

## RESOLUTION 04-11-2016

### DIGEST

#### Limited Civil: Availability of General Denial

Amends Code of Civil Procedure section 431.40 to clarify that a general denial may be used in limited civil cases.

### TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 431.40 to read as follows:

#### §431.40

- 1           (a) Any provision of law to the contrary notwithstanding, in any action in which the  
2 demand, exclusive of interest, or the value of the property in controversy does not exceed  
3 ~~one~~twenty-five thousand dollars (~~\$1000~~\$25,000), the defendant at his option, in lieu of demurrer  
4 or other answer, may file a general written denial and a brief statement of any new matter  
5 constituting a defense.  
6           (b) Nothing in this section excuses the defendant from complying with the provisions of  
7 law applicable to a cross-complaint, and any cross-complaint of the defendant shall be subject to  
8 the requirements applicable in any other action.  
9           (c) The general written denial described in subdivision (a) shall be on a blank available at  
10 the place of filing and shall be in a form prescribed by the Judicial Council. This form need not  
11 be verified.

(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 431.30, subdivision (d) provides that If the complaint is subject to Article 2 (commencing with Section 90) of Chapter 5.1 of Title 1 of Part 1 [Limited Civil] or is not verified, a general written denial is sufficient but only puts in issue the material allegations of the complaint. However, the current version of Code of Civil Procedure section 431.40 restricts use of a written general denial to cases where the demand is less than \$1,000.00. Subdivision (c) requires the written general denial to be in a form prescribed by the Judicial Council. The effect of this is that Judicial Council Form PLD-C-010 item 3 appears to prohibit a general denial "if the verified complaint or cross-complaint demands more than \$1,000.00." This inconsistency could create confusion, particularly to a self-represented litigant in a small collection case, who uses the PLD-C-010 ANSWER-Contract Form, and fails to note the \$1,000.00 restriction and checks box 3.a. In that situation, the answer is defective under section 432.40 and could result in law and motion activity which a self-represented litigant may or may not understand.

The Solution: This resolution would clarify that a defendant can file a written general denial in any limited civil case [other than Small Claims or Unlawful Detainer] and thereby put the case at issue.

**IMPACT STATEMENT**

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

**CURRENT OR PRIOR RELATED LEGISLATION**

Not known.

**AUTHOR AND/OR PERMANENT CONTACT:** Mary V.J. Cataldo, Procopio, Cory, Hargreaves & Savitch, LLP, 12544 High Bluff Drive, Ste. 300, San Diego, CA 92130; (760) 444-1773.

**RESPONSIBLE FLOOR DELEGATE:** Mary Cataldo, Esq.

\* \* \* \* \*

**RESOLUTIONS COMMITTEE RECOMMENDATION**

The CCBA's Resolutions Committee recommended Disapproval of this resolution. The full Conference rejected that recommendation and approved the resolution.