

Memorandum 99-31

Trial Court Unification: Catalog of Cases Within Jurisdiction of Court of Appeal on June 30, 1995

The Commission's trial court unification report identified as a future project the making of a catalog of cases within the appellate jurisdiction of the courts of appeal on June 30, 1995. This project was suggested by the State Bar Litigation Section. Such a catalog might be useful to courts and practitioners, because the trial court unification measure approved by the voters on June 2, 1998, amended the second sentence of Article VI, Section 11, of the California Constitution to say "courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in other causes prescribed by statute." By agreement, the Judicial Council undertook primary responsibility for this study.

Attached is a memorandum by a Judicial Council staff attorney. (Exhibit pp. 1-4.) Also attached are a staff draft of a possible statutory catalog of cases, and results of a search by the Commission's staff for relevant statutory terms. (Exhibit pp. 5-13.)

JUDICIAL COUNCIL STAFF MEMORANDUM

The Judicial Council staff memorandum recommends against creating a catalog of cases. The memorandum refers to three groups of cases within the appellate jurisdiction of the courts of appeal on June 30, 1995:

Common Cases (Group 1)

The first group identified in the Judicial Council staff memorandum consists of the following common types of appeals: (1) criminal matters that include at least one felony count charged, regardless of whether the resulting convictions are misdemeanors, infractions, or violations of city or county ordinances, (2) juvenile matters, (3) probate matters, (4) civil cases where the pleading alleges over \$25,000 in damages, (5) family court matters, and (6) injunctive relief. The memorandum says these six categories include 97 to 99 percent of the cases in the

courts of appeal. This estimate was based on the opinion of Jon Eisenberg, former Principal Attorney for the Court of Appeal for the First District.

Obscure Cases (Group 2)

The second group of cases within the appellate jurisdiction of the courts of appeal on June 30, 1995, consists of numerous obscure actions that do not fall within the first group. The Judicial Council staff memorandum says that cataloging the cases in the second group would be a considerable task. Independent research by the Commission's staff supports this view. For example, the staff searched the Business and Professions Code and found 87 sections that refer to "superior court" in that code alone. Fifty-one of these are injunctive relief sections belonging in the first group, but the remaining 36 Business and Professions Code sections referring to "superior court" do not fall within one of the six categories in the first group. (Exhibit, pp. 10-12.) The staff also searched all 29 codes for sections that refer to "court of appeal." These are listed in the Exhibit at pages 12-13.

Unforeseen or Incidental Cases (Group 3)

The third group includes cases that result from unforeseen or incidental consequences of unification. By definition, unforeseen cases cannot be catalogued.

Incidental cases are a different matter. An example of an incidental consequence of unification is referred to in footnote 4 of the Judicial Council staff memorandum — appeal from a joint trial where one defendant is charged with a felony and a co-defendant is charged with a misdemeanor. Although the staff found no case where a misdemeanor count against one defendant was joined with a felony count against a different defendant, this is theoretically possible under Penal Code Section 954. If a misdemeanor count is properly joined with a felony count, the superior court has original jurisdiction and the court of appeal has appellate jurisdiction. Cal. Const. art. VI, § 11; 4 B. Witkin & N. Epstein, *California Criminal Law Jurisdiction and Venue* § 1834, at 2172-74 (2d ed. 1989).

The staff believes that identifying other examples of incidental consequences of unification would be a daunting task. Mr. Weinstein, author of the Judicial Council staff memorandum, told the Commission's staff that, even with the most thorough search of the codes, it would be very difficult to find other incidental consequences of unification.

Conclusion of Judicial Council Staff

The Judicial Council staff memorandum concludes that a “comprehensive catalog of the types of causes within the appellate jurisdiction of the courts of appeal on June 30, 1995, would be extremely difficult to compile and would be of limited value.” (Exhibit p. 3.) The memorandum explains:

While a catalog of the first type of cases would be easy to assemble, it would not be helpful. According to Professor Kelso (and informal discussions on related issues in the Appellate Process Task Force), this list of cases is well known and is not controversial. Indeed, it is axiomatic that these cases would fall within the constitutional definition of Court of Appeal jurisdiction. Given how clear this list of the preliminary type of cases is, such a list would be of no value.

Anticipating and resolving every situation in the latter two categories would be extremely time consuming, yet very well not result in an exhaustive list. It would involve surveying all California statutes, approximately 150 volumes, studying the appellate scheme contemplated in each type of action. Moreover, there is no assurance that such a list would be conclusively exhaustive. Indeed, it is likely that some appellate scheme would accidentally be omitted from the list. Thus, compiling the list would be a monumental task that very well may be incomplete.

Nor would the list of the obscure actions heard by the Courts of Appeal [be] very helpful to either the court or practitioners. Any dispute about appellate jurisdiction could easily be resolved on a case-by-case basis, as the relevant statutory framework will be indicated by the cause of action. Furthermore, consulting the statutory framework would be no more burdensome than consulting a published appellate catalog.

Follow-up

Government Code Section 70219 directs the Judicial Council and Law Revision Commission to consult with each other in conducting the studies listed in the Commission’s report on trial court unification. Accordingly, the Judicial Council sent the Commission a copy of its staff memorandum, and Commission staff submitted some suggestions to the Judicial Council.

In particular, we seconded the conclusion that compiling the proposed catalog would be time-consuming, difficult, tedious, and fraught with potential for mistakes and omissions. We pointed out, however, that consulting the statutory framework will become increasingly difficult as the Legislature makes statutory revisions and June 30, 1995, becomes more distant. In time, it may be

significantly easier to consult a catalog than to examine the statutes as of June 30, 1995. A catalog may also be helpful as the Judicial Council and the Commission reexamine existing practices and procedures in light of trial court unification and determine whether they continue to make sense. The Legal Section of the Administrative Office of the Courts is ready to collaborate with the Law Revision Commission in developing an appropriate recommendation.

ANALYSIS

Additional Categories of Cases

Three other categories should be added to Group 1 (common cases) — (7) eminent domain, (8) quiet title to real property, and (9) partition of real or personal property. Except for arbitration and proceedings before the Public Utilities Commission, eminent domain proceedings are in superior court. Code Civ. Proc. § 1250.010. The superior court has jurisdiction of actions to quiet title to real property. Code Civ. Proc. § 760.040; 2 B. Witkin, *California Procedure Courts* § 253, at 328 (4th ed. 1996). The superior court has jurisdiction of actions to partition real or personal property. Code Civ. Proc. § 872.110.

Other cases in equity may be either in superior or municipal court. See Code Civ. Proc. §§ 85.1, 86; 2 B. Witkin, *California Procedure Courts* § 211, at 279-80 (4th ed. 1996). Quiet title to personal property is a limited civil case where the amount involved is not more than \$25,000. Code Civ. Proc. § 86(b)(1). Actions for ejectment or trespass are legal, 3 B. Witkin, *California Procedure Actions* § 131, at 197 (ejectment), § 548, at 697 (trespass) (4th ed. 1996), and so jurisdiction depends on the amount in controversy.

The California Attorney General has statutory authority to commence various enforcement actions in superior court. E.g., Bus. & Prof. Code §§ 16760 (civil action by Attorney General for damages resulting from restraint of trade), 18827 (action by Attorney General to collect tax and fine against boxing promoter), 18835 (same), 18844 (action by Attorney General to collect tax and fine against boxing promoter). Perhaps Attorney General enforcement actions could make a tenth category, but the staff would need to complete the search of the other 28 codes to be sure that such actions are limited to superior court.

Sections expressly providing for review in the court of appeal. There are sections other than the two general sections (Code of Civil Procedure Section 904.1 and Penal Code Section 1235) that provide specifically for appellate review

in the court of appeal. Some of these are redundant on the jurisdictional question because they provide for appellate review in the court of appeal, even though it is clear original jurisdiction is in superior court, and so are covered by the general sections. These are Elec. Code §§ 16900 (appeal to court of appeal), 16920 (same); Fam. Code § 2025 (order transferring bifurcated case to court of appeal); Fin. Code §§ 1785 (appeal to court of appeal from superior court judgment concerning liquidation of foreign bank), 1824 (appeal to court of appeal from superior court judgment concerning liquidation of licensee), 1893 (same), 3102 (same), 17335 (appeal to court of appeal from superior court judgment concerning Fidelity Corporation), 18415.2 (appeal to court of appeal from superior court judgment concerning industrial loan company), 18495 (same), 31713 (appeal to court of appeal from superior court judgment concerning licensee), 34113 (same); Gov't Code § 3075 (appeal to court of appeal under article on removal from office of public officer); Pen. Code §§ 851.8 (appeal to court of appeal of order concerning sealing felony arrest record), 1506 (appeal to court of appeal in habeas corpus proceedings), 1507 (same); Welf. & Inst. Code § 245 (juvenile court judgments subject to appellate jurisdiction of court of appeal).

Two other sections that provide for review in the court of appeal are special cases not covered by the general sections (Code of Civil Procedure Section 904.1 and Penal Code Section 1235). One is Business and Professions Code Section 6082 which provides for appellate review either by the Supreme Court or courts of appeal of a refusal by the State Bar Board of Governors to reinstate an attorney. Under Section 6082, appellate review is “in accordance with the procedure prescribed by the California Supreme Court.” Because this section provides for court of appeal review, it is covered by subdivision (b) of proposed Government Code Section 69191 (see Exhibit, p. 5), and is referred to in the Comment to Section 69191 (Exhibit, p. 8).

The other special case is Welfare and Institutions Code Section 5334 which provides for appeal either to the court of appeal or superior court of a capacity determination. Since appeal may be to the court of appeal, it is included within the language “causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995,” and need not be catalogued in Section 69191 as an exception to court of appeal jurisdiction. It is referred to in the Comment to Section 69191 (Exhibit, p. 8).

Frequency of Various Types of Cases

Judicial Council statistics for fiscal years 1996-97 and 1997-98 show the following superior court filings from which the workload of the court of appeal may be inferred:

Criminal:	13%
Juvenile:	13%
Probate:	5%
Family law:	14%
Eminent domain:	0%
All others:	55%

Alternative Solutions

There are at least five alternatives for addressing the problem of what the constitutional language “causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995” means.

Alternative 1: do nothing. We could do nothing because of the difficulty of compiling a complete and reliable catalog of cases, and the perhaps questionable benefit of so doing. This is what the Judicial Council staff memorandum recommended.

Alternative 2: amend constitution. We could amend the California Constitution to eliminate the troublesome language fixing appellate jurisdiction as of a particular date. We could substitute something like “courts of appeal have appellate jurisdiction in felony cases, in civil cases other than limited civil cases, and in other causes prescribed by statute.” This is probably the best alternative as a matter of policy.

Or the amendment could have the same substance and detail as the draft statute in the Exhibit. This would avoid possible constitutional problems of trying to define constitutional language by statute (discussed below), but might be objectionable for putting excessive detail in the constitution more appropriate for a statute.

Although the troublesome language was negotiated language, there may be support among the appellate justices to relax the constitutional provision so the Legislature can reduce the workload of the courts of appeal by shifting some matters to the appellate division of the superior court.

Alternative 3: publish a catalog of cases in a legal publication. We could publish a catalog of cases in some legal publication, such as the Law Revision

Commission or Judicial Council reports, in a law journal such as the Pacific Law Journal, or in CEB materials.

Alternative 4: Create a catalog of cases by Judicial Council rule.

Alternative 5: statutory catalog of cases. We could codify a statute fleshing out the constitutional language as set out in the Exhibit. If such a statute were held unconstitutional, it would simply be ignored by the courts. This alternative is discussed in more detail below.

Codify Catalog of Cases?

The Judicial Council staff memorandum recommended against creating a catalog of cases because the first group is already well-known, and the second group would require excessive effort to compile. Mr. Weinstein told Commission staff that the Judicial Council has done no additional work on this matter since the Judicial Council staff memorandum of January 11. The Commission's staff believes it would be useful to try to codify a statement of what the jurisdiction of the court of appeal was on June 30, 1995.

Constitutional limitations. Obviously the Legislature cannot amend the constitution by statute. But courts do give considerable weight to a contemporaneous legislative interpretation of ambiguous constitutional language. See, e.g., *California Bldg. Industry Ass'n v. Governing Bd.*, 206 Cal. App. 3d 212, 223, 231-32, 253 Cal. Rptr. 497 (1988) (constitutional provision adopted 1978, statutes enacted from 1979 to 1984); see generally 7 B. Witkin, *Summary of California Law Constitutional Law* § 98, at 50 (9th ed., 1998 Supp.). Courts are more ready to accept statutory construction of a constitutional measure placed on the ballot by the Legislature, as the trial court unification measure was, than one placed on the ballot by the initiative process. See *Hoogasian Flowers v. State Bd. of Equalization*, 23 Cal. App. 4th 1264, 1277, 28 Cal. Rptr. 2d 686, 694 (1994) (canon of construction "used with caution when interpreting an initiative measure").

An early case used a statute to construe ambiguous constitutional language without expressly requiring that the statute be contemporaneous with the constitutional provision. See *San Francisco v. Industrial Accident Comm'n*, 183 Cal. 273, 279-81, 191 Pac. 26 (1920) (constitutional provision adopted 1911, statute enacted 1917). This case was quoted with approval in *Methodist Hosp. v. Saylor*, 5 Cal. 3d 685, 692, 488 P.2d 161, 97 Cal. Rptr. 1 (1971) (constitutional provision adopted 1968, statute enacted 1969). The staff believes the fact that the trial court unification measure was approved in 1998, and that a catalog of cases could not

be enacted until 2000, would not violate the constitutional requirement that the two be contemporaneous.

Courts must also find the constitutional language to be ambiguous before a statutory construction is persuasive. In *California Bldg. Industry Ass'n v. Governing Bd.*, *supra*, the court said the Legislature's construction is persuasive if the constitutional provision being construed may have "either of two meanings," quoting *San Francisco v. Industrial Accident Comm'n*, *supra*. The constitutional language "causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995" may have a range of meanings depending on how broadly or narrowly the courts construe the word "type." This may be enough to satisfy the ambiguity requirement. And even if there is no ambiguity for this purpose, a statutory catalog of cases may still be quite useful to the courts and practitioners.

Draft statute. If codification appears desirable, a draft statute is set out in the Exhibit. The draft takes the approach of saying that, on June 30, 1995, courts of appeal had jurisdiction in all civil cases except those specifically excluded, drawing the exclusion language from the CCP sections defining a limited civil case. See proposed Section 61961(b) (Exhibit pp. 5-8.) This appears preferable to saying in detail what is included, since it parallels the existing scheme of the CCP. See Code Civ. Proc. §§ 85-86.1. As a result, this draft does not provide an exhaustive catalog of all the various types of superior court cases appealable to the court of appeal.

Respectfully submitted,

Robert J. Murphy
Staff Counsel

TO: Starr Babcock, Managing Attorney

FROM: Joshua Weinstein, Attorney *ju*

DATE: January 11, 1999

SUBJECT: Analysis of Need for Cataloging of Cases Within the Appellate Jurisdiction of the Courts of Appeal on June 30, 1995

Question Presented

Should the Judicial Council study and catalog the cases within the appellate jurisdiction of the Courts of Appeal on June 30, 1995?

Short Answer

It would be more efficient to answer jurisdictional questions on a case-by-case basis, if they arise, than to compile a catalog of appellate jurisdiction. Moreover, the catalog would not be particularly useful to the courts or litigants.

Discussion

A. Background

Senate Constitutional Amendment (SCA) 4, adopted by the voters in Proposition 220, allows the superior and municipal courts of each county to unify into one trial court called the superior court. Appellate jurisdiction from a unified superior court is vested in two appellate courts, the Court of Appeal and the appellate division of the superior court.¹ Under SCA 4, the Courts of Appeal have jurisdiction over superior court cases “of a type within the appellate jurisdiction of the Court of Appeals on June 30, 1995,” and other causes prescribed by statute. (Cal. Const. art. VI, § 11(a).) As the language is in the state Constitution, it is not amenable to “clean-up” legislation. Given its constitutional origins, this language also sets the minimum jurisdiction for the Courts of Appeal; however, the Legislature may expand the jurisdiction as it sees fit.

According to Professor Clark Kelso, one of the authors of SCA 4, this was compromise language. The drafters disagreed on whether there was a constitutionally based right to appeal, as opposed to a privilege granted by statute.

¹ In counties that declined to unify, appellate jurisdiction for causes with original jurisdiction in the superior court is in the Court of Appeal, and appellate jurisdiction in the appellate division of the superior court for causes whose original jurisdiction is in the municipal court.

Although this insight does not aid in analyzing whether to catalog and what types of causes to catalog, it does explain the inartful language.

In its July 1998 recommendations regarding SCA 4, the Law Revision Commission suggested “[s]tudies for which the Judicial Council should be assigned primary responsibility.” One of the items listed is a “[c]atalogue of cases within the appellate jurisdiction of the court of appeals on June 30, 1995.” The footnote to this item suggests that art. VI, § 11 of the California Constitution “may make it worthwhile to construct such a catalogue.” (California Law Revision Commission, *Trial Court Unification: Revision of Codes*, Vol. 28 (1998), p. 83–84.)

B. What would be cataloged

A catalog of “causes of a type within the appellate jurisdiction of the court of appeals on June 30, 1995” would list the types of cases that were appealable to the Courts of Appeal on that date. That list can be broken down into three groups. The first and most common group of cases is easy to list: (1) all criminal matters that included at least one felony count charged, regardless of whether the resulting convictions were misdemeanors, infractions, or violations of city or county ordinances; (2) all juvenile matters; (3) all probate matters; (4) civil cases where the pleading alleged over \$25,000 in damages; (5) family court matters; and (6) injunctive relief.² However, there are two other groups of cases that would be much more difficult to delineate.

The second group comprises numerous obscure actions that are appealable to the Courts of Appeal.³ One could inventory the cases that were heard in the superior court (or administrative matters that were appealed to the Court of Appeal) on June 30, 1995. But, given the obscure actions that were (and still are) heard by the superior court, exhaustively listing every matter that fell within the criteria would be a considerable task. Conversely, one could catalog all the cases that were appealable to the appellate department of the superior court (as well as the administrative appeals heard by the superior court). By elimination, review of any matter not on that list would be heard in the Courts of Appeal.

² Jon Eisenberg, former Principal Attorney of the First District of the Court of Appeal, estimates that 97 to 99 percent of the cases heard by the intermediate appellate courts fall within this preliminary list of cases.

³ For example, Penal Code section 851.8 provides for appeals, from motions to seal arrest records; it provides for appeals in either the appellate division of the superior court or the Court of Appeal, for misdemeanor or felony arrests, respectively. This section was found accidentally, only while reviewing the California Law Revision Commission recommendations on trial court unification.

The third group of cases may involve judicial interpretation to resolve the question of appellate jurisdiction. These cases result from unforeseen or incidental consequences of unification.⁴

C. Whether the cases should be cataloged

A comprehensive catalog of the types of causes within the jurisdiction of the Court of Appeal on June 30, 1995, would be extremely difficult to compile and would be of limited value. While a catalog of the first type of cases would be easy to assemble, it would not be helpful. According to Professor Kelso (and informal discussions on related issues in the Appellate Process Task Force), this list of cases is well known and is not controversial. Indeed, it is axiomatic that these cases would fall within the constitutional definition of Court of Appeal jurisdiction. Given how clear this list of the preliminary type of cases is, such a list would be of no value.

Anticipating and resolving every situation in the latter two categories would be extremely time consuming, yet very well not result in an exhaustive list. It would involve surveying all California statutes, approximately 150 volumes, studying the appellate scheme contemplated in each type of action. Moreover, there is no assurance that such a list would be conclusively exhaustive. Indeed, it is likely that some appellate scheme would accidentally be omitted from the list. Thus, compiling the list would be a monumental task that very well may be incomplete.

Nor would the list of the obscure actions heard by the Courts of Appeal very helpful to either the court or practitioners. Any dispute about appellate jurisdiction could easily be resolved on a case-by-case basis, as the relevant statutory framework will be indicated by the cause of action. Furthermore, consulting the statutory framework would be no more burdensome than consulting a published appellate catalog.

⁴ Brainstorming for this analysis brought up several questions. For example, prior to unification misdemeanor or infraction convictions may have proceeded to different appellate courts, depending on the court in which the action originated. A conviction resulting from a felony trial was heard in the Court of Appeal, regardless of the level of the convicted crime (i.e., misdemeanor, infraction, violation of city or county ordinance). On the other hand, a conviction from a trial of only a misdemeanor or infraction was heard by the appellate department of the superior court. The constitutional language is unclear about what court would hear a misdemeanor conviction (SB 2139 remedies this uncertainty statutorily). Adding to the confusion would be appeals from a joint trial where one defendant was charged with a felony and another with a misdemeanor (SB 2139 does not necessarily resolve this situation). To complicate matters even further, appellate courts might have some counties that are unified and some that are not within their jurisdiction and thus might review different types of cases from different counties.

Indeed, according to Professor Kelso, given the anticipated number of these obscure matters, researching and cataloging the list would be an inefficient task. Moreover, he believes a dispute of appellate jurisdiction would be extremely rare.

A list of the last group of cases, those that might involve judicial interpretation, would not be helpful except in the small percentage of cases that involve a jurisdictional dispute. Compiling such a list would be less efficient than addressing issues on a case-by-case basis. Indeed, it is questionable whether any such dispute would even arise. Moreover, it is questionable that one could successfully anticipate every type of action in a vacuum.

D. Recommendation

A list of preliminary cases would not be valuable, given that the types of cases are well known and not controversial. Both of the secondary lists would not be particularly valuable and would require considerable effort to amass. Compiling the list would be less efficient – especially in a vacuum – than confronting the questions on a case-by-case basis. Given the considerable task and its questionable value, we recommend against the Judicial Council creating such a catalog.

Exhibit

DRAFT STATUTE ON COURT OF APPEAL JURISDICTION

Gov't Code §§ 69160-69163 (added). Appellate jurisdiction

Article 3. Appellate Jurisdiction (added)

Comment. Article 3 (commencing with Section 69160) is added to Chapter 4 to give guidance to courts and the public concerning the meaning of the constitutional phrase "causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995." Cal. Const. art VI, § 11. Concerning legislative authority to clarify constitutional language by statute, see *Methodist Hosp. v. Saylor*, 5 Cal. 3d 685, 692, 488 P.2d 161, 97 Cal. Rptr. 1 (1971); *California Bldg. Industry Ass'n v. Governing Bd.*, 206 Cal. App. 3d 212, 231-32, 253 Cal. Rptr. 497 (1988); 7 B. Witkin, *Summary of California Law Constitutional Law* § 98, at 50 (9th ed., 1998 Supp.).

Gov't Code § 69160 (added). Appellate jurisdiction

69160. Courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in other causes prescribed by statute.

Comment. Section 69160 repeats language in Section 11 of Article VI of the California Constitution. Causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995, are set out in Section 69161.

Note. The language, "other causes prescribed by statute" in Section 69160 recognizes that the Legislature may increase the appellate jurisdiction of the courts of appeal in the future. See Cal. Const. art. VI, § 11.

Gov't Code § 69161 (added). Appellate jurisdiction on June 30, 1995

69161. The following are the causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995:

(a) A felony case as defined in Section 691 of the Penal Code, other than when judgment of death has been pronounced.

(b) A civil case, other than:

(1) Cases at law in which the demand, exclusive of interest, or the value of the property in controversy does not exceed twenty-five thousand dollars (\$25,000). This paragraph does not apply to cases which involve the legality of any tax, impost, assessment, toll, or municipal fine, except actions to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant.

(2) Actions for dissolution of partnership where the total assets of the partnership do not exceed twenty-five thousand dollars (\$25,000).

(3) Actions of interpleader where the amount of money or the value of the property involved does not exceed twenty-five thousand dollars (\$25,000).

(4) Actions to cancel or rescind a contract when the relief is sought in connection with an action to recover money not exceeding twenty-five thousand dollars (\$25,000) or property of a value not exceeding twenty-five thousand dollars (\$25,000), paid or delivered under, or in consideration of, the contract.

(5) Actions to revise a contract where the relief is sought in an action upon the contract if the action otherwise is a limited civil case.

(6) Proceedings in forcible entry or forcible or unlawful detainer where the whole amount of damages claimed does not exceed twenty-five thousand dollars (\$25,000).

(7) Actions to enforce and foreclose liens on personal property where the amount of the liens does not exceed twenty-five thousand dollars (\$25,000).

(8) Actions to enforce and foreclose liens of mechanics, materialmen, artisans, laborers, and of all other persons to whom liens are given under the provisions of Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 of the Civil Code, or to enforce and foreclose an assessment lien on a common interest development as defined in Section 1351 of the Civil Code, where the amount of the liens does not exceed twenty-five thousand dollars (\$25,000). This paragraph does not apply where an action to enforce the lien affects property which is also affected by a similar pending action that is not a limited civil case, or where the total amount of the liens sought to be foreclosed against the same property aggregates an amount in excess of twenty-five thousand dollars (\$25,000).

(9) Actions for declaratory relief when brought by way of cross-complaint as to a right of indemnity with respect to the relief demanded in the complaint or a cross-complaint in an action or proceeding that is otherwise a limited civil case, or to conduct a trial after a nonbinding fee arbitration between an attorney and client pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code where the amount in controversy does not exceed twenty-five thousand dollars (\$25,000).

(10) Actions to issue temporary restraining orders and preliminary injunctions, to take accounts, and to appoint receivers where necessary to preserve the property or rights of any party to a limited civil case.

(11) Actions to appoint a receiver and to make any order or perform any act pursuant to Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments) of the Code of Civil Procedure in a limited civil case.

(12) Actions to determine title to personal property seized in a limited civil case.

(13) Actions under Article 3 (commencing with Section 708.210) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure for the recovery of an interest in personal property or to enforce the liability of the debtor of a

judgment debtor where the interest claimed adversely is of a value not exceeding twenty-five thousand dollars (\$25,000) or the debt denied does not exceed twenty-five thousand dollars (\$25,000).

(14) Arbitration-related petitions filed pursuant to either of the following:

(A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3, except for uninsured motorist arbitration proceedings in accordance with Section 11580.2 of the Insurance Code, if the petition is filed before the arbitration award becomes final and the matter to be resolved by arbitration is a limited civil case, or if the petition is filed after the arbitration award becomes final and the amount of the award and all other rulings, pronouncements, and decisions made in the award are within the definition of a limited civil case.

(B) To confirm, correct, or vacate a fee arbitration award between an attorney and client that is binding or has become binding, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the arbitration award does not exceed twenty-five thousand dollars (\$25,000).

(15) Cases in equity to try title to personal property when the amount involved is not more than twenty-five thousand dollars (\$25,000).

(16) Cases when equity is pleaded as a defensive matter in any case that is otherwise a limited civil case.

(17) Cases in equity to vacate a judgment or order of the court obtained in a limited civil case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

(18) An action brought pursuant to the Long-Term Care, Health, Safety, and Security Act of 1973 (Chapter 2.4 (commencing with Section 1417) of Division 2 of the Health and Safety Code) if civil penalties are not sought or does not exceed twenty-five thousand dollars (\$25,000).

(19) A case in which the relief sought, whether in the complaint, a cross-complaint, or otherwise, is exclusively of a type described in one or more statutes that classify an action or special proceeding as a limited civil case or that provide that an action or special proceeding is within the original jurisdiction of the municipal court, including, but not limited to, the following provisions:

(A) Section 798.61 of the Civil Code.

(B) Section 1719 of the Civil Code.

(C) Section 3342.5 of the Civil Code.

(D) Section 1710.20 of the Code of Civil Procedure.

(E) Section 7581 of the Food and Agricultural Code.

(F) Section 12647 of the Food and Agricultural Code.

(G) Section 27601 of the Food and Agricultural Code.

(H) Section 31503 of the Food and Agricultural Code.

(I) Section 31621 of the Food and Agricultural Code.

(J) Section 52514 of the Food and Agricultural Code.

(K) Section 53564 of the Food and Agricultural Code.

(L) Section 53069.4 of the Government Code.

(M) Section 53075.6 of the Government Code.

(N) Section 53075.61 of the Government Code.

(O) Section 5411.5 of the Public Utilities Code.

(P) Section 9872.1 of the Vehicle Code.

(Q) Section 10751 of the Vehicle Code.

(R) Section 14607.6 of the Vehicle Code.

(S) Section 40230 of the Vehicle Code.

(T) Section 40256 of the Vehicle Code.

(20) A case based on a cause of action created after June 30, 1995, of the same type as a cause described in paragraphs (1) through (19), inclusive.

Comment. Section 69161 is added to give guidance to courts and the public concerning the meaning of the constitutional phrase “causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995.” Cal. Const. art VI, § 11. Concerning legislative authority to clarify constitutional language by statute, see *Methodist Hosp. v. Saylor*, 5 Cal. 3d 685, 692, 488 P.2d 161, 97 Cal. Rptr. 1 (1971); *California Bldg. Industry Ass’n v. Governing Bd.*, 206 Cal. App. 3d 212, 223, 231-32, 253 Cal. Rptr. 497 (1988); 7 B. Witkin, *Summary of California Law Constitutional Law* § 98, at 50 (9th ed., 1998 Supp.).

Subdivision (a) is consistent with the rule that the superior court has exclusive jurisdiction over a criminal case charged as a felony. See Cal. Const. art. VI, § 10; Pen. Code § 1462; 4 B. Witkin & N. Epstein, *California Criminal Law Jurisdiction and Venue* § 1834, at 2172 (2d ed. 1989).

Subdivision (b) includes civil cases where appellate jurisdiction of the court of appeal is expressly provided by statute. See Bus. & Prof. Code § 6082 (appellate review of nonreinstatement of attorney by State Bar Board of Governors); Elec. Code §§ 16900 (appeal to court of appeal), 16920 (same); Fam. Code § 2025 (order transferring bifurcated case to court of appeal); Fin. Code §§ 1785 (appeal to court of appeal from superior court judgment concerning liquidation of foreign bank), 1824 (appeal to court of appeal from superior court judgment concerning liquidation of licensee), 1893 (same), 3102 (same), 17335 (appeal to court of appeal from superior court judgment concerning Fidelity Corporation), 18415.2 (appeal to court of appeal from superior court judgment concerning industrial loan company), 18495 (same), 31713 (appeal to court of appeal from superior court judgment concerning licensee), 34113 (same); Gov’t Code § 3075 (appeal to court of appeal under article on removal from office of public officer); Pen. Code §§ 851.8 (appeal to court of appeal of order concerning sealing felony arrest record), 1506 (appeal to court of appeal in habeas corpus proceedings), 1507 (same); Welf. & Inst. Code §§ 245 (juvenile court judgments subject to appellate jurisdiction of court of appeal), 5334 (capacity determination appealable to court of appeal or superior court).

Paragraphs (1) through (17) of subdivision (b) are drawn from Code of Civil Procedure Section 86. Paragraph (18) is drawn from Code of Civil Procedure Section 86.1. Paragraph (19) is drawn from Code of Civil Procedure Section 85(c). Paragraph (20) is a catchall that anticipates that the Legislature may create a new cause of action after June 30, 1995, of the same type as a cause described elsewhere in subdivision (b).

☞ **Note.** *Subdivision (b) of Section 61961 takes the approach of saying that, on June 30, 1995, courts of appeal had jurisdiction in all civil cases except those specifically excluded, drawing the exclusion language from the CCP sections defining a limited civil case. This appears preferable to saying in detail what is included, since it parallels the existing scheme of the CCP. See Code Civ. Proc. §§ 85-86.1. As a result, this draft does not provide an exhaustive catalog of all the various types of superior court cases appealable to the court of appeal.*

Section 61961 duplicates the statutory substance of Code of Civil Procedure Sections 85, 86, and 86.1, instead of merely cross-referring to those sections. This is because the CCP sections

may be amended in the future, while this draft takes a “snapshot” of appellate jurisdiction of the courts of appeal in the 1995 to 1998 time frame.

Section 61961 uses the “limited civil case” terminology from the Commission’s 1998 trial court unification legislation, even though that terminology was not in use on June 30, 1995. This should not create a constitutional problem, because the 1998 terminology did not change appellate jurisdiction.

Gov’t Code § 69162 (added). Authority of Legislature to affect appellate jurisdiction of courts of appeal

69162. Notwithstanding any other provision of this article:

(a) When appellate jurisdiction of the courts of appeal in civil causes is determined by the amount in controversy, the Legislature may change the appellate jurisdiction of the courts of appeal by changing the jurisdictional amount in controversy.

(b) The Legislature may provide that the courts of appeal do not have appellate jurisdiction for a cause of action of a type that did not exist on June 30, 1995.

Comment. Section 69162 is consistent with Section 11 of Article VI of the California Constitution.

Gov’t Code § 69163 (added). Provisions implemented

69163. This article implements Section 11 of Article VI of the California Constitution.

Comment. Concerning the requirement that statutory construction of a constitutional provision should implement that provision, see *San Francisco v. Industrial Accident Comm’n*, 183 Cal. 273, 280, 191 Pac. 26 (1920); *California Bldg. Industry Ass’n v. Governing Bd.*, 206 Cal. App. 3d 212, 231-32, 253 Cal. Rptr. 497 (1988).

Prob. Code § 800 (amended). Jurisdiction and authority of court or judge

800. The superior court has jurisdiction in proceedings under this code. The court in proceedings under this code is a court of general jurisdiction and the court, or a judge of the court, has the same power and authority with respect to the proceedings as otherwise provided by law for a superior court, or a judge of the superior court, including, but not limited to, the matters authorized by Section 128 of the Code of Civil Procedure.

Comment. Section 800 is amended to add the first sentence, consistent with Section 7050 and the traditional rule. See 2 B. Witkin, *California Procedure Courts* § 215, at 283 (4th ed. 1996); B. Ross & H. Moore, *California Practice Guide Probate* § 3:34, at 3-13 (Rutter Group 1994).

☞ **Note.** Although by statute the “superior court has jurisdiction in proceedings under” the *Family Code*, there is no provision of equal breadth in the *Probate Code*. (*Probate Code* Section 7050 does say the “superior court has jurisdiction of proceedings under this code concerning the administration of the decedent’s estate.”) The term “municipal court” is not used in the *Probate Code*. Many *Probate Code* sections authorize proceedings in superior court. See *Prob. Code* §§ 201, 248, 2200, 3110, 3202, 3500, 3800, 3901(e), 3919, 3921, 4920, 4778, 6603, 7050, 12403, 13151, 13200, 13650, 17000, 20120, 20220, 21321, 21321. For sections implying that all proceedings under the *Probate Code* are in superior court, see *Prob. Code* §§ 800 (in proceedings under *Probate Code*, court has same authority as superior court), 1002 (costs), 1211 (notice). See also *id.* §§ 6803, 6805 (escheat of property subject to control of superior court).

JURISDICTION OF COURT OF APPEAL: SEARCH OF CODES FOR TERMS

Business and Professions Code Sections Referring to “Superior Court”

Eighty-seven sections in the Business and Professions Code refer to “superior court.” Fifty-one of these, or more than half, are injunctive relief sections belonging in the first group: Bus. & Prof. Code §§ 123.5 (enjoining violation of Section 123), 125.5 (enjoining violation of Business and Professions Code enforced by Department of Consumer Affairs), 125.7 (enjoining violation of provisions of Business and Professions Code enforced by a board referred to in Division 2 of that code; amended 1998 not affecting jurisdiction), 125.8 (temporary restraining order against licensee to prevent violation of Business and Professions Code), 650.2 (petition by Board of Dental Examiners to enjoin violation of group advertising provisions), 650.3 (petition by Board of Chiropractic Examiners to enjoin violation of group advertising provisions), 650.4 (petition by Board of Behavioral Science Examiners to enjoin violation of advertising and referral provisions; amended 1996 not affecting jurisdiction), 656 (enjoining violation of provisions on unearned rebates, refunds, and discounts), 690 (enjoining violation of patient’s right to consult optometrist rather than physician; amended 1996 not affecting jurisdiction), 1002 (enjoining violation of Chiropractic Act), 1326 (enjoining violation of provisions on clinical laboratories), 1705-1705.5 (enjoining unlicensed practice of dentistry), 2087 (action to compel approval of medical school or to admit applicant to examination), 2311 (enjoining violation of provisions on practice of medicine), 2533.4 (enjoining violation of provisions on speech pathology and audiology; amended 1997 not affecting jurisdiction), 2545 (enjoining violation of provisions on prescription lenses), 2559 (enjoining violation of provisions on registered dispensing opticians), 2652 (action to compel approval of physical therapist education program; amended 1996 not affecting jurisdiction), 2672 (enjoining violation of provisions on physical therapy; amended 1996 not affecting jurisdiction), 2971 (enjoining violation of provisions on psychologists; amended 1995 and 1997 not affecting jurisdiction), 3131 (enjoining violation of provisions on optometry), 3430 (enjoining violation of provisions on hearing aid dispensers), 3533 (enjoining violation of provisions on physicians’ assistants), 3764 (enjoining violation of provisions on respiratory therapy; amended 1995 not affecting jurisdiction), 4339 (enjoining violation of provisions on pharmacies; added 1996, amended 1997),

4963 (enjoining violation of provisions on acupuncture), 4983.1 (enjoining violation of provisions on marriage and family counselors), 4986.90 (same), 5527 (enjoining violation of provisions on architecture), 6030 (civil action by State Bar to enjoin violation of provisions on attorneys), 7028.3 (enjoining violation of provisions on contractors), 7502.4 (enjoining violation of provisions on repossessors), 7502.6 (same), 7523.5 (enjoining violation of provisions on private detectives; amended 1996 not affecting jurisdiction), 7582.4 (enjoining violation of provisions on private patrol operators; amended 1996 not affecting jurisdiction), 7873 (enjoining violation of provisions on geologists and geophysicists), 8658 (enjoining violation of provisions on structural pest control), 9851 (enjoining violation of provisions on service contractors; amended 1997 not affecting jurisdiction), 9884.14 (enjoining violation of provisions on automotive repair), 10081-10081.5 (enjoining violation of provisions on real estate licensing), 10086 (same), 10167.14 (same), 12012.1 (enjoining violation of provisions on weights and measures), 17531.9 (enjoining violation of provisions on labeling television picture tubes), 17770 (enjoining violation of provisions on trading stamp companies; added 1997), 19576 (enjoining furnishing or use of tape of quarter horse race without consent), 19823A (enjoining violation of provisions on gaming clubs; added 1997), 22256 (enjoining violation of provisions on tax preparers; added 1996), 22387 (enjoining violation of provisions on invention development services).

The remaining 36 Business and Professions Code sections referring to “superior court” do not fall within one of the six categories in the first group: Bus. & Prof. Code §§ 494 (judicial review of interim suspension or restriction order), 2760.1 (stay of disciplinary action by Board of Registered Nursing; amended 1997 and 1998 not affecting jurisdiction), 4300 (judicial review of disciplinary proceedings involving pharmacy license; added 1996, amended 1997), 4312 (court order authorizing State Board of Pharmacy to assume control of noncomplying pharmacy; added 1996, amended 1997), 4959 (proceedings to enforce payment of costs of investigating and prosecuting disciplinary case concerning acupuncture), 4982.2 (petition by licensed marriage and family counselor for reinstatement or modification of penalty), 6051 (contempt proceedings against person not complying with subpoena), 6084 (contempt proceedings against attorney failing to comply with disciplinary order), 6094 (court order granting immunity to witness in disciplinary proceeding against attorney), 6158.4 (action for declaratory relief concerning lawyer advertising),

6180.2 (assumption by court of jurisdiction over attorney's law practice), 6190.1 (same), 6185 (contents of court order appointing practice administrator, enacted 1998), 6405 (order by superior or municipal court for return of deposit to registered unlawful detainer assistant or legal document assistant who ceased business; amended 1998 not affecting jurisdiction), 7028.13 (application for judgment against contractor for civil penalty and order of abatement), 7403 (enforcement of order for payment of investigation and adjudication concerning licensee under barbering and cosmetology provisions), 8698.3 (judgment for civil penalty for violation of provisions on structural fumigation), 9656.1 (order for conservatorship of cemetery endowment care funds; amended 1998 not affecting jurisdiction), 9718 (order for temporary transfer of cemetery records; amended 1998 not affecting jurisdiction), 9798.3 (judicial sale of aircraft subject to lien), 10471.5 (notice of judicial review by superior court of denial of claim against real estate recovery account), 12015.3 (judgment for civil penalty for violation of provisions on weights and measures; amended 1997 not affecting jurisdiction), 16754 (civil or criminal proceedings for violation of general business regulations), 16759 (court order granting powers to district attorney to investigate combinations in restraint of trade), 16760 (civil action by Attorney General for damages resulting from restraint of trade), 17550.47 (judicial review of denial by Travel Consumer Restitution Corporation of claim; added 1998), 18827 (action by Attorney General to collect tax and fine against boxing promoter), 18835 (same), 18841 (judicial review of discipline against boxing promoter), 18844 (action by Attorney General to collect tax and fine against boxing promoter), 18845 (contempt proceedings for disobedience to a subpoena), 19922 (judicial review of discipline of gambling enterprise; added 1997), 20999.3 (action for violation of provisions on fuel franchises), 22351.5 (court review of criminal record of registered process server; added 1997), 25360 (forfeiture proceedings involving alcoholic beverages or other property), 25375 (same).

Code Sections Referring to "Court of Appeal"

The staff searched all 29 codes for sections that refer to "court of appeal." The staff found the following sections relating to appellate jurisdiction of the court of appeal: Bus. & Prof. Code § 6082 (appellate review of nonreinstatement of attorney); Code Civ. Proc. §§ 44 (calendar preference for appeals in probate and election cases), 904.1 (appeals in civil cases other than limited civil cases), 911 (order for transfer of case on appeal), 1062.5 (calendar preference for appeal from

declaration of rights under insurance policy); Elec. Code §§ 16900 (appeal to court of appeal), 16920 (same); Fam. Code § 2025 (order transferring bifurcated case to court of appeal); Fin. Code §§ 1785 (appeal to court of appeal from superior court judgment concerning liquidation of foreign bank), 1824 (appeal to court of appeal from superior court judgment concerning liquidation of licensee), 1893 (same), 3102 (same), 17335 (appeal to court of appeal from superior court judgment concerning Fidelity Corporation), 18415.2 (appeal to court of appeal from superior court judgment concerning industrial loan company), 18495 (same), 31713 (appeal to court of appeal from superior court judgment concerning licensee), 34113 (same); Gov't Code §§ 3075 (appeal to court of appeal under article on removal from office of public officer), 23219 (effect of boundary change on court of appeal cases), 23294 (same), 23394 (effect of creation of new county on court of appeal cases), 68915 (transfer of appeal taken to wrong court); Pen. Code §§ 851.8 (felony appeals to court of appeal), 1235 (same), 1265 (jurisdiction of court of appeal after certificate of judgment remitted), 1471 (order by court of appeal transferring case to it), 1506 (appeal to court of appeal in habeas corpus proceedings), 1507 (same); Prob. Code § 1002 (court of appeal ordering payment of costs); Pub. Res. Code § 25903 (calendar preference for appeal in court of appeal); Welf. & Inst. Code §§ 245 (juvenile court judgments subject to appellate jurisdiction of court of appeal), 5334 (capacity determination appealable to court of appeal or superior court).

The staff found no sections conferring appellate jurisdiction on the court of appeal (as distinguished from original writ jurisdiction) in the Civil Code, Commercial Code, Corporations Code, Education Code, Evidence Code, Fish and Game Code, Food and Agricultural Code, Harbors and Navigation Code, Health and Safety Code, Insurance Code, Labor Code, Military and Veterans Code, Public Contract Code, Public Utilities Code, Revenue and Taxation Code, Streets and Highways Code, Unemployment Insurance Code, Vehicle Code, or Water Code.