

AMENDED IN ASSEMBLY APRIL 18, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1742**

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**Introduced by Committee on Judiciary (Jones (Chair), Evans,  
Laird, Levine, Lieber, and Montanez)**

March 2, 2005

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An act to amend *Section 43.55 of the Civil Code*, to amend Sections 116.330, 116.340, 116.780, 128.7, 396b, 415.21, 425.115, and 998 of, and to repeal and add Section 116.725 of, the Code of Civil Procedure, to amend Sections 811.9, 905, 910.4, and 69926.5 of, and to add Section 905.7 to, the Government Code, and to amend Section 213.5 of the Welfare and Institutions Code and Section 123.6 of the Labor Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1742, as amended, Committee on Judiciary. Courts: civil procedure.

(1) *Under existing law, no liability or cause of action arises against a peace officer making an arrest pursuant to a warrant of arrest regular upon its face, if the peace officer acts without malice and in reasonable belief that the person arrested is the one referred to in the warrant.*

*This bill would provide that the term "warrant of arrest regular upon its face" includes both a paper arrest warrant issued pursuant to a judicial order and a judicial order entered into an automated warrant system by authorized law enforcement or court personnel, as specified.*

(2) Existing law governs procedures in the small claims court. These provisions set forth various time periods for scheduling cases for hearing and specifies methods for service of the claim and order on

a defendant. These provisions state that they may not be construed to prevent a court from correcting a clerical error in a judgment or setting aside and vacating a judgment on the ground of an incorrect or erroneous legal basis for the decision.

This bill would provide that, when a claim is filed, the case shall be scheduled for hearing no earlier than 20 days and not more than 70 days from the date of the order, thereby eliminating the various time periods. The bill would require that proof of service of the claim and order be filed at least 5 days before the hearing. The bill would authorize a party to make only one motion to correct a clerical error or set aside and vacate a judgment and provide that a party may have 30 days after the clerk mails notice of entry of ~~judgment~~ *judgment* to the parties to make that motion.

*(3) Existing law requires, until January 1, 2006, that all pleadings filed with a court be signed, except as specified, and that the filing of any paper with a court certifies that specified conditions have been satisfied. Existing law also specifies sanctions for violation of these requirements.*

*This bill would delete the repeal date of January 1, 2006, contained in these provisions and thereby extend indefinitely the operation of these provisions.*

*(4) Existing law requires a person to be granted access to a staffed gated community for a reasonable time period for the purpose of performing lawful service of process, as specified.*

*This bill would also authorize access to a staffed gated community for the purpose of serving a subpoena.*

*(5) Existing law also governs offers by a party to compromise a dispute that is to be resolved by arbitration.*

*This bill would require a written offer to compromise to include a provision that allows the accepting party to indicate acceptance of the offer by signing a statement that the offer is accepted, as specified. The bill would also require that any acceptance of the offer, whether made on the document containing the offer or on a separate document of acceptance, to be in writing and signed.*

*(6) Existing law imposes a surcharge of \$20 for court security in addition to the total court fees collected pursuant to specified provisions and also authorizes the collection of an additional surcharge in certain cases filed from January 1, 2004 to June 30, 2005, inclusive.*

This bill would extend that additional surcharge until June 30, 2006, as specified.

(7) Existing law requires the Judicial Council to provide for the representation or defense of judicial officers and employees by the county counsel or Attorney General, and authorizes such representation or defense of the Judicial Council. Existing law also provides that this representation or defense shall not be the sole basis for the disqualification of a judicial officer or employee in an unrelated action.

This bill would add justices and the Administrative Office of the Courts to the judicial officers to which this provision applies, and specify that representation of the Judicial Council of the Administrative Office of the Courts shall not be the sole basis for disqualification of a judicial officer or employee from an unrelated action.

(8) Existing law sets forth the procedure for filing a claim against a statewide public entity, as specified.

This bill would specify that these procedures also apply to claims against a judicial branch entity.

(9) Existing law authorizes a court in a proceeding for dissolution of marriage or legal separation and prior to the determination of a motion for a change of venue, to consider and make all necessary and proper orders in connection with motions for allowance of temporary spousal support, support of children, and counsel fees and costs.

This bill would revise that provision to additionally apply to proceedings under the Uniform Parentage Act and to authorize the court to consider and determine motions to determine custody of and visitation with children in any of the proceedings to which the provision applies prior to determining the motion for a change of venue.

~~Existing law authorizes a court to issue an ex parte order enjoining a person from engaging in specified acts of abuse against a parent, legal guardian, or current caretaker of a child simultaneously with an order enjoining a person from engaging in those acts against the child.~~

~~This bill would delete the requirement that the court issue that order simultaneously.~~

(10) *Existing law requires workers' compensation administrative law judges, as specified, to subscribe to the Code of Judicial Ethics and to not engage in conduct contrary to that code or to the*

*commentary to the Code of Judicial Ethics made by the California Judges Association.*

*This bill would delete the reference to the California Judges Association within that provision.*

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

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

1     *SECTION 1. Section 43.55 of the Civil Code is amended to*  
2 *read:*

3     43.55. (a) There shall be no liability on the part of, and no  
4 cause of action shall arise against, any peace officer who makes  
5 an arrest pursuant to a warrant of arrest regular upon its face if  
6 the peace officer in making the arrest acts without malice and in  
7 the reasonable belief that the person arrested is the one referred  
8 to in the warrant.

9     (b) *As used in this section, a “warrant of arrest regular upon*  
10 *its face” includes both of the following:*

11     (1) *A paper arrest warrant that has been issued pursuant to a*  
12 *judicial order.*

13     (2) *A judicial order that is entered into an automated warrant*  
14 *system by law enforcement or court personnel authorized to*  
15 *make those entries at or near the time the judicial order is made.*

16     ~~SECTION 1.~~

17     *SEC. 2. Section 116.330 of the Code of Civil Procedure is*  
18 *amended to read:*

19     116.330. (a) When a claim is filed, the clerk shall schedule  
20 the case for hearing and shall issue an order directing the parties  
21 to appear at the time set for the hearing with witnesses and  
22 documents to prove their claim or defense. The case shall be  
23 scheduled for hearing no earlier than 20 days but not more than  
24 70 days from the date of the order.

25     (b) In lieu of the method of setting the case for hearing  
26 described in subdivision (a), at the time a claim is filed the clerk  
27 may do all of the following:

28     (1) Cause a copy of the claim to be mailed to the defendant by  
29 any form of mail providing for a return receipt.

30     (2) On receipt of proof that the claim was served as provided  
31 in paragraph (1), issue an order scheduling the case for hearing in

1 accordance with subdivision (a) and directing the parties to  
2 appear at the time set for the hearing with witnesses and  
3 documents to prove their claim or defense.

4 (3) Cause a copy of the order setting the case for hearing and  
5 directing the parties to appear, to be served upon the parties by  
6 any form of mail providing for a return receipt.

7 ~~SEC. 2.~~

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

10 116.340. (a) Service of the claim and order on the defendant  
11 may be made by any one of the following methods:

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

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

17 (3) The plaintiff may cause service of a copy of the claim and  
18 order to be made by substituted service as provided in  
19 subdivision (a) or (b) of Section 415.20 without the need to  
20 attempt personal service on the defendant. For these purposes,  
21 substituted service as provided in subdivision (b) of Section  
22 415.20 may be made at the office of the sheriff or marshal who  
23 shall deliver a copy of the claim and order to any person  
24 authorized by the defendant to receive service, as provided in  
25 Section 416.90, who is at least 18 years of age, and thereafter  
26 mailing a copy of the claim and order to the defendant's usual  
27 mailing address.

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

31 (b) Proof of service of the claim and order shall be filed with  
32 the small claims court at least five days before the hearing.

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

38 (d) Service by the methods described in subdivision (a) shall  
39 be deemed complete on the date that the defendant signs the mail  
40 return receipt, on the date of the personal service, as provided in

1 Section 415.20, or as established by other competent evidence,  
2 whichever applies to the method of service used.

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

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

10 (g) A nonresident owner or operator of a motor vehicle  
11 involved in an accident within this state may be served pursuant  
12 to the provisions on constructive service in Sections 17450 to  
13 17461, inclusive, of the Vehicle Code without regard to whether  
14 the defendant was a nonresident at the time of the accident or  
15 when the claim was filed. Service shall be made by serving both  
16 the Director of the California Department of Motor Vehicles and  
17 the defendant, and may be made by any of the methods  
18 authorized by this chapter or by registered mail as authorized by  
19 Section 17454 or 17455 of the Vehicle Code.

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

26 ~~SEC. 3.~~

27 *SEC. 4.* Section 116.725 of the Code of Civil Procedure is  
28 repealed.

29 ~~SEC. 4.~~

30 *SEC. 5.* Section 116.725 is added to the Code of Civil  
31 Procedure, to read:

32 116.725. (a) A motion to correct a clerical error in a judgment  
33 or to set aside and vacate a judgment on the ground of an  
34 incorrect or erroneous legal basis for the decision may be made  
35 as follows:

36 (1) By the court on its own motion at any time.

37 (2) By a party within 30 days after the clerk mails notice of  
38 entry of judgment to the parties.

1 (b) Each party may file only one motion to correct a clerical  
2 error or to set aside and vacate the judgment on the ground of an  
3 incorrect or erroneous legal basis for the decision.

4 ~~SEC. 5.~~

5 *SEC. 6.* Section 116.780 of the Code of Civil Procedure is  
6 amended to read:

7 116.780. (a) The judgment of the superior court after a  
8 hearing on appeal is final and not appealable.

9 (b) Article 6 (commencing with Section 116.610) on  
10 judgments of the small claims court applies to judgments of the  
11 superior court after a hearing on appeal, except as provided in  
12 subdivisions (c) and (d).

13 (c) For good cause and where necessary to achieve substantial  
14 justice between the parties, the superior court may award a party  
15 to an appeal reimbursement of (1) attorney's fees actually and  
16 reasonably incurred in connection with the appeal, not exceeding  
17 one hundred fifty dollars (\$150), and (2) actual loss of earnings  
18 and expenses of transportation and lodging actually and  
19 reasonably incurred in connection with the appeal, not exceeding  
20 one hundred fifty dollars (\$150).

21 *SEC. 7. Section 128.7 of the Code of Civil Procedure is*  
22 *amended to read:*

23 128.7. (a) Every pleading, petition, written notice of motion,  
24 or other similar paper shall be signed by at least one attorney of  
25 record in the attorney's individual name, or, if the party is not  
26 represented by an attorney, shall be signed by the party. Each  
27 paper shall state the signer's address and telephone number, if  
28 any. Except when otherwise provided by law, pleadings need not  
29 be verified or accompanied by affidavit. An unsigned paper shall  
30 be stricken unless omission of the signature is corrected promptly  
31 after being called to the attention of the attorney or party.

32 (b) By presenting to the court, whether by signing, filing,  
33 submitting, or later advocating, a pleading, petition, written  
34 notice of motion, or other similar paper, an attorney or  
35 unrepresented party is certifying that to the best of the person's  
36 knowledge, information, and belief, formed after an inquiry  
37 reasonable under the circumstances, all of the following  
38 conditions are met:

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

4 (2) The claims, defenses, and other legal contentions therein  
5 are warranted by existing law or by a nonfrivolous argument for  
6 the extension, modification, or reversal of existing law or the  
7 establishment of new law.

8 (3) The allegations and other factual contentions have  
9 evidentiary support or, if specifically so identified, are likely to  
10 have evidentiary support after a reasonable opportunity for  
11 further investigation or discovery.

12 (4) The denials of factual contentions are warranted on the  
13 evidence or, if specifically so identified, are reasonably based on  
14 a lack of information or belief.

15 (c) If, after notice and a reasonable opportunity to respond, the  
16 court determines that subdivision (b) has been violated, the court  
17 may, subject to the conditions stated below, impose an  
18 appropriate sanction upon the attorneys, law firms, or parties that  
19 have violated subdivision (b) or are responsible for the violation.  
20 In determining what sanctions, if any, should be ordered, the  
21 court shall consider whether a party seeking sanctions has  
22 exercised due diligence.

23 (1) A motion for sanctions under this section shall be made  
24 separately from other motions or requests and shall describe the  
25 specific conduct alleged to violate subdivision (b). Notice of  
26 motion shall be served as provided in Section 1010, but shall not  
27 be filed with or presented to the court unless, within 21 days after  
28 service of the motion, or any other period as the court may  
29 prescribe, the challenged paper, claim, defense, contention,  
30 allegation, or denial is not withdrawn or appropriately corrected.  
31 If warranted, the court may award to the party prevailing on the  
32 motion the reasonable expenses and attorney's fees incurred in  
33 presenting or opposing the motion. Absent exceptional  
34 circumstances, a law firm shall be held jointly responsible for  
35 violations committed by its partners, associates, and employees.

36 (2) On its own motion, the court may enter an order describing  
37 the specific conduct that appears to violate subdivision (b) and  
38 directing an attorney, law firm, or party to show cause why it has  
39 not violated subdivision (b), unless, within 21 days of service of  
40 the order to show cause, the challenged paper, claim, defense,

1 contention, allegation, or denial is withdrawn or appropriately  
2 corrected.

3 (d) A sanction imposed for violation of subdivision (b) shall  
4 be limited to what is sufficient to deter repetition of this conduct  
5 or comparable conduct by others similarly situated. Subject to the  
6 limitations in paragraphs (1) and (2), the sanction may consist of,  
7 or include, directives of a nonmonetary nature, an order to pay a  
8 penalty into court, or, if imposed on motion and warranted for  
9 effective deterrence, an order directing payment to the movant of  
10 some or all of the reasonable attorney's fees and other expenses  
11 incurred as a direct result of the violation.

12 (1) Monetary sanctions may not be awarded against a  
13 represented party for a violation of paragraph (2) of subdivision  
14 (b).

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

19 (e) When imposing sanctions, the court shall describe the  
20 conduct determined to constitute a violation of this section and  
21 explain the basis for the sanction imposed.

22 (f) In addition to any award pursuant to this section for  
23 conduct described in subdivision (b), the court may assess  
24 punitive damages against the plaintiff upon a determination by  
25 the court that the plaintiff's action was an action maintained by a  
26 person convicted of a felony against the person's victim, or the  
27 victim's heirs, relatives, estate, or personal representative, for  
28 injuries arising from the acts for which the person was convicted  
29 of a felony, and that the plaintiff is guilty of fraud, oppression, or  
30 malice in maintaining the action.

31 (g) This section shall not apply to disclosures and discovery  
32 requests, responses, objections, and motions.

33 (h) A motion for sanctions brought by a party or a party's  
34 attorney primarily for an improper purpose, such as to harass or  
35 to cause unnecessary delay or needless increase in the cost of  
36 litigation, shall itself be subject to a motion for sanctions. It is the  
37 intent of the Legislature that courts shall vigorously use its  
38 sanctions authority to deter that improper conduct or comparable  
39 conduct by others similarly situated.

1 (i) This section shall apply to a complaint or petition filed on  
 2 or after January 1, 1995, and any other pleading, written notice of  
 3 motion, or other similar paper filed in that matter.

4 ~~(j) This section shall remain in effect only until January 1,~~  
 5 ~~2006, and as of that date is repealed, unless a later enacted~~  
 6 ~~statute, that is enacted before January 1, 2006, deletes or extends~~  
 7 ~~that date.~~

8 ~~SEC. 6.~~

9 *SEC. 8.* Section 396b of the Code of Civil Procedure is  
 10 amended to read:

11 396b. (a) Except as otherwise provided in Section 396a, if an  
 12 action or proceeding is commenced in a court having jurisdiction  
 13 of the subject matter thereof, other than the court designated as  
 14 the proper court for the trial thereof, under this title, the action  
 15 may, notwithstanding, be tried in the court where commenced,  
 16 unless the defendant, at the time he or she answers, demurs, or  
 17 moves to strike, or, at his or her option, without answering,  
 18 demurring, or moving to strike and within the time otherwise  
 19 allowed to respond to the complaint, files with the clerk, a notice  
 20 of motion for an order transferring the action or proceeding to the  
 21 proper court, together with proof of service, upon the adverse  
 22 party, of a copy of those papers. Upon the hearing of the motion  
 23 the court shall, if it appears that the action or proceeding was not  
 24 commenced in the proper court, order the action or proceeding  
 25 transferred to the proper court.

26 (b) In its discretion, the court may order the payment to the  
 27 prevailing party of reasonable expenses and attorney’s fees  
 28 incurred in making or resisting the motion to transfer whether or  
 29 not that party is otherwise entitled to recover his or her costs of  
 30 action. In determining whether that order for expenses and fees  
 31 shall be made, the court shall take into consideration (1) whether  
 32 an offer to stipulate to change of venue was reasonably made and  
 33 rejected, and (2) whether the motion or selection of venue was  
 34 made in good faith given the facts and law the party making the  
 35 motion or selecting the venue knew or should have known. As  
 36 between the party and his or her attorney, those expenses and  
 37 fees shall be the personal liability of the attorney not chargeable  
 38 to the party. Sanctions shall not be imposed pursuant to this  
 39 subdivision except on notice contained in a party’s papers, or on

1 the court's own noticed motion, and after opportunity to be  
2 heard.

3 (c) The court in a proceeding for dissolution of marriage or  
4 legal separation or under the Uniform Parentage Act (Part 3  
5 (commencing with Section 7600) of Division 12 of the Family  
6 Code) may, prior to the determination of the motion to transfer,  
7 consider and determine motions for allowance of temporary  
8 spousal support, support of children, and counsel fees and costs,  
9 and motions to determine custody of and visitation with children,  
10 and may make all necessary and proper orders in connection  
11 therewith.

12 (d) In any case, if an answer is filed, the court may consider  
13 opposition to the motion to transfer, if any, and may retain the  
14 action in the county where commenced if it appears that the  
15 convenience of the witnesses or the ends of justice will thereby  
16 be promoted.

17 (e) If the motion to transfer is denied, the court shall allow the  
18 defendant time to move to strike, demur, or otherwise plead if the  
19 defendant has not previously filed a response.

20 *SEC. 9. Section 415.21 of the Code of Civil Procedure is*  
21 *amended to read:*

22 415.21. (a) Notwithstanding any other provision of law, any  
23 person shall be granted access to a gated community for a  
24 reasonable period of time for the purpose of performing lawful  
25 service of process *or service of a subpoena*, upon identifying to  
26 the guard the person or persons to be served, and upon displaying  
27 a current driver's license or other identification, and one of the  
28 following:

29 (1) A badge or other confirmation that the individual is acting  
30 in his or her capacity as a representative of a county sheriff or  
31 marshal.

32 (2) Evidence of current registration as a process server  
33 pursuant to Chapter 16 (commencing with Section 22350) of  
34 Division 8 of the Business and Professions Code.

35 (b) This section shall only apply to a gated community ~~which~~  
36 *that* is staffed at the time service of process is attempted by a  
37 guard or other security personnel assigned to control access to  
38 the community.

39 *SEC. 10. Section 425.115 of the Code of Civil Procedure is*  
40 *amended to read:*

1 425.115. (a) As used in this section:  
 2 (1) “Complaint” includes a cross-complaint.  
 3 (2) “Plaintiff” includes a cross-complainant.  
 4 (3) “Defendant” includes a cross-defendant.  
 5 (b) The plaintiff preserves the right to seek punitive damages  
 6 pursuant to Section 3294 of the Civil Code on a default judgment  
 7 by serving upon the defendant the following statement, or its  
 8 substantial equivalent:

9  
 10 NOTICE TO \_\_\_\_\_:  
 11 (Insert name of defendant or cross-defendant)  
 12 \_\_\_\_\_ reserves the right to seek  
 13 (Insert name of plaintiff or  
 14 cross-complainant)  
 15 \$ \_\_\_\_\_ in punitive damages  
 16 (Insert dollar amount)  
 17 when \_\_\_\_\_ seeks a judgment in the  
 18 (Insert name of plaintiff or  
 19 cross-complainant)  
 20 suit filed against you.  
 21 \_\_\_\_\_ (date)  
 22 (Insert name of attorney or  
 23 party appearing in propria persona)  
 24

25 (c) Where the plaintiff seeks punitive damages pursuant to  
 26 Section 3294 of the Civil Code, and where the defendant appears  
 27 in the action, the plaintiff shall not be limited to the amount set  
 28 forth in the statement served on the defendant pursuant to this  
 29 section.

30 (d) A plaintiff who serves a statement on the defendant  
 31 pursuant to this section shall be deemed to have complied with  
 32 Sections 425.10 and 580 of this code and Section 3295 of the  
 33 Civil Code.

34 (e) The plaintiff may serve a statement upon the defendant  
 35 pursuant to this section, and may serve the statement as part of  
 36 the statement required by Section 425.11.

37 (f) The plaintiff shall serve the statement upon the defendant  
 38 pursuant to this section before a default may be taken, where the  
 39 motion for default judgment includes a request for punitive  
 40 damages.

1 (g) The statement referred to in subdivision (b) shall be served  
2 by one of the following methods:

3 (1) If the party has not appeared in the action, the ~~motion~~  
4 *statement* shall be served in the same manner as a summons  
5 pursuant to Article 3 (commencing with Section 415.10) of  
6 Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.

7 (2) If the party has appeared in the action, the ~~motion~~  
8 *statement* shall be served upon his or her attorney, or upon the  
9 party if he or she has appeared without an attorney, either in the  
10 same manner as a summons pursuant to Article 3 (commencing  
11 with Section 415.10) of Chapter 4 of Title 5 of the Code of Civil  
12 ~~Procedure~~ or in the manner provided by Chapter 5 (commencing  
13 with Section 1010) of Title 14 of Part 2 of the Code of Civil  
14 ~~Procedure~~.

15 ~~SEC. 7.~~

16 *SEC. 11.* Section 998 of the Code of Civil Procedure is  
17 amended to read:

18 998. (a) The costs allowed under Sections 1031 and 1032  
19 shall be withheld or augmented as provided in this section.

20 (b) Not less than 10 days prior to commencement of trial or  
21 arbitration (as provided in Section 1281 or 1295) of a dispute to  
22 be resolved by arbitration, any party may serve an offer in  
23 writing upon any other party to the action to allow judgment to  
24 be taken or an award to be entered in accordance with the terms  
25 and conditions stated at that time. *The written offer shall include,*  
26 *after the statement of the offer containing the terms and*  
27 *conditions of the judgment, a provision that allows the accepting*  
28 *party to indicate acceptance of the offer by signing a statement*  
29 *that the offer is accepted. Any acceptance of the offer, whether*  
30 *made on the document containing the offer or on a separate*  
31 *document of acceptance, shall be in writing and shall be signed.*

32 (1) If the offer is accepted, the offer with proof of acceptance  
33 shall be filed and the clerk or the judge shall enter judgment  
34 accordingly. In the case of an arbitration, the offer with proof of  
35 acceptance shall be filed with the arbitrator or arbitrators who  
36 shall promptly render an award accordingly.

37 (2) If the offer is not accepted prior to trial or arbitration,  
38 within 30 days after it is made, whichever occurs first, it shall be  
39 deemed withdrawn, and cannot be given in evidence upon the  
40 trial or arbitration.

1 (3) For purposes of this subdivision, a trial or arbitration shall  
2 be deemed to be actually commenced at the beginning of the  
3 opening statement of the plaintiff or counsel, and if there is no  
4 opening statement, then at the time of the administering of the  
5 oath or affirmation to the first witness, or the introduction of any  
6 evidence.

7 (c) (1) If an offer made by a defendant is not accepted and the  
8 plaintiff fails to obtain a more favorable judgment or award, the  
9 plaintiff shall not recover his or her postoffer costs and shall pay  
10 the defendant's costs from the time of the offer. In addition, in  
11 any action or proceeding other than an eminent domain action,  
12 the court or arbitrator, in its discretion, may require the plaintiff  
13 to pay a reasonable sum to cover costs of the services of expert  
14 witnesses, who are not regular employees of any party, actually  
15 incurred and reasonably necessary in either, or both, preparation  
16 for trial or arbitration, or during trial or arbitration, of the case by  
17 the defendant.

18 (2) (A) In determining whether the plaintiff obtains a more  
19 favorable judgment, the court or arbitrator shall exclude the  
20 postoffer costs.

21 (B) It is the intent of the Legislature in enacting subparagraph  
22 (A) to supersede the holding in *Encinitas Plaza Real v. Knight*,  
23 209 Cal. App.3d 996, that attorney's fees awarded to the  
24 prevailing party were not costs for purposes of this section but  
25 were part of the judgment.

26 (d) If an offer made by a plaintiff is not accepted and the  
27 defendant fails to obtain a more favorable judgment or award in  
28 any action or proceeding other than an eminent domain action,  
29 the court or arbitrator, in its discretion, may require the defendant  
30 to pay a reasonable sum to cover costs of the services of expert  
31 witnesses, who are not regular employees of any party, actually  
32 incurred and reasonably necessary in either, or both, preparation  
33 for trial or arbitration, or during trial or arbitration, of the case by  
34 the plaintiff, in addition to plaintiff's costs.

35 (e) If an offer made by a defendant is not accepted and the  
36 plaintiff fails to obtain a more favorable judgment or award, the  
37 costs under this section, from the time of the offer, shall be  
38 deducted from any damages awarded in favor of the plaintiff. If  
39 the costs awarded under this section exceed the amount of the  
40 damages awarded to the plaintiff the net amount shall be awarded

1 to the defendant and judgment or award shall be entered  
2 accordingly.

3 (f) Police officers shall be deemed to be expert witnesses for  
4 the purposes of this section; plaintiff includes a  
5 cross-complainant and defendant includes a cross-defendant. Any  
6 judgment or award entered pursuant to this section shall be  
7 deemed to be a compromise settlement.

8 (g) This chapter does not apply to either of the following:

9 (1) An offer that is made by a plaintiff in an eminent domain  
10 action.

11 (2) Any enforcement action brought in the name of the people  
12 of the State of California by the Attorney General, a district  
13 attorney, or a city attorney, acting as a public prosecutor.

14 (h) The costs for services of expert witnesses for trial under  
15 subdivisions (c) and (d) shall not exceed those specified in  
16 Section 68092.5 of the Government Code.

17 (i) This section shall not apply to labor arbitrations filed  
18 pursuant to memoranda of understanding under the Ralph C.  
19 Dills Act (Chapter 10.3 (commencing with Section 3512) of  
20 Division 4 of Title 1 of the Government Code).

21 ~~SEC. 8.~~

22 *SEC. 12.* Section 811.9 of the Government Code is amended  
23 to read:

24 811.9. (a) Notwithstanding any other provision of law,  
25 judges, subordinate judicial officers, and court executive officers  
26 of the superior courts are state officers for purposes of Part 1  
27 (commencing with Section 810) to Part 7 (commencing with  
28 Section 995), inclusive, and trial court employees are employees  
29 of the trial court for purposes of Part 1 (commencing with  
30 Section 810) to Part 7 (commencing with Section 995), inclusive.  
31 The Judicial Council shall provide for representation, defense,  
32 and indemnification of ~~such~~ *those* individuals and the court  
33 pursuant to Part 1 (commencing with Section 810) to Part 7  
34 (commencing with Section 995), inclusive. The Judicial Council  
35 shall provide for ~~such~~ *that* representation or defense through the  
36 county counsel, the Attorney General, or other counsel. The  
37 county counsel and the Attorney General may, but are not  
38 required to, provide ~~such~~ representation or defense for the  
39 Judicial Council ~~or the Administrative Office of the Courts~~. The  
40 fact that a justice, judge, subordinate judicial officer, court

1 executive officer, court employee, the court, the Judicial Council,  
2 or the Administrative Office of the Courts is or was represented  
3 or defended by the county counsel, the Attorney General, or  
4 other counsel shall not be the sole basis for a judicial  
5 determination of disqualification of a justice, judge, subordinate  
6 judicial officer, the county counsel, the Attorney General, or  
7 other counsel in unrelated actions.

8 (b) To promote the cost-effective, prompt, and fair resolution  
9 of actions, proceedings, and claims affecting the trial courts, the  
10 Judicial Council shall adopt rules of court requiring the  
11 Administrative Office of the Courts to manage actions,  
12 proceedings, and claims that affect the trial courts and involve  
13 superior courts, superior court judges, subordinate judicial  
14 officers, court executive officers, or trial court employees in  
15 consultation with the affected courts and individuals. The  
16 Administrative Office of the Courts' management of these  
17 actions, proceedings, and claims shall include, but not be limited  
18 to, case management and administrative responsibilities such as  
19 selection of counsel and making strategic and settlement  
20 decisions.

21 (c) Nothing in this section shall be construed to affect the  
22 employment status of subordinate judicial officers, court  
23 executive officers, and trial court employees related to any  
24 matters not covered by subdivision (a).

25 ~~SEC. 9.~~

26 *SEC. 13.* Section 905 of the Government Code is amended to  
27 read:

28 905. There shall be presented in accordance with Chapter 1  
29 (commencing with Section 900) and Chapter 2 (commencing  
30 with Section 910) of this part all claims for money or damages  
31 against local public entities except:

32 (a) Claims under the Revenue and Taxation Code or other  
33 statute prescribing procedures for the refund, rebate, exemption,  
34 cancellation, amendment, modification or adjustment of any tax,  
35 assessment, fee or charge or any portion thereof, or of any  
36 penalties, costs or charges related thereto.

37 (b) Claims in connection with which the filing of a notice of  
38 lien, statement of claim, or stop notice is required under any  
39 provision of law relating to mechanics', laborers' or  
40 materialmen's liens.

1 (c) Claims by public employees for fees, salaries, wages,  
2 mileage or other expenses and allowances.

3 (d) Claims for which the worker's compensation authorized by  
4 Division 4 (commencing with Section 3200) of the Labor Code is  
5 the exclusive remedy.

6 (e) Applications or claims for any form of public assistance  
7 under the Welfare and Institutions Code or other provisions of  
8 law relating to public assistance programs, and claims for goods,  
9 services, provisions or other assistance rendered for or on behalf  
10 of any recipient of any form of public assistance.

11 (f) Applications or claims for money or benefits under any  
12 public retirement or pension system.

13 (g) Claims for principal or interest upon any bonds, notes,  
14 warrants, or other evidences of indebtedness.

15 (h) Claims that relate to a special assessment constituting a  
16 specific lien against the property assessed and that are payable  
17 from the proceeds of the assessment, by offset of a claim for  
18 damages against it or by delivery of any warrant or bonds  
19 representing it.

20 (i) Claims by the state or by a state department or agency or by  
21 another local public entity or by a judicial branch entity.

22 (j) Claims arising under any provision of the Unemployment  
23 Insurance Code, including but not limited to claims for money or  
24 benefits, or for refunds or credits of employer or worker  
25 contributions, penalties, or interest, or for refunds to workers of  
26 deductions from wages in excess of the amount prescribed.

27 (k) Claims for the recovery of penalties or forfeitures made  
28 pursuant to Article 1 (commencing with Section 1720) of  
29 Chapter 1 of Part 7 of Division 2 of the Labor Code.

30 (l) Claims governed by the Pedestrian Mall Law of 1960, Part  
31 1 (commencing with Section 11000) of Division 13 of the Streets  
32 and Highways Code.

33 ~~SEC. 10.~~

34 *SEC. 14.* Section 905.7 is added to the Government Code, to  
35 read:

36 905.7. All claims against a judicial branch entity for money  
37 or damages based upon an express contract or for an injury for  
38 which the judicial branch entity is liable shall be presented in  
39 accordance with Chapter 1 (commencing with Section 900) and

1 Chapter 2 (commencing with Section 910) of this part. The  
2 provisions of this section are declaratory of existing law.

3 ~~SEC. 11.~~

4 *SEC. 15.* Section 910.4 of the Government Code is amended  
5 to read:

6 910.4. The board shall provide forms specifying the  
7 information to be contained in claims against the state or a  
8 judicial branch entity. The person presenting a claim shall use the  
9 form in order that his or her claim is deemed in conformity with  
10 Sections 910 and 910.2. A claim may be returned to the person if  
11 it was not presented using the form. Any claim returned to a  
12 person may be resubmitted using the appropriate form.

13 ~~SEC. 12.~~

14 *SEC. 16.* Section 69926.5 of the Government Code is  
15 amended to read:

16 69926.5. (a) To ensure and maintain adequate funding for  
17 court security, a surcharge of twenty dollars (\$20) is added to the  
18 total fee collected pursuant to Section 26820.4, 26826, 26827,  
19 72055, or 72056.

20 (b) In addition to the surcharge in subdivision (a), a surcharge  
21 of twenty dollars (\$20) is added to the total filing fee collected in  
22 a case pursuant to Section 26820.4, 26826, or 26827, a surcharge  
23 of twenty dollars (\$20) is added to the total filing fee collected in  
24 a limited civil case pursuant to Section 72055 or 72056 where the  
25 amount demanded, excluding attorney's fees and costs, is in  
26 excess of ten thousand dollars (\$10,000), and a surcharge of ten  
27 dollars (\$10) is added to the total filing fee collected in a limited  
28 civil case pursuant to Section 72055 or 72056 where the amount  
29 demanded, excluding attorney's fees and costs, is ten thousand  
30 dollars (\$10,000), or less. The surcharges in this subdivision shall  
31 be collected in cases filed from January 1, 2004, to June 30,  
32 2006, inclusive. The purpose of this surcharge is to stabilize  
33 funding for court security at the current level and is not intended  
34 to increase the funding available for court security in the  
35 2004-05 and 2005-06 fiscal years. This subdivision shall become  
36 inoperative on July 1, 2006, or upon the enactment of a uniform  
37 filing fee, whichever is earlier.

38 (c) Notwithstanding any other provision of law, the surcharges  
39 collected pursuant to subdivisions (a) and (b) shall all be  
40 deposited in a special account in the county treasury, and

1 transmitted therefrom monthly to the Controller for deposit in the  
2 Trial Court Trust Fund.

3 ~~SEC. 13. Section 213.5 of the Welfare and Institutions Code~~  
4 ~~is amended to read:~~

5 ~~213.5. (a) After a petition has been filed pursuant to Section~~  
6 ~~311 to declare a child a dependent child of the juvenile court, and~~  
7 ~~until the time that the petition is dismissed or dependency is~~  
8 ~~terminated, upon application in the manner provided by Section~~  
9 ~~527 of the Code of Civil Procedure, the juvenile court may issue~~  
10 ~~ex parte orders (1) enjoining any person from molesting,~~  
11 ~~attacking, striking, sexually assaulting, stalking, or battering the~~  
12 ~~child or any other child in the household; (2) excluding any~~  
13 ~~person from the dwelling of the person who has care, custody,~~  
14 ~~and control of the child; and (3) enjoining any person from~~  
15 ~~behavior, including contacting, threatening, or disturbing the~~  
16 ~~peace of the child, that the court determines is necessary to~~  
17 ~~effectuate orders under paragraph (1) or (2). The court may also~~  
18 ~~issue an ex parte order enjoining any person from contacting,~~  
19 ~~threatening, molesting, attacking, striking, sexually assaulting,~~  
20 ~~stalking, battering, or disturbing the peace of any parent, legal~~  
21 ~~guardian, or current caretaker of the child, regardless of whether~~  
22 ~~the child resides with that parent, legal guardian, or current~~  
23 ~~caretaker, upon application in the manner provided by Section~~  
24 ~~527 of the Code of Civil Procedure.~~

25 ~~(b) After a petition has been filed pursuant to Section 601 or~~  
26 ~~602 to declare a child a ward of the juvenile court, and until the~~  
27 ~~time that the petition is dismissed or wardship is terminated,~~  
28 ~~upon application in the manner provided by Section 527 of the~~  
29 ~~Code of Civil Procedure, the juvenile court may issue ex parte~~  
30 ~~orders (1) enjoining any person from molesting, attacking,~~  
31 ~~threatening, sexually assaulting, stalking, or battering the child or~~  
32 ~~any other child in the household; (2) excluding any person from~~  
33 ~~the dwelling of the person who has care, custody, and control of~~  
34 ~~the child; or (3) enjoining the child from contacting, threatening,~~  
35 ~~stalking, or disturbing the peace of any person the court finds to~~  
36 ~~be at risk from the conduct of the child, or with whom~~  
37 ~~association would be detrimental to the child.~~

38 ~~(c) In the case in which a temporary restraining order is~~  
39 ~~granted without notice, the matter shall be made returnable on an~~  
40 ~~order requiring cause to be shown why the order should not be~~

1 ~~granted, on the earliest day that the business of the court will~~  
2 ~~permit, but not later than 15 days or, if good cause appears to the~~  
3 ~~court, 20 days from the date the temporary restraining order is~~  
4 ~~granted. The court may, on the motion of the person seeking the~~  
5 ~~restraining order, or on its own motion, shorten the time for~~  
6 ~~service on the person to be restrained of the order to show cause.~~  
7 ~~The court may, upon its own motion or the filing of an affidavit~~  
8 ~~by the person seeking the restraining order, find that the person~~  
9 ~~to be restrained could not be served within the time required by~~  
10 ~~law and to reissue an order previously issued and dissolved by~~  
11 ~~the court for failure to serve the person to be restrained. The~~  
12 ~~reissued order shall state on its face the date of expiration of the~~  
13 ~~order. Any hearing pursuant to this section may be held~~  
14 ~~simultaneously with any regularly scheduled hearings held in~~  
15 ~~proceedings to declare a child a dependent child or ward of the~~  
16 ~~juvenile court pursuant to Section 300, 601, or 602, or~~  
17 ~~subsequent hearings regarding the dependent child or ward.~~

18 ~~(d) The juvenile court may issue, upon notice and a hearing,~~  
19 ~~any of the orders set forth in subdivisions (a), (b), and (c). Any~~  
20 ~~restraining order granted pursuant to this subdivision shall~~  
21 ~~remain in effect, in the discretion of the court, not to exceed three~~  
22 ~~years, unless otherwise terminated by the court, extended by~~  
23 ~~mutual consent of all parties to the restraining order, or extended~~  
24 ~~by further order of the court on the motion of any party to the~~  
25 ~~restraining order.~~

26 ~~(e) (1) The juvenile court may issue an order made pursuant~~  
27 ~~to subdivision (a), (c), or (d) excluding a person from a residence~~  
28 ~~or dwelling. This order may be issued for the time and on the~~  
29 ~~conditions that the court determines, regardless of which party~~  
30 ~~holds legal or equitable title or is the lessee of the residence or~~  
31 ~~dwelling.~~

32 ~~(2) The court may issue an order under paragraph (1) only on~~  
33 ~~a showing of all of the following:~~

34 ~~(A) Facts sufficient for the court to ascertain that the party~~  
35 ~~who will stay in the dwelling has a right under color of law to~~  
36 ~~possession of the premises.~~

37 ~~(B) That the party to be excluded has assaulted or threatens to~~  
38 ~~assault the other party or any other person under the care,~~  
39 ~~custody, and control of the other party, or any minor child of the~~  
40 ~~parties or of the other party.~~

1 ~~(C) That physical or emotional harm would otherwise result to~~  
2 ~~the other party, to any person under the care, custody, and control~~  
3 ~~of the other party, or to any minor child of the parties or of the~~  
4 ~~other party.~~

5 ~~(f) Any order issued pursuant to subdivision (a), (b), (c), or (d)~~  
6 ~~shall state on its face the date of expiration of the order.~~

7 ~~(g) The juvenile court shall order any designated person or~~  
8 ~~attorney to mail a copy of any order, or extension, modification,~~  
9 ~~or termination thereof, granted pursuant to subdivision (a), (b),~~  
10 ~~(c), or (d), by the close of the business day on which the order,~~  
11 ~~extension, modification, or termination was granted, and any~~  
12 ~~subsequent proof of service thereof, to each local law~~  
13 ~~enforcement agency designated by the person seeking the~~  
14 ~~restraining order or his or her attorney having jurisdiction over~~  
15 ~~the residence of the person who has care, custody, and control of~~  
16 ~~the child and other locations where the court determines that acts~~  
17 ~~of domestic violence or abuse against the child or children are~~  
18 ~~likely to occur. Each appropriate law enforcement agency shall~~  
19 ~~make available through an existing system for verification,~~  
20 ~~information as to the existence, terms, and current status of any~~  
21 ~~order issued pursuant to subdivision (a), (b), (c), or (d) to any law~~  
22 ~~enforcement officer responding to the scene of reported domestic~~  
23 ~~violence or abuse.~~

24 ~~(h) Any willful and knowing violation of any order granted~~  
25 ~~pursuant to subdivision (a), (b), (c), or (d) shall be a~~  
26 ~~misdemeanor punishable under Section 273.65 of the Penal~~  
27 ~~Code.~~

28 ~~(i) A juvenile court restraining order related to domestic~~  
29 ~~violence issued by a court pursuant to this section shall be issued~~  
30 ~~on forms adopted by the Judicial Council of California and that~~  
31 ~~have been approved by the Department of Justice pursuant to~~  
32 ~~subdivision (i) of Section 6380 of the Family Code. However, the~~  
33 ~~fact that an order issued by a court pursuant to this section was~~  
34 ~~not issued on forms adopted by the Judicial Council and~~  
35 ~~approved by the Department of Justice shall not, in and of itself,~~  
36 ~~make the order unenforceable.~~

37 ~~(j) Information on any juvenile court restraining order related~~  
38 ~~to domestic violence issued by a court pursuant to this section~~  
39 ~~shall be transmitted to the Department of Justice in accordance~~  
40 ~~with subdivision (b) of Section 6380 of the Family Code.~~

1 ~~(k) (1) Prior to a hearing on the issuance or denial of an order~~  
2 ~~under this part, a search shall be conducted as described in~~  
3 ~~subdivision (a) of Section 6306 of the Family Code.~~

4 ~~(2) Prior to deciding whether to issue an order under this part,~~  
5 ~~the court shall consider the following information obtained~~  
6 ~~pursuant to a search conducted under paragraph (1): any~~  
7 ~~conviction for a violent felony specified in Section 667.5 of the~~  
8 ~~Penal Code or a serious felony specified in Section 1192.7 of the~~  
9 ~~Penal Code; any misdemeanor conviction involving domestic~~  
10 ~~violence, weapons, or other violence; any outstanding warrant;~~  
11 ~~parole or probation status; any prior restraining order; and any~~  
12 ~~violation of a prior restraining order.~~

13 ~~(3) (A) If the results of the search conducted pursuant to~~  
14 ~~paragraph (1) indicate that an outstanding warrant exists against~~  
15 ~~the subject of the search, the court shall order the clerk of the~~  
16 ~~court to immediately notify, by the most effective means~~  
17 ~~available, appropriate law enforcement officials of any~~  
18 ~~information obtained through the search that the court determines~~  
19 ~~is appropriate. The law enforcement officials so notified shall~~  
20 ~~take all actions necessary to execute any outstanding warrants or~~  
21 ~~any other actions, as appropriate and as soon as practicable.~~

22 ~~(B) If the results of the search conducted pursuant to~~  
23 ~~paragraph (1) indicate that the subject of the search is currently~~  
24 ~~on parole or probation, the court shall order the clerk of the court~~  
25 ~~to immediately notify, by the most effective means available, the~~  
26 ~~appropriate parole or probation officer of any information~~  
27 ~~obtained through the search that the court determines is~~  
28 ~~appropriate. The parole or probation officer so notified shall take~~  
29 ~~all actions necessary to revoke any parole or probation, or any~~  
30 ~~other actions, with respect to the subject person, as appropriate~~  
31 ~~and as soon as practicable.~~

32 ~~(l) Upon making any order for custody or visitation pursuant~~  
33 ~~to this section, the court shall follow the procedures specified in~~  
34 ~~subdivisions (c) and (d) of Section 6323 of the Family Code.~~

35 *SEC. 17. Section 123.6 of the Labor Code is amended to*  
36 *read:*

37 123.6. (a) All workers' compensation administrative law  
38 judges employed by the administrative director and supervised  
39 by the court administrator shall subscribe to the Code of Judicial  
40 Ethics adopted by the Supreme Court pursuant to subdivision (m)

1 of Section 18 of Article VI of the California Constitution for the  
2 conduct of judges and shall not otherwise, directly or indirectly,  
3 engage in conduct contrary to that code or to the commentary to  
4 the Code of Judicial Ethics ~~made by the California Judges~~  
5 ~~Association.~~

6 In consultation with both the court administrator and the  
7 Commission on Judicial Performance, the administrative director  
8 shall adopt regulations to enforce this section. Existing  
9 regulations shall remain in effect until new regulations based on  
10 the recommendations of the court administrator and the  
11 Commission on Judicial Performance have become effective. To  
12 the extent possible, the rules shall be consistent with the  
13 procedures established by the Commission on Judicial  
14 Performance for regulating the activities of state judges, and, to  
15 the extent possible, with the gift, honoraria, and travel  
16 restrictions on legislators contained in the Political Reform Act  
17 of 1974 (Title 9 (commencing with Section 81000) of the  
18 Government Code). The court administrator shall have the  
19 authority to enforce the rules adopted by the administrative  
20 director.

21 (b) Honoraria or travel allowed by the court administrator, and  
22 not otherwise prohibited by this section in connection with any  
23 public or private conference, convention, meeting, social event,  
24 or like gathering, the cost of which is significantly paid for by  
25 attorneys who practice before the board, may not be accepted  
26 unless the court administrator has provided prior approval in  
27 writing to the workers' compensation administrative law judge  
28 allowing him or her to accept those payments.

29 *SEC. 18. The provisions of this act shall apply prospectively*  
30 *only.*