

Memorandum 2001-90**Appellate Jurisdiction of Court of Appeal
(Draft of Tentative Recommendation)**

At the September 2001 meeting, the Commission directed the staff to prepare a draft tentative recommendation to implement the concept of a new division of the court of appeal, replacing the appellate division of the superior court. The court of appeal division would be staffed by superior court judges sitting by assignment, and the cases to heard in the new division would be designated by the court of appeal.

The draft tentative recommendation is attached to this memorandum. For convenience of reference, we have adopted the name “limited jurisdiction division” for the new court of appeal division.

If the Commission approves the draft, either as presented by the staff or as revised at the Commission meeting, we will circulate it for review and comment. Implementation will require two legislative actions — (1) enactment of a proposed constitutional amendment and (2) passage of legislation contingent on approval of the constitutional amendment by the voters.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

APPELLATE AND WRIT REVIEW UNDER TRIAL COURT UNIFICATION

SUMMARY OF TENTATIVE RECOMMENDATION

The Law Revision Commission recommends that the superior court's appellate division be converted into a division of limited jurisdiction in the court of appeal. The new court of appeal division would function in much the same manner that the superior court appellate division functions. It would be staffed by superior court judges sitting by assignment and would hear cases in the counties in which they arise.

Under this proposal, the jurisdiction of the new division would not necessarily be misdemeanor, infraction, and limited civil cases. The court of appeal would control its own workload by assigning appropriate cases for resolution in the limited jurisdiction division.

Such a scheme offers a number of advantages over the dual appellate structure of existing law, in which jurisdiction is split between the court of appeal and the appellate division of the superior court:

(1) It would mitigate the undesirable situation of a superior court reviewing its own judgments and even issuing writs to itself.

(2) It would enable the court of appeal to control its workload by appropriate assignment of cases. A problematic constitutional provision that preserves the jurisdiction of the court of appeal in causes within its appellate jurisdiction on June 30, 1995, would be repealed as unnecessary.

(3) It would centralize filings in the court of appeal and eliminate the need to transfer or dismiss an appeal filed in the wrong court.

This recommendation was prepared pursuant to Resolution Chapter 78 of the Statutes of 2001.

1 APPELLATE AND WRIT REVIEW
2 UNDER TRIAL COURT UNIFICATION

3 **Background**

4 Historically, appeals from the superior court were to the court of appeal and
5 appeals from the municipal court were to the appellate division of the superior
6 court.¹ Similarly, writs to the superior court were issued by the court of appeal and
7 writs to the municipal court were issued by the superior court.²

8 This structure was disrupted by unification of the trial courts. In order to
9 maintain stability in the trial and appellate court systems through the unification
10 process, appellate and writ jurisdiction was converted to a structure based on
11 jurisdictional classification.³ Thus the appellate jurisdiction of the court of appeal
12 was changed from superior court cases to felony and unlimited civil cases. The
13 appellate jurisdiction of the superior court appellate division was changed from
14 municipal court cases to misdemeanor, infraction, and limited civil cases. The writ
15 jurisdiction of the courts tracked their appellate jurisdiction.

16 The conversion of appellate and writ jurisdiction of the courts from a
17 hierarchical structure to one based on jurisdictional classification accomplished a
18 number of objectives.⁴ Principally, it avoided overloading the court of appeal as a
19 consequence of expansion of the superior court's jurisdiction through unification.
20 Workload concerns were a major consideration. It was estimated that if all appeals
21 were to go to the court of appeal, its workload would increase by about 25%,
22 representing the volume of work handled by the superior court appellate
23 departments. The writ workload, while not as large, would be a significant added
24 burden.

25 Other significant benefits of maintaining superior court appellate and writ
26 jurisdiction in misdemeanor, infraction, and limited civil cases included providing
27 local and less expensive access to justice in smaller cases, and providing
28 consistency of procedure from county to county. Since trial court unification
29 proceeded on a county option basis, equal protection issues could be avoided by
30 maintaining the same appellate and writ review structure in all counties through
31 the unification process.

32 The major concern with having the appellate division review superior court
33 decisions was that it would put judges in the untenable position of overturning

1. See discussion in *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1, 27 (1994).

2. *Id.* at 26.

3. See discussion *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 73-75 (1998).

4. See discussion in *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1, 28-33 (1994).

1 actions and decisions of other judges of equal rank in the same court. The peer
2 review problem was attacked in a number of ways. The appellate division was
3 given constitutional status. Appointments to the appellate division were delegated
4 to the Chief Justice, to be made for a specified term. The Judicial Council was
5 required to adopt rules that promote independence.

6 Unification of the trial courts is now complete.⁵ Problems with the transitional
7 structure of split appellate and writ jurisdiction are apparent.⁶ The Law Revision
8 Commission recommends that the problems be cured by elimination of the
9 superior court appellate division and creation of a limited jurisdiction division in
10 the court of appeal.

11 **Existing Law**

12 Under existing law, appeals from the superior court follow different appeal
13 paths, depending on the nature of the case. Statutes specify the appellate
14 jurisdiction of the court of appeal and the appellate jurisdiction of the appellate
15 division of the superior court. The court of appeal may not be statutorily deprived
16 of appellate jurisdiction, however, “in causes of a type within the appellate
17 jurisdiction of the courts of appeal on June 30, 1995.”⁷

18 For civil cases, review of limited civil cases (other than small claims) is in the
19 appellate division of the superior court.⁸ Review of small claims cases is by trial
20 de novo before a superior court judge.⁹ Review of unlimited civil cases is in the
21 court of appeal.¹⁰

22 For criminal cases, review of misdemeanors and infractions is in the appellate
23 division of the superior court.¹¹ Review of felony cases is in the court of appeal.¹²

24 Writ review presents similar complications under existing law. Generally
25 speaking, the appellate courts have writ authority over lower courts.¹³ But the
26 appellate division of the superior court also has original jurisdiction in proceedings
27 for extraordinary relief in the nature of mandamus, certiorari, and prohibition
28 directed to the superior court in limited civil cases and misdemeanor and infraction

5. The trial courts in all 58 counties were unified as of February 8, 2001.

6. See, e.g., Judicial Council, Ad Hoc Task Force on Superior Court Appellate Divisions, *Report to the Appellate Process Task Force on the Superior Court Appellate Divisions* (May 2001). The recommendations of the Ad Hoc Task Force are discussed below under “Report of Ad Hoc Task Force on Superior Court Appellate Divisions.”

7. Cal. Const. art. VI, § 11(a).

8. Code Civ. Proc. § 904.2.

9. Code Civ. Proc. §§ 116.710, 116.770.

10. Code Civ. Proc. § 904.1.

11. Penal Code § 1466.

12. Penal Code § 1235.

13. Cal. Const. art. VI, § 10.

1 cases.¹⁴ The issues discussed below concerning collegiality and effective review of
2 appeals apply with equal, if not greater, force to writ proceedings.

3 **Changed Circumstances**

4 At the time when the system of appellate division review of superior court
5 decisions was created, there were substantial arguments in favor of that system.
6 These included significant transitional concerns about the disruptive effect of
7 unification and equal protection of the laws among parties appearing in unified and
8 nonunified counties.

9 Changed circumstances now argue for sending all appeals to the court of appeal,
10 rather than splitting them between the court of appeal and the appellate division.
11 Among the changed circumstances are:

12 (1) *Disruptive effect of unification.* The constitutional appellate division was
13 created in an effort to minimize any disruptive effect of unification by minimally
14 changing procedures. Now that unification is complete and all courts are
15 functioning successfully in a unified environment, it is appropriate to consider
16 whether procedures in unified courts can be improved.

17 (2) *Equal protection no longer a factor.* A significant policy underlying creation
18 of the appellate division was that unification should not create inequalities for
19 litigants in unified versus nonunified courts. Providing for appeals to the court of
20 appeal in unified counties while keeping the status quo in nonunified counties
21 would have violated this principle. With all counties now unified, the potential for
22 unequal treatment is gone.

23 (3) *June 30, 1995, problem.* At the time when split jurisdiction between the court
24 of appeal and the appellate division was proposed, the constitutional protection of
25 the court of appeal's jurisdiction in "causes of a type within the appellate
26 jurisdiction of the court of appeal on June 30, 1995"¹⁵ had not been contemplated.
27 It was contemplated that the Legislature would spell out the jurisdiction of the
28 appellate courts in a rational way.

29 The constitutional provision was intended to protect the historic jurisdiction of
30 the court of appeal from erosion by legislation. However, as June 30, 1995,
31 recedes into the distance, it will become increasingly difficult to ascertain which
32 "types" of causes were within the jurisdiction of the court of appeal on that date.
33 Moreover, the constitutional provision will hamstring the ability of the courts to
34 deal rationally with the changing workload of the court of appeal.

35 The awkward June 30, 1995, political compromise can be eliminated by putting
36 all jurisdiction in the court of appeal. The court would then have discretion to
37 determine which causes to assign to the limited jurisdiction division, eliminating
38 the concern that legislation might diminish the court's historic role. That approach

14. Cal. Const. art. VI, § 10 (2d ¶).

15. Cal. Const. art. VI, § 11(a).

1 would also enable the court to manage its own workload efficiently by allowing it
2 maximum flexibility.

3 (4) *Collegiality solutions unsatisfactory in practice.* The greatest problem with
4 the current scheme is the reality that judges of equal rank are required to overturn
5 each other's decisions. The law attempts to create institutional protection of
6 independence by various techniques. However, this does not appear to have
7 worked well in practice. One study concludes that, "the appearance of impartial
8 appellate justice at the superior court level is seriously threatened in many counties
9 because of (1) negative perceptions association with 'peer review' (i.e., judges on
10 the appellate division of a superior court reviewing decisions by their colleagues
11 on the same superior court), and (2) the frequency with which appellate division
12 judges in many counties have disqualifying conflicts arising out of prior
13 involvement with a case."¹⁶ The only county in which there do not appear to be
14 problems is Los Angeles, because of its size and because appellate division judges
15 work full time on handling appeals and writs in a separate facility dedicated to that
16 purpose.

17 (5) *Confusion about where to file.* The existing system of split appellate
18 jurisdiction creates the potential for filing in the wrong court, resulting in either
19 dismissal of the case¹⁷ or the need to transfer it to the proper court.¹⁸ Similar
20 confusion has also arisen over the proper court in which to file an application for a
21 writ directed to the superior court.¹⁹

22 The proposed legislation would eliminate these practical concerns by localizing
23 all appeals from the superior court and writs to the superior court in the court of
24 appeal.

25 (6) *Workload solution.* A major concern about assigning all appeals to the court
26 of appeal was the workload and staffing problem that approach would create. The
27 present proposal would solve that problem by creating a "limited jurisdiction
28 division" within the court of appeal, staffed by superior court judges sitting by
29 assignment. In effect, the proposed approach would transfer the superior court
30 appellate division, judges and all, to the court of appeal. There should be no
31 impact on the workload of the regular court of appeal judges.

32 (7) *Local access problem.* Replacing the superior court appellate division with a
33 court of appeal limited jurisdiction division has at least one potentially serious
34 problem. A major argument in favor of the superior court appellate division was
35 that it would keep appeals in small cases local. "Review of matters now within the

16. Judicial Council, Ad Hoc Task Force on Superior Court Appellate Divisions, *Report to the Appellate Process Task Force on the Superior Court Appellate Divisions*, at p. 9 (May 2001).

17. See, e.g., *People v. Shoup*, 89 Cal. App. 4th 420, 107 Cal. Rptr. 2d 468 (2001).

18. While there is statutory authority to transfer a case wrongly filed in the court of appeal, there appears to be no such authority for a case wrongly filed in the superior court appellate division. See Gov't Code § 68915 (transfer of appeal to proper court); see also Cal. Const. art. VI, § 12 (transfer and review).

19. See, e.g., *In re Ramirez*, 89 Cal. App. 4th 1312, 108 Cal. Rptr. 2d 229 (2001) (habeas corpus).

1 original jurisdiction of the municipal and justice courts should not be too remote or
2 formal, but should be available locally, immediately, and inexpensively.”²⁰

3 Nothing has changed to mitigate this concern, but there are possible solutions for
4 it. One study has suggested:²¹

5 Geographic convenience could be maintained in a district-wide appellate
6 division if the judges were to employ teleconferencing or video-conferencing
7 technologies, or if the appellate division were to “ride circuit” to each of the
8 counties. Riding circuit would appear to be a possible solution in the Second,
9 Sixth, and Fourth districts, but riding circuit becomes increasingly problematic as
10 the number of counties, and the frequency of sessions for each county, increases.

11 Under the proposed law, the court of appeal’s limited jurisdiction division would
12 hold session in the county in which the case before it originates. This would also
13 mitigate concerns about the adequacy of court of appeal facilities. The court of
14 appeal limited jurisdiction division could use the same facilities formerly used by
15 the superior court appellate division.²²

16 **Small Claims Appeals**

17 Appeal in a small claims case is by trial de novo in the superior court.²³ This
18 feature of existing law should be preserved, even though other appeals would be to
19 the court of appeal. The proposed law makes clear that the superior court retains
20 appellate jurisdiction in causes in which the appeal is a new trial.²⁴

21 **Original Jurisdiction**

22 Elimination of the appellate division of the superior court would put writ review
23 of superior court proceedings in the court of appeal.²⁵ Any workload concerns
24 under this proposal could be handled by the court of appeal assigning writ review
25 in appropriate cases to the limited jurisdiction division.

26 Elimination of the appellate division would also simplify the law governing
27 appeal of writ proceedings in limited civil cases.²⁶

20. *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm’n Reports 1, 28 (1994).

21. Judicial Council, Ad Hoc Task Force on Superior Court Appellate Divisions, *Report to the Appellate Process Task Force on the Superior Court Appellate Divisions*, at p. 19 (May 2001).

22. With respect to funding issues, see discussion below of “Funding.”

23. Code Civ. Proc. §§ 116.710, 116.770.

24. See proposed revision of Cal. Const. art. VI, § 11(b) (appellate jurisdiction).

25. See Cal. Const. art. VI, § 10; *cf.* Code Civ. Proc. §§ 1068 (writ of review), 1085 (writ of mandate), 1103 (writ of prohibition).

26. Code of Civil Procedure Section 904(a)(1)(C), dealing with appeal of writs directed to the superior court by the appellate division would be eliminated as unnecessary.

1 **Funding**

2 Funding for operations of the superior court appellate division is part of the trial
3 court budget. If that division is eliminated and the work transferred to the court of
4 appeal, an appropriate funding adjustment must be made.

5 The proposed legislation does not deal with the issue directly. Existing statutes
6 are written in such a way as to enable the Judicial Council to make the necessary
7 funding change without the need for special legislation.²⁷

8 ☞ **Note.** *The Commission solicits comment on the question whether the existing*
9 *funding scheme would require further adjustment to effectuate the court of appeal*
10 *limited jurisdiction division proposal.*

11 **Report of Ad Hoc Task Force on Superior Court Appellate Divisions**

12 In developing this recommendation, the Commission has had the benefit of the
13 work done by the Ad Hoc Task Force on the Superior Court Appellate Divisions.²⁸
14 The task force finds the same problems with the superior court appellate division
15 structure that the Law Revision Commission has identified, as well as other
16 deficiencies (e.g., trial court judges not properly trained for occasional appellate
17 work, insufficient support for the appellate division, inadequate facilities,
18 workload inequalities, and variant procedures).

19 The task force recommends district-wide superior court appellate divisions. This
20 is similar in concept to the Law Revision Commission's recommendation for
21 limited jurisdiction divisions in the courts of appeal. The two approaches would
22 operate essentially the same in practice.

23 The Commission has concluded that, of the two approaches, the court of appeal
24 limited jurisdiction division is preferable on several grounds. It mitigates concerns
25 about peer review by the superior court appellate division in both appeals and
26 writs. It also creates flexibility for the court of appeal to manage its workload,
27 eliminates the need to track the jurisdiction of the court of appeal as of June 30,
28 1995, and minimizes the possibility of misfiling by centralizing appeals in the
29 court of appeal.

30 **Conclusion**

31 The concept of eliminating the superior court appellate division in favor of a
32 division of limited jurisdiction in the court of appeal will require constitutional as
33 well as statutory revisions. The proposed legislation is set out below.

27. See, e.g., Gov't Code §§ 69141 (appropriation of funds for expenses of courts of appeal), 77200 (state funding of trial court operations).

28. See Judicial Council, Ad Hoc Task Force on Superior Court Appellate Divisions, *Report to the Appellate Process Task Force on the Superior Court Appellate Divisions* (May 2001).

Contents

CALIFORNIA CONSTITUTION	9
Cal. Const. Art. VI, § 3 (amended). Court of Appeal	9
Cal. Const. Art. VI, § 4 (amended). Superior Court	9
Cal. Const. Art. VI, § 10 (amended). Original jurisdiction	10
Cal. Const. Art. VI, § 11 (amended). Appellate jurisdiction	10
Cal. Const. Art. VI, § 23 (amended). Transitional provision	11
BUSINESS AND PROFESSIONS CODE	12
Bus. & Prof. Code § 17209 (amended). Notice to Attorney General and county district attorney	12
Bus. & Prof. Code § 17536.5 (amended). Notice to Attorney General and county district attorney	13
CODE OF CIVIL PROCEDURE	13
Code Civ. Proc. § 77 (repealed). Appellate division	13
Code Civ. Proc. § 170.7 (amended). Judge serving on appellate division	15
Code Civ. Proc. § 904 (amended). Appeal in civil case	15
Code Civ. Proc. § 904.1 (amended). Taking appeal in unlimited civil case	15
Code Civ. Proc. § 904.2 (amended). Taking appeal in limited civil case	16
Code Civ. Proc. § 911 (repealed). Transfer from appellate division to court of appeal	17
Code Civ. Proc. § 1068 (amended). Courts authorized to grant writ of review	17
Code Civ. Proc. § 1085 (amended). Courts authorized to grant writ of mandate	18
Code Civ. Proc. § 1103 (amended). Courts authorized to grant writ of prohibition	18
GOVERNMENT CODE	18
Gov't Code § 26824 (amended). Filing fee for appeal	18
Gov't Code § 68081 (amended). Appellate decisions	19
Gov't Code § 68902 (amended). Publication of opinions	19
Gov't Code § 69107 (amended). Appointment of court of appeal judges	19
Gov't Code §§ 69160-69167 (added). Limited jurisdiction division	20
69160. "Limited jurisdiction division" defined	20
69161. Jurisdiction of limited jurisdiction division	20
69162. Judges of limited jurisdiction division	20
69163. Presiding judge of limited jurisdiction division	21
69164. Number of judges required for decision	21
69165. Sessions of limited jurisdiction division	21
69166. Compensation and reimbursement of judges	22
69167. Judicial Council rules	22
PENAL CODE	22
Penal Code § 1466 (amended). Appeals	22
Penal Code § 1468 (repealed). Appeals to appellate division	23
Penal Code § 1471 (repealed). Transfer to court of appeal	23
Penal Code § 1538.5 (amended). Motion to return property or suppress evidence	24
VEHICLE CODE	29
Veh. Code § 11205. Traffic violator school list (as amended by 1998 Cal. Stat. ch. 931, § 455.5)	29
Veh. Code § 11205. Traffic violator school list (as amended by 1998 Cal. Stat. ch. 931, § 456)	32
UNCODIFIED	33
Section 4 of the Drainage Dist. Act of 1903 (amended). Appeals	33

PROPOSED LEGISLATION

1

CALIFORNIA CONSTITUTION

2 **Cal. Const. Art. VI, § 3 (amended). Court of Appeal**

3 First — That Section 3 of Article VI is amended to read:

4 SEC. 3. (a) The Legislature shall divide the State into districts each containing a
5 court of appeal with one or more divisions. Each division consists of a presiding
6 justice and ~~2~~ two or more associate justices. It has the power of a court of appeal
7 and shall conduct itself as a ~~3~~ three-judge court. Concurrence of ~~2~~ two judges
8 present at the argument is necessary for a judgment.

9 (b) An acting presiding justice shall perform all functions of the presiding justice
10 when the presiding justice is absent or unable to act. The presiding justice or, if the
11 presiding justice fails to do so, the Chief Justice shall select an associate justice of
12 that division as acting presiding justice.

13 (c) In each court of appeal there is a division of limited jurisdiction. The limited
14 jurisdiction division shall exercise the jurisdiction of the court in causes designated
15 by the court. The Chief Justice shall assign judges to the limited jurisdiction
16 division for specified terms pursuant to rules, not inconsistent with statute, adopted
17 by the Judicial Council to govern practice and procedure in, and disposition of the
18 business of, the limited jurisdiction division.

19 **Comment.** Section 3 is amended to provide for a division of limited jurisdiction in the court of
20 appeal. The limited jurisdiction division of the court of appeal replaces the appellate division of
21 the superior court. See Cal. Const. art. VI, §§ 4 (superior court), 10 (original jurisdiction), 11
22 (appellate jurisdiction).

23 Subdivision (c) is intended to allow the Legislature and the courts latitude in providing for
24 proceedings in the limited jurisdiction division. It is intended to enable, for example, assignment
25 of superior court judges to sit on the limited jurisdiction division, and review by one judge rather
26 than three in traffic infraction cases. Cf. Gov't Code §§ 69160-69167 (limited jurisdiction
27 division).

28 The court of appeal has both original and appellate jurisdiction. Cal. Const. art. VI, §§ 10
29 (original jurisdiction), 11 (appellate jurisdiction). Designation of a cause by the court of appeal
30 for decision in the limited jurisdiction division may involve exercise of either type of jurisdiction.

31 **Cal. Const. Art. VI, § 4 (amended). Superior Court**

32 Second — That Section 4 of Article VI is amended to read:

33 SEC. 4. In each county there is a superior court of one or more judges. The
34 Legislature shall prescribe the number of judges and provide for the officers and
35 employees of each superior court. If the governing body of each affected county
36 concurs, the Legislature may provide that one or more judges serve more than one
37 superior court.

38 ~~In each superior court there is an appellate division. The Chief Justice shall~~
39 ~~assign judges to the appellate division for specified terms pursuant to rules, not~~

1 ~~inconsistent with statute, adopted by the Judicial Council to promote the~~
2 ~~independence of the appellate division.~~

3 **Comment.** Section 4 is amended to eliminate the appellate division of the superior court. The
4 appellate division is replaced by the limited jurisdiction division of the court of appeal. See Cal.
5 Const. art. VI, §§ 3 (court of appeal), 10 (original jurisdiction), 11 (appellate jurisdiction).

6 Nothing in this section limits the ability of the superior court, or of the judicial branch by court
7 rule, to establish or provide for divisions or departments within the superior court dealing with
8 specific causes such as probate, juvenile, or traffic matters, or the authority of the Legislature to
9 prescribe special procedures or divisions for specific causes. Nothing in this section affects the
10 ability of superior courts of different counties to share resources or consolidate administrative
11 activities.

12 **Cal. Const. Art. VI, § 10 (amended). Original jurisdiction**

13 Third — That Section 10 of Article VI is amended to read:

14 SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges
15 have original jurisdiction in habeas corpus proceedings.

16 Those courts also have original jurisdiction in proceedings for extraordinary
17 relief in the nature of mandamus, certiorari, and prohibition. ~~The appellate division~~
18 ~~of the superior court has original jurisdiction in proceedings for extraordinary~~
19 ~~relief in the nature of mandamus, certiorari, and prohibition directed to the~~
20 ~~superior court in causes subject to its appellate jurisdiction.~~

21 Superior courts have original jurisdiction in all other causes ~~except those given~~
22 ~~by statute to other trial courts.~~

23 The court may make such comment on the evidence and the testimony and
24 credibility of any witness as in its opinion is necessary for the proper
25 determination of the cause.

26 **Comment.** The second paragraph of Section 10 is amended to reflect elimination of the
27 appellate division of the superior court. See Cal. Const. art. VI, § 4. The function of the appellate
28 division is performed by the court of appeal.

29 The third paragraph is amended to reflect unification of the municipal and superior courts
30 pursuant to Article VI, Section 5(e), of the California Constitution. Although the superior court
31 has original jurisdiction of all causes, nothing in this section limits the ability of the superior
32 court, or of the judicial branch by court rule, to establish or provide for divisions or departments
33 within the superior court dealing with specific causes such as probate, juvenile, or traffic matters,
34 or the authority of the Legislature to prescribe special procedures or divisions for specific causes,
35 or to create administrative tribunals that make adjudicative decisions, subject to judicial review.
36 Cf. Section 4 & Comment.

37 **Cal. Const. Art. VI, § 11 (amended). Appellate jurisdiction**

38 Fourth — That Section 11 of Article VI is amended to read:

39 SEC. 11. (a) The Supreme Court has appellate jurisdiction when judgment of
40 death has been pronounced. With that exception courts of appeal have appellate
41 jurisdiction when superior courts have original jurisdiction ~~in causes of a type~~
42 ~~within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in~~
43 ~~other causes prescribed by statute. When appellate jurisdiction in civil causes is~~
44 ~~determined by the amount in controversy, the Legislature may change the~~

1 appellate jurisdiction of the courts of appeal by changing the jurisdictional amount
2 in controversy.

3 (b) ~~Except as provided in subdivision (a), the appellate division of~~
4 Notwithstanding subdivision (a), the superior court has appellate jurisdiction in
5 causes prescribed by statute in which the appeal is a retrial in the superior court.

6 (c) The Legislature may permit courts exercising appellate jurisdiction to take
7 evidence and make findings of fact when jury trial is waived or not a matter of
8 right.

9 **Comment.** Section 11 is amended to reflect unification of the municipal and superior courts
10 pursuant to Article VI, Section 5(e), of the California Constitution, and to reflect the elimination
11 of the appellate division of the superior court. See Cal. Const. art. VI, §§ 3 (court of appeal), 4
12 (superior court), 10 (original jurisdiction)

13 Appeal in a small claims case is by retrial in the superior court. See Code Civ. Proc. §§
14 116.710, 116.770.

15 **Cal. Const. Art. VI, § 23 (amended). Transitional provision**

16 Fifth — That Section 23 of Article VI is amended to read:

17 SEC. 23. (a) The purpose of the amendments to Sections 1, 4, 5, 6, 8, 10, 11, and
18 16, of this article, and the amendments to Section 16 of Article I, approved at the
19 ~~November 5, 1996, general~~ June 2, 1998, primary election is to permit the
20 Legislature to provide for the abolition of the municipal courts and unify their
21 operations within the superior courts. Notwithstanding Section 8 of Article IV, the
22 implementation of, and orderly transition under, the provisions of the measure
23 adding this section may include urgency statutes that create or abolish offices or
24 change the salaries, terms, or duties of offices, or grant franchises or special
25 privileges, or create vested rights or interests, where otherwise permitted under
26 this Constitution.

27 (b) When the superior and municipal courts within a county are unified, the
28 judgeships in each municipal court in that county are abolished and the previously
29 selected municipal court judges shall become judges of the superior court in that
30 county. The term of office of a previously selected municipal court judge is not
31 affected by taking office as a judge of the superior court. The 10-year membership
32 or service requirement of Section 15 does not apply to a previously selected
33 municipal court judge. Pursuant to Section 6, the Judicial Council may prescribe
34 appropriate education and training for judges with regard to trial court unification.

35 (c) Except as provided by statute to the contrary, in any county in which the
36 superior and municipal courts become unified, the following shall occur
37 automatically in each preexisting superior and municipal court:

38 (1) Previously selected officers, employees, and other personnel who serve the
39 court become the officers and employees of the superior court.

40 (2) Preexisting court locations are retained as superior court locations.

41 (3) Preexisting court records become records of the superior court.

1 (4) Pending actions, trials, proceedings, and other business of the court become
2 pending in the superior court under the procedures previously applicable to the
3 matters in the court in which the matters were pending.


4 (5) Matters of a type previously within the appellate jurisdiction of the superior
5 court remain ~~come~~ within the jurisdiction of the appellate ~~division of the superior~~
6 ~~court~~ court of appeal.

7 (6) Matters of a type previously subject to rehearing by a superior court judge
8 remain subject to rehearing by a superior court judge, other than the judge who
9 originally heard the matter.

10 (7) Penal Code procedures that necessitate superior court review of, or action
11 based on, a ruling or order by a municipal court judge shall be performed by a
12 superior court judge other than the judge who originally made the ruling or order.

13 **Comment.** Section 23 is amended to eliminate the appellate division of the superior court. The
14 appellate division is replaced by the limited jurisdiction division of the court of appeal. See Cal.
15 Const. art. VI, §§ 3 (court of appeals), 10 (original jurisdiction), 11 (appellate jurisdiction).

16 The section is also amended to correct the reference to the election at which it was adopted.

17  **Note.** The Commission solicits comments on whether this section should be repealed to
18 reflect completion of the process of unification of the municipal and superior courts pursuant to
19 Article VI, Section 5(e), of the California Constitution. Statutory transitional provisions for trial
20 court unification based on this section are more complete. See Gov't Code §§ 70200-70219.

21 BUSINESS AND PROFESSIONS CODE

22 **Bus. & Prof. Code § 17209 (amended). Notice to Attorney General and county district** 23 **attorney**

24 SEC. _____. Section 17209 of the Business and Professions Code is amended to
25 read:

26 17209. If a violation of this chapter is alleged or the application or construction
27 of this chapter is in issue in any proceeding in the Supreme Court of California, or
28 a state court of appeal, ~~or the appellate division of a superior court~~, the person who
29 commenced that proceeding shall serve notice thereof, including a copy of the
30 person's brief or petition and brief, on the Attorney General, directed to the
31 attention of the Consumer Law Section, and on the district attorney of the county
32 in which the lower court action or proceeding was originally filed. The notice,
33 including the brief or petition and brief, shall be served within three days after the
34 commencement of the appellate proceeding, provided that the time may be
35 extended by the Chief Justice or presiding justice ~~or judge~~ for good cause shown.
36 No judgment or relief, temporary or permanent, shall be granted until proof of
37 service of this notice is filed with the court.

38 **Comment.** Section 17209 is amended to reflect elimination of the appellate division of the
39 superior court. See Cal. Const. art. VI, §§ 3 (court of appeal), 4 (superior court), 10 (original
40 jurisdiction), 11 (appellate jurisdiction).

1 **Bus. & Prof. Code § 17536.5 (amended). Notice to Attorney General and county district**
2 **attorney**

3 SEC. ____ . Section 17536.5 of the Business and Professions Code is amended to
4 read:

5 17536.5. If a violation of this chapter is alleged or the application or construction
6 of this chapter is in issue in any proceeding in the Supreme Court of California, or
7 a state court of appeal, ~~or the appellate division of a superior court~~, the person who
8 commenced that proceeding shall serve notice thereof, including a copy of the
9 person's brief or petition and brief, on the Attorney General, directed to the
10 attention of the Consumer Law Section, and on the district attorney of the county
11 in which the lower court action or proceeding was originally filed. The notice,
12 including the brief or petition and brief, shall be served within three days after the
13 commencement of the appellate proceeding, provided that the time may be
14 extended by the Chief Justice or presiding justice ~~or judge~~ for good cause shown.
15 No judgment or relief, temporary or permanent, shall be granted until proof of
16 service of this notice is filed with the court.

17 **Comment.** Section 17536.5 is amended to reflect elimination of the appellate division of the
18 superior court. See Cal. Const. art. VI, §§ 3 (court of appeal), 4 (superior court), 10 (original
19 jurisdiction), 11 (appellate jurisdiction).

20 **CODE OF CIVIL PROCEDURE**

21 **Code Civ. Proc. § 77 (repealed). Appellate division**

22 SEC. ____ . Section 77 of the Code of Civil Procedure is repealed.

23 ~~77. (a) In every county and city and county, there is an appellate division of the~~
24 ~~superior court consisting of three judges or, when the Chief Justice finds it~~
25 ~~necessary, four judges.~~

26 ~~The Chief Justice shall assign judges to the appellate division for specified terms~~
27 ~~pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to~~
28 ~~promote the independence and quality of each appellate division. Each judge~~
29 ~~assigned to the appellate division of the superior court shall be a judge of that~~
30 ~~court, a judge of the superior court of another county, or a judge retired from the~~
31 ~~superior court or a court of higher jurisdiction in this state.~~

32 ~~The Chief Justice shall designate one of the judges of each appellate division as~~
33 ~~the presiding judge of the division.~~

34 ~~(b) In each appellate division, no more than three judges shall participate in a~~
35 ~~hearing or decision. The presiding judge of the division shall designate the three~~
36 ~~judges who shall participate.~~

37 ~~(c) In addition to their other duties, the judges designated as members of the~~
38 ~~appellate division of the superior court shall serve for the period specified in the~~
39 ~~order of designation. Whenever a judge is designated to serve in the appellate~~
40 ~~division of the superior court of a county other than the county in which that judge~~
41 ~~was elected or appointed as a superior court judge, or if the judge is retired, in a~~

1 county other than the county in which the judge resides, the judge shall receive
2 from the county to which the judge is designated expenses for travel, board, and
3 lodging. If the judge is out of the judge's county overnight or longer, by reason of
4 the designation, that judge shall be paid a per diem allowance in lieu of expenses
5 for board and lodging in the same amounts as are payable for those purposes to
6 justices of the Supreme Court under the rules of the State Board of Control. In
7 addition, a retired judge shall receive from the state and the county to which the
8 judge is designated, for the time so served, amounts equal to that which the judge
9 would have received from each if the judge had been assigned to the superior court
10 of the county.

11 (d) The concurrence of two judges of the appellate division of the superior court
12 shall be necessary to render the decision in every case in, and to transact any other
13 business except business that may be done at chambers by the presiding judge of,
14 the division. The presiding judge shall convene the appellate division when
15 necessary. The presiding judge shall also supervise its business and transact any
16 business that may be done at chambers.

17 (e) The appellate division of the superior court has jurisdiction on appeal from
18 the following courts, in all cases in which an appeal may be taken to the superior
19 court or the appellate division of the superior court as provided by law, except
20 where the appeal is a retrial in the superior court:

21 (1) The municipal courts within the county.

22 (2) The superior court in a county in which there is no municipal court.

23 (f) The powers of each appellate division shall be the same as are now or may
24 hereafter be provided by law or rule of the Judicial Council relating to appeals to
25 the appellate division of the superior courts.

26 (g) The Judicial Council shall promulgate rules, not inconsistent with law, to
27 promote the independence of, and govern the practice and procedure and the
28 disposition of the business of the appellate division.

29 (h) Notwithstanding any other provision of law, the Chief Justice may designate
30 any municipal court judge as a member of the appellate division of the superior
31 court if the municipal court is participating in a trial court coordination plan
32 approved by the Judicial Council and the designated municipal court judge has
33 been assigned to the superior court of the county by the Chief Justice.

34 (i) A reference in any other statute to the appellate department of the superior
35 court means the appellate division of the superior court.

36 (j) Notwithstanding the provisions of subdivisions (b) and (d), appeals from
37 convictions of traffic infractions may be heard and decided by one judge of the
38 appellate division of the superior court.

39 **Comment.** Former Section 77 is repealed to reflect elimination of the appellate division of the
40 superior court and its replacement by the limited jurisdiction division of the court of appeal. See
41 Cal. Const. art. VI, §§ 3 (court of appeal), 4 (superior court), 10 (original jurisdiction), 11
42 (appellate jurisdiction). It is superseded by Article 3 (commencing with Section 69160) of
43 Chapter 4 of Title 8 of the Government Code (limited jurisdiction division of court of appeal).

1 **Code Civ. Proc. § 170.7 (amended). Judge serving on appellate division**

2 SEC. _____. Section 170.7 of the Code of Civil Procedure is amended to read:

3 170.7. Section 170.6 does not apply to a judge ~~designated or assigned to serve on~~
4 ~~the appellate division of a superior court~~ limited jurisdiction division of a court of
5 appeal in the judge's capacity as a judge of that division.

6 **Comment.** Section 170.7 is amended to reflect elimination of the appellate division of the
7 superior court and its replacement by the limited jurisdiction division of the court of appeal. See
8 Cal. Const. art. VI, §§ 3 (court of appeal), 4 (superior court), 10 (original jurisdiction), 11
9 (appellate jurisdiction). See Article 3 (commencing with Section 69160) of Chapter 4 of Title 8 of
10 the Government Code (limited jurisdiction division of court of appeal).

11 **Code Civ. Proc. § 904 (amended). Appeal in civil case**

12 SEC. _____. Section 904 of the Code of Civil Procedure is amended to read:

13 904. (a) An appeal may be taken in a civil action or proceeding as provided in
14 Sections 904.1, 904.2, 904.3, 904.4 and 904.5.

15 (b) An appeal in a civil action or proceeding is to the court of appeal.

16 **Comment.** Subdivision (b) of Section 904 supersedes the former first sentences of Sections
17 904.1 (taking appeal) and 904.2 (taking appeal in limited civil case). It reflects elimination of the
18 appellate division of the superior court. See Cal. Const. art. VI, §§ 3 (court of appeal), 4 (superior
19 court), 10 (original jurisdiction), 11 (appellate jurisdiction).

20 **Code Civ. Proc. § 904.1 (amended). Taking appeal in unlimited civil case**

21 SEC. _____. Section 904.1 of the Code of Civil Procedure is amended to read:

22 904.1. (a) An appeal, ~~other than in a limited civil case,~~ is to the court of appeal.
23 ~~An appeal, other than in a limited civil case,~~ in an unlimited civil case may be
24 taken from any of the following:

25 (1) From a judgment, except (A) an interlocutory judgment, other than as
26 provided in paragraphs (8), (9), and (11), or (B) a judgment of contempt that is
27 made final and conclusive by Section 1222, ~~or~~ (C) ~~a judgment granting or denying~~
28 ~~a petition for issuance of a writ of mandamus or prohibition directed to a~~
29 ~~municipal court or the superior court in a county in which there is no municipal~~
30 ~~court or the judge or judges thereof that relates to a matter pending in the~~
31 ~~municipal or superior court. However, an appellate court may, in its discretion,~~
32 ~~review a judgment granting or denying a petition for issuance of a writ of~~
33 ~~mandamus or prohibition, or a judgment or order for the payment of monetary~~
34 ~~sanctions, upon petition for an extraordinary writ.~~

35 (2) From an order made after a judgment made appealable by paragraph (1).

36 (3) From an order granting a motion to quash service of summons or granting a
37 motion to stay or dismiss the action on the ground of inconvenient forum.

38 (4) From an order granting a new trial or denying a motion for judgment
39 notwithstanding the verdict.

40 (5) From an order discharging or refusing to discharge an attachment or granting
41 a right to attach order.

1 (6) From an order granting or dissolving an injunction, or refusing to grant or
2 dissolve an injunction.

3 (7) From an order appointing a receiver.

4 (8) From an interlocutory judgment, order, or decree, hereafter made or entered
5 in an action to redeem real or personal property from a mortgage thereof, or a lien
6 thereon, determining the right to redeem and directing an accounting.

7 (9) From an interlocutory judgment in an action for partition determining the
8 rights and interests of the respective parties and directing partition to be made.

9 (10) From an order made appealable by the provisions of the Probate Code or the
10 Family Code.

11 (11) From an interlocutory judgment directing payment of monetary sanctions
12 by a party or an attorney for a party if the amount exceeds five thousand dollars
13 (\$5,000).

14 (12) From an order directing payment of monetary sanctions by a party or an
15 attorney for a party if the amount exceeds five thousand dollars (\$5,000).

16 (13) From an order granting or denying a special motion to strike under Section
17 425.16.

18 (b) Sanction orders or judgments of five thousand dollars (\$5,000) or less against
19 a party or an attorney for a party may be reviewed on an appeal by that party after
20 entry of final judgment in the main action, or, at the discretion of the court of
21 appeal, may be reviewed upon petition for an extraordinary writ.

22 **Comment.** The first sentence of Section 904.1(a) is superseded by subdivision (b) of Section
23 904 (appeal in civil case).

24 The second sentence is amended to replace the reference to “other than a limited civil case”
25 with a reference to an “unlimited civil case.” See Code Civ. Proc. § 88 (civil action or proceeding
26 other than limited civil case may be referred to as unlimited civil case).

27 Subdivision (a)(1)(C) is deleted as unnecessary under the new appellate structure.

28 **Code Civ. Proc. § 904.2 (amended). Taking appeal in limited civil case**

29 SEC. _____. Section 904.2 of the Code of Civil Procedure is amended to read:

30 904.2. ~~An appeal in a limited civil case is to the appellate division of the superior~~
31 ~~court.~~ An appeal in a limited civil case may be taken from any of the following:

32 (a) From a judgment, except (1) an interlocutory judgment, or (2) a judgment of
33 contempt that is made final and conclusive by Section 1222.

34 (b) From an order made after a judgment made appealable by subdivision (a).

35 (c) From an order changing or refusing to change the place of trial.

36 (d) From an order granting a motion to quash service of summons or granting a
37 motion to stay or dismiss the action on the ground of inconvenient forum.

38 (e) From an order granting a new trial or denying a motion for judgment
39 notwithstanding the verdict.

40 (f) From an order discharging or refusing to discharge an attachment or granting
41 a right to attach order.

42 (g) From an order granting or dissolving an injunction, or refusing to grant or
43 dissolve an injunction.

1 (h) From an order appointing a receiver.

2 **Comment.** Section 904.2 is amended to reflect elimination of the appellate division of the
3 superior court. See Cal. Const. art. VI, §§ 3 (court of appeal), 4 (superior court), 10 (original
4 jurisdiction), 11 (appellate jurisdiction).

5 An appeal in a limited civil case is to the court of appeal. Section 904 (appeal in civil case). The
6 court of appeal may confer jurisdiction on its limited jurisdiction division in a limited civil case.
7 Cal. Const. art. VI, § 3.

8 **Code Civ. Proc. § 911 (repealed). Transfer from appellate division to court of appeal**

9 SEC. _____. Section 911 of the Code of Civil Procedure is repealed.

10 ~~911. A court of appeal may order any case on appeal to a superior court in its~~
11 ~~district transferred to it for hearing and decision as provided by rules of the~~
12 ~~Judicial Council when the superior court certifies, or the court of appeal~~
13 ~~determines, that the transfer appears necessary to secure uniformity of decision or~~
14 ~~to settle important questions of law.~~

15 ~~No case in which there is a right on appeal to a trial anew in the superior court~~
16 ~~shall be transferred pursuant to this section before a decision in the case becomes~~
17 ~~final therein.~~

18 ~~A court to which any case is transferred pursuant to this section shall have~~
19 ~~similar power to review any matter and make orders and judgments as the~~
20 ~~appellate division of the superior court would have in the case, except that if the~~
21 ~~case was tried anew in the superior court, the court of appeal shall have similar~~
22 ~~power to review any matter and make orders and judgments as it has in a case~~
23 ~~appealed pursuant to Section 904.1.~~

24 **Comment.** Section 911 is repealed to reflect elimination of the appellate division of the
25 superior court. See Cal. Const. art. VI, §§ 3 (court of appeal), 4 (superior court), 10 (original
26 jurisdiction), 11 (appellate jurisdiction).

27 **Code Civ. Proc. § 1068 (amended). Courts authorized to grant writ of review**

28 SEC. _____. Section 1068 of the Code of Civil Procedure is amended to read:

29 1068. (a) A writ of review may be granted by any court, ~~except a municipal~~
30 ~~court~~, when an inferior tribunal, board, or officer, exercising judicial functions, has
31 exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal,
32 nor, in the judgment of the court, any plain, speedy, and adequate remedy.

33 ~~(b) The appellate division of the superior court may grant a writ of review~~
34 ~~directed to the superior court in a limited civil case or in a misdemeanor or~~
35 ~~infraction case. Where the appellate division grants a writ of review directed to the~~
36 ~~superior court, the superior court is an inferior tribunal for purposes of this~~
37 ~~chapter.~~

38 **Comment.** Subdivision (a) of Section 1068 is amended to reflect unification of the municipal
39 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

40 Subdivision (b) is deleted to reflect elimination of the appellate division of the superior court.
41 See Cal. Const. art. VI, §§ 3 (court of appeal), 4 (superior court), 10 (original jurisdiction), 11
42 (appellate jurisdiction).

1 **Code Civ. Proc. § 1085 (amended). Courts authorized to grant writ of mandate**

2 SEC. _____. Section 1085 of the Code of Civil Procedure is amended to read:

3 1085. (a) A writ of mandate may be issued by any court, ~~except a municipal~~
4 ~~court,~~ to any inferior tribunal, corporation, board, or person, to compel the
5 performance of an act which the law specially enjoins, as a duty resulting from an
6 office, trust, or station, or to compel the admission of a party to the use and
7 enjoyment of a right or office to which the party is entitled, and from which the
8 party is unlawfully precluded by such inferior tribunal, corporation, board, or
9 person.

10 ~~(b) The appellate division of the superior court may grant a writ of mandate~~
11 ~~directed to the superior court in a limited civil case or in a misdemeanor or~~
12 ~~infraction case. Where the appellate division grants a writ of review directed to the~~
13 ~~superior court, the superior court is an inferior tribunal for purposes of this~~
14 ~~chapter.~~

15 **Comment.** Subdivision (a) of Section 1085 is amended to reflect unification of the municipal
16 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

17 Subdivision (b) is deleted to reflect elimination of the appellate division of the superior court.
18 See Cal. Const. art. VI, §§ 3 (court of appeal), 4 (superior court), 10 (original jurisdiction), 11
19 (appellate jurisdiction).

20 **Code Civ. Proc. § 1103 (amended). Courts authorized to grant writ of prohibition**

21 SEC. _____. Section 1103 of the Code of Civil Procedure is amended to read:

22 1103. (a) A writ of prohibition may be issued by any court, ~~except municipal~~
23 ~~courts,~~ to an inferior tribunal or to a corporation, board, or person, in all cases
24 where there is not a plain, speedy, and adequate remedy in the ordinary course of
25 law. It is issued upon the verified petition of the person beneficially interested.

26 ~~(b) The appellate division of the superior court may grant a writ of prohibition~~
27 ~~directed to the superior court in a limited civil case or in a misdemeanor or~~
28 ~~infraction case. Where the appellate division grants a writ of review directed to the~~
29 ~~superior court, the superior court is an inferior tribunal for purposes of this~~
30 ~~chapter.~~

31 **Comment.** Subdivision (a) of Section 1103 is amended to reflect unification of the municipal
32 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

33 Subdivision (b) is deleted to reflect elimination of the appellate division of the superior court.
34 See Cal. Const. art. VI, §§ 3 (court of appeal), 4 (superior court), 10 (original jurisdiction), 11
35 (appellate jurisdiction).

36 GOVERNMENT CODE

37 **Gov't Code § 26824 (amended). Filing fee for appeal**

38 SEC. _____. Section 26824 of the Government Code is amended to read:

39 26824. The fee for filing a notice of appeal ~~to the appellate division of the~~
40 ~~superior court~~ in a limited civil case is fifty dollars (\$50). The Judicial Council

1 may make rules governing the time and method of payment and providing for
2 excuse.

3 **Comment.** Section 26824 is amended to reflect elimination of the appellate division of the
4 superior court. See Cal. Const. art. VI, §§ 3 (court of appeal), 4 (superior court), 10 (original
5 jurisdiction), 11 (appellate jurisdiction).

6 ☞ **Note.** Section 26824 is located among the county fee statutes. It should be relocated to a more
7 appropriate location relating to appeals to the court of appeal. *Cf.* Gov't Code § 68926 (fee for
8 notice of appeal generally). The Judicial Council has Section 26824 and related fee statutes under
9 review. The present draft does not address the matter of relocation.

10 **Gov't Code § 68081 (amended). Appellate decisions**

11 SEC. _____. Section 68081 of the Government Code is amended to read:

12 68081. Before the Supreme Court, ~~a court of appeal, or the appellate division of~~
13 ~~a superior court~~ Court or a court of appeal renders a decision in a proceeding other
14 than a summary denial of a petition for an extraordinary writ, based upon an issue
15 which was not proposed or briefed by any party to the proceeding, the court shall
16 afford the parties an opportunity to present their views on the matter through
17 supplemental briefing. If the court fails to afford that opportunity, a rehearing shall
18 be ordered upon timely petition of any party.

19 **Comment.** Section 68081 is amended to reflect elimination of the appellate division of the
20 superior court. See Cal. Const. art. VI, §§ 3 (court of appeal), 4 (superior court), 10 (original
21 jurisdiction), 11 (appellate jurisdiction).

22 **Gov't Code § 68902 (amended). Publication of opinions**

23 SEC. _____. Section 68902 of the Government Code is amended to read:

24 68902. Such opinions of the Supreme Court, ~~of the courts of appeal, and of the~~
25 ~~appellate divisions of the superior courts~~ Court and the courts of appeal as the
26 Supreme Court may deem expedient shall be published in the official reports. The
27 reports shall be published under the general supervision of the Supreme Court.

28 **Comment.** Section 68902 is amended to reflect elimination of the appellate division of the
29 superior court. See Cal. Const. art. VI, §§ 3 (court of appeal), 4 (superior court), 10 (original
30 jurisdiction), 11 (appellate jurisdiction).

31 **Gov't Code § 69107 (amended). Appointment of court of appeal judges**

32 SEC. _____. Section 69107 of the Government Code is amended to read:

33 69107. (a) Upon the creation of a new court of appeal district or division the
34 Governor shall appoint pursuant to subdivision (d) of Section 16 of Article VI of
35 the Constitution three or more persons to serve as judges thereof as provided in the
36 legislation creating the district or division. The judges of said district or division
37 elected at the first general election at which they had the right to become
38 candidates shall so classify themselves by lot that the term of office for at least one
39 of them expires at the end of four years, at least one of them at the end of eight
40 years, and at least one of them at the end of 12 years, and entry of such
41 classification shall be made in the minutes of said district or division, signed by

1 each of the judges thereof, and a duplicate thereof filed in the office of the
2 Secretary of State.


3 (b) This section does not apply to the limited jurisdiction division of the court of
4 appeal.

5 **Comment.** Subdivision (b) is added to Section 69107 to reflect the fact that the Chief Justice
6 makes assignments to the limited jurisdiction division in the court of appeal. See Cal. Const. art.
7 VI, § 3(c) (court of appeal); Gov't Code § 69160 (limited jurisdiction division).

8 **Gov't Code §§ 69160-69167 (added). Limited jurisdiction division**

9 SEC. _____. Article 3 (commencing with Section 69160) is added to Chapter 4 of
10 Title 8 of the Government Code, to read:

11 Article 3. Limited Jurisdiction Division

12  **Note.** This draft does not address funding issues. To the extent that the court of appeal
13 assumes the function of the appellate division, funding for that function should be provided to the
14 court of appeal.

15 **69160. "Limited jurisdiction division" defined**

16 69160. As used in this article, "limited jurisdiction division" means the division
17 of limited jurisdiction of the court of appeal established by Article VI, Section 3,
18 of the California Constitution.

19 **Comment.** Section 69160 is intended for drafting convenience.

20 **69161. Jurisdiction of limited jurisdiction division**

21 69161. (a) In each court of appeal there is a division of limited jurisdiction.

22 (b) The limited jurisdiction division shall exercise the jurisdiction of the court of
23 appeal in all cases designated by the court of appeal.

24 (c) The court of appeal does not have jurisdiction where the appeal is a retrial in
25 the superior court.

26 **Comment.** Subdivisions (a) and (b) of Section 69161 codify the first two sentences of
27 subdivision (c) of California Constitution, Article VI, Section 3 (court of appeal).

28 Subdivision (c) codifies subdivision (b) of California Constitution, Article VI, Section 11
29 (appellate jurisdiction).

30 The court of appeal has both original and appellate jurisdiction. Cal. Const. art. VI, §§ 10
31 (original jurisdiction), 11 (appellate jurisdiction). Designation of a case by the court of appeal for
32 decision in the limited jurisdiction division may involve exercise of either type of jurisdiction.

33 **69162. Judges of limited jurisdiction division**

34 69162. (a) The limited jurisdiction division consists of three judges or, when the
35 Chief Justice finds it necessary, four judges.

36 (b) The Chief Justice shall assign judges to the limited jurisdiction division for
37 specified terms pursuant to rules, not inconsistent with statute, adopted by the
38 Judicial Council.

39 (c) Each judge assigned to the limited jurisdiction division shall be a judge of a
40 superior court in a county within the court of appeal district, a judge of the

1 superior court of another county, or a judge retired from a superior court or a court
2 of higher jurisdiction in the state. In addition to other duties, a judge assigned as a
3 member of the limited jurisdiction division shall serve for the period specified in
4 the order of assignment.

5 **Comment.** Subdivision (a) of Section 69162 supersedes subdivision (a) of former Code of
6 Civil Procedure Section 77 (appellate division of superior court).

7 Subdivision (b) codifies the third sentence of California Constitution, Article VI, Section 3
8 (court of appeal). *Cf.* former Code Civ. Proc. § 77(a).

9 Subdivision (c) supersedes the second sentence of the second paragraph of former Code of
10 Civil Procedure Section 77(a).

11 **69163. Presiding judge of limited jurisdiction division**

12 69163. (a) The Chief Justice shall designate one of the judges of each limited
13 jurisdiction division as the presiding judge of the division.

14 (b) The presiding judge shall supervise the business of the limited jurisdiction
15 division and transact any business that may be done at chambers. The presiding
16 judge shall convene the limited jurisdiction division when necessary.

17 **Comment.** Subdivision (a) of Section 69163 supersedes the third paragraph of subdivision (a)
18 of former Code of Civil Procedure Section 77 (appellate division of superior court).

19 Subdivision (b) supersedes the second and third sentences of former Code of Civil Procedure
20 Section 77(d).

21 **69164. Number of judges required for decision**

22 69164. (a) In the limited jurisdiction division, no more than three judges shall
23 participate in a hearing or decision. The presiding judge of the division shall
24 designate the three judges who shall participate.

25 (b) The concurrence of two judges of the limited jurisdiction division is
26 necessary to render the decision in every case and to transact any other business
27 except business that may be done at chambers by the presiding judge of the
28 division.

29 (c) Notwithstanding any other provision of this section, an appeal from
30 conviction of a traffic infraction may be heard and decided by one judge of the
31 limited jurisdiction division.

32 **Comment.** Subdivision (a) of Section 69164 supersedes subdivision (b) of former Code of
33 Civil Procedure Section 77 (appellate division of superior court).

34 Subdivision (b) supersedes the first sentence of former Code of Civil Procedure Section 77(d).

35 Subdivision (c) supersedes former Code of Civil Procedure Section 77(j).

36 **69165. Sessions of limited jurisdiction division**

37 69165. The limited jurisdiction division shall hold session in the county within
38 the court of appeal district in which the case before it originates, unless otherwise
39 agreed to by the parties and the court.

40 **Comment.** Section 69165 requires that the limited jurisdiction division judges ride circuit. For
41 reimbursement of travel expenses, see Section 69166 (compensation and reimbursement of
42 judges).

1 **69166. Compensation and reimbursement of judges**

2 69166. (a) Whenever a judge is assigned to serve in a limited jurisdiction
3 division holding session in a county other than the county in which the judge's
4 superior court is located, or if the judge is retired, in a county other than the county
5 in which the judge resides, the judge shall receive expenses for travel, board, and
6 lodging. If the judge is out of the county overnight or longer by reason of the
7 assignment, the judge shall be paid a per diem allowance in lieu of expenses for
8 board and lodging in the same amounts as are payable for those purposes to
9 justices of the Supreme Court under the rules of the State Board of Control.

10 (b) In addition to the amount provided in subdivision (a), a retired judge shall
11 receive for the time served an amount equal to that which the judge would have
12 received if the judge had been assigned to the superior court.

13 **Comment.** Section 69166 supersedes the second, third, and fourth sentences of subdivision (c)
14 of former Code of Civil Procedure Section 77 (appellate division of superior court).

15 **69167. Judicial Council rules**

16 69167. The Judicial Council shall promulgate rules, not inconsistent with statute,
17 to govern practice and procedure in, and disposition of the business of, the limited
18 jurisdiction division.

19 **Comment.** Section 69167 implements the last clause of subdivision (c) of California
20 Constitution, Article VI, Section 3 (court of appeal). *Cf.* former Code Civ. Proc. § 77(g)
21 (appellate division of superior court).

22 PENAL CODE

23 **Penal Code § 1466 (amended). Appeals**

24 SEC. _____. Section 1466 of the Penal Code is amended to read:

25 1466. An appeal may be taken from a judgment or order, in an infraction or
26 misdemeanor case, to the ~~appellate division of the superior court of the county~~
27 court of appeal of the district in which the court from which the appeal is taken is
28 located, in the following cases:

29 (1) By the people:

30 (A) From an order recusing the district attorney or city attorney pursuant to
31 Section 1424.

32 (B) From an order or judgment dismissing or otherwise terminating all or any
33 portion of the action, including such an order or judgment, entered after a verdict
34 or finding of guilty or a verdict or judgment entered before the defendant has been
35 placed in jeopardy or where the defendant has waived jeopardy.

36 (C) From sustaining a demurrer to any portion of the complaint or pleading.

37 (D) From an order granting a new trial.

38 (E) From an order arresting judgment.

39 (F) From any order made after judgment affecting the substantial rights of the
40 people.

1 (G) From the imposition of an unlawful sentence, whether or not the court
2 suspends the execution of sentence. As used in this subparagraph, “unlawful
3 sentence” means the imposition of a sentence not authorized by law or the
4 imposition of a sentence based upon an unlawful order of the court that strikes or
5 otherwise modifies the effect of an enhancement or prior conviction. A defendant
6 shall have the right to counsel in the people’s appeal of an unlawful sentence under
7 the same circumstances that he or she would have a right to counsel under
8 subdivision (a) of Section 1238.

9 (H) Nothing in this section shall be construed to authorize an appeal from an
10 order granting probation. Instead, the people may seek appellate review of any
11 grant of probation, whether or not the court imposes sentence, by means of a
12 petition for a writ of mandate or prohibition that is filed within 60 days after
13 probation is granted. The review of any grant of probation shall include review of
14 any order underlying the grant of probation.

15 (2) By the defendant:

16 (A) From a final judgment of conviction. A sentence, an order granting
17 probation, a conviction in a case in which before final judgment the defendant is
18 committed for insanity or is given an indeterminate commitment as a mentally
19 disordered sex offender, or the conviction of a defendant committed for controlled
20 substance addiction shall be deemed to be a final judgment within the meaning of
21 this section. Upon appeal from a final judgment or an order granting probation the
22 court may review any order denying a motion for a new trial.

23 (B) From any order made after judgment affecting his or her substantial rights.

24 **Comment.** Section 1466 is amended to reflect elimination of the appellate division of the
25 superior court. See Cal. Const. art. VI, §§ 3 (court of appeal), 4 (superior court), 10 (original
26 jurisdiction), 11 (appellate jurisdiction).

27 **Penal Code § 1468 (repealed). Appeals to appellate division**

28 SEC. _____. Section 1468 of the Penal Code is repealed.

29 ~~1468. Appeals to the appellate divisions of superior courts shall be taken, heard
30 and determined, the decisions thereon shall be remitted to the courts from which
31 the appeals are taken, and the records on such appeals shall be made up and filed
32 in such time and manner as shall be prescribed in rules adopted by the Judicial
33 Council.~~

34 **Comment.** Section 1468 is repealed to reflect elimination of the appellate division of the
35 superior court. See Cal. Const. art. VI, §§ 3 (court of appeal), 4 (superior court), 10 (original
36 jurisdiction), 11 (appellate jurisdiction).

37 **Penal Code § 1471 (repealed). Transfer to court of appeal**

38 SEC. _____. Section 1471 of the Penal Code is repealed.

39 ~~1471. A court of appeal may order any case on appeal to a superior court in its
40 district transferred to it for hearing and decision as provided by rules of the
41 Judicial Council when the superior court certifies, or the court of appeal~~

1 ~~determines, that such transfer appears necessary to secure uniformity of decision~~
2 ~~or to settle important questions of law.~~

3 ~~A court to which any such case is transferred shall have similar power to review~~
4 ~~any matter and make orders and judgments as the appellate division of the superior~~
5 ~~court by statute would have in such case, except as otherwise expressly provided.~~

6 **Comment.** Section 1471 is repealed to reflect elimination of the appellate division of the
7 superior court. See Cal. Const. art. VI, §§ 3 (court of appeal), 4 (superior court), 10 (original
8 jurisdiction), 11 (appellate jurisdiction).

9 **Penal Code § 1538.5 (amended). Motion to return property or suppress evidence**

10 SEC. ____ . Section 1538.5 of the Penal Code is amended to read:

11 1538.5. (a) (1) A defendant may move for the return of property or to suppress
12 as evidence any tangible or intangible thing obtained as a result of a search or
13 seizure on either of the following grounds:

14 (A) The search or seizure without a warrant was unreasonable.

15 (B) The search or seizure with a warrant was unreasonable because any of the
16 following apply:

17 (i) The warrant is insufficient on its face.

18 (ii) The property or evidence obtained is not that described in the warrant.

19 (iii) There was not probable cause for the issuance of the warrant.

20 (iv) The method of execution of the warrant violated federal or state
21 constitutional standards.

22 (v) There was any other violation of federal or state constitutional standards.

23 (2) A motion pursuant to paragraph (1) shall be made in writing and
24 accompanied by a memorandum of points and authorities and proof of service.
25 The memorandum shall list the specific items of property or evidence sought to be
26 returned or suppressed and shall set forth the factual basis and the legal authorities
27 that demonstrate why the motion should be granted.

28 (b) When consistent with the procedures set forth in this section and subject to
29 the provisions of Section 170 to 170.6, inclusive, of the Code of Civil Procedure,
30 the motion should first be heard by the magistrate who issued the search warrant if
31 there is a warrant.

32 (c) Whenever a search or seizure motion is made in the ~~municipal~~ or superior
33 court as provided in this section, the judge or magistrate shall receive evidence on
34 any issue of fact necessary to determine the motion.

35 (d) If a search or seizure motion is granted pursuant to the proceedings
36 authorized by this section, the property or evidence shall not be admissible against
37 the movant at any trial or other hearing unless further proceedings authorized by
38 this section, Section 871.5, 1238, or 1466 are utilized by the people.

39 (e) If a search or seizure motion is granted at a trial, the property shall be
40 returned upon order of the court unless it is otherwise subject to lawful detention.
41 If the motion is granted at a special hearing, the property shall be returned upon
42 order of the court only if, after the conclusion of any further proceedings

1 authorized by this section, Section 1238 or 1466, the property is not subject to
2 lawful detention or if the time for initiating the proceedings has expired,
3 whichever occurs last. If the motion is granted at a preliminary hearing, the
4 property shall be returned upon order of court after 10 days unless the property is
5 otherwise subject to lawful detention or unless, within that time, further
6 proceedings authorized by this section, Section 871.5 or 1238 are utilized; if they
7 are utilized, the property shall be returned only if, after the conclusion of the
8 proceedings, the property is no longer subject to lawful detention.

9 (f) (1) If the property or evidence relates to a felony offense initiated by a
10 complaint, the motion shall be made in the superior court only upon filing of an
11 information, except that the defendant may make the motion at the preliminary
12 hearing ~~in the municipal court or in the superior court in a county in which there is~~
13 ~~no municipal court~~, but the motion shall be restricted to evidence sought to be
14 introduced by the people at the preliminary hearing.

15 (2) The motion may be made at the preliminary examination only if at least five
16 court days before the date set for the preliminary examination the defendant has
17 filed and personally served on the people a written motion accompanied by a
18 memorandum of points and authorities as required by paragraph (2) of subdivision
19 (a). At the preliminary examination, the magistrate may grant the defendant a
20 continuance for the purpose of filing the motion and serving the motion upon the
21 people, at least five court days before resumption of the examination, upon a
22 showing that the defendant or his or her attorney of record was not aware of the
23 evidence or was not aware of the grounds for suppression before the preliminary
24 examination.

25 (3) Any written response by the people to the motion described in paragraph (2)
26 shall be filed with the court and personally served on the defendant or his or her
27 attorney of record at least two court days prior to the hearing at which the motion
28 is to be made.

29 (g) If the property or evidence relates to a misdemeanor complaint, the motion
30 shall be made ~~in the municipal court or in the superior court in a county in which~~
31 ~~there is no municipal court~~ before trial and heard prior to trial at a special hearing
32 relating to the validity of the search or seizure. If the property or evidence relates
33 to a misdemeanor filed together with a felony, the procedure provided for a felony
34 in this section and Sections 1238 and 1539 shall be applicable.

35 (h) If, prior to the trial of a felony or misdemeanor, opportunity for this motion
36 did not exist or the defendant was not aware of the grounds for the motion, the
37 defendant shall have the right to make this motion during the course of trial in the
38 ~~municipal or superior court~~.

39 (i) If the property or evidence obtained relates to a felony offense initiated by
40 complaint and the defendant was held to answer at the preliminary hearing, or if
41 the property or evidence relates to a felony offense initiated by indictment, the
42 defendant shall have the right to renew or make the motion in the superior court at
43 a special hearing relating to the validity of the search or seizure which shall be

1 heard prior to trial and at least 10 court days after notice to the people, unless the
2 people are willing to waive a portion of this time. Any written response by the
3 people to the motion shall be filed with the court and personally served on the
4 defendant or his or her attorney of record at least two court days prior to the
5 hearing, unless the defendant is willing to waive a portion of this time. If the
6 offense was initiated by indictment or if the offense was initiated by complaint and
7 no motion was made at the preliminary hearing, the defendant shall have the right
8 to fully litigate the validity of a search or seizure on the basis of the evidence
9 presented at a special hearing. If the motion was made at the preliminary hearing,
10 unless otherwise agreed to by all parties, evidence presented at the special hearing
11 shall be limited to the transcript of the preliminary hearing and to evidence that
12 could not reasonably have been presented at the preliminary hearing, except that
13 the people may recall witnesses who testified at the preliminary hearing. If the
14 people object to the presentation of evidence at the special hearing on the grounds
15 that the evidence could reasonably have been presented at the preliminary hearing,
16 the defendant shall be entitled to an in camera hearing to determine that issue. The
17 superior court shall base its ruling on all evidence presented at the special hearing
18 and on the transcript of the preliminary hearing, and the findings of the magistrate
19 shall be binding on the superior court as to evidence or property not affected by
20 evidence presented at the special hearing. After the special hearing is held in the
21 superior court, any review thereafter desired by the defendant prior to trial shall be
22 by means of an extraordinary writ of mandate or prohibition filed within 30 days
23 after the denial of his or her motion at the special hearing.

24 (j) If the property or evidence relates to a felony offense initiated by complaint
25 and the defendant's motion for the return of the property or suppression of the
26 evidence at the preliminary hearing is granted, and if the defendant is not held to
27 answer at the preliminary hearing, the people may file a new complaint or seek an
28 indictment after the preliminary hearing, and the ruling at the prior hearing shall
29 not be binding in any subsequent proceeding, except as limited by subdivision (p).
30 In the alternative, the people may move to reinstate the complaint, or those parts of
31 the complaint for which the defendant was not held to answer, pursuant to Section
32 871.5. If the property or evidence relates to a felony offense initiated by complaint
33 and the defendant's motion for the return or suppression of the property or
34 evidence at the preliminary hearing is granted, and if the defendant is held to
35 answer at the preliminary hearing, the ruling at the preliminary hearing shall be
36 binding upon the people unless, upon notice to the defendant and the court in
37 which the preliminary hearing was held and upon the filing of an information, the
38 people, within 15 days after the preliminary hearing, request in the superior court a
39 special hearing, in which case the validity of the search or seizure shall be
40 relitigated de novo on the basis of the evidence presented at the special hearing,
41 and the defendant shall be entitled, as a matter of right, to a continuance of the
42 special hearing for a period of time up to 30 days. The people may not request
43 relitigation of the motion at a special hearing if the defendant's motion has been

1 granted twice. If the defendant's motion is granted at a special hearing in the
2 superior court, the people, if they have additional evidence relating to the motion
3 and not presented at the special hearing, shall have the right to show good cause at
4 the trial why the evidence was not presented at the special hearing and why the
5 prior ruling at the special hearing should not be binding, or the people may seek
6 appellate review as provided in subdivision (o), unless the court, prior to the time
7 the review is sought, has dismissed the case pursuant to Section 1385. If the case
8 has been dismissed pursuant to Section 1385, or if the people dismiss the case on
9 their own motion after the special hearing, the people may file a new complaint or
10 seek an indictment after the special hearing, and the ruling at the special hearing
11 shall not be binding in any subsequent proceeding, except as limited by
12 subdivision (p). If the property or evidence seized relates solely to a misdemeanor
13 complaint, and the defendant made a motion for the return of property or the
14 suppression of evidence in the ~~municipal court or superior court in a county in~~
15 ~~which there is no municipal court~~ prior to trial, both the people and defendant shall
16 have the right to appeal any decision of that court relating to that motion ~~to the~~
17 ~~superior court of the county in which the municipal or superior court is located, in~~
18 ~~accordance with the California Rules of Court provisions governing appeals to the~~
19 ~~appellate division in criminal cases.~~ If the people prosecute review by appeal or
20 writ to decision, or any review thereof, in a felony or misdemeanor case, it shall be
21 binding upon them.

22 (k) If the defendant's motion to return property or suppress evidence is granted
23 and the case is dismissed pursuant to Section 1385, or the people appeal in a
24 misdemeanor case pursuant to subdivision (j), the defendant shall be released
25 pursuant to Section 1318 if he or she is in custody and not returned to custody
26 unless the proceedings are resumed in the trial court and he or she is lawfully
27 ordered by the court to be returned to custody.

28 If the defendant's motion to return property or suppress evidence is granted and
29 the people file a petition for writ of mandate or prohibition pursuant to subdivision
30 (o) or a notice of intention to file such a petition, the defendant shall be released
31 pursuant to Section 1318, unless (1) he or she is charged with a capital offense in a
32 case where the proof is evident and the presumption great, or (2) he or she is
33 charged with a noncapital offense defined in Chapter 1 (commencing with Section
34 187) of Title 8 of Part 1, and the court orders that the defendant be discharged
35 from actual custody upon bail.

36 (l) If the defendant's motion to return property or suppress evidence is granted,
37 the trial of a criminal case shall be stayed to a specified date pending the
38 termination in the appellate courts of this state of the proceedings provided for in
39 this section, Section 871.5, 1238, or 1466 and, except upon stipulation of the
40 parties, pending the time for the initiation of these proceedings. Upon the
41 termination of these proceedings, the defendant shall be brought to trial as
42 provided by Section 1382, and, subject to the provisions of Section 1382,
43 whenever the people have sought and been denied appellate review pursuant to

1 subdivision (o), the defendant shall be entitled to have the action dismissed if he or
2 she is not brought to trial within 30 days of the date of the order that is the last
3 denial of the petition. Nothing contained in this subdivision shall prohibit a court,
4 at the same time as it rules upon the search and seizure motion, from dismissing a
5 case pursuant to Section 1385 when the dismissal is upon the court's own motion
6 and is based upon an order at the special hearing granting the defendant's motion
7 to return property or suppress evidence. In a misdemeanor case, the defendant
8 shall be entitled to a continuance of up to 30 days if he or she intends to file a
9 motion to return property or suppress evidence and needs this time to prepare for
10 the special hearing on the motion. In case of an appeal by the defendant in a
11 misdemeanor case from the denial of the motion, he or she shall be entitled to bail
12 as a matter of right, and, in the discretion of the trial or appellate court, may be
13 released on his or her own recognizance pursuant to Section 1318.

14 (m) The proceedings provided for in this section, and Sections 871.5, 995, 1238,
15 and 1466 shall constitute the sole and exclusive remedies prior to conviction to test
16 the unreasonableness of a search or seizure where the person making the motion
17 for the return of property or the suppression of evidence is a defendant in a
18 criminal case and the property or thing has been offered or will be offered as
19 evidence against him or her. A defendant may seek further review of the validity
20 of a search or seizure on appeal from a conviction in a criminal case
21 notwithstanding the fact that the judgment of conviction is predicated upon a plea
22 of guilty. Review on appeal may be obtained by the defendant provided that at
23 some stage of the proceedings prior to conviction he or she has moved for the
24 return of property or the suppression of the evidence.

25 (n) This section establishes only the procedure for suppression of evidence and
26 return of property, and does not establish or alter any substantive ground for
27 suppression of evidence or return of property. Nothing contained in this section
28 shall prohibit a person from making a motion, otherwise permitted by law, to
29 return property, brought on the ground that the property obtained is protected by
30 the free speech and press provisions of the United States and California
31 Constitutions. Nothing in this section shall be construed as altering (1) the law of
32 standing to raise the issue of an unreasonable search or seizure; (2) the law relating
33 to the status of the person conducting the search or seizure; (3) the law relating to
34 the burden of proof regarding the search or seizure; (4) the law relating to the
35 reasonableness of a search or seizure regardless of any warrant that may have been
36 utilized; or (5) the procedure and law relating to a motion made pursuant to
37 Section 871.5 or 995, or the procedures that may be initiated after the granting or
38 denial of such a motion.

39 (o) Within 30 days after a defendant's motion is granted at a special hearing in
40 the superior court in a felony case, the people may file a petition for writ of
41 mandate or prohibition in the court of appeal, seeking appellate review of the
42 ruling regarding the search or seizure motion. If the trial of a criminal case is set
43 for a date that is less than 30 days from the granting of a defendant's motion at a

1 special hearing in the superior court in a felony case, the people, if they have not
2 filed such a petition and wish to preserve their right to file a petition, shall file in
3 the superior court on or before the trial date or within 10 days after the special
4 hearing, whichever occurs last, a notice of intention to file a petition and shall
5 serve a copy of the notice upon the defendant.

6 (p) If a defendant's motion to return property or suppress evidence in a felony
7 matter has been granted twice, the people may not file a new complaint or seek an
8 indictment in order to relitigate the motion or relitigate the matter de novo at a
9 special hearing in the superior court as otherwise provided by subdivision (j),
10 unless the people discover additional evidence relating to the motion that was not
11 reasonably discoverable at the time of the second suppression hearing. Relitigation
12 of the motion shall be heard by the same judge who granted the motion at the first
13 hearing if the judge is available.

14 (q) The amendments to this section enacted in the 1997 portion of the 1997-98
15 Regular Session of the Legislature shall apply to all criminal proceedings
16 conducted on or after January 1, 1998.

17 **Comment.** Section 1538.5 is amended to reflect unification of the municipal and superior
18 courts pursuant to Article VI, Section 5(e), of the California Constitution, and to reflect
19 elimination of the appellate division of the superior court. See Cal. Const. art. VI, §§ 3 (court of
20 appeal), 4 (superior court), 10 (original jurisdiction), 11 (appellate jurisdiction).

21 VEHICLE CODE

22 **Veh. Code § 11205. Traffic violator school list (as amended by 1998 Cal. Stat. ch. 931, §**
23 **455.5)**

24 SEC. _____. Section 11205 of the Vehicle Code, as amended by Section 455.5 of
25 Chapter 931 of the Statutes of 1998, is amended to read:

26 11205. (a) The department shall publish a traffic violator school referral list of
27 all the approved locations of traffic violator school classes, by school name, to be
28 transmitted to each ~~municipal superior court in the state, and to each superior court~~
29 ~~in a county in which there is no municipal court,~~ in sufficient quantity to allow the
30 courts to provide a copy to each person referred to traffic violator school. The list
31 shall be revised at least twice annually and transmitted to the courts by the first
32 day of January and the first day of July. It shall include all of the following:

33 (1) The name of each traffic violator school or, pursuant to subdivision (d), the
34 general term "traffic violator school" followed by its traffic violator school license
35 number.

36 (2) A phone number used for student information.

37 (3) The county ~~and the judicial district.~~

38 (4) The cities where classes are available.

39 (b) Each traffic violator school owner shall be permitted one school name in a
40 ~~judicial district~~ county.

1 (c) The list shall be organized alphabetically in sections for each county and
2 ~~subsections for each judicial district within the county~~. The order of the names
3 within each ~~judicial district~~ county shall be random pursuant to a drawing or
4 lottery conducted by the department.

5 (d) On the list prepared by the department under subdivision (c), each traffic
6 violator school shall appear by name unless a court determines, pursuant to
7 subdivision (e), that a name is inappropriate and directs the department to delete
8 the name and instead list the school by the term “traffic violator school” followed
9 by its license number. The deletion of the name of a school from the list for a
10 ~~judicial district~~ county shall not affect whether that school appears by name on the
11 list for any other ~~judicial district~~ county within the state. In making a
12 determination under this subdivision regarding the deletion of a name from the list,
13 the court shall use as its criteria whether the name is misleading to the public,
14 undignified, or implies that the school offers inducements or premiums which
15 derogate or distort the instructional intent of the traffic safety program.

16 (e) When the department transmits any referral list pursuant to subdivision (a),
17 each court shall do all of the following:

18 (1) Within 30 days of receipt of the list, notify the school owner of any school
19 name that the court intends to remove from the referral list.

20 (2) Within 60 days of receipt of the list, make every effort to schedule, conduct,
21 and complete a hearing for the school owner, or a representative, if requested, at
22 which the sole issue shall be whether the name violates the standards set forth in
23 subdivision (d). A substitute name may be submitted to the court at the conclusion
24 of the hearing, pursuant to subdivision (h).

25 (3) Within 10 days of the completion of that hearing, notify the department and
26 school owner of any school names it intends to remove from the referral list.

27 (f) In order for a court action to delete a school name from the next referral list
28 published by the department, the department shall receive court notification no
29 later than 90 days prior to publication of the next referral list and, absent a direct
30 order by the ~~appellate division of the superior court or a court of higher~~
31 ~~jurisdiction~~ an appellate court, the department shall not fail to publish a referral list
32 on the grounds that there exists pending litigation or appeals concerning the lists.

33 (g) Any court notifying the department of a school name it intends to remove
34 from the list, pursuant to this section, shall provide the school owner with the
35 name of the judge making those findings.

36 (h) When a court informs a school owner, pursuant to subdivision (e), of its
37 decision to delete the name of a traffic violator school from that ~~judicial district's~~
38 county's subsection of the department's traffic violator school referral list, the
39 owner may, on a form approved by the department, submit a substitute name to the
40 court and request approval of that name. The court shall, within 30 days of receipt
41 of the request for approval of the substitute name, inform the department and the
42 school owner, on a form approved by the department, of its approval or rejection
43 of the substitute name. The school owner may continue this appeal process for

1 approval of a substitute name until the court determines that the name does not
2 violate the standard set forth in subdivision (d). A name approval in a judicial
3 ~~district~~ county shall not affect the school's name or listing in any other ~~district~~
4 county in the state. The department shall not impose any fee or license requirement
5 under this subdivision.

6 (i) If a court fails to act within 30 days on a request of a traffic violator school
7 owner, pursuant to subdivision (h), the proposed substitute name shall be deemed
8 approved by the court for the purposes of the traffic violator school referral list.

9 (j)(1) Every application filed with the department on and after June 1, 1991, for
10 an original license by a traffic school owner or for approval to conduct classes in a
11 ~~judicial district~~ county not previously approved, shall be accompanied by the
12 approval of the court in each ~~judicial district~~ county proposed for those operations
13 of the name of the school, on a form approved by the department for that purpose.
14 For the approved name to be included in the traffic violator school referral list, the
15 form shall be received by the department no later than 90 days prior to publication.

16 (2) When a court disapproves a school name pursuant to this subdivision, the
17 court shall notify the school owner within 30 days of its disapproval and schedule
18 a hearing for that school owner, or a representative, if requested, at which the sole
19 issue shall be whether the name violates the standards set forth in subdivision (d).
20 A substitute name may be submitted to the court at the conclusion of the hearing,
21 pursuant to subdivision (h).

22 (3) The court shall make every effort to schedule, conduct, and complete a
23 hearing within 60 days of receipt of the school owner's request for a school name
24 approval. A name approval in a ~~judicial district~~ county shall not affect the school's
25 name or listing in any other ~~district~~ county in the state. A change in physical
26 location by a school within a ~~judicial district~~ county shall not require approval
27 pursuant to this subdivision.

28 (k) The department shall publish a list of the owners of traffic violator schools.
29 One copy shall be provided to each ~~municipal superior court~~ superior court in the state, ~~and to~~
30 ~~each superior court in a county in which there is no municipal court.~~ This list shall
31 be revised at least twice annually and transmitted to the courts by the first day of
32 January and the first day of July. This list shall include all of the following:

33 (1) The name of each school, grouped by owner.

34 (2) The business office address.

35 (3) The business office telephone number.

36 (4) The license number.

37 (5) The owner's name.

38 (6) The operator's name.

39 (l) Except as otherwise provided in subdivision (d) of Section 42005, the court
40 shall use either the current list of traffic violator schools published by the
41 department when it orders a person to complete a traffic violator school pursuant
42 to subdivision (a) or (b) of Section 42005 or, when a court utilizing a nonprofit
43 agency for traffic violator school administration and monitoring services in which

1 all traffic violator schools licensed by the department are allowed the opportunity
2 to participate, a statewide referral list may be published by the nonprofit agency
3 and distributed by the court. The agency shall monitor each classroom location
4 situated within the ~~judicial-districts~~ counties in which that agency provides
5 services to the courts and is represented on its referral list. The monitoring shall
6 occur at least once every 90 days with reports forwarded to the department and the
7 respective courts on a monthly basis.

8 (m) The court may charge a traffic violator a fee to defray the costs incurred by
9 the agency for the monitoring reports and services provided to the court. The court
10 may delegate collection of the fee to the agency. Fees shall be approved and
11 regulated by the court. Until December 31, 1996, the fee shall not exceed the
12 actual cost incurred by the agency or five dollars (\$5), whichever is less.

13 (n) If any provision of subdivision (d) or (e), as added by Section 4 of ~~Assembly~~
14 ~~Bill 185 of the 1991-92 Regular Session~~ Chapter 411 of the Statutes of 1991 or as
15 subsequently amended, or the application thereof to any person, is held to be
16 unconstitutional, this section is repealed on the date the decision of the court so
17 holding becomes final.

18 **Comment.** Section 11205 is amended to reflect unification of the municipal and superior courts
19 pursuant to Article VI, Section 5(e), of the California Constitution. See also Code Civ. Proc. § 38
20 (judicial districts).

21 The section is also amended to reflect elimination of the appellate division of the superior
22 court. See Cal. Const. art. VI, §§ 3 (court of appeal), 4 (superior court), 10 (original jurisdiction),
23 11 (appellate jurisdiction).

24 **Veh. Code § 11205. Traffic violator school list (as amended by 1998 Cal. Stat. ch. 931, § 456)**

25 SEC. _____. Section 11205 of the Vehicle Code, as amended by Section 456 of
26 Chapter 931 of the Statutes of 1998, is amended to read:

27 11205. (a) The department shall publish semiannually, or more often as
28 necessary to serve the purposes of this act, a list of all traffic violator schools
29 which are licensed pursuant to this section. The list shall identify classroom
30 facilities within a ~~judicial-district~~ county that are at a different location from a
31 licensed school's principal facility. The department shall transmit the list to ~~each~~
32 ~~municipal court~~ and to each superior court ~~in a county in which there is no~~
33 ~~municipal court~~, with a sufficient number of copies to allow the courts to provide
34 one copy to each person referred to a licensed traffic violator school. The
35 department shall, at least semiannually, revise the list to ensure that each court has
36 a current list of all licensed traffic violator schools.

37 (b) Each licensed traffic violator school owner shall be permitted one school
38 name per ~~judicial-district~~ county.

39 (c) The referral list shall be organized alphabetically, in sections for each county,
40 and ~~contain subsections for each judicial-district within the county~~. The order of
41 the names within each ~~judicial-district~~ county shall be random pursuant to a
42 drawing or lottery conducted by the department.

1 (d) Except as otherwise provided in subdivision (d) of Section 42005, the court
2 shall use either the current referral list of traffic violator schools published by the
3 department when it orders a person to complete a traffic violator school pursuant
4 to subdivision (a) or (b) of Section 42005 or, when a court utilizing a nonprofit
5 agency for traffic violator school administration and monitoring services in which
6 all traffic violator schools licensed by the department are allowed the opportunity
7 to participate, a statewide referral list may be published by the nonprofit agency
8 and distributed by the court. The agency shall monitor each classroom location
9 situated within the ~~judicial districts~~ counties in which that agency provides
10 services to the courts and is represented on its referral list. The monitoring shall
11 occur at least once every 90 days with reports forwarded to the department and the
12 respective courts on a monthly basis.

13 (e) The court may charge a traffic violator a fee to defray the costs incurred by
14 the agency for the monitoring reports and services provided to the court. The court
15 may delegate collection of the fee to the agency. Fees shall be approved and
16 regulated by the court. Until December 31, 1996, the fee shall not exceed the
17 actual cost incurred by the agency or five dollars (\$5), whichever is less.

18 (f) If any provision of subdivision (d) or (e) of Section 11205, as added by
19 Section 4 of ~~Assembly Bill 185 of the 1991-92 Regular Session~~ Chapter 411 of the
20 Statutes of 1991 or as subsequently amended, or the application thereof to any
21 person, is held to be unconstitutional, that Section 11205 is repealed on the date
22 the decision of the court so holding becomes final, and on that date, this section
23 shall become operative.

24 **Comment.** Section 11205 is amended to reflect unification of the municipal and superior courts
25 pursuant to Article VI, Section 5(e), of the California Constitution. See also Code Civ. Proc. § 38
26 (judicial districts).

27 UNCODIFIED

28 **Section 4 of the Drainage Dist. Act of 1903 (amended). Appeals**

29 SEC. _____. Section 4 of the Drainage District Act of 1903 (Chapter 238 of the
30 Statutes of 1903) is amended to read:

31 Sec. 4. The right of appeal from the order to the superior court of the county
32 where the petition is heard, is hereby given to any person interested, who is a party
33 to the record; provided, that if more than one appeal be taken they shall be
34 consolidated and tried together. Such appeal shall be taken within 10 days after the
35 entry of such order upon the minutes of the board of supervisors. The appeal shall
36 be taken and heard in the same manner as ~~other appeals to the appellate division of~~
37 a writ proceeding before the superior court, except as herein otherwise provided.
38 Upon the appeal, the superior court may make and enter its judgment affirming,
39 modifying, or reversing the order appealed from. Within 10 days thereafter, the
40 superior court must cause its remittitur to issue to the board of supervisors, and if
41 said order of the board of supervisors is modified or reversed, the judgment of the

1 superior court and its remittitur shall direct the board of supervisors what order it
2 shall enter. Such remittitur shall be filed by the clerk of the board of supervisors,
3 and at the first regular meeting of the board thereafter, it shall cause to be entered
4 in its minutes the order as directed by the superior court. The appeal herein
5 provided for shall be heard and determined within thirty days from the time of
6 filing the notice of appeal.

7 **Comment.** Section 4 is amended to reflect elimination of the appellate division of the superior
8 court. See Cal. Const. art. VI, §§ 3 (court of appeal), 4 (superior court), 10 (original jurisdiction),
9 11 (appellate jurisdiction).