shall not incorporate~~  
34 ~~the entire file.~~

35 ~~(e) The motion for summary judgment shall be~~  
36 ~~granted if all the papers submitted show that there is no~~  
37 ~~triable issue as to any material fact and that the moving~~  
38 ~~party is entitled to a judgment as a matter of law. In~~  
39 ~~determining whether the papers show that there is no~~  
40 ~~triable issue as to any material fact the court shall consider~~



1 all of the evidence set forth in the papers, except that to  
2 which objections have been made and properly sustained  
3 by the court, and all inferences reasonably deducible  
4 from the evidence, except summary judgment shall not  
5 be granted by the court based on inferences reasonably  
6 deducible from the evidence, if contradicted by other  
7 inferences or evidence, which raise a triable issue as to  
8 any material fact.

9 (d) Supporting and opposing affidavits or declarations  
10 shall be made by any person on personal knowledge, shall  
11 set forth admissible evidence, and shall show  
12 affirmatively that the affiant is competent to testify to the  
13 matters stated in the affidavits or declarations. Any  
14 objections based on the failure to comply with the  
15 requirements of this subdivision shall be made at the  
16 hearing. Evidentiary objections not made at the hearing  
17 or in writing at least three days prior to the hearing shall  
18 be deemed waived.

19 (e) If a party is otherwise entitled to a summary  
20 judgment pursuant to this section, summary judgment  
21 shall not be denied on grounds of credibility or for want  
22 of cross examination of witnesses furnishing affidavits or  
23 declarations in support of the summary judgment, except  
24 that summary judgment may be denied in the discretion  
25 of the court, where the only proof of a material fact  
26 offered in support of the summary judgment is an  
27 affidavit or declaration made by an individual who was  
28 the sole witness to that fact; or where a material fact is an  
29 individual's state of mind, or lack thereof, and that fact is  
30 sought to be established solely by the individual's  
31 affirmation thereof.

32 (f) (1) A party may move for summary adjudication  
33 as to one or more causes of action within an action, one  
34 or more affirmative defenses, one or more claims for  
35 damages, or one or more issues of duty, if that party  
36 contends that the cause of action has no merit or that  
37 there is no affirmative defense thereto, or that there is no  
38 merit to an affirmative defense as to any cause of action,  
39 or both, or that there is no merit to a claim for damages,  
40 as specified in Section 3294 of the Civil Code, or that one



1 ~~or more defendants either owed or did not owe a duty to~~  
2 ~~the plaintiff or plaintiffs. A motion for summary~~  
3 ~~adjudication shall be granted only if it completely~~  
4 ~~disposes of a cause of action, an affirmative defense, a~~  
5 ~~claim for damages, or an issue of duty.~~

6 ~~(2) A motion for summary adjudication may be made~~  
7 ~~by itself or as an alternative to a motion for summary~~  
8 ~~judgment and shall proceed in all procedural respects as~~  
9 ~~a motion for summary judgment. However, a party may~~  
10 ~~not move for summary judgment based on issues asserted~~  
11 ~~in a prior motion for summary adjudication and denied by~~  
12 ~~the court, unless that party establishes to the satisfaction~~  
13 ~~of the court, newly discovered facts or circumstances or~~  
14 ~~a change of law supporting the issues reasserted in the~~  
15 ~~summary judgment motion.~~

16 ~~(g) Upon the denial of a motion for summary~~  
17 ~~judgment on the ground that there is a triable issue as to~~  
18 ~~one or more material facts, the court shall, by written or~~  
19 ~~oral order, specify one or more material facts raised by the~~  
20 ~~motion as to which the court has determined there exists~~  
21 ~~a triable controversy. This determination shall~~  
22 ~~specifically refer to the evidence proffered in support of~~  
23 ~~and in opposition to the motion which indicates that a~~  
24 ~~triable controversy exists. Upon the grant of a motion for~~  
25 ~~summary judgment, on the ground that there is no triable~~  
26 ~~issue of material fact, the court shall, by written or oral~~  
27 ~~order, specify the reasons for its determination. The order~~  
28 ~~shall specifically refer to the evidence proffered in~~  
29 ~~support of, and if applicable in opposition to, the motion~~  
30 ~~which indicates that no triable issue exists. The court shall~~  
31 ~~also state its reasons for any other determination. The~~  
32 ~~court shall record its determination by court reporter or~~  
33 ~~written order.~~

34 ~~(h) If it appears from the affidavits submitted in~~  
35 ~~opposition to a motion for summary judgment or~~  
36 ~~summary adjudication or both that facts essential to~~  
37 ~~justify opposition may exist but cannot, for reasons stated,~~  
38 ~~then be presented, the court shall deny the motion, or~~  
39 ~~order a continuance to permit affidavits to be obtained or~~



1 ~~discovery to be had, or may make any other order as may~~  
2 ~~be just.~~

3 ~~(i) If the court determines at any time that any of the~~  
4 ~~affidavits are presented in bad faith or solely for purposes~~  
5 ~~of delay, the court shall order the party presenting the~~  
6 ~~affidavits to pay the other party the amount of the~~  
7 ~~reasonable expenses which the filing of the affidavits~~  
8 ~~caused the other party to incur. Sanctions shall not be~~  
9 ~~imposed pursuant to this subdivision except on notice~~  
10 ~~contained in a party's papers, or on the court's own~~  
11 ~~noticed motion, and after an opportunity to be heard.~~

12 ~~(j) Except where a separate judgment may properly~~  
13 ~~be awarded in the action, no final judgment shall be~~  
14 ~~entered on a motion for summary judgment prior to the~~  
15 ~~termination of the action, but the final judgment shall, in~~  
16 ~~addition to any matters determined in the action, award~~  
17 ~~judgment as established by the summary proceeding~~  
18 ~~herein provided for.~~

19 ~~(k) In actions which arise out of an injury to the person~~  
20 ~~or to property, when a motion for summary judgment was~~  
21 ~~granted on the basis that the defendant was without fault,~~  
22 ~~no other defendant during trial, over plaintiff's objection,~~  
23 ~~may attempt to attribute fault to or comment on the~~  
24 ~~absence or involvement of the defendant who was~~  
25 ~~granted the motion.~~

26 ~~(l) A summary judgment entered under this section is~~  
27 ~~an appealable judgment as in other cases. Upon entry of~~  
28 ~~any order pursuant to this section except the entry of~~  
29 ~~summary judgment, a party may, within 20 days after~~  
30 ~~service upon him or her of a written notice of entry of the~~  
31 ~~order, petition an appropriate reviewing court for a~~  
32 ~~peremptory writ. If the notice is served by mail, the initial~~  
33 ~~period within which to file the petition shall be increased~~  
34 ~~by five days if the place of address is within the State of~~  
35 ~~California, 10 days if the place of address is outside the~~  
36 ~~State of California but within the United States, and 20~~  
37 ~~days if the place of address is outside the United States. If~~  
38 ~~the notice is served by facsimile transmission, Express~~  
39 ~~Mail, or another method of delivery providing for~~  
40 ~~overnight delivery, the initial period within which to file~~



1 ~~the petition shall be increased by two court days. The~~  
2 ~~superior court may, for good cause, and prior to the~~  
3 ~~expiration of the initial period, extend the time for one~~  
4 ~~additional period not to exceed 10 days.~~

5 ~~(m) (1) If a motion for summary adjudication is~~  
6 ~~granted, at the trial of the action, the cause or causes of~~  
7 ~~action within the action, affirmative defense or defenses,~~  
8 ~~claim for damages, or issue or issues of duty as to the~~  
9 ~~motion which has been granted shall be deemed to be~~  
10 ~~established and the action shall proceed as to the cause or~~  
11 ~~causes of action, affirmative defense or defenses, claim for~~  
12 ~~damages, or issue or issues of duty remaining.~~

13 ~~(2) In the trial of the action, the fact that a motion for~~  
14 ~~summary adjudication is granted as to one or more causes~~  
15 ~~of action, affirmative defenses, claims for damages, or~~  
16 ~~issues of duty within the action shall not operate to bar~~  
17 ~~any cause of action, affirmative defense, claim for~~  
18 ~~damages, or issue of duty as to which summary~~  
19 ~~adjudication was either not sought or denied.~~

20 ~~(3) In the trial of an action, neither a party, nor a~~  
21 ~~witness, nor the court shall comment upon the grant or~~  
22 ~~denial of a motion for summary adjudication to a jury.~~

23 ~~(n) A cause of action has no merit if either of the~~  
24 ~~following exists:~~

25 ~~(1) One or more of the elements of the cause of action~~  
26 ~~cannot be separately established, even if that element is~~  
27 ~~separately pleaded.~~

28 ~~(2) A defendant establishes an affirmative defense to~~  
29 ~~that cause of action.~~

30 ~~(o) For purposes of motions for summary judgment~~  
31 ~~and summary adjudication:~~

32 ~~(1) A plaintiff or cross-complainant has met his or her~~  
33 ~~burden of showing that there is no defense to a cause of~~  
34 ~~action if that party has proved each element of the cause~~  
35 ~~of action entitling the party to judgment on that cause of~~  
36 ~~action. Once the plaintiff or cross-complainant has met~~  
37 ~~that burden, the burden shifts to the defendant or~~  
38 ~~cross-defendant to show that a triable issue of one or more~~  
39 ~~material facts exists as to that cause of action or a defense~~  
40 ~~thereto. The defendant or cross-defendant may not rely~~



1 upon the mere allegations or denials of its pleadings to  
2 show that a triable issue of material fact exists but, instead,  
3 shall set forth the specific facts showing that a triable issue  
4 of material fact exists as to that cause of action or a defense  
5 thereto.

6 (2) A defendant or cross-defendant has met his or her  
7 burden of showing that a cause of action has no merit if  
8 that party has shown that one or more elements of the  
9 cause of action, even if not separately pleaded, cannot be  
10 established, or that there is a complete defense to that  
11 cause of action. Once the defendant or cross-defendant  
12 has met that burden, the burden shifts to the plaintiff or  
13 cross-complainant to show that a triable issue of one or  
14 more material facts exists as to that cause of action or a  
15 defense thereto. The plaintiff or cross-complainant may  
16 not rely upon the mere allegations or denials of its  
17 pleadings to show that a triable issue of material fact exists  
18 but, instead, shall set forth the specific facts showing that  
19 a triable issue of material fact exists as to that cause of  
20 action or a defense thereto.

21 (p) Nothing in this section shall be construed to extend  
22 the period for trial provided by Section 1170.5.

23 (q) Subdivisions (a) and (b) shall not apply to actions  
24 brought pursuant to Chapter 4 (commencing with  
25 Section 1159) of Title 3 of Part 3.

26 (r) For the purposes of this section, a change in law  
27 shall not include a later enacted statute without  
28 retroactive application.

29 **SEC. 3.**

30 *SECTION 1.* Section 473 of the Code of Civil  
31 Procedure is amended to read:

32 473. (a) (1) The court may, in furtherance of justice,  
33 and on any terms as may be proper, allow a party to  
34 amend any pleading or proceeding by adding or striking  
35 out the name of any party, or by correcting a mistake in  
36 the name of a party, or a mistake in any other respect; and  
37 may, upon like terms, enlarge the time for answer or  
38 demurrer. The court may likewise, in its discretion, after  
39 notice to the adverse party, allow, upon any terms as may  
40 be just, an amendment to any pleading or proceeding in



1 other particulars; and may upon like terms allow an  
2 answer to be made after the time limited by this code.

3 (2) When it appears to the satisfaction of the court that  
4 the amendment renders it necessary, the court may  
5 postpone the trial, and may, when the postponement will  
6 by the amendment be rendered necessary, require, as a  
7 condition to the amendment, the payment to the adverse  
8 party of any costs as may be just.

9 (b) The court may, upon any terms as may be just,  
10 relieve a party or his or her legal representative from a  
11 judgment, dismissal, order, or other proceeding taken  
12 against him or her through his or her mistake,  
13 inadvertence, surprise, or excusable neglect. Application  
14 for this relief shall be accompanied by a copy of the  
15 answer or other pleading proposed to be filed therein,  
16 otherwise the application shall not be granted, and shall  
17 be made within a reasonable time, in no case exceeding  
18 six months, after the judgment, dismissal, order, or  
19 proceeding was taken. However, in the case of a  
20 judgment, dismissal, order, or other proceeding  
21 determining the ownership or right to possession of real  
22 or personal property, without extending the six-month  
23 period, when a notice in writing is personally served  
24 within the State of California both upon the party against  
25 whom the judgment, dismissal, order, or other  
26 proceeding has been taken, and upon his or her attorney  
27 of record, if any, notifying that party and his or her  
28 attorney of record, if any, that the order, judgment,  
29 dismissal, or other proceeding was taken against him or  
30 her and that any rights the party has to apply for relief  
31 under the provisions of Section 473 of the Code of Civil  
32 Procedure shall expire 90 days after service of the notice,  
33 then the application shall be made within 90 days after  
34 service of the notice upon the defaulting party or his or  
35 her attorney of record, if any, whichever service shall be  
36 later. No affidavit or declaration of merits shall be  
37 required of the moving party. Notwithstanding any other  
38 requirements of this section, the court shall, whenever an  
39 application for relief is made no more than six months  
40 after entry of judgment, is in proper form, and is



1 accompanied by an attorney's sworn affidavit attesting to  
2 his or her mistake, inadvertence, surprise, or neglect,  
3 vacate any (1) resulting default entered by the clerk  
4 against his or her client, and which will result in entry of  
5 a default judgment, or (2) resulting default judgment or  
6 dismissal entered against his or her client, unless the court  
7 finds that the default or dismissal was not in fact caused  
8 by the attorney's mistake, inadvertence, surprise, or  
9 neglect. The court shall, whenever relief is granted based  
10 on an attorney's affidavit of fault, direct the attorney to  
11 pay reasonable compensatory legal fees and costs to  
12 opposing counsel or parties. However, this section shall  
13 not lengthen the time within which an action shall be  
14 brought to trial pursuant to Section 583.310.

15 (c) (1) Whenever the court grants relief from a  
16 default, default judgment, or dismissal based on any of the  
17 provisions of this section, the court may do any of the  
18 following:

19 (A) Impose a penalty of no greater than one thousand  
20 dollars (\$1,000) upon an offending attorney or party.

21 (B) Direct that an offending attorney pay an amount  
22 no greater than one thousand dollars (\$1,000) to the State  
23 Bar Client Security Fund.

24 (C) Grant other relief as is appropriate.

25 (2) However, where the court grants relief from a  
26 default or default judgment pursuant to this section based  
27 upon the affidavit of the defaulting party's attorney  
28 attesting to the attorney's mistake, inadvertence,  
29 surprise, or neglect, the relief shall not be made  
30 conditional upon the attorney's payment of  
31 compensatory legal fees or costs or monetary penalties  
32 imposed by the court or upon compliance with other  
33 sanctions ordered by the court.

34 (d) The court may, upon motion of the injured party,  
35 or its own motion, correct clerical mistakes in its  
36 judgment or orders as entered, so as to conform to the  
37 judgment or order directed, and may, on motion of either  
38 party after notice to the other party, set aside any void  
39 judgment or order.

40 ~~SEC. 4.~~



1     *SEC. 2.* Section 685.070 of the Code of Civil Procedure  
2 is amended to read:

3     685.070. (a) The judgment creditor may claim under  
4 this section the following costs of enforcing a judgment:

5     (1) Statutory fees for preparing and issuing, and  
6 recording and indexing, an abstract of judgment or a  
7 certified copy of a judgment.

8     (2) Statutory fees for filing a notice of judgment lien  
9 on personal property.

10    (3) Statutory fees for issuing a writ for the  
11 enforcement of the judgment to the extent that the fees  
12 are not satisfied pursuant to Section 685.050.

13    (4) Statutory costs of the levying officer for  
14 performing the duties under a writ to the extent that the  
15 costs are not satisfied pursuant to Section 685.050 and the  
16 statutory fee of the levying officer for performing the  
17 duties under the Wage Garnishment Law to the extent  
18 that the fee has not been satisfied pursuant to the wage  
19 garnishment.

20    (5) Costs incurred in connection with any proceeding  
21 under Chapter 6 (commencing with Section 708.010) of  
22 Division 2 that have been approved as to amount,  
23 reasonableness, and necessity by the judge or referee  
24 conducting the proceeding.

25    (6) Attorney's fees, if allowed by Section 685.040.

26    (b) Before the judgment is fully satisfied but not later  
27 than two years after the costs have been incurred, the  
28 judgment creditor claiming costs under this section shall  
29 file a memorandum of costs with the court clerk and serve  
30 a copy on the judgment debtor. Service shall be made  
31 personally or by mail. The memorandum of costs shall be  
32 executed under oath by a person who has knowledge of  
33 the facts and shall state that to the person's best  
34 knowledge and belief the costs are correct, are reasonable  
35 and necessary, and have not been satisfied.

36    (c) Within 10 days after the memorandum of costs is  
37 served on the judgment debtor, the judgment debtor  
38 may apply to the court on noticed motion to have the  
39 costs taxed by the court. The notice of motion shall be  
40 served on the judgment creditor. Service shall be made



1 personally or by mail. The court shall make an order  
2 allowing or disallowing the costs to the extent justified  
3 under the circumstances of the case.

4 (d) If no motion to tax costs is made within the time  
5 provided in subdivision (c), the costs claimed in the  
6 memorandum are allowed.

7 (e) If a memorandum of costs for the costs specified in  
8 subdivision (a) is filed at the same time as an application  
9 for a writ of execution, these statutory costs not already  
10 allowed by the court in an amount not to exceed one  
11 hundred dollars (\$100) in the aggregate may be included  
12 in the amount specified in the writ of execution, subject  
13 to subsequent disallowance as ordered by the court  
14 pursuant to a motion to tax if filed by the debtor. The  
15 memorandum of costs shall contain the following  
16 statement: “The fees sought under this memorandum  
17 may be disallowed by a court upon a motion to tax filed  
18 by the debtor notwithstanding the fees having been  
19 included in the writ of execution.” The inclusion of the  
20 above costs in the writ of execution or the pendency of the  
21 motion to tax on these costs shall not be cause for the clerk  
22 of the court to delay issuing the writ of execution or for  
23 the levying officer to delay enforcing the writ of  
24 execution.

25 (f) Section 1013, extending the time within which a  
26 right may be exercised or an act may be done, applies to  
27 this section.

