

# Chapter 9—Challenging the Court’s Jurisdiction

## § 9.01 Challenging the Court’s Personal Jurisdiction

One challenges the court’s [personal jurisdiction](#) using the same device by which one challenges defects in the service of the summons and complaint, a [motion to quash service of the summons](#).

## § 9.02 Challenging the Court’s Subject Matter Jurisdiction

If the court lacks [subject matter jurisdiction](#) over an action, it lacks the authority to render a binding judgment in the matter, and any judgment that the court purports to render is void. One may challenge the court’s subject matter jurisdiction at any time;<sup>1</sup> one does not waive the defect of no subject matter jurisdiction by failing to object by way of [demurrer](#) or [answer](#).<sup>2</sup> Indeed, one may attack a final judgment collaterally for lack of subject matter jurisdiction if the lack of jurisdiction was

<sup>1</sup> *Troy Gold Indus., Ltd. v. Occupational Safety & Health Appeals Bd.*, 187 Cal. App. 3d 379, 385 n.3, 231 Cal. Rptr. 861, 864 n.3 (1986) (lack of subject matter jurisdiction may be raised for the first time on appeal). *See generally* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:117–:122, 7:63–:69 (1996); 5 B.E. WITKIN, CALIFORNIA PROCEDURE, *Pleading* § 919 (3d ed. 1985).

<sup>2</sup> CODE CIV. PROC. § 430.80(a); *cf.* *Buss v. J.O. Martin Co.*, 241 Cal. App. 2d 123, 133, 50 Cal. Rptr. 206, 213 (1966) ([demurrer for lack of jurisdiction of subject matter](#), which operates like and is functionally similar to a [demurrer for insufficiency of facts](#), should likewise be regarded as a [general demurrer](#)).

clear, the jurisdictional issue is one of law rather than fact, the tribunal that rendered the judgment was a court of limited jurisdiction, and there is a strong policy against the tribunal's acting beyond its jurisdiction.<sup>3</sup> The court may raise the issue of subject matter jurisdiction on its own motion.<sup>4</sup>

The choice of device by which to challenge the court's subject matter jurisdiction depends primarily on whether the absence of subject matter jurisdiction appears on the fact of the complaint or turns upon some fact outside the complaint. In the former case, one may raise the issue of jurisdiction by means of a [demurrer](#)<sup>5</sup> or [{motion for judgment on the pleadings}](#). In the latter case, one may raise the issue of jurisdiction by means of a [{motion for summary judgment}](#) or as an [affirmative defense](#) in the answer.<sup>6</sup>

### § 9.03 Transfer of the Case

A successful challenge to the court's subject matter jurisdiction does not automatically result in dismissal of the case. If the plaintiff commenced the action in

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<sup>3</sup> *City and County of San Francisco v. Padilla*, 23 Cal. App. 3d 388, 399–400, 100 Cal. Rptr. 223, 231–32 (1972) (res judicata did not bar city from attacking unauthorized order of the Board of Permit Appeals). See generally 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* §§ 280–287 (3d ed. 1985).

<sup>4</sup> *Goodwine v. Superior Court*, 63 Cal. 2d 481, 484, 407 P.2d 1, 3, 47 Cal. Rptr. 201, 203 (1965).

<sup>5</sup> A defendant may object to the complaint by demurrer on the ground that the court has no jurisdiction of the subject of the cause of action alleged in the complaint if the absence of subject matter jurisdiction appears on the fact of the complaint or from any matter of which the court is required to or may take [judicial notice](#). CODE CIV. PROC. §§ 430.10(a), .30(a).

<sup>6</sup> *Greener v. Workers' Compensation Appeals Bd.*, 6 Cal. 4th 1028, 1036, 863 P.2d 784, 788, 25 Cal. Rptr. 2d 539, 543 (1993).

the wrong court, as determined by the complaint, and if there is a California court that has authority to hear the action, the court in which the action was incorrectly commenced must transfer the action to a court having subject matter jurisdiction.<sup>7</sup> A matter may be transferred when (i) the absence of jurisdiction is apparent before trial from the complaint, petition, or related documents, or (ii) during the course of pretrial litigation, it becomes clear that the matter will necessarily result in a verdict below the [superior court jurisdictional amount](#), and the court affords the parties an opportunity to contest the transfer.<sup>8</sup>

If more than one court has subject matter jurisdiction, the court must transfer the case to the court agreed upon by the parties; if they do not agree, the court may transfer the case to a court having subject matter jurisdiction and in which [venue](#) lies. The case is thereafter prosecuted in the court to which it has been transferred as if the plaintiff had filed the action there, though all prior proceedings remain valid.<sup>9</sup> The transferee court has the same authority over the case as if the plaintiff had originally filed the case in the transferee court.<sup>10</sup> A case transferred to another court

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<sup>7</sup> CODE CIV. PROC. § 396. Section 396 applies when it appears from verified pleadings or at trial that the determination of a cross-complaint will necessarily involve the determination of questions not within the court's subject matter jurisdiction. *Rothrock v. Ohio Farmers Ins. Co.*, 233 Cal. App. 2d 616, 620, 43 Cal. Rptr. 716, 718–19 (1965). Section 396 applies to an action filed in superior court which should have been filed as an original proceeding in an appellate court. *Padilla v. Department of Alcoholic Beverage Control*, 43 Cal. App. 4th 1151, 1154, 51 Cal. Rptr. 2d 133, 136 (1996). *See generally* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:123–:127.11 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* §§ 321–331 (3d ed. 1985).

<sup>8</sup> *Walker v. Superior Court*, 53 Cal. 3d 257, 262, 807 P.2d 418, 420, 279 Cal. Rptr. 576, 578 (1991).

<sup>9</sup> CODE CIV. PROC. § 396.

is deemed to have been commenced when the plaintiff filed the action in the wrong court. If the plaintiff served the [summons](#) on a defendant before the transfer of the action, the time to answer the complaint for any defendant so served who has not appeared in the action begins to run upon service of written notice of the filing of the action in the court to which it is transferred.<sup>11</sup>

The court's authority to transfer extends only to actions, not to causes of action. Thus, if a complaint combines claims for which the court has subject matter jurisdiction with claim for which the court lacks jurisdiction, the court must retain the action and refuse to address the causes of action for which it lacks jurisdiction.<sup>12</sup>

#### **[A] Subsequently Discovered Lack of Subject Matter Jurisdiction**

If an action is commenced in or transferred to a court having subject matter jurisdiction as determined by the complaint and it later appears from the verified pleadings or at trial that the determination of the action or of a cross-complaint will necessarily involve the determination of questions not within the court's jurisdiction, the court must suspend all further proceedings and transfer the action and certify the file to a court having subject matter jurisdiction and in which venue lies.<sup>13</sup>

**Example:** *P* files a complaint seeking general damages of \$500,000 but alleging no physical injury, medical expenses, or lost wages. An arbitrator awards \$1,400. The superior court transfers the case to the municipal

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<sup>10</sup> CODE CIV. PROC. § 399.

<sup>11</sup> CODE CIV. PROC. § 396.

<sup>12</sup> Cook v. Winklepleck, 16 Cal. App. 2d Supp. 759, 764, 59 P.2d 463, ?? (1936).

<sup>13</sup> CODE CIV. PROC. § 396.

court because the case does not satisfy the superior court's \$25,000 jurisdictional threshold.

The transfer order was correct.<sup>14</sup>

In order for a superior court to transfer a case to the municipal court on the ground that the amount in controversy does not meet the jurisdictional threshold of the superior court, it must appear that a recovery exceeding the superior court's jurisdictional threshold "could not be obtained" or is "virtually unobtainable."<sup>15</sup>

**Example:** *P* files a complaint seeking \$6,000 in medical expenses and \$40,000 in lost wages. An arbitrator awards \$17,000. The superior court transfers the case to the municipal court.

The superior court abused its discretion. The arbitrator's award did not make a \$25,000 judgment virtually unobtainable.<sup>16</sup>

The superior court is not required to transfer an action because the judgment to be rendered is one which might have been rendered by a municipal or justice court in the same county.<sup>17</sup> Before transferring a case on its own motion, a superior court must give the plaintiff notice and an opportunity to argue against the transfer,<sup>18</sup> and

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<sup>14</sup> *Campbell v. Superior Court*, 213 Cal. App. 3d 147, 152, 261 Cal. Rptr. 509, 513 (1989).

<sup>15</sup> *Walker v. Superior Court*, 53 Cal. 3d 257, 269, 807 P.2d 418, 425, 279 Cal. Rptr. 576, 583 (1991).

<sup>16</sup> *Williams v. Superior Court*, 219 Cal. App. 3d 171, 179–80, 268 Cal. Rptr. 61, 66 (1990).

<sup>17</sup> CODE CIV. PROC. § 396.

<sup>18</sup> *Walker v. Superior Court*, 53 Cal. 3d 257, 270–71, 807 P.2d 418, 426, 279 Cal. Rptr. 576, 584 (1991).

The defendant may not disclose the plaintiff's low settlement offers to buttress his argument in favor of transfer because disclosure would discourage frank settlement negotiations. *Id.* at 271, 807 P.2d at 426, 279 Cal. Rptr. at 584.

the court must prepare a record sufficient to support its decision to transfer the case.<sup>19</sup> If the plaintiff seeks to {[amend](#)} the complaint in a manner that would divest the court of subject matter jurisdiction, the court has the authority to allow the amendment<sup>20</sup> but must then transfer the action to the proper court.

➔ Jurisdiction: Municipal Courts

If the plaintiff files an action in a municipal court and seeks a judgment in an amount exceeding the court's authority, the plaintiff may ask the court to remit the excess so that the action may continue in the court where it is pending.<sup>21</sup>

#### **[B] Appellate Review**

When a superior court changes the place of trial, the plaintiff may petition the court of appeal for a {[writ of mandate](#)} requiring trial in the proper court. The plaintiff must file the petition within 20 days after service of [written notice of the order](#). The superior court may, for good cause and before the expiration of the initial 20-day period, extend the time for one additional period not exceeding ten days. The petitioner must file a copy of the petition in the trial court immediately after filing the petition in the court of appeal. The court of appeal may stay all proceedings in the case until judgment on the petition becomes final.<sup>22</sup>

#### **[C] Fees and Costs**

When a case is transferred, the clerk, after expiration of the time within which the plaintiff could have file a petition for a writ of mandate or after judgment denying

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<sup>19</sup> Walker v. Superior Court, 53 Cal. 3d 257, 271, 807 P.2d 418, 427, 279 Cal. Rptr. 576, 585 (1991).

<sup>20</sup> Thomasian v. Superior Court, 122 Cal. App. 2d 322, 341, 265 P.2d 165, 176 (1953).

<sup>21</sup> CODE CIV. PROC. § 396.

<sup>22</sup> CODE CIV. PROC. § 400.

the writ becomes final, transmits the file to the clerk of the transferee court upon the plaintiff's payment of the costs and fees. If the plaintiff does not pay the costs and fees within five days after service of notice of the transfer order, then any other party interest in the case, whether named in the complaint as a party or not, may pay such costs and fees, and the clerk must then transmit the file. The plaintiff may not prosecute the case further until the costs and fees are paid. If the plaintiff does not pay the costs and fees within 30 days after service of notice of the transfer order or within 30 days after notice of finality of the transfer order if the plaintiff seeks a writ of mandate, the defendant may move to dismiss the action without prejudice, but the plaintiff may not commence another case on the same cause of action in another court before paying the costs and fees. If the court of appeal does not stay the proceedings upon the plaintiff's filing of a petition for a writ of mandate, the time for payment of the costs and fees is 60 days after service of the notice of the transfer order.<sup>23</sup>

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<sup>23</sup> CODE CIV. PROC. § 399.