

Chapter 10—Challenging the Plaintiff’s Choice of Forum

§ 10.01 Motions for Change of Venue

The Code of Civil Procedure prescribes the county or counties in which **venue** lies for any given civil action. If the plaintiff files the action in the wrong court, the defendant may remedy the error by means of a motion for change of venue.¹ The Code also permits a party² to invoke the court’s discretion to transfer the case for other reasons as well. The court may, on motion, change the place of trial in the following cases:

➔ Actions Commenced in the Wrong Court

- when the court designated in the complaint is not the proper court
- when there is reason to believe that an impartial trial cannot be had in the court designated in the complaint³

¹ CODE CIV. PROC. § 397.

² The plaintiff as well as the defendant may seek a change of venue on grounds other than the filing of the action in the wrong court. *See, e.g.*, *Carruthers v. Crown Prods. Co.*, 89 Cal. App. 2d 326, 200 P.2d 819 (1948).

³ CODE CIV. PROC. § 397. Any one of several defendants may seek a change of venue to obtain an impartial trial, even if his codefendants refuse to join in the motion. *People v. Ocean Shore R.R.*, 24 Cal. App. 2d 420, 424–25, 75 P.2d 560, 562–63 (1938).

➡ Actions Commenced in an Inconvenient Court

- when a change of venue would promote the convenience of witnesses and the ends of justice
- when there is no judge of the court qualified to act⁴
- when the petitioner in a proceeding for dissolution of marriage has filed the proceeding in the county in which the petitioner has resided for the three months preceding the commencement of the proceeding and the respondent at the time of the commencement of the proceeding is a resident of another California county, provided that a change of venue to the respondent's county would promote the ends of justice.⁵

The moving party bears the burden of proving the facts establishing his entitlement to a change of venue.⁶ It is not enough that the defendant show that he resides in a county different from that in which the plaintiff filed suit. The defendant must “negat[e] the propriety of venue as laid on all possible grounds.”⁷ This means proving that none of the defendants resides in the county where the plaintiff filed

⁴ This provision has long been a dead letter, as the Chief Justice has the power to appoint a judge from another county to try the case if no judge of a court is qualified to hear the action. CODE CIV. PROC. § 170.8.

⁵ CODE CIV. PROC. §§ 396b(a), 397. In any proceeding for dissolution or nullity of marriage or legal separation, if both the petitioner and the respondent have moved from the county rendering the order, the court may transfer the proceedings to the county of residence of either party if the change would promote the ends of justice and the convenience of the parties. *Id.* § 397.5. See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:542–594, 11:10–12 (1996); 3 B.E. WITKIN, CALIFORNIA PROCEDURE, *Actions* §§ 621, 628–635, 657–709 (3d ed. 1985).

⁶ Lieberman v. Superior Court, 194 Cal. App. 3d 396, 401, 239 Cal. Rptr. 450, 452 (1987).

⁷ Karson Indus., Inc. v. Superior Court, 273 Cal. App. 2d 7, 8–9, 77 Cal. Rptr. 714, 715 (1969).

- ➡ Venue: [Additional Venues](#)
- ➡ Motions: [Evidentiary Support](#)

suit⁸ and that venue in that county is not valid on some alternative ground.⁹ The evidentiary rules normally applicable to motions generally apply to motions for change of venue.¹⁰ If the court denies a motion for change of venue, the defendant has 30 days to [move to strike](#), [demur](#), or otherwise plead if the defendant has not previously filed a response.¹¹ If the court grants the motion, the defendant has 30 days from the time the transferee court mails notice of receipt of the case in which to plead.¹²

The filing of a motion for change of venue operates as a stay of proceedings, and the court must dispose of the motion before taking any other steps.¹³ In dissolution proceedings, however, the court may, before ruling on the motion to change venue, consider and determine motions for allowance of temporary spousal support, child support, temporary restraining orders, attorneys’ fees, and costs.¹⁴ Also, the plaintiff may serve a [fictitiously named “Doe” defendant](#) and amend the complaint to state the fictitiously named defendant’s true name, in which case the court must take the new defendant’s residence into account when determining whether the plaintiff

⁸ *Sequoia Pine Mills, Inc. v. Superior Court*, 258 Cal. App. 2d 65, 67–68, 65 Cal. Rptr. 353, 354–55 (1968).

⁹ *Karson Indus., Inc. v. Superior Court*, 273 Cal. App. 2d 7, 8–9, 77 Cal. Rptr. 714, 715 (1969).

¹⁰ *Michael E. Lieppman, Inc. v. Lieber*, 180 Cal. App. 3d 914, 919, 225 Cal. Rptr. 845, 847 (1986).

¹¹ CODE CIV. PROC. § 396b(e); RULES OF CT. 326.

¹² RULES OF CT. 326.

¹³ *Moore v. Powell*, 70 Cal. App. 3d 583, 587, 138 Cal. Rptr. 914, 916 (1977).

¹⁴ CODE CIV. PROC. §§ 396b(c), 397(e).

filed the action in an improper court.¹⁵ Moreover, the court has the power to order {severance} of the action at the same time it orders transfer.¹⁶

If the defendant unsuccessfully moves for a change of venue, he may renew the motion if the circumstances have changed.¹⁷

Example: D_1 moves unsuccessfully for a change of venue based on P 's failure to file the action in the county of D_1 's residence. D_2 moves for a change of venue based on the convenience of the witnesses. P objects based on D_1 's unsuccessful motion. The court grants the motion
The court had the power to venue.¹⁸

[A] Actions Commenced in the Wrong Court

If the plaintiff filed the action in a court having [subject matter jurisdiction](#) but in the wrong county, the court may try the action unless the defendant files a motion for change of venue, alone or accompanied by an [answer](#), [demurrer](#), or [motion to strike](#).¹⁹ Any one of the defendants may force a change of venue, even if another defendant opposes the motion and is content to try the case in a county in which

¹⁵ Gutierrez v. Superior Court, 243 Cal. App. 2d 710, 724, 52 Cal. Rptr. 592, 602 (1966).

¹⁶ Pfefferle v. Lastreto, 206 Cal. App. 2d 575, 580, 23 Cal. Rptr. 834, 837–38 (1962).

¹⁷ Seybert v. County of Imperial, 139 Cal. App. 2d 221, 230, 293 P.2d 135, 141 (1956).

¹⁸ Marshall v. Dunlap, 138 Cal. App. 2d 59, 61, 291 P.2d 538, 540 (1955).

¹⁹ CODE CIV. PROC. § 396b(a). See generally 3 B.E. WITKIN, CALIFORNIA PROCEDURE, *Actions* §§ 646–649 (3d ed. 1985).

none of them resides.²⁰ A plaintiff may not avoid the consequences of a motion for change of venue by {[dismissing the action](#)} and refile.²¹

➡ [Venue: Mixed Actions](#)

A defendant may show that the plaintiff filed the action in the wrong court by showing that the plaintiff improperly joined the defendant upon whose residence the plaintiff bases venue. The defendant must persuade the court that the plaintiff had no reasonable grounds for a good faith belief that the plaintiff had a cause of action against the resident defendant.²² The defendant may accomplish this requirement by showing either that the complaint does not state a cause of action against the resident defendant or that the resident defendant is not, in fact, an interested party. To this end, the defendant may go outside the complaint and adduce evidence showing the resident defendant's improper joinder.²³

Example: *P* files suit in the San Francisco Superior Court alleging that she sustained injuries in a taxicab accident in Napa. She names as defendants the owner and driver of the cab. She also names as a defendant owner *D Corp.*, a corporation located in San Francisco. The Napa defendants move for a change of venue and submit uncontradicted [declarations](#) showing that *D Corp.* does not own the taxicab and had nothing to do with the accident. The court denies the motion on the ground that the complaint states a cause of action against *D Corp.*

²⁰ *Goossen v. Clifton*, 75 Cal. App. 2d 44, 50, 170 P.2d 104, 108–09 (1946).

²¹ CODE CIV. PROC. § 581(i).

²² *California Collection Agency, Inc. v. Fontana*, 61 Cal. App. 2d 648, 653–54, 143 P.2d 507, 510 (1943).

²³ *Sourbis v. Rhoads*, 50 Cal. App. 98, 101, 194 P. 521, 522 (1920).

The court erred. The court must disregard the residence of an improperly joined defendant if the nonresident defendants show that no substantial factual basis exists for the cause of action alleged against the resident defendant.²⁴

If the plaintiff filed the case in the wrong court and the defendant obtains a change of venue on that ground, the court must transfer the case to any court that the parties may agree upon, provided that the court is a “proper court,” that is, a court having [subject matter jurisdiction](#) and in which venue lies. If the parties do not agree on a new court, then the court must transfer the case to a proper court of the defendant’s choice in the county in which the plaintiff commenced the action. If there is not proper court in that county, the court must transfer the case to a proper court chosen by the defendant in another county.²⁵

Example: *P* sues *D*₁, *D*₂, and *D Corp.* in the Alameda County Superior Court for wrongful discharge and intentional infliction of emotional distress. *D*₁ resides in San Diego County; *D*₂ resides in San Mateo County. *D*₁ moves the court for a change of venue to San Diego County, and *D*₂ acquiesces. The trial court denies the motion.

The trial court erred. The individual defendants were not parties to the contract of employment and could be sued for intentional infliction of emotional distress only in the counties where they

²⁴ *Minyard v. Superior Court*, 248 Cal. App. 2d 633, 637, 56 Cal. Rptr. 801, 805 (1967).

²⁵ CODE CIV. PROC. § 398. The defendant may designate his chosen court in his notice of motion for change of venue or in open court, entered in the minutes or docket when the court makes the order for transfer. *Id.*

resided. Because D_2 acquiesced in D_1 's motion, the court had no option other than to transfer the case to the San Diego County Superior Court.²⁶

If the parties do not agree on a transferee court and the defendant does not choose one, or if the court orders a change of venue on its own motion, the court may transfer the case to whatever proper court it chooses.²⁷

In any case, if the defendant has already filed an answer, the court may consider the opposition to the motion to transfer and may retain the action in the county where the plaintiff commenced the action if the court finds that retention of the action would promote the convenience of the witnesses or the ends of justice.²⁸

In its discretion, the court may order the loser to pay the winner's reasonable expenses and attorneys' fees incurred in making or resisting the motion, whether or not that party is otherwise entitled to recover his costs of action. In determining whether to order payment of expenses and attorneys' fees, the court is to consider:

- whether an offer to stipulate to a change of venue was reasonably made and rejected
- whether the plaintiff selected venue or the defendant moved for change of venue in good faith given the facts and law that party knew or should have known.²⁹

²⁶ Cubic Corp. v. Superior Court, 186 Cal. App. 3d 622, 625, 231 Cal. Rptr. 18, 19–20 (1986).

²⁷ CODE CIV. PROC. § 398.

²⁸ CODE CIV. PROC. § 396b(d).

The attorney for the loser, not the loser, is liable for the expenses and attorneys' fees. The court may not award sanctions except upon notice contained in the winning party's papers,³⁰ or on the court's own noticed motion, and after an opportunity to be heard.³¹

[B] Actions Commenced in an Inconvenient Court

The discretionary transfer provisions³² apply to all actions, regardless of the breadth of the plaintiff's initial choice of venues.³³ In seeking a motion for change of venue based on "the convenience of witnesses and the ends of justice,"³⁴ the plaintiff must adduce [declarations](#) showing specifically the nature and extent of the testimony forthcoming from the inconvenienced witnesses so that the trial court will be able to determine whether that testimony would be relevant and admissible, and, further, so that opposing counsel can stipulate to the admission of the proposed

²⁹ CODE CIV. PROC. § 396b(b); *Mission Imports, Inc. v. Superior Court*, 31 Cal. 3d 921, 931–32, 647 P.2d 1075, 1081, 184 Cal. Rptr. 296, 302 (1982). By its terms, section 396b(b) applies to motions for change of venue based on the filing of the complaint in the wrong court. In one case the court declined to decide whether a court can rely on section 396b(b) to impose sanctions in case of a motion for change of venue on other grounds or must rely exclusively on CODE CIV. PROC. § 128.5. *See* Michael E. Lieppman, M.D., Inc. v. Lieber, 180 Cal. App. 3d 914, 919, 225 Cal. Rptr. 845, 847 (1986).

³⁰ *Cacciaguidi v. Superior Court* 226 Cal. App. 3d 181, 187, 276 Cal. Rptr. 465, 469 (1990) (request for fees included in [memorandum of points and authorities](#) was sufficient).

³¹ CODE CIV. PROC. § 396b(b).

³² CODE CIV. PROC. § 397(b)–(e).

³³ *Richfield Hotel Management, Inc. v. Superior Court*, 22 Cal. App. 4th 222, 225–26, 27 Cal. Rptr. 2d 161, 162–63 (1994).

³⁴ CODE CIV. PROC. § 397(c).

testimony and thus obviate the necessity of calling the witnesses.³⁵ The “convenience of witnesses” refers to nonparty witnesses, not to parties,³⁶ their employees³⁷ (unless the opponent calls the employee as a witness³⁸), their attorneys,³⁹ or their experts.⁴⁰ Only in extraordinary circumstances (*e.g.*, ill health)

³⁵ *Juneau v. Juneau*, 45 Cal. App. 2d 14, 17, 113 P.2d 463, 464 (1941). *See* LOS ANGELES SUPER. CT. R. 2.1(d)—declarations must show:

(1) Identification. The name and address of each prospective witness to be called by all parties to the action so far as known to the moving party;

(2) Significance of Witness. The anticipated testimony of each prospective witness or the nature of the witness' relationship to the action, so that the significance of the witness' presence at trial might be fairly considered by the court;

(3) Completed Discovery. Whether or not such prospective witness has been deposed, answered interrogatories, or provided any person with a statement concerning the incident in question. If any such record exists, the moving party should make specific reference to it;

(4) Further Discovery. Whether or not the moving party has completed discovery proceedings and, if not, what further discovery will be required and where and by what means it will be accomplished.

The *San Francisco Superior Court Law and Motion and Writs and Receivers Manual* adds to this list whether a change of venue will permit a view of the scene or make available other material evidence not available if the case is tried in San Francisco. *Id.* § 112(b).

³⁶ *Wrin v. Ohlandt*, 213 Cal. 158, 160, 1 P.2d 991, 991 (1931).

³⁷ *Stute v. Burinda*, 123 Cal. App. 3d Supp. 11, 17, 177 Cal. Rptr. 102, 105 (1981).

³⁸ *J.C. Millett Co. v. Latchford-Marble Glass Co.*, 167 Cal. App. 2d 218, 227, 334 P.2d 72, 77 (1959).

³⁹ *Michael E. Lieppman, M.D., Inc. v. Lieber*, 180 Cal. App. 3d 914, 920, 225 Cal. Rptr. 845, 848 (1986).

⁴⁰ *Wrin v. Ohlandt*, 213 Cal. 158, 160, 1 P.2d 991, 991 (1931).

may the court change venue based on the convenience of a party.⁴¹ A party seeking a change of venue must act within a reasonable time.⁴² The defendant, however, may not file a motion for change of venue before answering because the answer is indispensable to the task of identifying the likely witnesses in the case.⁴³

If the court orders a change of venue in order to obtain an impartial trial, to promote the witnesses' convenience, or to find a judge qualified to act, the court must transfer the case to a court having **subject matter jurisdiction** which the parties may agree upon. If the parties do not agree on a transferee court, the court must transfer the case to the nearest or most accessible court where the same cause for changing venue does not exist.⁴⁴

[C] Actions Commenced in a Court in Which an Impartial Trial Cannot Be Had

At one time it was said that a defendant could not obtain a change of venue in order to obtain an impartial trial unless the court had tried and failed to impanel an impartial jury.⁴⁵ More recent (though hardly modern) authority rejects this view, holding that the court may transfer the action to obtain an impartial trial if, at the hearing on the motion, there appears sufficient reason to believe that an impartial

⁴¹ *Simonian v. Simonian*, 97 Cal. App. 2d 68, 69, 217 P.2d 157, 158 (1950).

⁴² *Newman v. County of Sonoma*, 56 Cal. 2d 625, 628, 364 P.2d 850, 852, 15 Cal. Rptr. 914, 916 (1961).

⁴³ *Buran Equip. Co. v. Superior Court*, 190 Cal. App. 3d 1662, 1665, 236 Cal. Rptr. 171, 172 (1987).

⁴⁴ CODE CIV. PROC. § 398.

⁴⁵ *Cook v. Pendergast*, 61 Cal. 72, 79–80 (1882).

trial cannot be had.⁴⁶ Transfer lies within the court's discretion.⁴⁷ The argument in favor of transfer is weak if the case is to be tried to the court, rather than to a jury.⁴⁸

The court has the power to transfer a case in order to obtain an impartial trial, even though the statute supporting the plaintiff's cause of action specifies that trial shall occur in a specific county.⁴⁹

[D] Appellate Review

When a superior court grants or denies a motion for change of venue, the loser may petition the court of the appeal for a {writ of mandate} requiring trial of the case in the proper court.⁵⁰ The petition must be filed within 20 days after service of a written notice of the trial court's order. The trial court may, for good cause and before the expiration of the initial 20-day period, extend the time for one additional period not exceeding 10 days. The petitioner must file a copy of the petition in the trial court. The court of appeal may stay all proceedings in the case pending a final judgment on the petition.⁵¹

A losing party may take an appeal from a municipal court order granting or denying a motion for change of venue.⁵²

⁴⁶ People v. Ocean Shore R.R., 24 Cal. App. 2d 420, 426, 75 P.2d 560, 564 (1938).

⁴⁷ Nguyen v. Superior Court, 49 Cal. App. 4th 1781, 1791, 57 Cal. Rptr. 2d 611, 617 (1996).

⁴⁸ Nguyen v. Superior Court, 49 Cal. App. 4th 1781, 1791, 57 Cal. Rptr. 2d 611, 617 (1996).

⁴⁹ Paesano v. Superior Court, 204 Cal. App. 3d 17, 20–21, 250 Cal. Rptr. 842, 844 (1988).

⁵⁰ CODE CIV. PROC. § 400; Calhoun v. Vallejo City Unified School Dist., 20 Cal. App. 4th 39, 41, 24 Cal. Rptr. 2d 337, 338 (1993) (superior court order not appealable).

⁵¹ CODE CIV. PROC. § 400.

⁵² CODE CIV. PROC. § 904.2(c).

[E] Transfer of the Case

If the court transfers the case, the court loses jurisdiction, and any further proceedings must take place in the transferee court.⁵³ The transfer may not occur until the expiration of the time within which the plaintiff may seek a {writ of mandate}. If the plaintiff seeks a writ of mandate, the court may not transfer the case until the judgment denying the writ becomes final.

The clerk must transmit the file to the clerk of the transferee court upon payment of the costs and fees. If the defendant seeks transfer of the case for reasons other than the plaintiff's filing of the action in an improper court, the defendant must pay the costs and fees of the transfer and of filing the papers in the transferee court when he files the notice of motion for change of venue. If the defendant seeks a change of venue, or if the court orders a change of venue, because the plaintiff filed the action in an improper court, the plaintiff must pay the costs and fees (plus expenses and attorney's fees awarded to the defendant⁵⁴) before the transfer is made. If the defendant paid the costs and fees when he filed his notice of motion, the plaintiff must reimburse the defendant when the court orders the case transferred to another court. If the plaintiff does not reimburse the defendant within five days after service of notice of the transfer order, then any other interested party, whether or not named in the complaint as a party, may pay the costs and fees, and the clerk must then transmit the file. The costs and fees become a proper item of costs of the paying

⁵³ *Badella v. Miller*, 44 Cal. 2d 81, 85, 279 P.2d 729, 731 (1955). The court, however, retains the power to vacate a transfer order for mistake, inadvertence, surprise, or excusable neglect under CODE CIV. PROC. § 473(b). *Badella v. Miller*, *supra*, 44 Cal. 2d at 86, 279 P.2d at 732.

⁵⁴ CODE CIV. PROC. § 396b(b).

party. If he wins the case, he may recover the costs and fees of transfer as costs; if he loses, he may deduct the costs of fees of transfer from the amount he owes to the plaintiff. The plaintiff may not further prosecute the action until the costs and fees are paid. If the costs and fees are not paid within 30 days after service of [notice of the transfer order](#), the defendant may move the court to dismiss the action without prejudice on the condition that the plaintiff may not refile the action in another court before paying the costs and fees. If the plaintiff has applied for a [writ of mandate](#) or has appealed from the transfer order, the plaintiff must pay the costs and fees within 30 days after notice of finality of the transfer order. When a petition for a writ of mandate or appeal does not result in a stay of proceedings, the plaintiff must pay the costs and fees within 60 days after service of the notice of the order.⁵⁵

If the court orders transfer of the action, the plaintiff may not avoid the consequences of the order by dismissing the action and refileing.⁵⁶

Example: *P* files an action in the Alameda County Superior Court. *D* successfully moves the court for an order changing venue to Butte County. *P* dismissed the action without prejudice and refiles the action in the Alameda County Superior Court. *D* moves to change of venue to Butte County. The court denies the motion.

The court erred. The transfer order in the original action was binding on the second court hearing the same action.⁵⁷

⁵⁵ CODE CIV. PROC. § 399.

⁵⁶ *Tarman v. Sherwin*, 189 Cal. App. 2d 49, 52, 10 Cal. Rptr. 787, 789 (1961).

⁵⁷ *Tarman v. Sherwin*, 189 Cal. App. 2d 49, 52, 10 Cal. Rptr. 787, 789 (1961).

When the clerk transmits the file, the clerk must mail notice of the transfer date to all parties who have appeared in the action. When the clerk of the transferee court receives the file, the clerk must mail notice of the filing date and case number to all parties who have appeared in the action.⁵⁸

The transferee court has the same jurisdiction over the case as if the plaintiff had originally filed the case in the transferee court. All prior proceedings remain valid.⁵⁹

[F] Retransfer

If the defendant forces the transfer of the action on the ground that the plaintiff filed the action in the wrong court, the transferee court, upon the filing of the defendant's answer, has the power to transfer the case back to the original court for any of the discretionary reasons supporting transfer of cases.⁶⁰

[G] Actions Involving Local Governments and Agencies

If a local government or agency brings an action in its home county against a resident of a county other than that in which the plaintiff is located, or against a corporation doing business in a county other than that in which the plaintiff is located, the court must, on the motion of either party, transfer the action to a neutral county.⁶¹ A regional agency is a resident of all the counties it encompasses.⁶² A

⁵⁸ CODE CIV. PROC. § 399.

⁵⁹ CODE CIV. PROC. § 399.

⁶⁰ *Scribner v. Superior Court*, 19 Cal. App. 3d 764, 766, 97 Cal. Rptr. 217, 218 (1971).

⁶¹ CODE CIV. PROC. § 394(a).

⁶² *Westinghouse Elec. Corp. v. Superior Court*, 17 Cal. 3d 259, 268, 551 P.2d 847, 854, 131 Cal. Rptr. 231, 238 (1976).

corporation does business in a county only if its activities in the county are so substantial that the corporation is intimately identified with the affairs or closely associated with the people of the community.⁶³ Except in extraordinary cases, the defendant's acts related to the subject matter of the litigation have no bearing on whether the corporation is doing business in the county; otherwise, a nonresident corporation could never obtain a change of venue in an action breach of a contract to be performed in the county.⁶⁴ Resident defendants are entitled to join in the transfer to avoid a multiplicity of suits,⁶⁵ but they are not entitled to initiate a transfer based on the presence in the litigation of a nonresident defendant.⁶⁶ If an action is brought against a local government or agency in a county other than that in which the defendant located, the defendant may move the court to transfer the action to a neutral county. These transfer rules do not render a neutral county a proper county in which to file the action in the first instance.⁶⁷

Example: *P* files an action in San Diego County seeking an injunction against Riverside County. On the motion of Riverside County for a change of venue, the court transfers the action to San Mateo County.

⁶³ Westinghouse Elec. Corp. v. Superior Court, 17 Cal. 3d 259, 271, 551 P.2d 847, 856, 131 Cal. Rptr. 231, 240 (1976).

⁶⁴ Westinghouse Elec. Corp. v. Superior Court, 17 Cal. 3d 259, 272, 551 P.2d 847, 856–57, 131 Cal. Rptr. 231, 240–41 (1976).

⁶⁵ Westinghouse Elec. Corp. v. Superior Court, 17 Cal. 3d 259, 275, 551 P.2d 847, 859, 131 Cal. Rptr. 231, 243 (1976).

⁶⁶ Westinghouse Elec. Corp. v. Superior Court, 17 Cal. 3d 259, 278, 551 P.2d 847, 860, 131 Cal. Rptr. 231, 244 (1976).

⁶⁷ Skidmore v. County of Solano, 128 Cal. App. 2d 391, 394, 275 P.2d 613, 615 (1954).

The court erred. *P* should have filed the action in Riverside County, the county of the defendant's residence, and then filed a motion to transfer.⁶⁸

If a plaintiff brings an action against a local government or agency for injury occurring within the defendant's home county to person or property caused by the negligence of the defendant or its employees, the action must be tried in the defendant's home county.⁶⁹ This rule does not apply, however, if the plaintiff resides outside the county in which the action is pending.⁷⁰

In any such action, the parties may stipulate that the case be tried in a different county. If the case is of a kind for which neither party may demand a jury, or if the parties have waived a jury, the Judicial Council, in lieu of transferring the case to another county, may assign a disinterested judge from a neutral county to preside over the case.⁷¹

If one of the parties opposes the demand of the other that the case be transferred, the court hearing the case must assess against the party requesting the transfer the additional costs of the nonconsenting party, including living and travel expenses of that party and his material witnesses. The additional costs may not exceed five dollars above the daily witness fees and mileage otherwise allowed by law for each

⁶⁸ *Riverside v. Superior Court*, 69 Cal. 2d 828, 831, 447 P.2d 626, 629, 73 Cal. Rptr. 386, 389 (1968).

⁶⁹ CODE CIV. PROC. § 394(a). The court has the authority to transfer the action on the usual discretionary grounds. *Paesano v. Superior Court*, 204 Cal. App. 3d 17, 20–21, 250 Cal. Rptr. 842, 844(1988).

⁷⁰ *Fitzpatrick v. Sonoma County*, 97 Cal. App. 588, 591, 276 P. 113, 115 (1929).

⁷¹ CODE CIV. PROC. § 394(a).

witness. To the extent of the excess, such costs are awarded to the nonconsenting party regardless of the outcome of the trial.⁷²

[H] Actions by the State or State Agencies

Whenever the law provides that the state or “a department, institution, board, commission, bureau, officer or other agency thereof” shall or may bring an action in Sacramento County, the defendant may move the court to transfer the case to the county in which the attorney general has an office (*i.e.*, Los Angeles or San Francisco) and which is nearest the county in which the defendant resides or has his principal office in California.⁷³

[I] Actions Involving Installment or Automotive Sales, Consumer Obligations, or Unlawful Detainer

In all actions subject to the Unruh Act,⁷⁴ the Rees-Levering Motor Vehicle Sales and Finance Act,⁷⁵ or involving the sale of consumer goods,⁷⁶ or an action for unlawful detainer,⁷⁷ the plaintiff must show by way of a **declaration** or **verified complaint** that he has filed the action in the proper county.⁷⁸ If it appears from the declaration, complaint, or otherwise that the court in which the plaintiff filed the

- ➡ Venue: Retail Installment Contract and Automobile Conditional Sale Contract Cases
- ➡ Venue: Consumer Contract Cases
- ➡ Venue: Unlawful Detainer

⁷² CODE CIV. PROC. § 394(a).

⁷³ CODE CIV. PROC. § 401(2).

⁷⁴ CIV. CODE §§ 1801 *et seq.*

⁷⁵ CIV. CODE §§ 2981 *et seq.*

⁷⁶ CODE CIV. PROC. § 395(b).

⁷⁷ CODE CIV. PROC. § 1161.

⁷⁸ CODE CIV. PROC. § 396a.

action is not the proper court, the court, on its own motion or the defendant's motion, must transfer the case to the proper court unless the defendant consents in writing or in open court to trial of the action in the court the plaintiff chose.⁷⁹

[J] Transfer Between Municipal Courts

The presiding judge of a municipal court may order, for the convenience of the court, the transfer of any pending case to a contiguous district in the same county if the presiding judge in the transferee district consents. The court must give the parties notice at least ten days before trial.⁸⁰

§ 10.02 Motions to Stay or Dismiss for Inconvenient Forum

➡ Jurisdiction: Personal Jurisdiction

Cases arise in which the defendant's contacts with California are sufficient to confer upon the California courts the authority to try a case but for which trial in another state would be more efficient and convenient. Code of Civil Procedure section 410.30(a) provides that when a court, upon a party's motion or its own motion, finds that in the interest of "substantial justice" a forum outside California should hear the action, the court must stay or **{dismiss}** the action in whole or in part on any conditions that may be just to permit the plaintiff to refile the action in the more appropriate forum.⁸¹ The court may dismiss the complaint without prejudice, altogether or as to a particular defendant.⁸² This doctrine of "forum non conveniens"

⁷⁹ CODE CIV. PROC. § 396a.

⁸⁰ CODE CIV. PROC. § 402.

⁸¹ CODE CIV. PROC. § 410.30(a). *See generally* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:408--:414 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* § 303 (3d ed. 1985).

⁸² CODE CIV. PROC. § 581(h).

is not jurisdictional; rather, the court declines to exercise jurisdiction which otherwise exists.⁸³

[A] The Existence of a Suitable Alternative Forum

In *Stangvik v. Shiley Inc.*⁸⁴ the California Supreme Court addressed in detail the process by which a trial court should decide whether to stay or dismiss an action for inconvenient forum. According to *Stangvik*, the court must first determine whether the defendant's proposed alternative forum is a "suitable" place for trial. The action will not be dismissed unless a suitable alternative forum is available to the plaintiff. The defendant, as the moving party, bears the burden of proof.⁸⁵

A foreign forum is suitable if the defendant is subject to [personal jurisdiction](#) there and the forum's statute of limitations does not bar his claim. The court must entertain the suit, no matter how inappropriate California may be as a forum, if the defendant cannot be subjected to jurisdiction in other states or if the plaintiff's cause of action would elsewhere be barred by the statute of limitations, unless the foreign court is willing to accept the defendant's stipulation that he will not raise this defense in the foreign forum.⁸⁶

Example: P_1 and P_2 , the heirs of Swedish and Norwegian patients who died when their heart valve implants failed, sue *D Corp.*, the manufacturer

⁸³ *In re Christopher B.*, 43 Cal. App. 4th 551, 557, 51 Cal. Rptr. 2d 43, 47 (1996).

⁸⁴ 54 Cal. 3d 744, 819 P.2d 14, 1 Cal. Rptr. 2d 556 (1991). See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:420–:423.5 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* § 307A (3d ed. 1985).

⁸⁵ *Stangvik v. Shiley Inc.*, 54 Cal. 3d 744, 752, 819 P.2d 14, 18, 1 Cal. Rptr. 2d 556, 560 (1991).

⁸⁶ *Stangvik v. Shiley Inc.*, 54 Cal. 3d 744, 752, 819 P.2d 14, 18, 1 Cal. Rptr. 2d 556, 560 (1991).

of the valves, in California. *D Corp.* agrees to submit to the jurisdiction of the courts in Sweden or Norway and stipulates to the tolling of the statute of limitations during the pendency of the actions in California.

Sweden and Norway are suitable fora.⁸⁷

A forum is suitable if the defendant is amenable to process there, there is no procedural bar to the ability of courts of the foreign jurisdiction to reach the issues raised on their merits (or, if there is, the defendant has waived the advantage of the bar—typically, the statute of limitations), and adjudication in the alternative forum is by an independent judiciary applying what American courts generally regard as due process of law. The fact that a plaintiff will be disadvantaged by the law of that jurisdiction, or that the plaintiff will probably or even certainly lose, does not render the forum unsuitable.⁸⁸

The defendant does not have the burden of showing that all the defendants are subject to the personal jurisdiction of the alternative forum.⁸⁹

[B] The Private Interests of the Litigants and the Interests of the Public

According to *Stangvik*, if the court determines that the defendant's proposed alternative forum is a suitable place for trial, the court must next consider the private interests of the litigants and the interests of the public in retaining the action for trial

⁸⁷ *Stangvik v. Shiley Inc.*, 54 Cal. 3d 744, 752, 819 P.2d 14, 18, 1 Cal. Rptr. 2d 556, 560 (1991).

⁸⁸ *Boaz v. Boyle & Co., Inc.*, 40 Cal. App. 4th 700, 711, 46 Cal. Rptr. 2d 888, 895 (1995).

⁸⁹ *Hansen v. Owens-Corning Fiberglas Corp.*, 51 Cal. App. 4th 753, 758, 59 Cal. Rptr. 2d 229, 232 (1996).

in California.⁹⁰ The private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses. The public interest factors include avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation.⁹¹

[1] Access to Sources of Proof

If most of the witnesses reside in the alternative forum and are subject to that court's subpoena power and if other evidence is located in the alternative forum, the balance tips in favor of trying the case in the alternative forum.⁹²

[2] The Burden on Local Courts

California courts are already overburdened with litigation and have little or no interest in litigation involving injuries incurred outside of California by non-

⁹⁰ *Stangvik v. Shiley Inc.*, 54 Cal. 3d 744, 751, 819 P.2d 14, 17, 1 Cal. Rptr. 2d 556, 559 (1991). See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:424-:425 (1996).

⁹¹ *Stangvik v. Shiley Inc.*, 54 Cal. 3d 744, 751, 819 P.2d 14, 17, 1 Cal. Rptr. 2d 556, 559-60 (1991).

⁹² *Hansen v. Owens-Corning Fiberglas Corp.*, 51 Cal. App. 4th 753, 760, 59 Cal. Rptr. 2d 229, 233 (1996); *Belnap Freight Lines v. Petty*, 46 Cal. App. 3d 159, 163, 119 Cal. Rptr. 907, 910 (1975) (quite title action stayed pending resolution of estate administration in Utah, where all the parties resided).

residents. It is unduly burdensome for California residents to be expected to serve as jurors on a case having little to do with California.⁹³

[3] California's Interest in Regulating the Conduct Involved

The argument in favor of retaining jurisdiction over a case becomes stronger if California has an interest in regulating the conduct that forms the basis of the case.⁹⁴ For instance, California has a fundamental interest in determining insurance coverage issues that affect who will pay for the remediation of toxic contamination within its borders.⁹⁵

[4] The Residence of the Parties

There is ordinarily a strong presumption in favor of the plaintiff's choice of forum. If the plaintiff is a resident of California, the plaintiff's choice of a California forum is presumed to be convenient because California has a strong interest in assuring its own residents an adequate forum for the redress of grievances.⁹⁶ The

⁹³ Hansen v. Owens-Corning Fiberglas Corp., 51 Cal. App. 4th 753, 760, 59 Cal. Rptr. 2d 229, 233 (1996); Rinauro v. Honda Motor Co., 31 Cal. App. 4th 506, 510, 37 Cal. Rptr. 2d 181, 183 (1995).

⁹⁴ Ford Motor Co. v. Insurance Co. of N. Am., 35 Cal. App. 4th 604, 612–13, 41 Cal. Rptr. 2d 342, 347 (1995).

⁹⁵ Ford Motor Co. v. Insurance Co. of N. Am., 35 Cal. App. 4th 604, 614, 41 Cal. Rptr. 2d 342, 348 (1995).

⁹⁶ Stangvik v. Shiley Inc., 54 Cal. 3d 744, 753, 819 P.2d 14, 19, 1 Cal. Rptr. 2d 556, 561 (1991); Archibald v. Cinerama Hotels, 15 Cal. 3d 853, 858, 544 P.2d 947, 950, 126 Cal. Rptr. 811, 814 (1976) (“[E]xcept in extraordinary cases a trial court has no discretion to dismiss an action brought by a California resident on grounds of forum non conveniens.”). See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:426–:433 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* §§ 311–313A (3d ed. 1985).

exceptional case justifying the dismissal of a suit under the doctrine of inconvenient forum is one in which California cannot provide an adequate forum or has no interest in doing so, including, for instance, cases in which a nominal California resident sues on behalf of foreign beneficiaries or creditors.⁹⁷ If substantial justice dictates trial of the case outside California, the court should stay the action rather than dismiss it.

Example: P_1 and her brother, P_2 , sue their brother, D , for misappropriating family assets in Switzerland. All three parties reside in California, but similar litigation is already pending in Switzerland, the assets were located in Switzerland, the alleged misappropriation occurred in Switzerland, Swiss law would apply to the dispute, and trial in California would raise difficult issues of evidentiary privilege. The trial court denies D 's motion to stay or dismiss the California action pending resolution of the Swiss action.

The trial court abused its discretion.⁹⁸

California does not have a strong interest in assuring non-Californians an adequate forum for the redress of their grievances. Thus, a foreigner's choice of a California forum deserves less deference than the choice of a California resident.⁹⁹

⁹⁷ Archibald v. Cinerama Hotels, 15 Cal. 3d 853, 859, 544 P.2d 947, 951, 126 Cal. Rptr. 811, 815 (1976).

⁹⁸ Klein v. Superior Court, 198 Cal. App. 3d 894, 905, 224 Cal. Rptr. 226, 232 (1988).

⁹⁹ Stangvik v. Shiley Inc., 54 Cal. 3d 744, 753, 819 P.2d 14, 19, 1 Cal. Rptr. 2d 556, 561 (1991); Boaz v. Boyle & Co., Inc., 40 Cal. App. 4th 700, 712, 46 Cal. Rptr. 2d 888, 896 (1995); Rinauro v. Honda Motor Co., 31 Cal. App. 4th 506, 510, 37 Cal. Rptr. 2d 181, 183 (1995).

The same logic applies to plaintiffs who reside in other states, but California law does not yet show such plaintiffs the same indifference.¹⁰⁰

The defendant's residence also affects the balance of convenience. If a defendant corporation was incorporated in California and has its principal place of business in California, then California is presumptively a convenient forum. A California defendant may, however, overcome the presumption of convenience by evidence that the alternative jurisdiction is a more convenient place for trial of the action. California has an interest in regulating the conduct of California defendants, but if California residents have already filed suit against a California defendant, the additional deterrence that would result if the defendant were called to account in California for a wrong committed against a foreign plaintiff would be negligible. The burden imposed on a California defendant in trying cases brought by California plaintiffs in the California courts, and the damages that the defendant might have to pay if found liable, provide sufficient deterrence to prevent wrongful conduct in the future, even if suits filed by nonresident plaintiffs are tried elsewhere.¹⁰¹

If the plaintiff and defendant both live outside California and the cause of action arose outside California, California has little interest in assuming the burden of the action, and the court must dismiss the action.¹⁰²

¹⁰⁰ *Ford Motor Co. v. Insurance Co. of N. Am.*, 35 Cal. App. 4th 604, 610–11, 41 Cal. Rptr. 2d 342, 346 (1995).

¹⁰¹ *Stangvik v. Shiley Inc.*, 54 Cal. 3d 744, 755–56, 819 P.2d 14, 20–21, 1 Cal. Rptr. 2d 556, 562–63 (1991).

¹⁰² *Baltimore Football Club, Inc. v. Superior Court*, 171 Cal. App. 3d 352, 365, 215 Cal. Rptr. 323, 330–31 (1985).

[5] Other Factors

The opinion *Great Northern Railway Co. v. Superior Court*¹⁰³ provides a list of additional factors to consider when deciding whether to stay or dismiss an action under section 410.30(a):

- the principal place of business of the defendant
- whether any party would be substantially disadvantaged in having to try the action in California or in the alternative forum
- whether any judgment entered in the action would be enforceable by process issued or other enforcement proceedings undertaken in California¹⁰⁴
- whether witnesses would be inconvenienced if the action were prosecuted in California or in the alternative forum¹⁰⁵
- the relative expense to the parties of maintaining the action in California or in the alternative forum
- whether a view of premises by the trier of fact will or might be necessary or helpful in deciding the case
- whether the parties participating in the action have a relationship to California that imposes upon them an obligation to participate in judicial proceedings in the California courts
- the avoidance of multiplicity of actions and inconsistent adjudications¹⁰⁶

¹⁰³ 12 Cal. App. 3d 105, 113–15, 90 Cal. Rptr. 461, 466–67 (1970). *See generally* 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* §§ 304, 306 (3d ed. 1985).

¹⁰⁴ *See also* Klein v. Superior Court, 198 Cal. App. 3d 894, 902–03, 244 Cal. Rptr. 226, 230 (1988).

¹⁰⁵ *See also*.

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- the availability of compulsory process for attendance of witnesses
- the relative advantages and obstacles to a fair trial
- the public interest in the case
- the difficulties and inconvenience to defendant, to the court, and to jurors hearing the case, attending presentation of testimony by {depositions}
- the other practical considerations that make trial of a case convenient, expeditious, and inexpensive.

Although the *Great Northern* factors are often quoted its list is not exclusive. Other factors include:

- whether the issues in the case are intertwined with those in a pending case in another forum¹⁰⁷
- whether the defendant has filed a [cross-complaint](#) against a party who is only subject to the [personal jurisdiction](#) of the alternative forum
- whether the California forum would have to apply the law of the alternative forum¹⁰⁸

¹⁰⁶ The question is not whether there may be a multiplicity of actions and inconsistent adjudications concerning other claims, but whether these factors may come into play with respect to the claims asserted in this action. *Ford Motor Co. v. Insurance Co. of N. Am.*, 35 Cal. App. 4th 604, 616, 41 Cal. Rptr. 2d 342, 350 (1995).

¹⁰⁷ *Klein v. Superior Court*, 198 Cal. App. 3d 894, 905, 244 Cal. Rptr. 226, 232 (1988).

¹⁰⁸ *Boaz v. Boyle & Co., Inc.*, 40 Cal. App. 4th 700, 713, 46 Cal. Rptr. 2d 888, 896 (1995) (the fact that a California court would have to untangle problems in conflict of law is itself a basis to apply the doctrine of forum non conveniens); *Klein v. Superior Court*, 198 Cal. App. 3d 894, 905, 244 Cal. Rptr. 226, 232 (1988).

- whether the [cause of action](#) arose in California.¹⁰⁹

The possibility that the alternative forum may apply less favorable law to the plaintiff's is a relevant consideration only if the remedy in the alternative forum is so clearly inadequate or unsatisfactory that it is no remedy at all. The fact that an alternative jurisdiction's law is less favorable to a litigant than California law is not accorded any weight in deciding a motion to stay or dismiss for inconvenient forum, provided that the alternative forum's law affords some remedy.¹¹⁰

Although the court should not use dismissals or stays for inconvenient forum primarily to control the court's docket, preventing court congestion resulting from the trial of foreign causes of action is an important factor in the inconvenient forum analysis.¹¹¹

The locus of the alleged culpable conduct is a consideration in the inconvenient forum analysis, but the fact that a California defendant committed tortious acts in California does not automatically require denial of a motion to stay or dismiss for inconvenient forum.¹¹²

In the light of vastly improved transportation and communication methods and the conditions the trial court may impose to mitigate inconvenience, the court may

¹⁰⁹ *Rinauro v. Honda Motor Co.*, 31 Cal. App. 4th 506, 510, 37 Cal. Rptr. 2d 181, 183 (1995).

¹¹⁰ *Stangvik v. Shiley Inc.*, 54 Cal. 3d 744, 753, 819 P.2d 14, 19, 1 Cal. Rptr. 2d 556, 561 (1991). The alternative forum's remedy is "no remedy at all" if, for instance, the alternative forum is a foreign country whose courts are ruled by a dictatorship, so that there is no independent judiciary or due process of law. *Shiley, Inc. v. Superior Court*, 4 Cal. App. 4th 126, 133–34, 6 Cal. Rptr. 2d 38, 43 (1992).

¹¹¹ *Stangvik v. Shiley Inc.*, 54 Cal. 3d 744, 758, 819 P.2d 14, 22–23, 1 Cal. Rptr. 2d 556, 564–65 (1991).

¹¹² *Stangvik v. Shiley Inc.*, 54 Cal. 3d 744, 759, 819 P.2d 14, 23, 1 Cal. Rptr. 2d 556, 565 (1991).

have less concern with the convenience of the parties or with harassment of defendants by the filing of lawsuits in a forum inconvenient for them than with forum shopping by plaintiffs and reverse forum shopping by defendants, seeking to take advantage of, or to resist the advantage of, laws favorable to the plaintiff in the jurisdiction where the suit is filed.¹¹³

[C] Forum Selection Agreements

If the lawsuit is based on a contract containing a clause selecting California as the forum for any litigation arising out of the contract, then the defendant has little grounds to complain that California is an inconvenient forum.¹¹⁴ If, on the other hand, the contract contains a clause selecting a forum other than California and the chosen forum is a reasonable choice, the California court would abuse its discretion not to stay or dismiss an action brought in California.¹¹⁵ The defendant's agreement to try the case in another forum trumps all other factors pertaining to the convenience of trying the case.¹¹⁶

¹¹³ *Stangvik v. Shiley Inc.*, 54 Cal. 3d 744, 762, 819 P.2d 14, 25, 1 Cal. Rptr. 2d 556, 567 (1991).

¹¹⁴ *Appalachian Ins. Co. v. Superior Court*, 162 Cal. App. 3d 427, 439, 208 Cal. Rptr. 627, 634 (1984). See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:444–:446 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* §§ 315A, 315B (3d ed. 1985).

¹¹⁵ *Furda v. Superior Court*, 161 Cal. App. 3d 418, 424–25, 207 Cal. Rptr. 646, 650 (1984).

¹¹⁶ *CQL Original Prods., Inc. v. National Hockey League Players' Ass'n*, 39 Cal. App. 4th 1347, 1354, 46 Cal. Rptr. 2d 412, 415–16 (1995); *Cal-State Business Prods. & Servs., Inc. v. Ricoh*, 12 Cal. App. 4th 1666, 1683, 16 Cal. Rptr. 2d 417, 427 (1993) (“To apply the general factors in this context would in essence be rewriting the bargain struck between the parties . . .”).

Any person may sue a nonresident or a foreign corporation in a California court if the action arises out of or relates to any contract by which the parties have chosen California law, by which the defendant has agreed to submit to the jurisdiction of the California courts, and which relates to a transaction involving not less than \$1 million.¹¹⁷

In the case, however, of a contract between a contractor and a subcontractor with principal offices in California for the construction work in California, a provision purporting to require the parties to litigate their disputes outside California is void and unenforceable.¹¹⁸ A provision in a franchise agreement restricting venue to a forum outside California is void with respect to any claim arising under or relating to a franchise agreement involving a franchise business operating within California.¹¹⁹

[D] Procedure

If the defendant, on or before the last day of his time to plead or within any further time that the court may for good cause allow, files [notice of his motion](#) to stay or dismiss the action on the ground of inconvenient forum,¹²⁰ his response to the plaintiff's lawsuit is not a [general appearance](#) and is subject to the same procedures as a [motion to quash service of the summons](#) on the ground of lack of

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¹¹⁷ CODE CIV. PROC. § 410.40.

¹¹⁸ CODE CIV. PROC. § 410.42(a).

¹¹⁹ BUS. & PROF. CODE § 20040.5. This provision took effect in 1995.

¹²⁰ CODE CIV. PROC. § 418.10(a)(2). *See generally* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:416--:419 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* § 307 (3d ed. 1985)

personal jurisdiction.¹²¹ He may combine his motion to stay or dismiss with a motion to quash.¹²² If, however, the defendant makes a general appearance before moving to stay or dismiss the action on the ground of inconvenient forum, the rules regarding motions to quash do not apply.¹²³ In particular, the defendant does not enjoy protection from {defaults}¹²⁴ and does not have an automatic right of review by way of a petition for a {writ of mandate}.¹²⁵ In other respects, motions to stay or dismiss the action on the ground of inconvenient forum are subject to the rules applicable to [motions](#) generally.

Because a California court lacks the power to transfer a case to a court outside California, it can effect a change of venue only indirectly by staying the California pending prosecution of the same cause of action in the foreign forum. To the end that disputes be resolved on their merits rather than on technicalities, the law prefers that actions in inconvenient fora be transferred rather than dismissed. Therefore, when section 410.30(a) applies, a stay is preferred over {dismissal}.¹²⁶ The availability of a stay or conditional dismissal may diminish the weight of the plaintiff's argument against trial in the proposed alternative forum, for a stay or conditional dismissal allows the California court to wait and see whether the

¹²¹ CODE CIV. PROC. § 418.10(d).

¹²² CODE CIV. PROC. § 418.10(a).

¹²³ CODE CIV. PROC. § 410.30(b).

¹²⁴ CODE CIV. PROC. § 418.10(a).

¹²⁵ CODE CIV. PROC. § 419.10(d).

¹²⁶ *Ferreira v. Ferreira*, 9 Cal. 3d 824, 841, 512 P.2d 304, 315, 109 Cal. Rptr. 80, 91 (1973).

plaintiff's expressed concerns about trial in the proposed alternative forum are justified.¹²⁷

[E] Family Law Cases

The motion to stay or dismiss for inconvenient forum is available in actions involving marital status.¹²⁸

Example: *P*, the wife of international rock star *D*, commences an action for dissolution against *D* in England. *D* was born in England and resided in England, France, and the West Indies; he has no significant contacts with California. *P* finds that she cannot satisfy the residency requirement in England and brings a dissolution proceeding against *D* in California. *D* moves to stay dismiss the action for inconvenient forum. The court denies the motion.

The court abused its discretion: "The Superior Court of Los Angeles County does not need another case in which the parties were married, executed a premarital agreement and lived in one country and subsequently lived together, own property, and maintain a child who lives and goes to school in another, and in which there have been only few marital contacts with California."¹²⁹

¹²⁷ *Delfosse v. C.A.C.I., Inc.*—Fed., 218 Cal. App. 3d 683, 691, 267 Cal. Rptr. 224, 229 (1990).

¹²⁸ See, e.g., *Jagger v. Superior Court*, 96 Cal. App. 3d 579, 158 Cal. Rptr. 163 (1979). See generally 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* § 314 (3d ed. 1985).

¹²⁹ *Jagger v. Superior Court*, 96 Cal. App. 3d 579, 588, 158 Cal. Rptr. 163, 168 (1979).

The motion is also available in child custody cases. A court that has jurisdiction to award child custody may decline to exercise its jurisdiction if it finds that it is an inconvenient forum to make a custody determination under the circumstances and that a court of another state is a more appropriate forum.¹³⁰ The right to a stay or dismissal depends on whether it is in the interest of the child that another state assume jurisdiction. The court is to consider the following factors:

- if another state is or recently was the child's home state
- if another state has a closer connection with the child and the child's family or with the child and one or more of the contestants
- if substantial evidence concerning the child's present or future care, protection, training, and personal relationship is more readily available in another state
- if the parties have agreed on another forum which is no less appropriate
- if the exercise of jurisdiction by a California court would contravene any of the purposes of the Uniform Child Custody Jurisdiction Act.¹³¹

¹³⁰ FAM. CODE § 3407(a).

¹³¹ FAM. CODE § 3407(c). The purposes of the Uniform Child Custody Jurisdiction Act (FAM. CODE §§ 3400–3425) are set forth in FAM. CODE § 3401(a):

(a) The general purposes of this part are to:

(1) Avoid jurisdiction competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being.

(2) Promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child.

(3) Assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and the child's family have the closest connection and where significant evidence concerning the child's care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and the child's family have a closer connection with another state.

(4) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child.

(5) Deter abductions and other unilateral removals of children undertaken to obtain custody awards.

(6) Avoid relitigation of custody decisions of other states in this state insofar as feasible.

(7) Facilitate the enforcement of custody decrees of other states.

(8) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child.

The court may communicate with a court of another state and exchange information to ensure that the more appropriate court will exercise jurisdiction and that a forum will be available to the parties. *Id.* § 3407(d). The court may either stay or dismiss the proceedings as in ordinary civil cases. *Id.* § 3407(e).

