

## RESOLUTION 06-08-2013 (As Amended and Adopted)

### DIGEST

#### Civil Procedure: Right to Appeal Limited Civil Anti-SLAPP Rulings

Amends Code of Civil Procedure sections 425.16 and 904.2 to make an order granting or denying an “Anti-SLAPP” motion immediately appealable in limited civil cases.

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Code of Civil Procedure section 425.16 and 904.2 to make an order granting or denying an “Anti-SLAPP” motion immediately appealable in limited civil cases. This resolution should be approved in principle because it would place provide litigants in limited civil cases with the same appellate rights as provided to litigants in unlimited civil cases.

The Anti-SLAPP statute, codified at Code of Civil Procedure section 425.16, provides both parties with an immediate right to appeal any ruling granting or denying an Anti-SLAPP motion in an unlimited civil case. This resolution would make an order granting or denying a special motion to strike appealable in *all* cases, including limited civil cases where the amount in dispute does not exceed \$25,000. An appeal from an Anti-SLAPP motion in a limited civil case would go not to the appellate court, but to the appellate department of the superior court. Accordingly, any concerns about the delays caused by interlocutory appeals are ameliorated by the fact that the appellate divisions of the superior courts render decisions on a more expedient basis than appeals before the the various Courts of Appeal. Because cases involving Anti-SLAPP motions typically involve First Amendment, malicious prosecution or other important issues, prompt appellate review of orders granting or denying Anti-SLAPP motions is warranted, regardless of the jurisdictional amount of the case.

~~As drafted, this resolution contains a proposed amendment to Code of Civil Procedure section 425.16 which would affect the wrong provision of the Code of Civi Procedure. Specifically, the substantive argument for this resolution advocates that an appeal should be permitted under section 904.2 of the Code of Civil Procedure, but the proposed amendment instead adds “904.3” to subsection (i). This should be addressed by the proponent to ensure the appropriate code section is made pat of the resolution. (Amendment made and adopted).~~

### TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend Code of Civil Procedure sections 425.16 and 904.2 to read as follows:

1 §425.16

2 (a) The Legislature finds and declares that there has been a disturbing increase in lawsuits  
3 brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and  
4 petition for the redress of grievances. The Legislature finds and declares that it is in the public  
5 interest to encourage continued participation in matters of public significance, and that this  
6 participation should not be chilled through abuse of the judicial process. To this end, this section  
7 shall be construed broadly.

8 (b) (1) A cause of action against a person arising from any act of that person in  
9 furtherance of the person's right of petition or free speech under the United States Constitution  
10 or the California Constitution in connection with a public issue shall be subject to a special  
11 motion to strike, unless the court determines that the plaintiff has established that there is a  
12 probability that the plaintiff will prevail on the claim.

13 (2) In making its determination, the court shall consider the pleadings, and supporting  
14 and opposing affidavits stating the facts upon which the liability or defense is based.

15 (3) If the court determines that the plaintiff has established a probability that he or she  
16 will prevail on the claim, neither that determination nor the fact of that determination shall be  
17 admissible in evidence at any later stage of the case, or in any subsequent action, and no burden  
18 of proof or degree of proof otherwise applicable shall be affected by that determination in any  
19 later stage of the case or in any subsequent proceeding.

20 (c) (1) Except as provided in paragraph (2), in any action subject to subdivision (b), a  
21 prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's  
22 fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to  
23 cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff  
24 prevailing on the motion, pursuant to Section 128.5.

25 (2) A defendant who prevails on a special motion to strike in an action subject to  
26 paragraph (1) shall not be entitled to attorney's fees and costs if that cause of action is brought  
27 pursuant to Section 6259, 11130, 11130.3, 54960, or 54960.1 of the Government Code. Nothing  
28 in this paragraph shall be construed to prevent a prevailing defendant from recovering attorney's  
29 fees and costs pursuant to subdivision (d) of Section 6259, 11130.5, or 54690.5.

30 (d) This section shall not apply to any enforcement action brought in the name of the  
31 people of the State of California by the Attorney General, district attorney, or city attorney,  
32 acting as a public prosecutor.

33 (e) As used in this section, "act in furtherance of a person's right of petition or free  
34 speech under the United States or California Constitution in connection with a public issue"  
35 includes: (1) any written or oral statement or writing made before a legislative, executive, or  
36 judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral  
37 statement or writing made in connection with an issue under consideration or review by a  
38 legislative, executive, or judicial body, or any other official proceeding authorized by law, (3)  
39 any written or oral statement or writing made in a place open to the public or a public forum in  
40 connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise  
41 of the constitutional right of petition or the constitutional right of free speech in connection with  
42 a public issue or an issue of public interest.

43 (f) The special motion may be filed within 60 days of the service of the complaint or, in  
44 the court's discretion, at any later time upon terms it deems proper. The motion shall be  
45 scheduled by the clerk of the court for a hearing not more than 30 days after the service of the  
46 motion unless the docket conditions of the court require a later hearing.

47 (g) All discovery proceedings in the action shall be stayed upon the filing of a notice of  
48 motion made pursuant to this section. The stay of discovery shall remain in effect until notice of  
49 entry of the order ruling on the motion. The court, on noticed motion and for good cause shown,  
50 may order that specified discovery be conducted notwithstanding this subdivision.

51 (h) For purposes of this section, “complaint” includes “cross-complaint” and “petition,”  
52 “plaintiff” includes “cross-complainant” and “petitioner,” and “defendant” includes “cross-  
53 defendant” and “respondent.”

54 (i) An order granting or denying a special motion to strike shall be appealable under  
55 Sections 904.1 and ~~904.3~~ 904.2.

56 (j) (1) Any party who files a special motion to strike pursuant to this section, and any  
57 party who files an opposition to a special motion to strike, shall, promptly upon so filing,  
58 transmit to the Judicial Council, by e-mail or facsimile, a copy of the endorsed, filed caption  
59 page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and  
60 a conformed copy of any order issued pursuant to this section, including any order granting or  
61 denying a special motion to strike, discovery, or fees.

62 (2) The Judicial Council shall maintain a public record of information transmitted  
63 pursuant to this subdivision for at least three years, and may store the information on microfilm  
64 or other appropriate electronic media.

1 §904.2

2 An appeal of a ruling by a superior court judge or other judicial officer in a limited civil  
3 case is to the appellate division of the superior court. An appeal of a ruling by a superior court  
4 judge or other judicial officer in a limited civil case may be taken from any of the following:

5 (a) From a judgment, except (1) an interlocutory judgment, or (2) a judgment of contempt  
6 that is made final and conclusive by Section 1222.

7 (b) From an order made after a judgment made appealable by subdivision (a).

8 (c) From an order changing or refusing to change the place of trial.

9 (d) From an order granting a motion to quash service of summons or granting a motion to  
10 stay the action on the ground of inconvenient forum, or from a written order of dismissal under  
11 Section 581d following an order granting a motion to dismiss the action on the ground of  
12 inconvenient forum.

13 (e) From an order granting a new trial or denying a motion for judgment notwithstanding  
14 the verdict.

15 (f) From an order discharging or refusing to discharge an attachment or granting a right to  
16 attach order.

17 (g) From an order granting or dissolving an injunction, or refusing to grant or dissolve an  
18 injunction.

19 (h) From an order appointing a receiver.

20 (i) From an order granting or denying a special motion to strike under Section 425.16

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

**PROPONENT:** Michael R. Sohigian, Richard Kaplan, Randall Spencer, Matilda Callahan, Charles Parselle, Elizabeth Moreno, Scott Schomer, John S. Birke, Keith Turner, Kenneth Petrusis, Stephen L. Raucher

## **STATEMENT OF REASONS**

The Problem: Code of Civil Procedure section 425.15 (“Anti-SLAPP Statute”) was adopted to address the Legislature’s finding of “a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.” The Legislature declared it “in the public interest to encourage continued participation in matters of public significance, and . . . this participation should not be chilled through abuse of the judicial process. To this end,” the Legislature concluded, “this section shall be construed broadly.” In subdivision (i), the Anti-SLAPP Statute provides both sides with an immediate right to appeal any ruling granting or denying an Anti-SLAPP motion “under Section 904.1.” But Code of Civil Procedure section 904.1 applies only to “[a]n appeal, other than in a limited civil case.” Despite the Legislature’s mandate that the Anti-SLAPP Statute be construed broadly, appeal, essential to protect litigants’ constitutional rights, is denied to Limited Civil litigants.

This Solution: The Resolution changes existing law by amending the Anti-SLAPP Statute, and section 904.2, to provide a right to appeal an order granting or denying an Anti-SLAPP motion under both sections 904.1 and 904.2.

## **LEGISLATIVE HISTORY**

Not known

## **IMPACT STATEMENT**

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

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