

## Memorandum 2000-25

### Reclassification of Civil Cases

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In revising the codes to accommodate trial court unification, the Law Revision Commission (with assistance from the Judicial Council and the State Bar) devised a procedure for reclassification of civil cases in a unified superior court. See Code Civ. Proc. §§ 403.010-403.090 & Comments; see also former Code Civ. Proc. §§ 395.9, 399.5. A number of concerns have been raised regarding this new procedure, as reflected in the attached communications (the reclassification provisions and a letter written by Commission staff are included for purposes of context):

	<i>Exhibit pp.</i>
1. Code Civ. Proc. §§ 403.010-403.090 & Comments . . . . .	1
2. Mark Lomax, Alameda County Superior Court (Feb. 3, 2000) . . . . .	6
3. Mark Lomax, Alameda County Superior Court (Feb. 17, 2000) . . . . .	11
4. Barbara Gaal, California Law Revision Commission (March 2, 2000) . . . . .	14
5. Mark Lomax, Alameda County Superior Court (March 10, 2000) . . . . .	16

The concerns raised in these communications are discussed below.

#### BACKGROUND

In a county where the municipal and superior courts have unified, traditional municipal court civil cases (limited civil cases) and traditional superior court civil cases (unlimited civil cases) are heard in the same court but are subject to different procedures. A limited civil case is subject to traditional municipal court procedures; an unlimited civil case is subject to traditional superior court procedures.

The jurisdictional classification of a case (whether it is a limited civil case or an unlimited civil case) is initially determined from the caption of the complaint. Code Civ. Proc. § 422.30 (unless otherwise noted, all further statutory references are to the Code of Civil Procedure). Under specified circumstances, a case may be reclassified, either through amending the complaint or other initial pleading

(Section 403.020), filing a cross-complaint (Section 403.030), or granting a motion for reclassification (Section 403.040).

The original provisions governing reclassification were former Sections 395.9 and 399.5, which were enacted in late 1998 as part of the Commission's urgency legislation implementing trial court unification. As part of the Commission's efforts to minimize procedural disparities between unified court systems and non-unified court systems, these provisions were modeled on the provision governing transfer for lack of subject matter jurisdiction (Section 396). The Commission recognized, however, that reclassification did not fit cleanly into any existing procedural category.

Former Sections 395.9 and 399.5 were repealed in 1999 as part of the Commission's trial court unification clean-up bill. They were replaced by a new chapter of the Code of Civil Procedure, entitled "Reclassification of Civil Actions and Proceedings" (Sections 403.010-403.090). The new provisions went into effect immediately upon enactment last September. Although these provisions cover basic aspects of reclassification, some matters were deliberately left to the development of court rules.

The Judicial Council's Civil and Small Claims Committee has formed a working group to study reclassification, but has not yet promulgated any rules relating to reclassification. In the meantime, courts have raised a number of issues regarding reclassification, including some suggestions for refinement of the new statutory provisions.

#### RECLASSIFICATION FEES

Several issues relate to the fees for reclassification:

#### **Fees When a Limited Civil Case is Reclassified to an Unlimited Civil Case By Filing a Cross-Complaint**

Mark Lomax (Management Analyst, Alameda County Superior Court) questions what fees are due where a limited civil case is reclassified as an unlimited civil case by filing a cross-complaint that exceeds the amount-in-controversy for a limited civil case:

Is the cross-complainant required to pay just the \$30 reclassification fee on the cross-complaint (\$75 [filing fee for a cross-complaint in an unlimited case] minus \$45 [filing fee for a cross-complaint in a limited case]), or must that party pay, in addition,

the difference between the filing fee paid for a complaint in an unlimited case and the filing fee for a complaint in a limited case? If the answer to this question is that the cross-complainant pays only the \$30 cross-complaint reclassification fee, then does that mean that the plaintiff is responsible for paying the reclassification fee on the complaint (which he or she has no interest in paying, since he or she would probably prefer to keep the case classified as limited)?

(Exhibit p. 11.) Mr. Lomax states that the “new reclassification statutes are not very clear on this point.” (*Id.* at 12.)

Under Section 403.050(b), however, if “an action or proceeding is reclassified by filing ... a cross-complaint pursuant to Section 403.030, the reclassification fees shall be determined as if the court had granted a motion for reclassification.” Section 403.050(a) specifies how to calculate the reclassification fees if the court grants a motion for reclassification:

403.050. Unless the court otherwise directs:

(a) If a court grants a motion for reclassification, the reclassification fees shall be determined as follows:

(1) If a party misclassifies a case as a limited civil case and the case is reclassified, the party shall pay as a reclassification fee the difference between the fee paid for filing the first paper in a limited civil case and the fee for filing the first paper in a case other than a limited civil case. A similar adjustment shall be made for other fees paid before reclassification. Each party shall pay for reclassification of that party's pleadings, but the Judicial Council may prescribe rules governing the manner of making payment and consequences of failure to make payment.

(2) If a party fails to classify a case as a limited civil case and the case is reclassified, the party shall not be required to pay a new fee for filing the first paper in a limited civil case, but the party is not entitled to a refund of the difference between the fee for filing the first paper in a case other than a limited civil case and the fee for filing the first paper in a limited civil case. Other fees paid before reclassification shall be handled in the same manner.

Mr. Lomax states that neither subdivision (a)(1) nor subdivision (a)(2) addresses his cross-complaint scenario. (*Id.*)

But the scenario involves reclassification of a limited civil case to an unlimited civil case, as in subdivision (a)(1). Thus, where a limited civil case is reclassified as an unlimited civil case by filing a cross-complaint, the reclassification fees are to be determined as in subdivision (a)(1). For each pleading, the amount due is

the difference between the filing fee for an unlimited civil case and the corresponding filing fee for a limited civil case. The Commission's Comment eliminates any doubt that this approach is meant to apply:

Under subdivision (b), if a limited civil case is reclassified by filing an amended complaint pursuant to Section 403.020, and the defendant has already answered the original complaint, the reclassification fees include, for example, the difference between the fee for filing the defendant's first paper in a limited civil case (Gov't Code § 72056) and the fee for filing the defendant's first paper in a case other than a limited civil case (Gov't Code § 26826). **The same approach applies where a cross-complainant reclassifies a limited civil case by filing a cross-complaint pursuant to Section 403.030.**

(Emphasis added.)

Mr. Lomax does not seriously question that the reclassification fees are to be calculated on a pleading-by-pleading basis based on the difference between the filing fee for an unlimited civil case and the corresponding filing fee for a limited civil case. In asking who is responsible for paying "the difference between filing fee paid for a complaint in an unlimited case and the filing fee for a complaint in a limited case," he implicitly assumes as much (i.e., that subdivision (a)(1) applies).

Subdivision (a)(1) not only specifies what reclassification fees are due, it also states that "[e]ach party shall pay for reclassification of that party's pleadings." Thus, in the cross-complaint scenario, the cross-complainant is responsible for the \$30 reclassification fee on the cross-complaint, *but the plaintiff is responsible for the reclassification fee on the complaint.*

On behalf of the Alameda County Superior Court, Mr. Lomax resists this interpretation. Citing Section 396, he points out that "before unification, if a cross-complaint ousting jurisdiction were filed in municipal court, the cross-complainant was required to pay the transfer fees." (Exhibit p. 12.)

It is true that the original provision governing allocation of reclassification fees (former Section 395.9) tracked Section 396 in this and other respects:

395.9. ....

(h) Upon the making of an order for reclassification, proceedings shall be had as provided in Section 399.5. Unless the court ordering the reclassification otherwise directs, **the costs and fees of those proceedings, and other costs and fees of reclassifying the case, including any additional amount due for**

**filing the initial pleading, are to be paid by the party filing the pleading that erroneously classified the case.**

(Emphasis added.) As explained in the Commission’s Comment on the repeal of former Section 395.9, however, that approach is now “superseded by Section 403.050(a)(1)-(2).” To achieve equitable allocation of pleading fees, the Commission (and ultimately the Legislature) rejected the concept of allocating all of the reclassification fees to one party, even where that party erroneously classified the case. (First Supplement to Memorandum 99-16, Exhibit p.9; Minutes (Feb. 4-5, 1999), p. 7.)

In light of this statutory history (particularly the contrast between Section 403.050(a)(1) and former Section 395.9(h)), as well as the lack of a policy justification for requiring a party who reclassifies a case by filing a cross-complaint (or amending the complaint) to pay more fees than one who unsuccessfully opposes a motion for reclassification, the legislative intent is unambiguous. *Each party must pay for reclassifying that party’s own pleadings, regardless of whether reclassification occurs due to granting a motion, amending the complaint, or filing a cross-complaint.* While the Judicial Council might want to make this point explicit in a rule of court, **further statutory clarification seems unnecessary.**

### **Payment Process**

Mr. Lomax further points out, however, that the plaintiff “has no interest in paying” the fee for reclassifying the complaint, “since he or she would probably prefer to keep the case classified as limited” (Exhibit p. 11.) He also suggests that the procedure for collecting fees pursuant to Section 403.050(a)(1) needs to be fleshed out. (*Id.* at 9.) Likewise, Mr. Lomax correctly observes that although reclassification is clearly required where a party files an amended complaint pursuant to Section 403.020 or a cross-complaint pursuant to Section 403.030 *and simultaneously pays the reclassification fees*, these provisions “are silent on the procedure to be followed if the fees are not paid simultaneously with the filing of the pleading ....” (*Id.*)

These omissions were not accidental. Commission staff originally proposed to address the collection problem by requiring a party seeking reclassification to pay *all* of the reclassification fees to the court in the first instance, *subject to prompt reimbursement from any party whose pleading is reclassified.* (First Supplement to Memorandum 99-16, Exhibit pp. 9-10; Memorandum 99-22, Exhibit pp. 13-14.)

Failure to make reimbursement would have been grounds for striking the pleading in question, unless the party who prepared the pleading moved to re-classify the case. (Memorandum 99-22, Exhibit, p. 14.)

On further study, the Commission (and later the Legislature) decided that instead of prescribing the manner of making payment and consequences of failure to make payment by statute, the Judicial Council should be given authority to address these matters in court rules. (Section 403.050(a).) “For example, the Judicial Council may specify by rule that the losing party is to pay the reclassification fees in the first instance, subject to reimbursement by the other parties in accordance with [Section 403.050].” (Section 403.050 Comment.) The idea was to afford the courts flexibility in developing a workable scheme for collection of reclassification fees, rather than imposing a legislative solution.

Because rules on reclassification have not yet been promulgated, Mr. Lomax’s concern and confusion regarding the proper approach in collecting reclassification fees is understandable. According to Janet Grove (research attorney, Administrative Office of the Courts (“AOC")), other courts have also requested guidance on collection of such fees. Mr. Lomax quite rightly urges the Judicial Council to adopt rules “for notifying a party that a reclassification fee is due, prescribing the time for payment of the fee, and prescribing the consequences for failure to pay the fee within the prescribed time.” (Exhibit p. 8.) Preparing such rules on reclassification needs to be done promptly, and AOC staff have requested that Commission staff assist in this effort. **To help smooth the transition to unification, Commission staff should assist the Judicial Council as requested.**

### **Complexity of Payment Scheme**

Perhaps most importantly, Mr. Lomax comments that the “almost byzantine complexity” of the new provision on reclassification fees has “proved to be a major challenge to implement.” He explains:

When an attorney or party is preparing to file a document (complaint, answer, cross-complaint, motion, etc.), it is a simple matter to figure out the amount of the required filing fee, by referring to a court fee schedule. What is not so simple is figuring out the amount of reclassification fees under this legislation for any of the means of case reclassification (by amended complaint, cross-complaint, or motion for reclassification). In every case, determining the amount of reclassification fees requires examining

the case file to see what documents were filed before reclassification, by whom, and when they were filed.

The chapter 344 provisions regarding reclassification fees appear, to me at least, to be inconsistent with the goal of making court procedures — especially filing procedures — more easily ascertainable and uniform throughout the state.

For the foregoing reasons, we think that a uniform, fixed reclassification fee, in an amount sufficient to discourage careless misclassification of pleadings and frivolous reclassification maneuvers, is a more practicable approach to reclassification fees. Furthermore, we think the party whose pleading fails to meet the requirements for a limited case should be responsible for paying the reclassification fees, except when ordered otherwise by the court.

(Exhibit p. 17 (footnotes omitted.)

The administrative concerns that Mr. Lomax raises should not be lightly discounted. He may ultimately prove correct that “the burden of identifying fees paid before reclassification and notifying parties of adjustments to those fees” outweigh the benefits of allocating fees as set forth in Section 403.050. (*Id.* at 9.)

The fee for filing a motion is the same in a limited civil case as in an unlimited civil case, however, so motion fees do not require adjustment on reclassification. Gov’t Code § 26830. To the extent that administrative difficulties in determining and collecting reclassification fees do exist, they may be alleviated once the Judicial Council promulgates rules on reclassification.

The statutory scheme was reviewed by State Bar groups, recommended by the Commission, supported by the Judicial Council, and subjected to the legislative process. It may require effort to administer, but it also has advantages:

(1) Because the reclassification fees are based on comparison of the filing fees for a limited civil case with the filing fees for an unlimited civil case, they bear a reasonable relation to the procedure in question (reclassifying a case as an unlimited civil case and subsequently treating it as such instead of as a limited civil case).

(2) Because each party pays for reclassification of that party’s pleadings, the fees are equitably allocated among the parties. For example, suppose a buyer and a seller have claims against each other for breach of contract. The buyer’s claim is for only \$10,000, but the seller’s claim exceeds the \$25,000 maximum for a limited civil case. If the seller sues first, the case is an unlimited civil case and each party pays for filing its pleadings according to the fee

schedule for unlimited civil cases. If the buyer sues first, however, the case is a limited civil case until the seller cross-complains and the case is reclassified as an unlimited civil case. Under the current statutory scheme, the reclassification fees in that situation would parallel the fee allocation where the seller sues first. But under Mr. Lomax's proposal (allocating all of the reclassification fees to "the party whose pleading fails to meet the requirements for a limited case"), the seller would bear a disproportionate portion of the filing fees if the buyer happens to sue first.

Moreover, the Judicial Council is conducting a study of filing fees at the direction of the Legislature. Gov't Code § 70219; *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports at 83-84. This study will encompass review of the fee distinctions between a limited civil case and an unlimited civil case. If some of these distinctions prove unnecessary in a unified court, it may simplify calculation of reclassification fees, or compel revision of Section 403.050.

In light of these considerations, it would be premature to switch to another approach for determining reclassification fees. Rather, **the Commission and the Judicial Council should monitor the implementation of Section 403.050 and reassess its merits when more information is available.**

#### TECHNICAL CORRECTIONS

We have become aware of two minor technical defects in the reclassification provisions:

#### **References to Cross-Complainant in Section 403.030**

Section 403.030 provides:

403.030. If a **cross-complainant** in a limited civil case files a cross-complaint that causes the action or proceeding to exceed the maximum amount in controversy for a limited civil case, or otherwise fail to satisfy the requirements for a limited civil case as prescribed by Section 85, the caption of the cross-complaint shall state that the action or proceeding is a limited civil case to be reclassified by cross-complaint, or words to that effect. The **cross-complainant** shall pay the reclassification fees provided in Section 403.050, and the clerk shall promptly reclassify the case.

(Emphasis added.) Mr. Lomax comments that the references to "cross-complainant" are "an obvious misnomer, as a cross-complaint can be filed only



by a defendant or a cross-defendant (§428.10), who does not become a cross-complainant until after the cross-complaint is filed.” (Exhibit p. 2, n. 2.)

Mr. Lomax is technically correct, although use of the term “cross-complainant” is unlikely to cause any confusion in this context. To fix the terminology, **the provision could be revised as follows:**

403.030. If a ~~cross-complainant~~ party in a limited civil case files a cross-complaint .... The ~~cross-complainant~~ party shall pay the reclassification fees provided in Section 403.050, and the clerk shall promptly reclassify the case.

**Comment.** Section 403.030 is amended to make a technical correction.

This technical revision is not urgent, but should be made when an appropriate vehicle is available.

#### **Misspelling in Section 403.020**

The word “simultaneously” is misspelled in Section 403.020(a). **This misspelling should be corrected**, perhaps in the annual bill to maintain the codes.

### APPELLATE REVIEW

Section 403.080 permits a party to challenge an order granting or denying a motion for reclassification by petitioning the court of appeal for a writ of mandate:

#### **Code Civ. Proc. § 403.080. Petition for writ of mandate**

403.080. When an order is made by the superior court granting or denying a motion to reclassify an action or proceeding pursuant to Section 403.040, the party aggrieved by the order may, within 20 days after service of a written notice of the order, petition the court of appeal for the district in which the court granting or denying the motion is situated for a writ of mandate requiring proper classification of the action or proceeding pursuant to Section 403.040. The superior court may, for good cause, and prior to the expiration of the initial 20-day period, extend the time for one additional period not to exceed 10 days. The petitioner shall file a copy of the petition in the superior court immediately after the petition is filed in the court of appeal. The court of appeal may stay all proceedings in the case, pending judgment on the petition becoming final. The clerk of the court of appeal shall file with the

clerk of the superior court, a copy of any final order or final judgment immediately after the order or judgment becomes final.

Mr. Lomax points out that the appellate division of the superior court may grant a writ of mandate directed to the superior court in a limited civil case. (Exhibit p. 9; see Cal. Const. art. VI, § 10; Code Civ. Proc. § 1085.) He suggests amending Section 403.040 to substitute “appropriate reviewing court” for “court of appeal.” (Exhibit p. 9.)

Although the appellate division of the superior court is authorized to grant a writ of mandate in a limited civil case, a ruling on reclassification necessarily hinges on whether a case really is a limited civil case. Instead of having the appellate division make this determination, it seems more appropriate to direct this matter to the court of appeal, which has original jurisdiction in any mandate proceeding. Cal. Const. art. VI, § 10. The approach that Mr. Lomax proposes may also be constitutional, but there is no evidence that the current approach is creating problems. **Absent such evidence, Section 403.080 should be left as is.**

#### JUDICIAL OVERSIGHT OF RECLASSIFICATION

AOC staff have informed us that a question has been raised regarding judicial oversight of reclassification. AOC staff describe the issue as follows:

In some situations, one party can reclassify a case with a filing (as with a cross-complaint), where prior to court unification a motion for transfer would have been required. When a motion to transfer was required, the decision was made by a judge, often after hearing argument from the parties as to why the case should stay in that court and/or why it should be transferred. That procedure had the advantage of allowing issues and facts to be considered before a case was transferred. It was suggested that perhaps there should be more judicial oversight in the reclassification process. No particular proposals were made, but it was recommended that we consider whether there are situations in which a motion should be required.

(Email from Janet Grove to Barbara Gaal (March 17, 2000.))

Based on this description, the staff is not convinced that a problem exists. The reclassification provisions make reclassification automatic in some circumstances (see Sections 403.020, 403.030), but this conserves judicial resources. It is not unlike prior law, under which a plaintiff could voluntarily dismiss a municipal court case and refile it in superior court, or vice versa. If anyone is dissatisfied

with how a case is classified, they can obtain judicial oversight by filing a motion challenging the classification (Section 403.040). Although Section 403.050 establishes guidelines for payment of reclassification fees, it also gives the court discretion to deviate from those rules. If the court determines that a case was improperly reclassified, it can adjust the reclassification fees to reflect the equities of the situation. In short, there is no reason to believe that automatic reclassification is causing problems. **There does not seem to be any need for action on this point.** If we become aware of problems in the future, we can address them at that time.

Respectfully submitted,

Barbara S. Gaal  
Staff Counsel

Exhibit

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**RECLASSIFICATION OF CIVIL ACTIONS AND PROCEEDINGS  
(CODE CIV. PROC. §§ 403.010-403.090)**

**Code Civ. Proc. § 403.010. Application and effect of chapter**

403.010. (a) This chapter applies in a county in which there is no municipal court.

(b) Nothing in this chapter expands or limits the law on whether a plaintiff, cross-complainant, or petitioner may file an amended complaint or other amended initial pleading. Nothing in this chapter expands or limits the law on whether, and to what extent, an amendment relates back to the date of filing the original complaint or other initial pleading.

**Comment.** Subdivision (a) of Section 403.010 makes clear that this chapter is limited to counties in which the trial courts have unified. For transfer between superior and municipal courts in counties in which the courts have not unified, see Chapter 1 (commencing with Section 392).

The first sentence of subdivision (b) continues former Section 395.9(e) without substantive change. The second sentence clarifies that this chapter does not affect the running of the statute of limitations.

**Code Civ. Proc. § 403.020. Reclassification by amending initial pleading**

403.020. (a) If a plaintiff, cross-complainant, or petitioner files an amended complaint or other amended initial pleading that changes the jurisdictional classification from that previously stated in the caption, and simultaneously [sic] pays the reclassification fees provided in Section 403.050, the clerk shall promptly reclassify the case.

(b) For purposes of this section, an amendment to an initial pleading shall be treated in the same manner as an amended initial pleading.

**Comment.** Section 403.020 is added to provide guidance where a plaintiff recognizes and acknowledges the need for reclassification. It does not affect whether a plaintiff is entitled to amend the complaint or other initial pleading. See Section 403.010 (application and effect of chapter). For authority to amend pleadings, see Sections 426.50 (amending to add cause of action), 472 (amendment once of course), 473 (amendment requiring leave of court).

See also Sections 32.5 (jurisdictional classification), 403.030 (reclassification of limited civil case by cross-complaint), 403.040 (motion for reclassification), 422.030 (caption).

**Code Civ. Proc. § 403.030. Reclassification of limited civil case by cross-complaint**

403.030. If a cross-complainant in a limited civil case files a cross-complaint that causes the action or proceeding to exceed the maximum amount in

controversy for a limited civil case, or otherwise fail to satisfy the requirements for a limited civil case as prescribed by Section 85, the caption of the cross-complaint shall state that the action or proceeding is a limited civil case to be reclassified by cross-complaint, or words to that effect. The cross-complainant shall pay the reclassification fees provided in Section 403.050, and the clerk shall promptly reclassify the case.

**Comment.** Section 403.030 is added to provide guidance where a cross-complainant in a limited civil case recognizes and acknowledges the need for reclassification.

See also Sections 403.020 (reclassification by amending initial pleading), 403.040 (motion for reclassification), 422.30 (caption).

**Code Civ. Proc. § 403.040. Motion for reclassification**

403.040. (a) If the caption of a complaint, cross-complaint, petition, or other initial pleading misstates the jurisdictional classification of the action or proceeding, or mistakenly fails to state, pursuant to Section 422.30, that the action or proceeding is a limited civil case, the defendant or cross-defendant may file a motion for reclassification within the time allowed for that party to respond to the initial pleading. The court, on its own motion, may reclassify a case at any time. A motion for reclassification does not extend the moving party's time to answer or otherwise respond. The court shall grant the motion and enter an order for reclassification, regardless of any fault or lack of fault, if the caption of the initial pleading misstates the jurisdictional classification of the action or proceeding, or mistakenly fails to state, pursuant to Section 422.30, that the action or proceeding is a limited civil case.

(b) If a defendant or cross-defendant files a motion for reclassification after the time for that party to respond to the complaint, cross-complaint, or other initial pleading, the court shall grant the motion and enter an order for reclassification only if both of the following conditions are satisfied:

(1) The caption of the initial pleading misstates the jurisdictional classification of the action or proceeding, or mistakenly fails to state, pursuant to Section 422.30, that the action or proceeding is a limited civil case.

(2) The moving party shows good cause for not seeking reclassification earlier.

(c) Nothing in the section shall be construed to require the superior court to reclassify an action or proceeding because the judgment to be rendered, as determined at the trial or hearing, is one that might have been rendered in a limited civil case.

(d) In any case where the misclassification is due solely to an excess in the amount of the demand, the excess may be remitted and the action may continue as a limited civil case.

**Comment.** Subdivision (a) of Section 403.040 continues the first and third sentences of former Section 399.5(a) without substantive change. A new clause is added to expressly negate any inference that a motion for reclassification may only be granted upon a finding of fault. This is declarative of existing law.

Subdivision (b) continues former Section 395.9(b), with revisions to improve clarity. The reference to a motion by the court is deleted as redundant. See subdivision (a).

Subdivisions (c)-(d) continue former Section 395.9(f)-(g) without substantive change.

For the procedure on granting a motion for reclassification, see Sections 403.060 (proceedings on order granting motion for reclassification), 403.070 (reclassified action or proceeding). For reclassification fees, see Section 403.050. See also Sections 403.020 (reclassification by amending initial pleading), 403.030 (reclassification of limited civil case by cross-complaint).

**Code Civ. Proc. § 403.050. Reclassification fees**

403.050. Unless the court otherwise directs:

(a) If a court grants a motion for reclassification, the reclassification fees shall be determined as follows:

(1) If a party misclassifies a case as a limited civil case and the case is reclassified, the party shall pay as a reclassification fee the difference between the fee paid for filing the first paper in a limited civil case and the fee for filing the first paper in a case other than a limited civil case. A similar adjustment shall be made for other fees paid before reclassification. Each party shall pay for reclassification of that party's pleadings, but the Judicial Council may prescribe rules governing the manner of making payment and consequences of failure to make payment.

(2) If a party fails to classify a case as a limited civil case and the case is reclassified, the party shall not be required to pay a new fee for filing the first paper in a limited civil case, but the party is not entitled to a refund of the difference between the fee for filing the first paper in a case other than a limited civil case and the fee for filing the first paper in a limited civil case. Other fees paid before reclassification shall be handled in the same manner.

(b) If an action or proceeding is reclassified by filing an amended pleading or an amendment to a pleading pursuant to Section 403.020 or a cross-complaint pursuant to Section 403.030, the reclassification fees shall be determined as if the court had granted a motion for reclassification.

**Comment.** The introductory clause and the first sentence of subdivision (a) of Section 403.050 continue the second sentence of former Section 395.9(h) without substantive change, except that they do not specify which party is to make payment. Like former Section 395.9(h), this section does not authorize an award of attorney's fees attributable to misclassification of a case. For authority to make such an award under limited circumstances, see Sections 128.6, 128.7.

Paragraphs (1)-(2) of subdivision (a) clarify the fees due on reclassification pursuant to order of the court. See Gov't Code §§ 26820.4 (fee for filing first paper in case other than limited civil case), 26826 (fee for filing defendant's first paper in case other than limited civil case), 72055 (fee for filing first paper in limited civil case), 72056 (fee for filing defendant's first paper in limited civil case). The Judicial Council may promulgate rules governing the details of making payment. For example, the Judicial Council may specify by rule that the losing party is to pay the reclassification fees in the first instance, subject to reimbursement by the other parties in accordance with this provision.

Under subdivision (b), if a limited civil case is reclassified by filing an amended complaint pursuant to Section 403.020, and the defendant has already answered the original complaint, the reclassification fees include, for example, the difference between the fee for filing the defendant's first paper in a limited civil case (Gov't Code § 72056) and the fee for filing the defendant's first paper in a case other than a limited civil case (Gov't Code § 26826). The same approach applies where a cross-complainant reclassifies a limited civil case by filing a cross-complaint pursuant to Section 403.030.

See Section 403.040 (motion for reclassification). See also Section 422.30 (caption).

**Code Civ. Proc. § 403.060. Proceedings on order granting motion for reclassification**

403.060. (a) If an order is made for reclassification of an action or proceeding pursuant to Section 403.040, and fees have been paid as provided in Section 403.050, the clerk shall promptly reclassify the case.

(b) If the fees have not been paid as provided in Section 403.050 within five days after service of notice of the order for reclassification, any party interested in the case, regardless of whether that party is named in the complaint, may pay the fees, and the clerk shall promptly reclassify the case as if the fees had been paid as provided in Section 403.050.

(c) The cause of action shall not be further prosecuted in any court until the reclassification fees are paid. If those fees are not paid within 30 days after service of notice of an order for reclassification, the court on its own motion or motion of any party may dismiss the action without prejudice to the cause on the condition that no other action on the cause may be commenced in another court before the reclassification fees are paid.

**Comment.** Subdivisions (a)-(c) of Section 403.060 continue former Section 399.5(a)-(c) without substantive change, except that (1) the consequences of failure to make payment are not addressed as fully, because this matter may be covered by rules of court promulgated pursuant to Section 403.050, and (2) the clerk is to reclassify the case on payment of the reclassification fees, regardless of whether the time for filing a writ petition pursuant to Section 403.080 (petition for writ of mandate) has expired or such a petition is pending.

For rules governing reclassified actions or proceedings, see Section 403.070. For authority of the court of appeal to stay an action or proceeding pending determination of a writ proceeding, see Section 403.080.

**Code Civ. Proc. § 403.070. Reclassified action or proceeding**

403.070. (a) An action or proceeding that is reclassified shall be deemed to have been commenced at the time the complaint or petition was initially filed, not at the time of reclassification.

(b) The court shall have and exercise over the reclassified action or proceeding the same authority as if the action or proceeding had been originally commenced as reclassified, all prior proceedings being saved. The court may allow or require whatever amendment of the pleadings, filing and service of amended, additional, or supplemental pleadings, or giving of notice, or other appropriate action, as may be necessary for the proper presentation and determination of the action or proceeding as reclassified.

**Comment.** Subdivision (a) of Section 403.070 continues former Section 399.5(d) without substantive change. Subdivision (b) continues without substantive change former Section 399.5(e) and the second sentence of former Section 395.9(a).

See also Sections 403.020 (reclassification by amending initial pleading), 403.030 (reclassification of limited civil case by cross-complaint), 403.040 (motion for reclassification), 403.050 (reclassification fees), 422.30 (caption).

**Code Civ. Proc. § 403.080. Petition for writ of mandate**

403.080. When an order is made by the superior court granting or denying a motion to reclassify an action or proceeding pursuant to Section 403.040, the party aggrieved by the order may, within 20 days after service of a written notice of the order, petition the court of appeal for the district in which the court granting or denying the motion is situated for a writ of mandate requiring proper classification of the action or proceeding pursuant to Section 403.040. The superior court may, for good cause, and prior to the expiration of the initial 20-day period, extend the time for one additional period not to exceed 10 days. The petitioner shall file a copy of the petition in the superior court immediately after the petition is filed in the court of appeal. The court of appeal may stay all proceedings in the case, pending judgment on the petition becoming final. The clerk of the court of appeal shall file with the clerk of the superior court, a copy of any final order or final judgment immediately after the order or judgment becomes final.

**Comment.** Section 403.080 continues without substantive change the references to reclassification deleted from Section 400.

**Code Civ. Proc. § 403.090. Rules governing reclassification procedure**

403.090. The Judicial Council may prescribe rules, not inconsistent with statute, governing the procedure for reclassification of civil actions and proceedings.

**Comment.** Section 403.090 is added to facilitate refinement of the procedures governing reclassification of civil actions. See also Section 403.050 (Judicial Council authority to prescribe rules governing manner of paying reclassification fees and consequences of failure to make payment).





**Superior Court of California**

**County of Alameda**

Courthouse  
1225 Fallon Street  
Oakland, California 94612

Law Revision Commission  
RECEIVED

FEB - 4 2000

February 3, 2000

File: \_\_\_\_\_

Mr. Nathaniel Sterling  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Suite D-1  
Palo Alto, CA 94303-4739

Dear Mr. Sterling:

In January, I wrote Janet Grove, staff attorney in the Administrative Office of the Courts, regarding problems this court had identified in chapter 344 of the Statutes of 1999, trial court unification cleanup legislation. Specifically, our concerns related to new statutes prescribing the procedure for reclassification of civil cases in unified courts.

It has just occurred to me that some of the issues identified in my letter to Ms. Grove—specifically items 3 and 5 and footnote 2—may be appropriate subjects for the commission's proposed 2000 unification cleanup legislation. Accordingly, I am forwarding a copy of my letter to Ms. Grove to you.

If you have any questions, please contact me, by telephone at (510) 271-5122 or by e-mail at [mlomax@sct.mail.co.alameda.ca.us](mailto:mlomax@sct.mail.co.alameda.ca.us).

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark Lomax".

MARK LOMAX  
Management Analyst  
Planning, Research, Court Services  
and Public Information Bureau

Enclosure



## Superior Court of California

County of Alameda

Courthouse

1225 Fallon Street

Oakland, California 94612

January 12, 2000

Janet Grove, Esq.  
Staff Attorney  
Council and Legal Services Division  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102-3660

Dear Ms. Grove:

### **CIVIL CASE RECLASSIFICATION** (Code Civil Proc., §403.010 et seq.)

This letter confirms the substance of our telephone conversation of January 10, 2000, regarding civil case reclassification.

#### ***Background***

Judicial Council-sponsored legislation, Senate Bill No. 210, chapter 344 of the Statutes of 1999, repealed sections 395.9 and 399.5, and added chapter 2 (commencing with §403.010) to title 4 of part 2 of the Code of Civil Procedure, effective September 7, 1999.<sup>1</sup> The new chapter prescribes comprehensive procedures for jurisdictional reclassification of civil actions and proceedings in superior courts.

In planning changes to our civil case management system to handle case reclassification, we noted a number of serious concerns with chapter 344. The purpose of this letter is to communicate those concerns to you so that they might be addressed in court rules and/or in cleanup legislation.

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<sup>1</sup>Hereafter, all section references are to the Code of Civil Procedure.

### ***Problems Identified***

1. Section 403.020 prescribes the procedure for reclassifying a case by filing an amended complaint or other amended initial pleading that changes the case jurisdictional classification from limited to unlimited or from unlimited to limited. Section 403.020 provides that if a plaintiff, cross-complainant, or petitioner files an amended complaint, amended cross-complaint, or other amended initial pleading that changes the case jurisdictional classification from limited to unlimited, *and simultaneously pays the reclassification fees*, the clerk must promptly reclassify the case. However, the new statutes are silent on the procedure to be followed if the fees are not paid simultaneously with the filing of the pleading—a situation that we anticipate will occur frequently, especially in the early stages of this new legislation.

We recommend that the council adopt rules for notifying a party that a reclassification fee is due, prescribing the time for payment of the fee, and prescribing the consequences for failure to pay the fee within the prescribed time.

2. Likewise, section 403.030 prescribes the procedure for reclassifying a limited case by filing a cross-complaint that causes the case to exceed the amount in controversy for a limited case. Section 403.030 provides that if a defendant or cross-defendant<sup>2</sup> files a cross-complaint that causes the case to exceed the amount in controversy for a limited case (or otherwise to fail to satisfy the requirements for a limited case as prescribed by §85), and pays the reclassification fees, the clerk must promptly reclassify the case. As with a reclassification by filing an amended complaint, the new statutes are silent on the procedure to be followed if the fees are not paid with the filing of the cross-complaint.

We recommend that the council adopt rules for notifying a party that a reclassification fee is due, prescribing the time for payment of the fee, and prescribing the consequences for failure to pay the fee within the prescribed time.

3. While a motion for reclassification constitutes a general appearance by the filing party (§1014 as amended by ch. 344), it does not extend the moving party's time to answer or otherwise plead. (§403.040, subd. (a).) Moreover, chapter 344 failed to amend sections 585 and 586 to make a motion for reclassification a paper that prevents entry

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<sup>2</sup>Section 403.030 actually states in relevant part: "If a *cross-complainant* in a limited civil case files a cross-complaint . . ." This is an obvious misnomer, as a cross-complaint can be filed only by a defendant or a cross-defendant (§428.10), who does not become a cross-complainant until after the cross-complaint is filed. This error should be corrected if cleanup legislation is introduced.

of default. Therefore, if the defendant's or cross-defendant's time to plead expires while that party's motion for reclassification is pending, there is nothing preventing the plaintiff or cross-complainant from requesting and obtaining entry of the defendant's or cross-defendant's default.

We recommend that the council adopt a rule prohibiting the entry of a defendant's or cross-defendant's default while that party's motion for reclassification is pending and requiring the court to grant time to plead after granting or denying a motion for reclassification.

4. Section 403.050, subdivision (a)(1), requires that when a case is reclassified from limited to unlimited, the responsible party must pay a reclassification fee representing the difference between the first-paper filing fee for a limited case and the first-paper filing fee for an unlimited case. However, in addition to that fee, the statute mandates adjustments to other fees paid before reclassification. The procedure for adjusting fees is not spelled out in chapter 344.<sup>3</sup>

We recommend that the council adopt rules prescribing procedures for notifying parties who paid fees before reclassification of additional fees that must be paid, how long parties have to pay those fees, and the consequences for failure to pay the fees within the prescribed time.

5. Section 403.080 provides that a party may seek review of an order granting or denying a motion for reclassification by filing a petition for a writ of mandate in the "court of appeal." However, writ petitions for limited cases are generally handled by the superior court appellate division. (§§1068, subd. (b) [writ of review]; 1085, subd. (b) [writ of mandate]; and 1103, subd. (b) [writ of prohibition]; see rule 56, Cal. Rules of Court.)

We recommend that section 403.080 be amended to substitute "appropriate reviewing court" for "court of appeal." (Cf. §418.10, subd. (c), regarding review of an order granting or denying a motion to quash service.)

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<sup>3</sup>The benefits of this provision, while laudatory from a revenue-generation standpoint, may be outweighed by the burden of identifying fees paid before reclassification and notifying parties of adjustments to those fees.

Janet Grove, Esq.  
January 12, 2000  
Page 4

If you have any questions, please contact me, by telephone at (510) 271-5122 or by e-mail at [mlomax@sct.mail.co.alameda.ca.us](mailto:mlomax@sct.mail.co.alameda.ca.us).

Very truly yours,



MARK LOMAX  
Management Analyst  
Planning, Research, Court Services  
and Public Information Bureau

Enclosure

c: Tally Craig, Esq.  
DOMAIN Project



## Superior Court of California

County of Alameda

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Oakland, California 94612

(510) 271-5122 • FAX (510) 272-6001

*e-mail:* mlomax@sct.mail.co.alameda.ca.us

February 17, 2000

Janet Grove, Esq.  
Staff Attorney  
Council and Legal Services Division  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102-3660

Dear Ms. Grove:

### **CIVIL CASE RECLASSIFICATION (Code Civil Proc., §403.010 et seq.)**

In January, I wrote to you regarding problems identified by this court with chapter 344 of the Statutes of 1999, regarding jurisdictional reclassification of civil cases in unified superior courts. Since then, we have identified another problem, which I would like to bring to your attention.

This problem concerns the appropriate reclassification fee to be collected when a limited case is reclassified to unlimited by filing a cross-complaint that causes the case to exceed the amount in controversy for a limited case. Is the cross-complainant required to pay just the \$30 reclassification fee on the cross-complaint (\$75 [filing fee for a cross-complaint in an unlimited case] minus \$45 [filing fee for a cross-complaint in a limited case]), or must that party pay, in addition, the difference between the filing fee paid for a complaint in an unlimited case and the filing fee for a complaint in a limited case? If the answer to this question is that the cross-complainant pays only the \$30 cross-complaint reclassification fee, then does that mean that the plaintiff is responsible for paying the reclassification fee on the complaint (which he or she has no interest in paying, since he or she would probably prefer to keep the case classified as limited)?

The new reclassification statutes are not very clear on this point. With respect to the filing of a cross-complaint seeking relief in excess of that allowed in a limited case, Code of Civil Procedure<sup>1</sup> section 403.030 provides: "The cross-complainant shall pay the reclassification fees provided in Section 403.050, . . ." Section 403.050, subdivision (b), provides: "If an action or proceeding is reclassified by filing . . . a cross-complaint pursuant to Section 403.030, the reclassification fees shall be determined as if the court had granted a motion for reclassification." Section 403.050 provides: "Unless the court otherwise directs: [¶] (a) If a court grants a motion for reclassification, the reclassification fees shall be determined as follows:" Thereafter follow paragraph (1), dealing with misclassification of a case as limited, and paragraph (2), dealing with misclassification of a case as unlimited—neither of which addresses this scenario.

In arguing against the cross-complainant's being obligated to pay a reclassification fee on the original complaint, attorneys cite section 403.050, subdivision (a)(1), which states: "Each party shall pay for reclassification of that party's pleadings, but the Judicial Council may prescribe rules governing the manner of making payment and consequences of failure to make payments." That sentence, however, is in a paragraph dealing with cases that have been misclassified; it is not clear that it applies to cases properly classified at filing but reclassified as the result of the filing of a cross-complaint.

On the other hand, in support of requiring the cross-complainant to pay a reclassification fee on the original complaint, we point out that before unification, if a cross-complaint ousting jurisdiction were filed in municipal court, the cross-complainant was required to pay the transfer fees.<sup>2</sup>

We recommend that the council adopt a rule clarifying the appropriate reclassification fee to be charged when a case is reclassified by filing a cross-complaint that causes the case to exceed the amount in controversy for a limited case.

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<sup>1</sup>Hereafter, all section references are to the Code of Civil Procedure.

<sup>2</sup>Section 396, dealing with transfers due to lack of subject-matter jurisdiction, still provides (for the last few counties that have not unified): "Upon the making of an order for transfer, proceedings shall be had as provided in Section 399 of this code, 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."

Janet Grove, Esq.  
February 17, 2000  
Page 3

If you have any questions, please contact me, by telephone at (510) 271-5122 or by e-mail at [mlomax@sct.mail.co.alameda.ca.us](mailto:mlomax@sct.mail.co.alameda.ca.us).

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark Lomax", written in a cursive style.

MARK LOMAX  
Management Analyst  
Planning, Research, Court Services  
and Public Information Bureau



## CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, ROOM D-1  
PALO ALTO, CA 94303-4739  
650-494-1335



March 2, 2000

Mark Lomax  
Management Analyst  
Alameda County Superior Court  
1225 Fallon Street  
Oakland, CA 94612

**Re: Reclassification of Civil Cases**

Dear Mr. Lomax:

I have been given copies of (1) your letter to Nat Sterling dated February 3, 2000, regarding reclassification of civil cases (including the enclosure), and (2) your letter to Janet Grove dated February 17, 2000, raising further questions regarding reclassification. Thank you for taking the time to relate your court's concerns regarding the reclassification procedure.

The Law Revision Commission will consider your letters at its meeting on April 13, 2000, in Sacramento (see the enclosed agenda). Before the meeting, we will prepare a staff memorandum analyzing the issues, which will be circulated to the Commissioners and other interested persons, including you.

In reviewing your comments, it occurred to me that you may not have seen the Law Revision Commission Comments to the new reclassification provisions. A copy of those Comments is enclosed for your reference. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. See, e.g., *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968); *Catch v. Phillips*, 73 Cal. App. 4th 648-654-55, 86 Cal. Rptr. 584, 588 (1999); *Vournas v. Fidelity Nat'l Title Ins. Co.*, 73 Cal. App. 4th 668, 673 n.4, 86 Cal. Rptr. 2d 490, 493-94 n.4 (1999).

One of the points you raise concerns entry of a default while a motion for reclassification is pending. The Commission considered that matter at length in drafting the reclassification provisions. Copies of the pertinent memoranda and minutes are enclosed for your consideration (as well as additional materials relating to reclassification). After experimenting with an approach similar to what you propose, the Commission reversed course and concluded that a pending motion for reclassification should not delay the progress of a case. The Legislature adopted that approach. Code Civ. Proc. § 403.040(a); see also former Code Civ. Proc. § 395.9(a).

If your court is not satisfied with that situation, it would be helpful to know why. What problem(s) would be solved by preventing entry of a default while a motion for reclassification is pending? Would those benefits outweigh the

Mark Lomax  
March 2, 2000  
Page 2

detriments of delaying the litigation? We would appreciate any information you are able to provide on these points.

Please call me at 650-494-1335 if there's anything you'd like to discuss.

Sincerely,



Barbara S. Gaal  
Staff Counsel

cc (w/out enc.): Janet Grove

File: J-1312

Enc. tentative agenda (4/13/00); Comments to Code Civ. Proc. §§ 403.0101-403.090; M98-12, M98-12s1; M98-25, M98-41, M98-47 s1; M98-61; M98-82; M99-16 s1; M99-22; minutes (3/98, 4/98, 6/98, 7/98, 9/98, 12/98, 2/99, 4/99)



**Superior Court of California**

**County of Alameda**

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Law Revision Commission  
RECEIVED

**MAR 13 2000**

File: J-1312

March 10, 2000

Barbara S. Gaal, Esq.  
Staff Counsel  
California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

Re: Your File J-312

Dear Ms. Gaal:

**CIVIL CASE RECLASSIFICATION**  
**(Code Civil Proc., §403.010 et seq.)**

Thank you for your letter of March 2, 2000, as well as for the background materials on chapter 344 of the Statutes of 1999 that accompanied your letter.

I think my remarks, contained in my January 12, 2000, letter to Janet Grove of the Administrative Office of the Courts, regarding the possibility of entering the default of a defendant who has filed a motion for reclassification may have been misleading.

I pointed out the vulnerability of a defendant filing a motion for reclassification to having his or her default entered, because the possibility seemed anomalous to me—an oversight by the drafters of the legislation. (At the time I wrote my letter, I was not privy to the behind-the-scenes dialogue on the subject.) I consider a motion for reclassification part of the pleading-development process of a lawsuit, and most pleading-development motions extend the time to plead. While I consider the omission of an extension to plead for a motion for reclassification to be a potential trap for the unwary, I know of no problems the omission presents to the court, at least from the standpoint of administrative implementation of the legislation. Accordingly, I request that you disregard the remarks and suggestion on this subject contained in my January 12, 2000, letter.

Barbara S. Gaal, Esq.  
March 10, 2000  
Page 2

On the other hand, the almost byzantine complexity of the provisions of chapter 344 regarding reclassification fees have proved to be a major challenge to implement. Specifically, I refer to the difficulties of identifying the exact amount of reclassification fees required and the party or parties responsible for paying those fees.

When an attorney or party is preparing to file a document (complaint, answer, cross-complaint, motion, etc.), it is a simple matter to figure out the amount of the required filing fee, by referring to a court fee schedule.<sup>1</sup> What is not so simple is figuring out the amount of reclassification fees under this legislation for any of the means of case reclassification (by amended complaint, cross-complaint, or motion for reclassification). In every case, determining the amount of reclassification fees requires examining the case file to see what documents were filed before reclassification, by whom, and when they were filed.<sup>2</sup>

The chapter 344 provisions regarding reclassification fees appear, to me at least, to be inconsistent with the goal of making court procedures—especially filing procedures—more easily ascertainable and uniform throughout the state.

For the foregoing reasons, we think that a uniform, fixed reclassification fee, in an amount sufficient to discourage careless misclassification of pleadings and frivolous reclassification maneuvers, is a more practicable approach to reclassification fees. Furthermore, we think the party whose pleading fails to meet the requirements for a limited case should be responsible for paying the reclassification fees, except when ordered otherwise by the court.

Thank you for the opportunity to present our views.

Very truly yours,



MARK LOMAX  
Management Analyst  
Planning, Research, Court Services  
and Public Information Bureau

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<sup>1</sup>Because of the wide variation among counties in the component fees that comprise most filing fees (e.g., law library fees, dispute resolution fees, construction fund surcharges), filing fees vary widely from county to county; however, by reference to an up-to-date fee schedule for a particular county, one can determine with certainty the filing fee for a particular document in the superior court of that county.

<sup>2</sup>The date a document was filed determines what fee was paid, since filing fees can change from year to year.