

## RESOLUTION 01-08-06

### DIGEST

Venue: Actions by or against a City, County or Local Agency

Amends Civil Procedure section 394 to alter the process of changing venue in cases in which a county, city, or local agency is involved.

### RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Civil Procedure section 394 to alter the process of changing venue in cases in which a county, city, or local agency is involved. This resolution should be disapproved because it is overbroad and creates mandatory changes of venue where such changes should remain discretionary.

Currently, it is discretionary to order a change of venue where the non-public entity requests that change, and mandatory when the public entity defendant so requests. This resolution makes a change of venue mandatory in all cases where a public entity is a party, and either party requests the venue change.

This resolution removes the exemption for personal injury cases. Hence, under this resolution, an individual claiming to be injured may be forced to litigate his or her case against a public entity in a remote county simply because the public entity has requested that the venue selected by the individual be changed. This could pose extreme hardships upon individual plaintiffs.

Moreover, significant parts of the affected statute are not even addressed, so it is difficult to determine how this resolution would impact the remainder of the venue statute.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 394 to read as follows:

1 § 394:

2 (a) An action or proceeding against or brought by a county, or city and county, a city, or  
3 local agency, ~~may be tried in the county, or city and county, or the county in which the city or~~  
4 ~~local agency is situated unless the action or proceeding is brought by a county, or city and~~  
5 ~~county, a city, or local agency, in which case it may~~ shall be, on motion of either party,  
6 transferred for trial to a ~~be tried in any~~ county, or city and county, not a party thereto and in  
7 which the city or local agency is not situated and other than that in which the private party  
8 resides, or is doing business, or is situated. ~~Except for actions~~ Actions initiated by the local child

9 support agency pursuant to Section 17400, 17402, 17404, or 17416 of the Family Code shall not  
10 be subject to transfer under this statute., ~~any action or proceeding brought by a county, city and~~  
11 ~~county, city, or local agency within a certain county, or city and county, against a resident of~~  
12 ~~another county, city and county, or city, or a corporation doing business in the latter, shall be, on~~  
13 ~~motion of either party, transferred for trial to a county, or city and county, other than the~~  
14 ~~plaintiff, if the plaintiff is a county, or city and county, and other than that in which the plaintiff~~  
15 ~~is situated, if the plaintiff is a city, or a local agency, and other than that in which the defendant~~  
16 ~~resides, or is doing business, or is situated.~~ Whenever an action or proceeding is brought against  
17 a county, city and county, city, or local agency, in any county, or city and county, other than the  
18 defendant, if the defendant is a county, or city and county, or, if the defendant is a city, or local  
19 agency, other than that in which the defendant is situated, the action or proceeding must be, on  
20 motion of that defendant, transferred for trial to a county, or city and county, other than that in  
21 which the plaintiff, or any of the plaintiffs, resides, or is doing business, or is situated, and other  
22 than the plaintiff county, or city and county, or county in which that plaintiff city or local agency  
23 is situated, and other than the defendant county, or city and county, or county in which the  
24 defendant city or local agency is situated; provided, however, that any action or proceeding  
25 against the city, county, city and county, or local agency for injury occurring within the city,  
26 county, or city and county, or within the county in which the local agency is situated, to person  
27 or property or person and property caused by the negligence or alleged negligence of the city,  
28 county, city and county, local agency, or its agents or employees, shall be tried in that county, or  
29 city and county, or if a city is a defendant, in the city or in the county in which the city is  
30 situated, or if a local agency is a defendant, in the county in which the local agency is situated. In  
31 that action or proceeding, the parties thereto may, by stipulation in writing, or made in open  
32 court, and entered in the minutes, agree upon any county, or city and county, for the place of trial  
33 thereof.

34 (b) When the action or proceeding is one in which a jury is not of right, or in case a  
35 jury is waived, then in lieu of transferring the cause, the court in the original county may request  
36 the chairperson of the Judicial Council to assign a disinterested judge from a neutral county to  
37 hear that cause and all proceedings in connection therewith.

38 (c) When the action or proceeding is transferred to another county for trial, a witness  
39 required to respond to a subpoena for a hearing within the original county shall be compelled to  
40 attend hearings in the county to which the cause is transferred.

41 (d) If the demand for transfer is made by one party and the opposing party does not  
42 consent thereto, the additional costs of the nonconsenting party occasioned by the transfer of the  
43 cause, including living and traveling expenses of the nonconsenting party and material witnesses,  
44 found by the court to be material, and called by the nonconsenting party, not to exceed five  
45 dollars (\$5) per day each in excess of witness fees and mileage otherwise allowed by law, shall  
46 be assessed by the court hearing the cause against the party requesting the transfer. To the extent  
47 of that excess, those costs shall be awarded to the nonconsenting party regardless of the outcome  
48 of the trial. This section shall apply to actions or proceedings now pending or hereafter brought.

49 (b) (e) For the purposes of this section, "local agency" shall mean any governmental  
50 district, board, or agency, or any other local governmental body or corporation, but shall not  
51 include the State of California or any of its agencies, departments, commissions, or boards.

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

PROPONENT: San Diego County Bar Association

#### STATEMENT OF REASONS

Existing Law: The existing law is confusing and presents ambiguities for attorneys who practice in and against governmental agencies. It also provides for conflicting standards related to residents. A non-resident plaintiff may seek a venue change but a resident plaintiff may not. However, if the resident is a defendant, then he or she may seek a venue change. This carves out a niche of unfairness for residents who are concerned about bias.

Resolution: This resolution clarifies the ambiguity inherent in this incoherent statute by creating one clear and consistent rule for changes of venue.

The Problem: Under current law, litigants are subjected to an ambiguous and potentially inconsistent statute.

#### IMPACT STATEMENT

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

AUTHOR AND/OR PERMANENT CONTACT: Karen R. Frostrom, Thorsnes Bartolotta McGuire, 2550 Fifth Avenue, Suite 1100, San Diego, California 92103, 619-236-9363.

RESPONSIBLE FLOOR DELEGATE: Karen R. Frostrom