

Memorandum 2007-14

Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture

In response to the tentative recommendation circulated last summer on *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, the judges of the Santa Clara County Superior Court requested that the Commission clarify appellate jurisdiction over bail forfeiture. Exhibit p. 3. The Commission did not address that topic in its final recommendation on *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, but instead reserved the matter for future study. This memorandum introduces the topic and suggests a possible approach to be incorporated into a tentative recommendation.

The memo begins by describing the issues raised by the Santa Clara County Superior Court, followed by a brief background on bail, bail forfeiture, and bail forfeiture appeals. It then describes appellate jurisdiction of bail forfeiture before trial court unification. It illustrates the various circumstances in which a bail forfeiture appeal arose before unification and identifies the court to which the appeal was taken. Finally, it analyzes how bail forfeiture should be handled after trial court unification.

ISSUES RAISED BY THE SANTA CLARA COUNTY SUPERIOR COURT

Appellate jurisdiction of certain bail forfeiture appeals has become unclear since trial court unification. See Exhibit p. 1. Before unification, bail forfeiture appeals from municipal court went to the appellate department of the superior court. *Id.*

Post-unification, with the elimination of the municipal courts, there is uncertainty about where the following appeals belong: “(1) bail in misdemeanor cases over \$25,000, (2) bail in felony cases under \$25,000, and (3) bail, in any amount, forfeited in the pre information (magistrate) procedural posture.” Exhibit pp. 3-4. The Appellate Division of the Santa Clara County Superior Court “has continued to decide appeals of bail forfeitures” as it did before unification,

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due to the Legislature's intent not to increase the workload of the courts of appeal. *Id.* at 3. However, the judges feel "justification for [their] bail appeal policy has become unclear." *Id.* at 2-3. The judges take no position on the issue, but merely request clarification. *Id.* at 4.

BAIL, BAIL FORFEITURE, AND BAIL FORFEITURE APPEALS

The rules governing bail, its forfeiture and appeal, discussed below, were substantially the same before and after trial court unification. Any relevant differences are noted.

Bail

At any stage of a criminal proceeding, a criminal defendant may be released from custody upon the posting of bail. Penal Code §§ 1268 (admission to bail by court or magistrate), 1269b (authorization of jail officer to accept bail), 1273 (admission to bail before conviction and post-conviction pending appeal); *People v. Fid. & Dep. Co. of Md.*, 106 Cal. App. 372, 289 P. 231, (1930). (Note: While the statutory scheme on bail and its forfeiture uses "bail" to refer to the cash, undertaking, surety and bail agent or bondsman, "bail" herein refers to the security — money or bond — given in exchange for the defendant's release. See Penal Code §§ 1269, 1295-1298; *People v. Amwest Sur. Ins. Co.*, 105 Cal. App. 3d 51, 54, 164 Cal. Rptr. 159, 161 (1980).)

Bail may be undertaken by a surety, contracting with the government to either secure the defendant's presence when lawfully required or forfeit bail. Penal Code §§ 1276, 1458-1459; *People v. Am. Contractors Indem. Co.*, 33 Cal. 4th 653, 657, 16 Cal. Rptr. 3d 76 (2004) (citing *People v. Ranger Ins. Co.*, 31 Cal. App. 4th 13, 22, 36 Cal. Rptr. 2d 807, 813 (1994)).

Bail Forfeiture

If the defendant fails to appear when lawfully required (for example, for arraignment, trial, judgment, surrender to judgment after appeal, etc.), "without sufficient excuse," a court must order the bail forfeited. Penal Code § 1305(a). This order forfeiting bail (hereafter, "bail forfeiture order") is *not* an actual forfeiture, but an initial step in forfeiture proceedings. *People v. Sur. Ins. Co.*, 82 Cal. App. 3d 229, 236-237, 147 Cal. Rptr. 65, (1978). Following the bail forfeiture order, the surety is given notice of the defendant's absence. Penal Code § 1305(b) (notice required for deposits over \$400). The surety then has the opportunity to pursue the defendant and secure the defendant's presence. See Penal Code

§ 1301 (authorizing surety or its agent to arrest defendant); *People v. Nat'l Auto. and Cas. Ins. Co.*, 98 Cal. App. 4th 277, 283, 119 Cal. Rptr. 2d 746, 749 (2002).

If the defendant's presence is secured within a 180-day "appearance period," the court must vacate its forfeiture order. Penal Code § 1305(c). However, if the defendant fails to appear without sufficient excuse, the court must enter summary judgment against the surety. Penal Code §§ 1305.1 (court with belief of sufficient excuse for absence may extend time period), 1306(a) (court shall enter summary judgment against bondsman).

Bail Forfeiture Appeals

Several key principles govern bail forfeiture appeals.

Civil Rules Apply to Bail Forfeiture Appeals

Bail forfeiture proceedings are civil in nature, subject to rules governing civil appeals. See *People v. United Bonding Co.*, 272 Cal. App. 2d 441, 442, 77 Cal. Rptr. 310 (1969) (civil appellate rules for time to file notice of appeal applies to bail forfeiture case); 6 B. Witkin, *California Criminal Law Criminal Appeal* § 74, at 319 (3d ed. 2000). Bail forfeitures occur in connection with criminal prosecutions, but are independent and collateral civil proceedings. *Am. Contractors Indem. Co.*, 33 Cal. 4th at 657 (citing *People v. Wilcox*, 53 Cal. 2d 651, 654, 2 Cal. Rptr. 754, 349 P. 2d 522 (1960)).

Order Granting or Denying Motion to Set Aside Bail Forfeiture Order Is Appealable

To appeal a bail forfeiture order, the surety must make a motion to set aside or vacate the forfeiture order. See Penal Code § 1305(i); *People v. Hodges*, 205 Cal. 476, 478, 271 P. 897 (1928); 6 B. Witkin, *California Criminal Law Criminal Appeal* § 74, at 319 (3d ed. 2000). The order granting or denying the motion to set aside the forfeiture is appealable (because it is a final judgment in a collateral proceeding, aside from the principal matter before the court). *Wilcox*, 53 Cal. 2d at 654-655 (citing Code Civ. Proc. § 963 and *Howe v. Key Sys. Transit Co.*, 198 Cal. 525, 531, 246 P. 39, 41 (1926)).

Additionally, a bail forfeiture order may be challenged by an extraordinary writ, such as a writ of mandamus. See *Newman v. Superior Court of Los Angeles County*, 67 Cal. 2d 620, 432 P.2d 972, 63 Cal. Rptr. 284 (1967) (writ of mandamus for appellate division of superior court to accept appeal). An extraordinary writ is subject to special jurisdictional rules. See Cal. Const. art. VI, § 10. The staff

plans to do further research to determine whether writ jurisdiction of a bail forfeiture order merits separate attention.

Summary Judgment Against the Surety Is Generally Not Appealable

A summary judgment order against the surety is generally not appealable, as it is a consent judgment pursuant to a contractual agreement between the surety and the government. *Am. Contractors Indem. Co.*, 33 Cal. 4th at 663-664 (citing *People v. Nat'l Auto. & Cas. Co.*, 242 Cal. App. 2d 150, 152, fn. 2, 51 Cal. Rptr. 212 (1966)). Such an order is appealable, however, if it is not entered according to the consent in the undertaking. *Id.* at 664 (citing *County of Los Angeles v. Sur. Ins. Co.*, 164 Cal. App. 3d 1221, 1224, 211 Cal. Rptr. 201, 203 (1985).)

APPELLATE JURISDICTION OF BAIL FORFEITURE BEFORE TRIAL COURT UNIFICATION

To determine how bail forfeiture appeals should be handled after trial court unification, it is first necessary to examine how such appeals were treated before unification.

Appellate Jurisdiction Determined by Which Trial Court Heard Case

Before the process of trial court unification began, appellate jurisdiction depended on the court from which the case was appealed.

Specifically, the appellate department of the superior court had appellate jurisdiction over appeals from municipal court. Former Code Civ. Proc. §§ 77(e), 904.2 (enumerating appealable judgments and orders from municipal court); 2 B. Witkin, *California Procedure Courts* § 346, at 414-415 (4th ed. 1997). The court of appeal had appellate jurisdiction when superior courts had original jurisdiction. Former Cal. Const. art. VI, § 11(a) (appellate jurisdiction of court of appeal when superior court has original jurisdiction); former Code Civ. Proc. § 904.1 (enumerating appealable judgments and orders from superior court).

Which Trial Court Heard Case Depended on Trial Court's Original Jurisdiction

A bail forfeiture arises in criminal proceedings. See Penal Code §§ 1268, 1305. Therefore, before trial court unification, the jurisdictional rules applicable to criminal cases determined which trial court — municipal or superior — had jurisdiction. See 1 B. Witkin, *California Criminal Law Introduction to Crimes* § 5, at 15 (3d. ed. 2000).

The municipal court had original jurisdiction over a case involving a misdemeanor or infraction. 4 B. Witkin, *California Criminal Law Jurisdiction &*

Venue § 18, at 107 (3d. ed. 2000) (citing Penal Code §§ 19.7, 1462(a)). (Because the same jurisdictional rules applied, jurisdiction of an infraction is included in discussion of jurisdiction of a misdemeanor. See Penal Code § 19.7.) The municipal court had no jurisdiction over a felony. *Application of Joinder*, 180 Cal. App. 2d 250, 254, 4 Cal. Rptr. 667 (1960).

The superior court had original jurisdiction over a case involving a felony. 4 B. Witkin, *California Criminal Law Jurisdiction & Venue* § 14, at 102 (3d. ed. 2000) (citing Cal. Const. art. VI, § 10 and Penal Code § 1462(a)). It also had jurisdiction over a misdemeanor committed in connection with a felony. *Id.*; Penal Code § 954; *People v. Leney*, 213 Cal. App. 3d 265, 268, 261 Cal. Rptr. 541 (1989) (superior court jurisdiction over properly joined misdemeanor); *People v. Clark*, 17 Cal. App. 3d 890, 897-898, 95 Cal. Rptr. 411 (1971) (superior court jurisdiction to try connected misdemeanor even if felony charge eliminated before trial); *People v. Spreckels*, 125 Cal. App. 2d 507, 512-513, 270 P.2d 513 (1954) (superior court jurisdiction over felony and misdemeanor that is lesser, included offense). But the superior court had no jurisdiction over a complaint charging only misdemeanors. *In re McKinney*, 70 Cal. 2d 8, 13, 73 Cal. Rptr. 580 (1968).

Amount of Bail Was Irrelevant

Before trial court unification, the amount of bail did not affect either original or appellate jurisdiction of a bail forfeiture.

Amount of Bail Did Not Determine Original Jurisdiction

In a civil case, the amount in controversy determined whether the case went to municipal or superior court, thereby determining the proper appellate court. But the same was not true when the underlying case was criminal, as in bail forfeiture. See former Cal. Const. art. VI, §§ 10 (superior court had original jurisdiction in cases not within municipal court jurisdiction), 11(a) (court of appeal had appellate jurisdiction when superior court had original jurisdiction); former Code Civ. Proc. §§ 86 (municipal court had original jurisdiction if amount in controversy not more than \$25,000), 77(e) (appellate department of superior court had appellate jurisdiction from municipal and justice courts), 904.1 (appeal from superior court), 904.2 (appeal from municipal or justice court).

In a bail forfeiture case, the underlying criminal charge — misdemeanor or felony — determined the original jurisdiction of the trial court (municipal or superior), and in turn, determined which court had jurisdiction of an appeal. See former Cal. Const. art. VI, §§ 10 (superior court had original jurisdiction in cases

not within municipal court jurisdiction), 11(a) (court of appeal had appellate jurisdiction when superior court had original jurisdiction); former Penal Code § 1462 (municipal court had original jurisdiction of misdemeanor); former Code Civ. Proc. § 77(e) (appellate department of superior court had appellate jurisdiction from municipal and justice courts); 4 B. Witkin, California Criminal Law *Jurisdiction & Venue* § 14, at 102, § 18, at 107 (3d. ed. 2000) (municipal court had original jurisdiction of misdemeanor and superior court had original jurisdiction of felony).

Amount of Bail Did Not Determine Appellate Jurisdiction

In *Newman v. Superior Court of Los Angeles County*, 67 Cal. 2d 620, 623, 432 P.2d 972, 63 Cal. Rptr. 284 (1967), the California Supreme Court held that the amount of bail did not determine which court could declare forfeiture or hear a forfeiture appeal. The Court reasoned that appeals from the municipal court to the appellate department of the superior court were not limited by amount, but included “all” appeals. *Id.* at 623 (citing Code of Civ. Proc. § 77(g), which has since been re-designated § 77(e) and subsequently revised).

Although the amount of bail did not affect a court’s jurisdiction to declare forfeiture or hear a forfeiture appeal, the court ordering forfeiture could *not* enter summary judgment on that order if the bail amount was above that court’s civil jurisdictional limit. *Id.* at 622 (citing Penal Code § 1306). However, that rule was changed after *Newman* but long before trial court unification. In 1977, the Legislature amended Penal Code Section 1306 to allow the court ordering forfeiture to enter the summary judgment, regardless of whether the bail amount was within that court’s civil jurisdiction. 1977 Cal. Stat. ch. 889, § 3.5.

Where and When a Bail Forfeiture Could Have Occurred Pre-Unification

To determine the court to which a bail forfeiture was appealed, it is helpful to identify all of the situations in which a bail forfeiture could have occurred before unification. Once these situations are identified, appellate jurisdictional rules in place before trial court unification are applied to determine the proper place of appeal.

Where a bail forfeiture arose before unification depended on (1) the underlying crime and (2) the procedural stage of the case.

A forfeiture could arise at any stage of the criminal trial proceedings. See Penal Code § 1305(a) (court must declare forfeiture if defendant fails to appear at judgment or any occasion before judgment if presence is lawfully required). Such

proceedings were in municipal or superior court, depending on whether the charges involved a misdemeanor (municipal), felony (superior), or both (superior). See *Leney*, 213 Cal. App. 3d at 268, 271; *Clark*, 17 Cal. App. 3d at 897-898; 4 B. Witkin, *California Criminal Law Jurisdiction & Venue* § 14, at 102, 103-104 (3d. ed. 2000) (citing Cal. Const. art. VI, § 10; Penal Code § 1462(a)), § 18, at 107 (3d. ed. 2000) (citing Penal Code § 1462(a)).

However, before a felony was heard in superior court, it might have been before a municipal court judge acting as a magistrate. To prosecute a felony, there must be either an information or an indictment. Cal. Const. art. I, § 14. When prosecution is by information (rather than indictment), before it can be filed in superior court, a magistrate must first hear a complaint and find probable cause to hold the defendant. Penal Code §§ 738, 806, 866. The proceeding at which the magistrate hears the complaint is the “preliminary examination.” See Penal Code §§ 738, 866. If the defendant failed to appear at the preliminary examination, the magistrate had to forfeit bail. See Penal Code § 1305(a).

Usual practice was that a magistrate of the municipal court conducted the preliminary examination. *Lempert v. Superior Court of Santa Clara County*, 112 Cal. App. 4th 1161, 1168, 5 Cal Rptr. 3d 700 (2003); see also Uelmen, *California Criminal Procedure and Trial Court Unification* (March 2002), at 2; Cal. Const. art. I, § 14; Penal Code §§ 737, 738, 806, 866, 872, 976; former Penal Code § 1462; *California Criminal Law Practice and Procedure Arraignment* § 6.10, at 144-45, *Preliminary Hearings* § 8.1, at 188-89, *California Judges Benchbook: Criminal Pretrial Proceedings, Commencing the Action*, § 1.1, at 3.

(Since 1994, a night commissioner of Santa Clara County Superior Court has also been authorized to conduct the preliminary examination. See Penal Code § 809; 1993 Cal. Stat. ch. 909 § 14 (SB 15). The staff is investigating this matter, because it may require special treatment with regard to post-unification appellate jurisdiction. For now, we only address the usual situation in which a magistrate of the municipal court conducted the preliminary examination. We will analyze the situation of the Santa Clara night commissioner in a future memorandum.)

Bail forfeiture could have also occurred at the appellate court level if the defendant was granted bail upon appeal. See Penal Code §§ 1273 (defendant may be admitted to bail after conviction upon appeal), 1291 (defendant may be admitted to bail upon appeal by any magistrate with authority to issue habeas corpus or by magistrate who presided over trial). If the defendant failed to surrender after the appellate court’s judgment affirming conviction, that

appellate court had to forfeit bail. See Penal Code §§ 1305(a)(5) (court shall declare forfeiture upon defendant's failure to surrender in execution of judgment after appeal), 1306 (court declaring forfeiture enters summary judgment), 1305(i) (court declaring forfeiture hears motion to vacate).

Taken together, a bail forfeiture appeal could have originated from the following: (1) a municipal court judge presiding over a misdemeanor, (2) a superior court judge presiding over a felony (and any joined misdemeanor), (3) a magistrate (typically, a municipal court judge) presiding over a preliminary examination determining whether there was probable cause to hold the defendant on a felony complaint, or (4) an appellate court when the defendant failed to surrender after judgment affirming conviction.

The fourth situation — the appeal path of a bail forfeiture that occurs when a criminal case is on appeal — was not affected by trial court unification, and no clarification is needed. Accordingly, it is omitted from further consideration.

The first three situations involve forfeiture at the trial court level. The pre-unification appeal path for each one is discussed below.

Bail Forfeiture by a Municipal Court Judge Presiding Over a Misdemeanor Case

A bail forfeiture arising from a misdemeanor case, which was tried in municipal court, was appealed to the appellate department of the superior court. See former Code Civ. Proc. § 77(e); 4 B. Witkin, *California Criminal Law Jurisdiction & Venue* § 18, at 107 (3d. ed. 2000) (citing Penal Code § 1462(a) (misdemeanor heard in municipal court)); 2 B. Witkin, *California Procedure Courts* § 346, at 414-415 (4th ed. 1997) (appeal from municipal to appellate department of superior court).

A thorough survey of bail forfeiture cases reveals that each one involving a misdemeanor (and detectable amount of bail) involved a bail amount *within* the municipal court's civil jurisdictional limit (which was not always \$25,000, but began at \$1,000 and increased over time). Former Code Civ. Proc. § 86 (municipal court civil jurisdictional limit of \$25,000); *Hooper v. Miley Oil Co.*, 109 Cal. App. Supp. 767, 769 288 P. 2d 26 (1930); for case examples, see *People v. National American Ins. Co.*, 32 Cal. App. 4th 1176, 38 Cal. Rptr. 2d 569 (1995), *People v. Hadley*, 257 Cal. App. 2d Supp. 871, 64 Cal. Rptr. 777 (1967), *Pacific Indem. Co. v. Myers*, 211 Cal. 635, 296 P. 1084 (1931).

The reason why no case was found involving a misdemeanor with a bail amount *above* the municipal court jurisdictional limit is unclear. It may have been

rare or never occurred. It is unlikely that it was impossible because the amount of bail was within the judge's discretion, subject to constitutional limits against excessive bail. U.S. Const. amend. VIII; Cal. Const. art. I, § 12; Penal Code § 1275(a) (judge or magistrate to consider public safety, seriousness of offense, prior record and probability of appearance); *Wadey v. Justice Court, Upland Judicial Dist., San Bernardino*, 176 Cal. App. 2d 426, 428, 1 Cal. Rptr. 382 (1959) (amount of bail under Penal Code Section 1275 is discretionary).

In any event, the California Supreme Court, relying on constitutional and statutory law, placed an appeal from the municipal court in the appellate department of the superior court, regardless of the amount of bail. *Newman*, 67 Cal. 2d at 623. While the case did not involve a misdemeanor, the forfeiture was deemed to arise from municipal court (where the defendant failed to appear at a preliminary examination by a municipal court judge acting as a magistrate). *Id.* at 621. Because the appeal was from the municipal court, the appellate department of the superior court had appellate jurisdiction. *Id.* It did not matter that the bail amount was above the municipal court's civil jurisdictional limit. *Id.* at 621-623. The origination of the appeal in municipal court — not the amount of bail — was the determining factor. *Id.*

Bail Forfeiture By a Superior Court Judge Presiding Over a Felony Case

A bail forfeiture arising from a felony case, which was tried in superior court, was appealed to the court of appeal. Former Cal. Const. art. VI, § 11 (court of appeal had appellate jurisdiction over cases in original jurisdiction of superior court); 4 B. Witkin, *California Criminal Law, Jurisdiction & Venue* § 14, at 102 (3d. ed. 2000) (citing Cal. Const. art. VI, § 10 and Penal Code § 1462(a) to deduce superior court had original jurisdiction of felony)).

Regardless of the amount of bail, a forfeiture appeal arising in a felony case in superior court went to the court of appeal. *Id.* For example, an appeal involving bail forfeiture of an amount *within* the jurisdictional limit of the municipal court was sent to the court of appeal. See, e.g., *People v. Topa Ins. Co.*, 32 Cal. App. 4th 296, 38 Cal. Rptr. 2d 167 (1995); *County of Los Angeles v. Am. Bankers Ins. Co.*, 202 Cal. App. 3d 1291, 249 Cal. Rptr. 540 (1988); *People v. Ramirez*, 64 Cal. App. 3d 391, 134 Cal. Rptr. 511 (1976).

Likewise, an appeal involving bail forfeiture of an amount *above* the jurisdictional limit of the municipal court was sent to the court of appeal. See, e.g., *People v. Ranger Ins. Co.*, 61 Cal. App. 4th 812, 71 Cal. Rptr. 2d. 806 (1998);

People v. Resolute Ins. Co., 46 Cal. App. 3d 249, 120 Cal. Rptr. 17 (1975); *People v. Rolley*, 223 Cal. App. 2d 639, 35 Cal. Rptr. 803 (1963).

A case that began as a felony in superior court might not have included a felony throughout the criminal proceedings during which a bail forfeiture could occur. Even if all felony charges were dismissed before trial, the superior court retained jurisdiction over any remaining misdemeanor charges. *Clark*, 17 Cal. App. 3d at 897-898. Likewise, if felony charges were tried but eliminated before judgment, the superior court retained jurisdiction over the remaining misdemeanor charges. *Leney*, 213 Cal. App. 3d at 268. In either situation, a bail forfeiture would have occurred in superior court because the case remained in that court. Accordingly, the appeal would have gone to the court of appeal. See former Code Civ. Proc. § 904.1.

In sum, the court of appeal had appellate jurisdiction of bail forfeiture ordered in any case that included a felony charge when brought in superior court.

Bail Forfeiture by a Magistrate Presiding Over a Preliminary Examination of a Felony Complaint

A bail forfeiture at a preliminary examination of a felony complaint by a magistrate sitting as a municipal court judge was “an order of the municipal court.” As such, the appellate department of the superior court had appellate jurisdiction under *Newman*, 67 Cal. 2d at 624-625.

TRIAL COURT UNIFICATION

The trial court system has been restructured over the last decade. In 1998, the voters approved a constitutional amendment that permitted unification of the municipal and the superior courts, county by county, upon a majority vote of the municipal court judges and the superior court judges in each county. 1996 Cal. Stat. res. ch. 35 (SCA 4) (Prop. 220, approved June 2, 1998, effective June 3, 1998); former Cal. Const. art. VI, § 5(e).

By 2001, the trial courts in each county had unified, subsuming the municipal courts into a unified superior court. See *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm’n Reports 169, 173 (2003) (hereafter, “*TCR: Part 2*”). Unification also involved creating the appellate *division* of the superior court (an entity of constitutional dimension, subject to

constitutional constraints), replacing the appellate department (a statutory entity). 2 B. Witkin, *California Procedure Courts* § 346, at 141 (4th ed. 2006 Supp.).

Commission Work Implementing Trial Court Unification

Pursuant to legislative requests, the Commission has done extensive work on revising the California Constitution and codes to implement trial court unification. 1993 Cal. Stat. res. ch. 96; 1997 Cal. Stat. res. ch. 102; 1998 Cal. Stat. res. ch. 91; Gov't Code § 71674; *Trial Court Unification: Constitutional Revision* (SCA 3), 24 Cal. L. Revision Comm'n Reports 1 (1994) (hereafter, "*TCU: Constitutional Revision*"); *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51 (1998) (hereafter, "*TCU: Revision of Codes*"); *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm'n Reports 1 (2002) (hereafter, "*TCR: Part 1*"); *TCR: Part 2, supra*; *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, ___ Cal. L. Revision Comm'n Reports ___ (2006) (hereafter, "*TCR: Part 3*").

Previous Commission work has covered bail, but not its forfeiture or an appeal therefrom. See *TCU: Revision of Codes, supra*, at 69 (business hours for bail purposes); *TCR: Part 1, supra*, at 490-491 (proposed legislation changing municipal court to superior court for authorizing setting bail of felony); *TCR: Part 2, supra*, at 178 (removing municipal court reference to bail schedule and providing for one bail schedule for allailable crimes.)

Policy in Implementing Trial Court Unification

In implementing trial court unification, the Legislature and the Commission have followed three related guiding principles.

First, the implementing reforms accord equal treatment to similarly situated litigants in unified and non-unified counties. *Revision of Codes, supra*, at 60. Because unification occurred on a county by county basis, every effort was made to avoid "disparity of treatment between a party appearing in municipal court and a similarly situated party appearing in superior court" in a county that had unified its municipal and superior courts. *Id.* Even after the danger of disparate treatment disappeared (upon unification in all counties), the objective has been to preserve pre-unification procedures in the context of a unified court, instead of making substantive revisions to those procedures. See, e.g., *TCR: Part 3, supra* (12/18/06 preprint version), at 8, n. 39; CLRC Minutes (June 2006), pp. 12-16.

Second, steps were taken to ensure that if a case was historically within the appellate jurisdiction of the court of appeal, unification would not deprive the

court of appeal of jurisdiction of the matter. If a litigant in a particular type of matter was entitled to review by a court of appeal before unification, the same would be true after unification. See Cal. Const. art. VI, § 11.

Third, unification was not to increase the workload of the courts of appeal. Rather, the respective workloads of the courts of appeal and the appellate division of the superior court (formerly, the appellate department) were to remain essentially unchanged by unification. *TCU: Constitutional Revision, supra*, at 32.

Appellate Jurisdiction After Trial Court Unification

The constitutional amendments providing for unification thus sought to preserve pre-unification appellate jurisdiction of the superior court and the court of appeal. Cal. Const. art. VI, § 11; former Cal. Const. art. VI, § 23(c)(5) (transitional provision stating matters “previously within the appellate jurisdiction of the superior court remain within the jurisdiction of the appellate division of the superior court.”).

Jurisdiction of the Appellate Division of the Superior Court

Before unification, the appellate department of the superior court had jurisdiction of civil appeals from municipal court. Former Cal. Const. art. VI, § 11; former Code Civ. Proc. § 904.2.

After unification, the appellate division of the superior court has jurisdiction “as prescribed by statute.” Cal. Const. art. VI, § 11(b). In particular, the appellate division has jurisdiction of a *civil* matter if it is a “limited civil case,” involving an amount in controversy not more than \$25,000. Code Civ. Proc. §§ 85, 904.2. “Limited civil case” is intended to include cases that were within the original jurisdiction of the municipal court. *Revision of Codes, supra*, at 64-65; compare Code Civ. Proc. § 85 to former Code Civ. Proc. § 86.

For *criminal* cases, before unification the appellate department of the superior court had jurisdiction of enumerated appeals of a misdemeanor. Former Penal Code § 1466(a). After unification, those same appeals are appealable to the appellate division of the superior court. See Penal Code § 1466.

Appellate Jurisdiction of the Courts of Appeal

Post-unification, the Constitution restricts the Legislature’s authority to remove appellate jurisdiction from the courts of appeal. Cal. Const. art. VI, § 11(a) (“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.”) The Legislature, however, may add to the appellate jurisdiction of the courts of appeal. *Id.* (courts of appeal have appellate jurisdiction “in other causes prescribed by statute”).

Before unification, the appellate jurisdiction of the courts of appeal included civil appeals from superior court and appeals of felony cases. Former Cal. Const. art VI, § 11; former Code Civ. Proc. § 904.1; former Penal Code §§ 1235, 1466(b).

After unification, an appeal from a civil case that is not a “limited civil case” (generally, a case in which the amount in controversy exceeds \$25,000) is to the court of appeal. Code Civ. Proc. § 904.1; see also Code Civ. Proc. § 88. This allows civil cases that were in the original jurisdiction of the superior court before unification to continue to be appealed to the court of appeal.

An appeal of a felony case, as before unification, is to the court of appeal. Penal Code § 1235 & Comment.

APPELLATE JURISDICTION OF BAIL FORFEITURE APPEALS AFTER UNIFICATION

After unification, all appeals arising from bail forfeiture at the trial court level come from the superior court. Under the guiding principles of unification — (1) preserve pre-unification procedures with no disparity of treatment of similarly situated litigants in unified and non-unified courts, (2) preserve the historical jurisdiction of the courts of appeal, and (3) refrain from increasing the workload of the courts of appeal — appellate jurisdiction of bail forfeiture should be essentially the same after unification as it was before unification. In other words, the appeal path for a bail forfeiture should be as follows, regardless of the amount of bail:

- In a felony case, or a case in which both a felony and a misdemeanor were charged, if the failure to appear occurs after the indictment or filing of the information, to the court of appeal.
- In a felony case, or a case in which both a felony and a misdemeanor were charged, if the failure to appear occurs at the preliminary examination or other proceeding before the filing of an information, to the appellate division of the superior court.
- In a misdemeanor case, to the appellate division of the superior court.

However, the statutes governing appellate jurisdiction, as revised to reflect trial court unification, seem to call for a different result. Because bail forfeiture is a civil matter, the provisions governing civil appeals appear to apply. If so,

jurisdiction over an appeal would depend upon the amount of bail, regardless of the underlying criminal charge. Specifically,

- An appeal relating to a bail forfeiture in a felony case, or a case charging both a misdemeanor and a felony, involving a failure to appear after an indictment or the filing of an information, and bail of \$25,000 or less, would seem to be to the appellate division of the superior court. See Code Civ. Proc. §§ 85, 580, 904.2. This would differ from the pre-unification situation, in which an appeal relating to a bail forfeiture in a felony case, or a case charging both a misdemeanor and a felony, involving a failure to appear after an indictment or filing of an information, went to the court of appeal regardless of the amount of bail. It would also be inconsistent with the constitutional provision preserving the appellate jurisdiction of the courts of appeal as of June 30, 1995. Cal. Const. art. VI, § 11.
- An appeal relating to a bail forfeiture in a felony case, or a case charging both a misdemeanor and a felony, involving a failure to appear at a preliminary examination or other proceeding before the filing of an information, and bail exceeding \$25,000, would seem to be to the court of appeal. See Code Civ. Proc. § 904.1. Again, this would differ from the pre-unification situation, in which an appeal relating to a bail forfeiture in a felony case, or a case charging both a misdemeanor and a felony, involving a failure to appear at a preliminary examination or other proceeding before the filing of an information, went to the appellate department of the superior court regardless of the amount of bail.
- An appeal relating to a bail forfeiture in a misdemeanor case and involving bail exceeding \$25,000 would seem to be to the court of appeal. See Code Civ. Proc. §§ 85, 580, 904.2. This would also differ from the pre-unification situation, in which an appeal relating to a bail forfeiture in a misdemeanor case in municipal court went to the appellate department regardless of the amount of bail.

The Santa Clara County Superior Court is thus understandably confused regarding the proper appeal path for bail forfeiture after trial court unification. Clarification is definitely needed.

Suggested Approach

Consistent with the three guiding principles of trial court unification, **the codes should be revised to clarify that jurisdiction of bail forfeiture appeals is essentially the same as it was before unification.**

That could be accomplished through two specific reforms. First, a new provision would be added to the Penal Code, in the portion of the code relating to bail forfeitures (Penal Code §§ 1305-1308). **That provision could be drafted**

along the following lines to clarify the appeal path for a challenge to a superior court's decision on a motion to set aside a bail forfeiture order:

Penal Code § 1305.5 (added). Appeal from order denying motion to vacate bail forfeiture declaration

SEC. _____. Section 1305.5 is added to the Penal Code, to read:

1305.5. Notwithstanding Sections 85, 580, 904.1, and 904.2 of the Code of Civil Procedure, if a surety or other person appeals from an order of the superior court denying a motion to vacate a bail forfeiture declared under Section 1305, the following rules apply:

(a) If the bail forfeiture was in a felony case, or in a case in which both a felony and a misdemeanor were charged, and the failure to appear occurred after the indictment or filing of the information, the appeal is to the court of appeal and it shall be treated as an appeal in an unlimited civil case, regardless of the amount of bail.

(b) If the bail forfeiture was in a felony case, or in a case in which both a felony and a misdemeanor were charged, and the failure to appear occurred at the preliminary hearing or other proceeding before the filing of an information, the appeal is to the appellate division of the superior court and it shall be treated as an appeal in a limited civil case, regardless of the amount of bail.

(c) If the bail forfeiture was in a misdemeanor case, the appeal is to the appellate division of the superior court and it shall be treated as a limited civil case, regardless of the amount of bail.

Comment. Section 1305.5 is added to clarify the appellate jurisdiction of bail forfeiture matters after trial court unification. The provision preserves the pre-unification status quo. See, e.g., *Newman v. Superior Court of Los Angeles County*, 67 Cal. 2d 620, 623, 432 P.2d 972, 63 Cal. Rptr. 284 (1967) (amount of bail does not determine jurisdiction of appeal relating to bail forfeiture order); *People v. Topa Ins. Co.*, 32 Cal. App. 4th 296, 38 Cal. Rptr. 2d 167 (1995) (court of appeal heard bail forfeiture appeal involving failure to appear before superior court in felony case, even though bail was less than jurisdictional limit of municipal court); *County of Los Angeles v. Am. Bankers Ins. Co.*, 202 Cal. App. 3d 1291, 249 Cal. Rptr. 540 (1988) (same); see also *People v. Clark*, 17 Cal. App. 3d 890, 897-898, 95 Cal. Rptr. 411 (1971) (superior court has jurisdiction to try connected misdemeanor even if felony charge eliminated before trial); *People v. Leney*, 213 Cal. App. 3d 265, 268, 261 Cal. Rptr. 541 (1989) (superior court has jurisdiction to try remaining misdemeanor even if felony charge eliminated before judgment).

Second, Penal Code Section 1306 should be amended to (a) clarify the proper jurisdiction for the relatively uncommon situation in which a surety or bondsman appeals from a summary judgment based on a bail bond, and (b)

delete language that is obsolete due to trial court unification. Specifically, **the provision should be amended along the following lines:**

Penal Code § 1306 (amended). Procedures after court declares bail forfeiture

SEC. _____. Section 1306 of the Penal Code is amended to read:

1306. (a) When any bond is forfeited and the period of time specified in Section 1305 has elapsed without the forfeiture having been set aside, the court which has declared the forfeiture, ~~regardless of the amount of the bail,~~ shall enter a summary judgment against each bondsman named in the bond in the amount for which the bondsman is bound. The judgment shall be the amount of the bond plus costs, and notwithstanding any other law, no penalty assessments shall be levied or added to the judgment.

(b) If a court grants relief from bail forfeiture, it shall impose a monetary payment as a condition of relief to compensate the people for the costs of returning a defendant to custody pursuant to Section 1305, except for cases where the court determines that in the best interest of justice no costs should be imposed. The amount imposed shall reflect the actual costs of returning the defendant to custody. Failure to act within the required time to make the payment imposed pursuant to this subdivision shall not be the basis for a summary judgment against any or all of the underlying amount of the bail. A summary judgment entered for failure to make the payment imposed under this subdivision is subject to the provisions of Section 1308, and shall apply only to the amount of the costs owing at the time the summary judgment is entered, plus administrative costs and interests.

(c) If, because of the failure of any court to promptly perform the duties enjoined upon it pursuant to this section, summary judgment is not entered within 90 days after the date upon which it may first be entered, the right to do so expires and the bail is exonerated.

(d) A dismissal of the complaint, indictment, or information after the default of the defendant shall not release or affect the obligation of the bail bond or undertaking.

(e) The district attorney or county counsel shall:

(1) Demand immediate payment of the judgment within 30 days after the summary judgment becomes final.

(2) If the judgment remains unpaid for a period of 20 days after demand has been made, shall forthwith enforce the judgment in the manner provided for enforcement of money judgments generally. If the judgment is appealed by the surety or bondsman, the undertaking required to be given in these cases shall be provided by a surety other than the one filing the appeal. The undertaking shall comply with the enforcement requirements of Section 917.1 of the Code of Civil Procedure. Notwithstanding Sections 85, 580, 904.1, and 904.2, jurisdiction of the appeal, and treatment of the

appeal as a limited civil case or an unlimited civil case, is governed by Section 1305.5.

(f) The right to enforce a summary judgment entered against a bondsman pursuant to this section shall expire two years after the entry of the judgment.

Comment. Subdivision (a) of Section 1306 is amended to delete language that is obsolete due to trial court unification. Before unification, it was necessary to make clear that a municipal court was authorized to enter summary judgment based on a bail forfeiture even though the amount of bail exceeded the jurisdictional limit of the municipal court. See 1977 Cal. Stat. ch. 889, § 3.5; *Newman v. Superior Court of Los Angeles County*, 67 Cal. 2d 620, 622, 432 P.2d 972, 63 Cal. Rptr. 284 (1967); see also Department of Consumer Affairs, Analyst's Report SB 1107 (Song), p. 2. Because municipal courts have been eliminated and the superior court has no jurisdictional limit, that language is no longer needed.

Subdivision (e)(2) is amended to clarify the jurisdiction and treatment of an appeal from a summary judgment based on a bail bond. The amendment preserves the pre-unification status quo. See Section 1305.5 Comment.

If the Commission agrees with this approach, with or without revisions, the staff will prepare a draft of a tentative recommendation for the Commission to consider at its next meeting. The staff will also research and report on the issues that we have not yet fully analyzed (writ jurisdiction of bail forfeiture; night commissioner of Santa Clara County Superior Court).

PENDING LEGISLATION

A bill to amend Penal Code Section 1305 on bail forfeiture is pending. See AB 1093 (Runner). In its current form, the bill would not have any impact on the issues addressed in this memorandum. The staff will monitor the bill and report any pertinent developments.

Respectfully submitted,

Catherine Bidart
Staff Counsel

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County of Santa Clara**

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HALL OF JUSTICE

Law Revision Commission
RECEIVED

OCT 30 2006

File: J-1402



October 5, 2006

MEMO

TO: California Law Revision Commission

FROM: Alex Cerul, Santa Clara County Superior Court
Staff Attorney *Alex Cerul*

RE: Comment on "Statutes Made Obsolete by trial
Court Restructuring"

The Presiding Judge of Santa Clara County Superior Court, the Honorable Judge Danner, and the Judges of the our Appellate Division, asked that I bring an issue to your attention. It involves appellate jurisdiction in certain instances of bail forfeiture.

Prior to unification the Appellate Division would review all bail forfeitures ordered by Municipal Court judges. A Municipal Court judge could forfeit bail in a misdemeanor case, or, in a felony case when sitting as a magistrate hearing a preliminary hearing. This was in line with *Newman v. Superior Court of Los Angeles County* (1967) 67 Cal.2d 620, 623, which held that "the amount of the bail is not determinative as to the court which may order a forfeiture or as to the appropriate court for appeal from such an order." Now, of course, there are no longer Municipal Court judges. So where does this leave the appeal of bail forfeitures in those circumstances?

EX 1

BAIL FORFEITED BY MAGISTRATE PRIOR TO FELONY INFORMATION

Newman, supra, held that when a magistrate, at the time for a preliminary hearing, forfeits bail he or she does so as a “court.” In *Newman* the magistrate who forfeited bail was a judge of the Municipal Court. Accordingly, when he took off his ‘magistrate hat’ he reverted to being a Municipal Court judge and the Appellate Division was, therefore, the appropriate place to take the appeal.

Now that there are no longer Municipal Court judges, whenever a magistrate forfeits bail he or she does so as a Superior Court judge and it would appear that, pursuant to *Newman supra*, any appeal should go to the Court of Appeal because it is action by a Superior Court judge in a felony case. The matter is not a misdemeanor or infraction over which the Appellate Division has jurisdiction.

BAIL FORFEITED IN MISDEMEANOR CASE

The *Newman* court also reaffirmed that “forfeiture of bail is an independent, collateral matter, and is civil in nature.” (*Newman* at p. 622, citing *People v. Wilcox* (1960) 53 Cal.2d 651, 654. See also *People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 657: “While bail bond proceedings occur in connection with criminal prosecutions, they are independent from and collateral to the prosecutions and are civil in nature.”) It would appear then that even in the case of a misdemeanor the Appellate Division might not have jurisdiction by virtue of the criminal case because the forfeiture is not part of the misdemeanor or infraction case but instead is a civil matter in which “the amount of the bail is not determinative.”

OUR CURRENT PRACTICES

The preceding is a good argument for the proposition that the Appellate Division does not have jurisdiction in bail forfeiture cases as it previously did. Nevertheless, the

Santa Clara County Superior Court Appellate Division has continued to decide appeals of bail forfeitures as it had prior to unification. The original basis for this was the statement of legislative intent that court unification not increase the workload of the Court of Appeal. At the present time, however, we recognize that the justification for our bail appeal policy has become unclear.

Partially contributing to our continued practice is the fact that unification could not change our facility or organizational structure. Santa Clara County's Hall of Justice is divided into an East and a West wing. The West wing was Municipal Court and after unification local practice was to call it "Limited Jurisdiction -- Criminal" because it continued to be the location of all misdemeanor cases and preliminary hearings. While this is probably not technically correct (see *Wozniak v. Lucutz* (2002) 102 Cal.App.4th 1031, 1036, fn. 1,) it is locally entrenched. Since, practically speaking, local procedures vis-à-vis misdemeanors and preliminary hearings did not change much there is definitely inertial resistance to the idea of changing the appellate structure. Especially when there is no clear direction, from either the case law or statutes, to do so.

REQUEST FOR ACTION

For the above reasons we would greatly appreciate a statute definitively establishing where bail forfeiture appeals should be heard. It is likely other counties would also find this beneficial. The abolition of the Municipal Court means that some aspect of the *Newman* case is no longer applicable. But it is far from clear which aspect that should be. Perhaps the Appellate Division should decide only cases which can be characterized as "limited civil cases" (under \$25,000) regardless of the charge (felony or misdemeanor) and regardless of the procedural posture of the case (before or after preliminary hearing). While it is clear that in misdemeanor cases in which the bail amount is under \$25,000 the appeal goes to the Appellate Division, and it is clear that in

felony cases, post indictment or information, with bail over \$25,000 the appeal goes to the Court of Appeal, the areas that need clarification are: (1) bail in misdemeanor cases over \$25,000, (2) bail in felony cases under \$25,000, and (3) bail, in any amount, forfeited in the pre information (magistrate) procedural posture. We express no opinion on the resolution of this issue but only request that there be one. As one of the judges I work with said, we do not have a dog in this race, we are only spectators.

Feel free to contact me at (408) 808-6782 if there are any questions or for any further information or input you may desire.
