

## Memorandum 2005-11

**Equitable Relief in a Limited Civil Case  
(Discussion of Issues)**

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The Commission at its June 2004 meeting reviewed the limitations in existing law on granting equitable relief in a limited civil case. The Commission decided to explore further the possibility of liberalizing the law with respect to the following types of equitable relief in a limited civil case:

- Title to real property
- Enforcement of orders under Family Code
- Declaratory relief
- Good faith improver claim

**BACKGROUND**

The authority of the superior court to grant equitable relief in a limited civil case is restricted. The restriction on the court's authority dates from the era when a cause of that type was within the jurisdiction of the municipal court. Now that the municipal court has been abolished and the superior court's jurisdiction has been expanded to encompass a limited civil case, the equitable relief restrictions are called into question.

This project stems from the Law Revision Commission's work on trial court unification. The Commission is directed by statute to determine whether any provisions of law are obsolete as a result of the restructuring of the trial courts and to recommend to the Legislature any amendments to remove the obsolete provisions. Gov't Code § 71674.

**Trial Court Unification**

Before unification of the trial courts, the jurisdictional division between the superior court and municipal court was reasonably clear. The municipal court was a court of limited jurisdiction; its civil jurisdiction was roughly restricted to cases **at law** in which the amount in controversy did not exceed \$25,000. The superior court was a court of general jurisdiction; its civil jurisdiction included

not only cases at law in larger amounts, but also cases **in equity**. Some areas of civil law were within the exclusive jurisdiction of the superior court regardless of the amount in controversy, such as family, probate, and real property matters.

In order to avoid disruption during the unification process, the Commission recommended and the Legislature adopted the approach of converting a cause traditionally within the civil jurisdiction of the municipal court into a “limited civil case.” The Commission explained:

On unification of the trial courts in a county, all causes will be within the original jurisdiction of the superior court. Differentiating among superior court causes will be necessary, however, to preserve filing fees, economic litigation procedures, local appeals, and other significant procedural distinctions for matters that traditionally have been within the municipal court’s jurisdiction. If instead all causes in a unified court were treated in the same manner as traditional superior court causes, there would be disparity of treatment between a party appearing in a municipal court and a similarly situated party appearing in a unified superior court. The approach may also be impractical for a number of reasons, including limited trial and appellate court resources.

*Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 64 (1998) (footnote omitted).

The Commission recognized at the time that the limited civil case concept was only an interim solution. “Although the proposed legislation would preserve these procedural distinctions intact, they warrant reexamination as unification progresses. Adjustments may be appropriate to eliminate unnecessary rigidity and improve the court system.” 28 Cal. L. Revision Comm’n Reports at 65 (footnote omitted).

Now that the court system is fully unified, it is appropriate to reexamine aspects of civil procedure in the superior court. The Commission has engaged in different facets of this project over the past several years, including repeal of many statutes made obsolete by trial court restructuring, reexamination of the jurisdictional limits of small claims and limited civil cases (a joint project with the Judicial Council), reexamination of preliminary procedures in criminal cases, and reexamination of appellate and writ review of misdemeanor cases and limited civil cases (peer review problem).

Rationalizing the jurisdictional distinctions and civil procedures that remain in the wake of trial court unification is a large and long term project, which the Commission is not equipped to handle at present. Meanwhile, there are smaller

more immediate steps that can be taken, with beneficial effect. The question of equitable relief in a limited civil case falls into that category.

### **Existing Law**

Code of Civil Procedure Section 580 provides:

580. (a) The relief granted to the plaintiff, if there is no answer, cannot exceed that which he or she shall have demanded in his or her complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115; but in any other case, the court may grant the plaintiff any relief consistent with the case made by the complaint and embraced within the issue. The court may impose liability, regardless of whether the theory upon which liability is sought to be imposed involves legal or equitable principles.

(b) Notwithstanding subdivision (a), the following types of relief may not be granted in a limited civil case:

(1) Relief exceeding the maximum amount in controversy for a limited civil case as provided in Section 85, exclusive of attorney's fees, interest, and costs.

(2) A permanent injunction.

(3) A determination of title to real property.

(4) Enforcement of an order under the Family Code.

(5) Declaratory relief, except as authorized by Section 86.

Under this statute, the court may grant any appropriate relief in a civil case regardless of whether the theory upon which liability is predicated involves legal or equitable principles. However, the law restricts the authority of the superior court to grant various types of relief in a limited civil case.

The Commission Comment to Code of Civil Procedure Section 580 notes:

Similarly, subdivisions (b)(2)-(b)(5) reflect and preserve limitations on the types of equitable relief awardable in a municipal court. See R. Weil & I Brown, Jr., *California Practice Guide: Civil Procedure Before Trial, Jurisdiction and Venue* §§ 3:12-3:18.1, at 3-6 to 3-7 (1997). See also *St. James Church of Christ Holiness v. Superior Court*, 135 Cal. App. 2d 352, 362, 287 P.2d 387 (1955) (municipal court lacks jurisdiction to grant permanent injunction); *Pasadena Inv. Co. v. Peerless Casualty Co.*, 134 Cal. App. 2d Supp. 902, 286 P.2d 1014 (1955) (municipal court lacks jurisdiction to grant declaratory relief). On enforcement of orders under the Family Code, see Family Code Sections 200, 290; *In re Marriage of Lackey*, 143 Cal. App. 3d 698, 191 Cal. Rptr. 309 (1983).

It is worth noting that the general rule of Section 580(a) that “the court may grant the plaintiff any relief consistent with the case made by the complaint and embraced within the issue” has been a part of Section 580 since it was enacted in 1872. It has been applied to both superior and municipal courts. See, e.g., *Janssen v. Luu*, 57 Cal. App. 4th 272, 278, 66 Cal. Rptr. 2d 838 (1997) (“[T]here is *no limitation* on the application of section 580 to municipal courts.”). It applies to both legal and equitable relief. See *Walsh v. McKeen*, 75 Cal. 519, 521-22, 17 P. 673 (1888):

As to the alleged change in the nature of the action [from legal to equitable], an answer is found in the fact that we have in this state but one form of civil action for the enforcement or protection of private rights, (Code Civil Proc. § 307;) and, where an answer has been filed, any relief may be granted to the plaintiff which is consistent with the facts stated in the complaint, (Code Civil Proc. § 580.) An action does not now, as formerly, fail because the plaintiff has made a mistake as to the form of his remedy. If the case which he states entitles him to any remedy, either legal or equitable, his complaint is not to be dismissed because he has prayed for a judgment to which he is not entitled. ‘Legal and equitable relief are administered in the same forum, and according to the same general plan. A party cannot be sent out of court merely because his facts do not entitle him to relief at law, or merely because he is not entitled to relief in equity, as the case may be. He can be sent out of court only when, upon his facts, he is entitled to no relief, either at law or in equity.’

See also *Lacy v. Laurentide Fin. Corp.*, 28 Cal. App. 3d 251, 104 Cal. Rptr. 547 (1972) (plaintiffs who sought to vacate levy of writ of execution but did not pray to vacate judgment were not limited to relief demanded).

#### EXPANSION OF EQUITABLE RELIEF IN A LIMITED CIVIL CASE

The Commission has identified these types of equitable relief as candidates for limited civil case jurisdiction:

- Determination of title to real property. Code Civ. Proc. § 580(b)(3).
- Enforcement of an order under the Family Code. Code Civ. Proc. § 580(b)(4).
- Declaratory relief, except in connection with certain types of indemnity and fee arbitration proceedings. Code Civ. Proc. §§ 86(a)(7), 580(b)(5).

- Good faith improver relief. Code Civ. Proc. § 871.3.

### **Title to Real Property**

Code of Civil Procedure Section 580(b)(3) prohibits a determination of title to real property in a limited civil case.

Before unification, a municipal court judge could in some instances determine title to real property. For example, if a determination of title to real property was necessary in order to resolve a claim for damages to real property within the jurisdiction of the municipal court, the court had jurisdiction for that purpose. *Hooper v. Miley Oil Co.*, 109 Cal. App. Supp. 767, 288 P. 2d, 27 (1930).

The municipal court did not have equity jurisdiction to determine title to real property for the purpose of applying fraudulent conveyance remedies if the value of the property affected exceeded the jurisdictional limits of the municipal court:

The rule is that if there is present in a case any material issue involving the title of real property which property is over the value of \$5,000, the superior court has jurisdiction over the action. (See *Vella v. Hudgins* (1977) 20 Cal.3d 251, 257, 142 Cal.Rptr. 414, 572 P.2d 28; 1 Witkin, Cal.Procedure (2d ed. 1970) Jurisdiction, § 45, p. 569.)

*Flowers & Sons*, 86 Cal. App. 3d at 824.

Title could be tried in an unlawful detainer action in municipal court, provided the value of the property was less than the limited civil case jurisdictional limit. *Vella v. Hudgins*, 20 Cal. 3d 251, 255, 572 P.2d 28, 142 Cal. Rptr. 414 (1977).

The Commission's concept is to generalize the rule that the court may try title to real property in a limited civil case when the amount involved does not exceed \$25,000. Jurisdiction of this type could be particularly useful in a case involving a less than fee interest such as an easement, reserved mineral interest, use restriction, or the like. The Commission directed the staff to prepare draft language, paying attention to issues such as the effect of encumbrances and security interests in determining the \$25,000 value limitation, and whether in rem relief would be authorized.

The **staff suggests the following** revision:

**Code Civ. Proc. § 86 (amended). Miscellaneous limited civil cases**

86. ....

(b) The following cases in equity are limited civil cases:

(1) ~~Cases to try title to personal property when the amount involved is not more than twenty-five thousand dollars (\$25,000).~~ A case to try title to an interest in real or personal property if the case otherwise satisfies the amount in controversy and other requirements of Section 85.

....

**Comment.** Paragraph (1) of Section 86(b) is amended to permit determination of real property title in a limited civil case where the value of the property interest involved is within the limited civil case jurisdictional amount. This provision supersedes former Section 580(b)(3) (restriction on determination of real property title in limited civil case) and broadens the rule previously applicable in municipal court. See, e.g., *Vella v. Hudgins*, 20 Cal. 3d 251, 142 Cal. Rptr. 414, 572 P.2d 28 (1977) (determination of title in unlawful detainer action involving property within jurisdictional limits of municipal court); *Hooper v. Miley Oil Co.*, 109 Cal. App. Supp. 767, 288 P. 26 (1930) (determination of title necessary to resolve claim for damages within jurisdictional limits of municipal court).

Under this provision, the jurisdiction of the court to determine title in a limited civil case is not restricted to an ancillary proceeding in a limited civil case. The court may make an in rem determination of title, provided the value of the property interest being determined does not exceed the limited civil case jurisdictional amount.

For the purpose of determining the jurisdictional limit under this section, the relevant amount is not the gross value of the property involved, but the value of the interest being adjudicated. See Section 85(a). Thus, if the ownership interest of one of several cotenants is at stake, it is the value of that interest that is the determining factor. If a less than fee interest, such as an easement, is at stake, it is the value of that interest that is the determining factor.

Note that in this draft we have replaced the reference to the \$25,000 limited civil case jurisdictional limit with a reference to the statute that establishes the limit (Section 85). This is pursuant to the Commission's decision to avoid use of the specific number in anticipation of an increase in the jurisdictional limit some time in the not too distant future.

This draft does not limit the determination of title to an ancillary remedy. An in rem action to determine real property title would be available, provided the value of the interest involved does not exceed \$25,000. We have replaced the term "amount involved" with "amount in controversy" — the term more

commonly used in defining limited civil case jurisdiction. See Code Civ. Proc. § 85(a):

85. An action or special proceeding shall be treated as a limited civil case if all of the following conditions are satisfied, and, notwithstanding any statute that classifies an action or special proceeding as a limited civil case, an action or special proceeding shall not be treated as a limited civil case unless all of the following conditions are satisfied:

(a) The amount in controversy does not exceed twenty-five thousand dollars (\$25,000). As used in this section, “amount in controversy” means the amount of the demand, or the recovery sought, or the value of the property, or the amount of the lien, that is in controversy in the action, exclusive of attorneys' fees, interest, and costs.

....

The reference in Section 85(a) to the “value of property” apparently means the gross value of property, rather than the value of an individual interest in property, although this is far from clear. Cf. Section 17(b)(1)-(3) (“property” defined). Some statutes more clearly distinguish the value of property from the value of the interest involved. **It would be useful to clarify this matter** in the statute:

(a) The amount in controversy does not exceed twenty-five thousand dollars (\$25,000). As used in this section, “amount in controversy” means the amount of the demand, or the recovery sought, or the value of the interest in property, or the amount of the lien, that is in controversy in the action, exclusive of attorneys' fees, interest, and costs.

**Comment.** Subdivision (a) of Section 85 is amended to make clear that it is the value of the property interest in controversy, rather than the gross value of the property involved, that determines limited civil case jurisdiction. See, e.g., Section 86(b)(1) (case to try title to interest in real or personal property).

Thus, if the ownership interest of a cotenant is at issue in a case, it is the value of the cotenant’s interest, rather than the value of the undivided fee, that determines the jurisdictional classification of the case. Similarly, if a less than fee interest, such as an easement or leasehold is at issue, it is the value of that interest, rather than the value of the fee, that determines jurisdictional classification.

One problem with this general approach to jurisdictional classification is that it may be difficult to apply in practice. Gross value may be relatively simple to

determine; but can a lesser interest be as readily valued? Is it necessary to attach an appraisal to the complaint?

The simplest and most obvious solution to this problem is to base the initial determination of value on the allegation of value in the complaint. If the defendant objects to limited civil case treatment because the plaintiff has undervalued the property, there are procedures available by which the defendant may obtain a reclassification of the case. See Sections 403.010-403.090. The staff would rely on this system, which is already in place.

What is the effect of an encumbrance such as a lien on determination of the value of an ownership interest? Suppose, for example, that property having a gross value of \$50,000 is subject to a \$30,000 lien (e.g., a mortgage or a mechanics lien). Does that bring the value of the property within the limited civil case jurisdiction? Logically, it should not. A purchaser of the property on the open market would pay full value for the property, knowing that the encumbrance would be discharged out of the proceeds of sale. A lien is classically viewed as a charge against the property, rather than an interest in the property. The **staff would add explanatory language** to the Comment to Section 85(a):

Under this section, the value of an interest in property is determined without reduction for liens encumbering the property. While a lien may entitle the lienholder to priority for sale proceeds, it does not reduce the value of the encumbered property interest for purposes of jurisdictional classification.

### **Enforcement of Orders Under Family Code**

Family Code proceedings historically have been exclusively within superior court jurisdiction. Fam. Code § 200. Family Code proceedings are special proceedings rather than civil actions, governed by special rules of procedure. They do not generally fall into limited versus unlimited civil case categories, regardless of the amount that may be in controversy in the proceeding. An order made under the Family Code, such as a custody award, a domestic violence protective order, or an order for possession of property, may be enforceable by various means, including the court's contempt power. Fam. Code § 290.

Family Code proceedings may also result in an order for payment of money, such as to equalize a property division or for a support arrearage. Although an order of this type would not differ much from a money judgment in a limited civil case, enforcement is not necessarily straightforward since ancillary court proceedings may well involve a modification request.



Code of Civil Procedure Section 580(b)(4) provides that enforcement of an order under the Family Code may not be granted in a limited civil case. It is unclear what this means as a practical matter. The provision could probably be repealed without loss. On the other hand, the provision does not appear to be causing any problem, given that proceedings under the Family Code are special proceedings anyway.

The Commission directed the staff to make inquiry of family law practitioners whether the existing restriction on enforcement of orders under the Family Code in a limited civil case serves a useful purpose. The staff has made inquiry of the State Bar Family Law Section. We understand the Family Law Section currently has the matter under review.

Absent receipt of State Bar comments in the immediate future, the **staff would proceed with the proposed repeal of this provision**. We would request comment by means of a tentative recommendation. See the draft below of “Conforming Revision”.

### **Declaratory Relief**

Declaratory relief is an equitable remedy, providing for a court declaration of the rights and duties of parties. Code Civ. Proc. § 1060. On unification, declaratory relief was precluded in a limited civil case except by way of cross complaint. Code Civ. Proc. §§ 86(a)(7)(A), 580(b)(5). (Also, an action for declaratory relief to conduct a trial after a nonbinding attorney fee arbitration is a limited civil case if the amount in controversy does not exceed \$25,000. Code Civ. Proc. § 86(a)(7)(B).)

There is nothing unique about the procedures required to make a declaration of rights and duties. A determination of rights and duties routinely occurs en route to a standard money judgment in a limited civil case. The fact that existing law allows declaratory relief in a limited civil case if brought by way of cross complaint suggests that limited civil case procedures are adequate for resolution in a limited civil case where the amount in controversy does not exceed \$25,000.

Witkin says:

An action for declaratory relief may involve a right or claim of small monetary value which would be tried in a legal action if the cause of action was based on a breach or other wrongful act actually committed. In the federal courts the amount in controversy in declaratory relief actions is determined as in ordinary actions, by the amount involved.

2 B. Witkin, *California Procedure*, Jurisdiction § 53, pp. 594-95 (4th ed. 1996).

The Commission saw advantages and disadvantages to extending declaratory relief authority to limited civil cases. On the one hand, it may be useful to have a simple procedure for declaratory relief in a smaller case. On the other hand, that may increase the potential for abusive manipulation of the process. The Commission concluded it would be useful to obtain broader input on the issue through the tentative recommendation process.

The **staff would include the following provision** in the tentative recommendation, with a request for comment:

**Code Civ. Proc. § 86 (amended). Miscellaneous limited civil cases**

86. (a) The following civil cases and proceedings are limited civil cases:

...

~~(7) Actions for declaratory relief when brought pursuant to either of the following:~~

~~(A) By way of cross-complaint as to a right of indemnity with respect to the relief demanded in the complaint or a cross-complaint in an action or proceeding that is otherwise a limited civil case.~~

~~(B) To conduct a trial after a nonbinding fee arbitration between an attorney and client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the amount in controversy is twenty-five thousand dollars (\$25,000) or less.~~

...

**Comment.** Paragraph (7) of Section 86(a) is amended to permit declaratory relief in a case that is otherwise a limited civil case. The provision supersedes former Section 580(b)(5) (restriction on declaratory relief in a limited civil case). The expanded provision for declaratory relief encompasses both former subdivision (a)(7)(A) (cross-complaint as to right of indemnity) and former subdivision (a)(7)(B) (trial after nonbinding fee arbitration between an attorney and client where amount in controversy is \$25,000 or less).

☞ **Note.** The Commission particularly solicits comment on the proposal to allow declaratory relief in a case that would otherwise be a limited civil case. There are tradeoffs in this proposal. On the one hand, it could be useful to have a simple procedure for declaratory relief in a smaller case. On the other hand, there may be an increase in the potential for abusive manipulation of the process.

## **Good Faith Improver Claim**

Code of Civil Procedure Sections 871.1-871.7 set out rights and remedies of a person who makes an improvement to land in good faith and under the erroneous belief that the person is the owner. Section 871.3(a) provides:

An action for relief under this chapter shall be treated as an unlimited civil case, regardless of the amount in controversy and regardless of whether a defendant cross-complains for relief under this chapter. Any other case in which a defendant cross-complains for relief under this chapter shall be treated as a limited civil case if the cross-complaint is defensive and the case otherwise satisfies the amount in controversy and other requirements of Section 85.

This scheme is consistent with the general rules of practice that governed equitable claims in municipal court. See *Jurisdictional Classification of Good Faith Improver Claims*, 30 Cal. L. Revision Comm'n Reports 281, 286 (2000). Under Section 871.5, the court may "effect such an adjustment of the rights, equities, and interests of the good faith improver, the owner of the land, and other interested parties (including, but not limited to, lessees, lienholders, and encumbrancers) as is consistent with substantial justice to the parties under the circumstances of the particular case." A good faith improver claim was thus not within the jurisdiction of the municipal court unless raised as a defensive matter.

The Commission recognized that this was an interim solution to the jurisdictional question. The Commission decided that, after all of the trial courts had unified, it would revisit the question of whether the law versus equity distinction makes sense for purposes of jurisdictional classification. Minutes, June 24-25, 1999, p. 9.

Even if a good faith improver complaint seeks only damages, other issues and types of relief can be decided by the court in its discretion, including the issue of title. It is likely that a good faith improver claim will exceed \$25,000 in the ordinary case, although if the plaintiff purposely undervalues the claim in order to achieve limited civil case treatment, the defendant probably wouldn't object.

The Commission at the June 2004 meeting approved the concept of allowing a good faith improver claim in a limited civil case where an amount under \$25,000 is involved. A draft to achieve this would read:

### **Code Civ. Proc. § 871.3 (amended). Good faith improver**

871.3. (a) ~~An~~ A cause of action for relief under this chapter shall be treated as an unlimited civil case, ~~regardless of the amount in~~

~~controversy and regardless of whether a defendant cross-complains for relief under this chapter. Any other case in which a defendant cross-complains for relief under this chapter except that the case shall be treated as a limited civil case if the cross-complaint is defensive and the case otherwise satisfies the amount in controversy and other requirements of Section 85.~~

(b) In every case, the burden is on the good faith improver to establish that the good faith improver is entitled to relief under this chapter, and the degree of negligence of the good faith improver should be taken into account by the court in determining whether the improver acted in good faith and in determining the relief, if any, that is consistent with substantial justice to the parties under the circumstances of the particular case.

**Comment.** Subdivision (a) of Section 871.3 is amended to permit the classification of a good faith improver claim as a limited civil case, subject to limited civil case jurisdictional limits. Cf. Section 85(a) (amount in controversy not exceeding \$25,000).

#### CONFORMING REVISION

The changes suggested above should be reflected in an adjustment to Section 580:

#### **Code Civ. Proc. § 580 (amended). Relief granted**

580. (a) The relief granted to the plaintiff, if there is no answer, cannot exceed that ~~which he or she shall have demanded in his or her~~ the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115; but in any other case, the court may grant the plaintiff any relief consistent with the case made by the complaint and embraced within the issue. The court may impose liability, regardless of whether the theory upon which liability is sought to be imposed involves legal or equitable principles.

(b) Notwithstanding subdivision (a), the following types of relief may not be granted in a limited civil case:

(1) Relief exceeding the maximum amount in controversy for a limited civil case as provided in Section 85, exclusive of attorney's fees, interest, and costs.

(2) A permanent injunction.

(3) ~~A determination of title to real property.~~

(4) ~~Enforcement of an order under the Family Code.~~

(5) ~~Declaratory relief, except as authorized by Section 86.~~

**Comment.** Section 580 is amended to enable several types of equitable relief previously precluded in a limited civil case. See Sections 86(b)(1) (title to real property), 86(a)(7) (declaratory relief).

The changes to subdivision (a) are technical.

☞ **Note.** The Commission particularly solicits comment on the proposal to permit enforcement of an order under the Family Code in a limited civil case.

#### APPELLATE JURISDICTION

Ordinarily, a limited civil case is appealed to the appellate division of the superior court and an unlimited civil case is appealed to the Court of Appeal. However, as part of trial court unification, the appellate jurisdiction of the Court of Appeal in matters of a type historically within its appellate jurisdiction was protected. See Cal. Const. art. VI, § 11(a) (emphasis added):

The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception **courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995**, and in other causes prescribed by statute. When appellate jurisdiction in civil causes is determined by the amount in controversy, the Legislature may change the appellate jurisdiction of the courts of appeal by changing the jurisdictional amount in controversy.

The meaning of the term “cause” as used in that provision of the Constitution is unclear. Whether specific types of equitable relief would be considered a cause, as opposed to a remedy, has not been determined.

It appears to the staff likely that determining title to real property, enforcing an order under the Family Code, granting declaratory relief, or awarding good faith improver relief, in a limited civil case would not be considered a “cause of a type” that was within the appellate jurisdiction of the Courts of Appeal on June 30, 1995, so as to require that an appeal in the case would go to the Court of Appeal rather than to the appellate division of the superior court. Cf. *Lester v. Lennane*, 84 Cal. App. 4th 560, 101 Cal. Rptr. 2d 86 (2002) (temporary custody order not a “cause” within the meaning of Cal. Const. art. VI, § 11, so as to implicate right to appeal).

In any event, the staff would not consider it a problem if equitable relief were interpreted to be a “cause of a type” requiring Court of Appeal review. The Commission has previously underscored the problematic nature of peer review by the appellate division of the superior court in a limited civil case. See Tentative Recommendation on *Appellate and Writ Review Under Trial Court*

*Unification* (Nov. 2001). Court of Appeal jurisdiction here would actually improve the administration of justice.

#### CONCLUSION

The staff will prepare a tentative recommendation that incorporates the Commission's decisions on the matters raised in this memorandum.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary