

## RESOLUTION 03-01-2014

### DIGEST

#### Civil Procedure: Venue and Incorporation by Reference, Consistency Between Statutes

Amends Code of Civil Procedure section 398 to make references to Code of Civil Procedure section 397 consistent with an earlier amendment to Code of Civil Procedure section 397.

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Code of Civil Procedure section 398 to make references to Code of Civil Procedure sections 397 consistent with an earlier amendment to Code of Civil Procedure section 397. This resolution should be approved in principle because it updates the references to Code of Civil Procedure section 397 in Code of Civil Procedure section 398 to match the renumbering of the subdivisions in Code of Civil Procedure section 397.

A 1992 amendment to Code of Civil Procedure section 397 changed the numbering of the subdivisions of this section from numbers to letters respectively. However, Code of Civil Procedure section 398 continues to refer to subdivisions (2), (3), and (4) of Code of Civil Procedure section 397, even though section 397 no longer has any subdivisions numbered (2), (3), and (4). This resolution resolves the inconsistency so that Code of Civil Procedure section 398 will refer to the correct alphabetical subdivisions in section 397.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 398 to read as follows:

#### § 398

1           If, for any cause, specified in subdivisions ~~2, 3 and 4~~ (b), (c), and (d) of section 397, the  
2 court orders the transfer of an action or proceeding, it must be transferred to a court having  
3 jurisdiction of the subject matter of the action which the parties may agree upon, by stipulation in  
4 writing, or made in open court and entered in the minutes or docket; or, if they do not so agree,  
5 then to the nearest or most accessible court, where the like objection or cause for making the  
6 order does not exist.

7           If an action or proceeding is commenced in a court, other than one designated as a proper  
8 court for the trial thereof by the provisions of this title, and the same be ordered transferred for  
9 that reason, it must be transferred to any such proper court which the parties may agree upon by  
10 stipulation in writing, or made in open court and entered in the minutes or docket; if the parties  
11 do not so agree, then to any such proper court in the county in which the action or proceeding  
12 was commenced which the defendant may designate, or, if there be no such proper court in such  
13 county, to any such proper court, in a proper county, designated by the defendant; if the parties  
14 do not so agree, and the defendant does not so designate the court, as herein provided, or where  
15 the court orders the transfer of an action on its own motion as provided in this title, to such  
16 proper court as the court in which the action or proceeding is pending may determine.

17 The designation of the court by the defendant, herein provided for, may be made in the notice of

18 motion for change of venue or in open court, entered in the minutes or docket, at the time the  
19 order for transfer is made.

(Proposed new language underlined; language to be deleted stricken.)

**PROPONENT:** Bar Association of Northern San Diego County

### **STATEMENT OF REASONS**

The Problem: Code of Civil Procedure section 397 was amended effective 1992 to substitute (a), (b), (c), (d), and (e) as numbering for former subdivisions 1, 2, 3, 4, and 5. Code of Civil Procedure section 398 was apparently not commensurately amended. Thus, the current version of Code of Civil Procedure section 398 refers to subdivisions of Code of Civil Procedure section 397 that no longer exist.

The Solution: This resolution amends the references to the subdivisions in Code of Civil Procedure section 397 found in Code of Civil Procedure section 398 to be consistent with the current numbering.

### **LEGISLATIVE HISTORY**

Not known.

### **IMPACT STATEMENT**

The proposed resolution does not affect any other law, statute or rule.

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