

Memorandum 2007-49

**Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture  
(Comments on Tentative Recommendation)**

The comment period for the tentative recommendation on *Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture* (June 2007) has ended. The tentative recommendation proposes to clarify appellate jurisdiction of bail forfeiture by directing bail forfeiture appeals in the same manner as before the trial courts unified. The Commission received the following comments:

*Exhibit p.*

- Heather Anderson, Appellate Advisory Committee of the Judicial Council of California (10/31/07).....1
- E. Alan Nuñez, Nuñez & Bernstein (9/19/07).....3
- Albert W. Ramirez, Golden State Bail Agents Association (9/20/07)....11
- Robert Tomlin White, Two Jinn, Inc. (9/21/07).....13

One comment supports the proposal. The remaining three comments oppose it.

Additionally, the California Judges Association (hereafter, "CJA") informed the staff by phone that the CJA was not submitting comments "because it has no serious concerns" about the proposal. Similarly, the Office of the Attorney General communicated that it was not submitting comments "because it saw no problem with the proposal." See Email from Anna Pozdyn to Catherine Bidart (10/15/2007).

This memorandum discusses the comments, then raises a minor drafting issue.

A draft of a final recommendation is attached. The Commission needs to consider the comments and the attached draft, and decide whether to approve the draft as a final recommendation, with or without revisions.

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Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

## COMMENTS IN SUPPORT

The Appellate Advisory Committee of the Judicial Council of California (hereafter, "Appellate Advisory Committee") supports the proposal. See Exhibit p. 1.

The committee believes that the proposal would eliminate confusion and reduce disputes over jurisdiction of bail forfeiture appeals, making such appeals easier for courts and litigants. See *id.*

The committee supports the concept of directing appeals in the same manner as before the municipal and superior courts unified. See *id.* Further, the Committee agrees with the guiding principles the Commission has used. See *id.* Namely, the Appellate Advisory Committee supports (1) ensuring that the court of appeal keeps jurisdiction over cases historically within its appellate jurisdiction, and (2) leaving intact the respective workloads of the courts of appeal and appellate division of the superior court. See *id.* The committee notes that such principles are grounded in the California Constitution. See *id.* ("[C]ourts 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.") (quoting Cal. Const. art. VI, § 11).

Finally, the Appellate Advisory Committee believes that the proposal would effectuate the goal of preserving pre-unification jurisdiction of bail forfeiture appeals. See Exhibit p. 1.

## "NO COMMENT" BASED ON VIEW THAT PROPOSAL IS UNPROBLEMATIC

Two organizations did not submit written comments on the proposal, but have nonetheless communicated why they did not do so. By phone, a CJA representative explained that the CJA "has no serious concerns" with the proposal. Similarly, the Office of the Attorney General communicated that "it saw no problem with the proposal." See Email from Anna Pozdyn to Catherine Bidart (10/15/2007).

## COMMENTS IN OPPOSITION

This section of the memorandum presents the comments in opposition to the proposal. Such comments were received from E. Alan Nuñez of Nuñez & Bernstein, Albert W. Ramirez of Golden State Bail Agents Association (hereafter,

“Golden State Bail Agents”), and Robert Tomlin White on behalf of Two Jinn, Inc., which does business as Aladdin Bail Bonds (hereafter, “Two Jinn”). See Exhibit pp. 3-10 (Nuñez), 11-12 (Golden State Bail Agents), 13-14 (Two Jinn).

Mr. Nuñez, an attorney with a long-standing practice in bail forfeiture appeals, had previously commented on the draft tentative recommendation. See CLRC Memorandum 2007-22, Exhibit 1-9. Those comments were discussed in a previous memorandum. See CLRC Memorandum 2007-22, pp. 1-5. His new comments, along with the comments by Golden State Bail Agents and Two Jinn, are discussed below. Many of the arguments raised were already considered and rejected by the Commission in developing its tentative recommendation, but they have been expanded on and restated.

### **Proposal Is Unnecessary**

Mr. Nuñez continues to say that the proposal is unnecessary. He maintains that courts uniformly apply the provisions governing jurisdiction of civil appeals, Code of Civil Procedure Sections 85, 904.1, and 904.2 (hereafter, the “civil appellate rules”), to bail forfeiture cases. See Exhibit pp. 3, 10. He characterizes the instances in which courts have not applied the civil appellate rules as “isolated cases.” He attributes the variation to inadvertent errors. See Exhibit p. 3. Despite cases to the contrary, he asserts that all courts other than the Santa Clara County Superior Court apply the civil appellate rules to bail forfeiture cases. See Exhibit pp. 3, 10; see also CLRC Memorandum 2007-22, p. 2 (discussing lack of uniform treatment and providing examples); *Tentative Recommendation on Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture* (June 2007) (hereafter, *Tentative Recommendation*) at 4 (same).

Two Jinn also states that the proposal is unnecessary, presumably on the ground that the civil appellate rules should, and do, apply to bail forfeiture cases. See Exhibit p. 13.

Courts, however, are not uniformly applying the civil appellate rules to bail forfeiture appeals. The tentative recommendation describes a number of such cases. See *Tentative Recommendation* at 4 & nn.21-24.

Since the tentative recommendation was published, the path of at least three more bail forfeiture appeals (including another by a client of Mr. Nuñez) did not follow the civil appellate rules. See, e.g., *People v. Ranger Ins. Co*, 2007 WL 2876092 (6th Dist., Oct. 4, 2007) (unpublished decision) (court of appeal decides bail forfeiture appeal of \$25,000, an amount below its civil jurisdiction); *People v.*

*Lincoln Gen'l Ins. Co.*, 2007 WL 2258284 (5th Dist., Aug. 8, 2007) (unpublished decision) (court of appeal decides bail forfeiture appeal of \$10,000, an amount below its civil jurisdiction); *People v. Ranger Ins. Co.*, 2007 WL 2164928 (4th. Dist., July 30, 2007) (unpublished decision) (court of appeal decides bail forfeiture appeal of \$25,000, an amount below its civil jurisdiction). Tentative Recommendation at 4 n.22. If the civil appellate rules clearly applied to these appeals, they would have been misdirected, and the court would have raised that it lacked jurisdiction. See *Goodwine v. Super. Ct.*, 63 Cal. 2d 481, 484, 47 Cal. Rptr. 201 (1965); *Abelleira v. Dist. Ct. of Appeal*, 17 Cal. 2d 280, 288, 109 P.2d 942 (1941). However, in each appeal, the court did not raise the issue, but decided the appeal.

In one of these new cases, the appeal followed neither the civil appellate rules nor the pre-unification appeal path. See *People v. Ranger Ins. Co.*, 2007 WL 2164928 (4th. Dist., July 30, 2007) (unpublished decision). This recent appeal was decided by a court of appeal. It involved bail forfeiture of \$25,000 at the preliminary examination on a felony charge. See *People v. Ranger Ins. Co.*, 2007 WL 2164928 at \*1 (unpublished decision). If the civil appellate rules had been applied, the appeal would have been to the appellate division of the superior court. Likewise, if the pre-unification appeal path had been followed, the appeal would have been to the appellate division of the superior court. (Before unification, the forfeiture would have been in municipal court, which held preliminary examinations, and an appeal from municipal court would have gone to the appellate department of the superior court). This case, the two other new cases, and the cases described in the tentative recommendation demonstrate that the civil appellate rules are not being consistently applied to a bail forfeiture appeal.

Indeed, there is confusion over the appeal path of a bail forfeiture case. Recognizing that confusion, the Sixth District Court of Appeal recently expressed the need for clarifying legislation:

After unification, a process that began in 1998, the proper appellate path of bail bond forfeiture proceedings — to the appellate division of the superior court or to the court of appeal and under what circumstances — seems unclear and *is in need of legislative clarification*.

*People v. Ranger Ins. Co.*, 2007 WL 2175059 at \*2 n.5 (emphasis added) (unpublished decision). Similarly, the Judicial Council's Appellate Advisory

Committee expressed belief that the Commission’s proposal would “eliminate confusion” over appellate jurisdiction of bail forfeiture cases. See Exhibit p. 1.

Taking together all of the above, the staff recommends that the Commission **continue to recommend clarifying legislation on appellate jurisdiction of bail forfeiture.**

### **Amount in Controversy**

Commenters opposing the proposal argue that appellate jurisdiction of bail forfeiture should be based on the amount in controversy, like other civil cases.

#### *Uniform Treatment of Civil Cases*

Mr. Nuñez refers to a failure to accept that a bail forfeiture case is a civil case. See Exhibit p. 3. To be clear, the staff recognizes the civil nature of bail forfeiture proceedings. See, e.g., CLRC Memorandum 2007-14, p. 3.

Mr. Nuñez, Golden State Bail Agents, and Two Jinn argue that all civil cases, including bail forfeiture appeals, should be treated uniformly. See Exhibit pp. 6-7 (Nuñez), p. 11 (Golden State Bail Agents), p. 13 (Two Jinn). That is, they believe jurisdiction over bail forfeiture appeals should be based on the amount in controversy. See *id.* In their view, appeals from forfeiture of bail *over* \$25,000 should go to the court of appeal, and appeals from forfeiture of bail of \$25,000 or less should go to the appellate division of the superior court. See *id.*

The staff disagrees that bail forfeiture appeals should be based on the amount in controversy.

First, that approach would go against principles that have guided the Commission’s work on unification. In particular, it would disrupt the workload balance between the courts of appeal and the appellate division of the superior court. In addition, it would not preserve the historic jurisdiction of the court of appeal. See Tentative Recommendation, pp. 2-3, 5.

Second, basing bail forfeiture appeals on the amount of bail would remove some cases from the appellate jurisdiction of the court of appeal, contravening the constitutional provision protecting such jurisdiction. See Cal. Const. art. VI, § 11(a); see also Tentative Recommendation at 5. Specifically, the type of case that would be unconstitutionally removed from the appellate jurisdiction of the court of appeal would be an appeal from a bail forfeiture of \$25,000 or less in a felony case. Basing the appeal on the amount in controversy would send the appeal to the appellate division of the superior court. Before unification, however, an

appeal from bail forfeiture of \$25,000 or less in a felony case after the legal commitment by a magistrate went to the court of appeal.

Mr. Nuñez disagrees that there would be an unconstitutional removal of the appellate jurisdiction of the court of appeal. He points out that any appeal of the underlying criminal case would still go to the court of appeal. Exhibit pp. 7-8.

However, the constitutionality of removing a *civil bail forfeiture appeal*, not an appeal of the underlying criminal case, is what is at issue. As Mr. Nuñez recognizes, a bail forfeiture proceeding is separate and distinct from the criminal action. See Exhibit pp. 7-9. Thus, regardless of the appeal path of the underlying criminal case, removing the civil bail forfeiture case from the appellate jurisdiction of the court of appeal would be unconstitutional. See Cal. Const. art. VI, § 11(a).

#### *The California Supreme Court Decision in Newman*

In support of his argument that appellate jurisdiction should be based on the amount in controversy, Mr. Nuñez again discusses the California Supreme Court's decision in *Newman v. Superior Court*, 67 Cal. 2d 620, 432 P.2d 972, 63 Cal. Rptr. 284 (1967). See Exhibit pp. 5-6; see also CLRC Memorandum 2007-22, Exhibit pp. 3-6. He explains that this discussion of *Newman* shows that "the Supreme Court was aware that in the purely civil aspect of the forfeiture proceeding, jurisdiction is determined by the amount in controversy." Exhibit p. 6.

The staff disagrees with that characterization of *Newman*. In fact, the case 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 appeals from such an order." *Newman*, 67 Cal. 2d at 623 (1967). Citing *Newman* and various former constitutional and statutory provisions, the Sixth District Court of Appeal recently observed:

Before unification, bond forfeiture ordered by the municipal court was appealed to the appellate department of the superior court and forfeiture ordered by the superior court was appealed to the court of appeal, regardless of the amount of the bond. *This was true despite the civil nature of bail bond proceedings.*

*People v. Ranger Ins. Co.*, 2007 WL 2175059 at \*2 n.5 (citations omitted) (emphasis added) (unpublished opinion).

To aid understanding of Mr. Nuñez’s discussion of *Newman*, however, a brief review of bail forfeiture proceedings is helpful. (For more background on bail forfeiture, see CLRC Memorandum 2007-14 pp. 2-4; Tentative Recommendation at 1 n.2.). Bail forfeiture occurs in two steps. The first step occurs when the defendant fails to appear, and the court orders bail forfeited. That starts an “appearance period.” If the defendant appears during that period, the surety does not have to pay the bail. If the defendant does not appear during that time, the second step occurs: Bail is actually forfeited, i.e., the court enters summary judgment of bail forfeiture, ordering the surety to pay the bail. See Penal Code §§ 1305-1306.

Mr. Nuñez states that the *Newman* Court was “aware” that the amount in controversy could determine jurisdiction. However, any such awareness was limited to jurisdiction to enter a *summary judgment* of bail forfeiture (the second step), as even at the time of *Newman*, any court could *declare forfeiture* (the first step), regardless of the amount in controversy. See former Penal Code § 1306; Penal Code § 1305; *Newman*, 67 Cal. 2d at 622-23.

Moreover, the rule with regard to entry of summary judgment was changed long before unification. The Legislature, in 1977, authorized *any* court to enter the summary judgment, regardless of the amount of bail. See 1977 Cal. Stat. ch. 889, § 3.5 (former Penal Code section 1306); see also CLRC Memorandum 2007-14, p. 6; CLRC Memorandum 2007-22, pp. 2-3.

Thus, since 1977, the pre-unification path of *all* bail forfeiture appeals definitively had nothing to do with the amount of bail.

### *Policy*

Mr. Nuñez reemphasizes that bail forfeiture appeals should be determined by the amount in controversy for policy reasons. See Exhibit p. 9; 2007 CLRC Memorandum, Exhibit p. 8. He argues that the Legislature has determined that cases involving property claims should be allocated by the amount of property involved. See *id.*

As explained above, however, the same is not true for bail forfeiture appeals. Moreover, basing appellate jurisdiction of bail forfeiture on the amount in controversy would go against a key policy behind unification, embodied in the California Constitution, not to disturb the workload balance of the courts nor remove cases from the appellate jurisdiction of the court of appeal. See Cal. Const. art. VI, § 11.

### *Recommendation*

For the reasons explained above, **the staff recommends that the Commission stick with its decision to preserve the pre-unification bail forfeiture appeal path**, which was not based on the amount of bail.

### **Constitutional Issues**

Comments raised constitutional issues relating to: (1) due process, (2) equal protection, and (3) the right to bail. Those points are discussed separately below.

#### *Due Process*

Two Jinn and Golden State Bail Agents argue that the proposal would limit the due process rights of bail forfeiture litigants. See Exhibit pp. 11-12 (Golden State Bail Agents), pp. 13-14 (Two Jinn).

The staff disagrees. “Due process does not require any particular form of notice or method of procedure.” *Drummey v. State Bd. of Funeral Dirs. & Embalmers*, 13 Cal. 2d 75, 80, 87 P.2d 848 (1939) (emphasis added); see also *In re Parker*, 60 Cal. App. 4th 1453, 1462, 71 Cal. Rptr. 2d 167 (1998). Furthermore,

The due process clause does not guarantee to the citizen of a state any particular form or method of state procedure. Under it he may neither claim a right to trial by jury nor a right of appeal. Its requirements are satisfied if he has reasonable notice and reasonable opportunity to be heard and to present his claim or defense ....

*Dohany v. Rogers*, 281 U.S. 362, 369 (1930) (citations omitted).

#### *Equal Protection*

Mr. Nuñez reiterates his argument that differential treatment of civil litigants raises a constitutional concern. See Exhibit p. 8; CLRC Memorandum 2007-22, Exhibit p. 8. He adds that preserving pre-unification procedures is not a reasonable goal because municipal courts no longer exist. See Exhibit p. 8.

The staff disagrees. Like other Commission work on trial court unification, the proposal aims to implement unification so as not to disrupt the appellate jurisdiction of the court of appeal, nor the workload balance of handling appeals. The constitutional safeguard of the historic appellate jurisdiction of the court of appeal underscores the reasonableness of these goals. See Cal. Const. art. VI, § 11.

Furthermore, the Legislature may prescribe different procedures to different litigants. After pronouncing that due process does not guarantee any particular procedure, the United States Supreme Court stated:

Nor does the equal protection clause require exact uniformity of procedure. *The Legislature may classify litigation and adopt one type of procedure for one class and a different type for another.*

*Dohany v. Rogers*, 281 U.S. 362, 369 (1930) (emphasis added).

#### *Right to Bail*

Golden State Bail Agents argues that the proposal will increase peer review at the superior court level, causing fewer reversals. See Exhibit p. 11. Golden State Bail Agents claims that a lower reversal rate will cause the cost of getting bail to rise, interfering with the constitutional right to bail. See Exhibit p. 12.

The staff disagrees. First, the commenter has provided no evidence, nor is the staff aware of any, that review at the superior court level results in fewer reversals.

Second, the proposal is not intended to increase the proportion of bail forfeiture appeals heard by the appellate division of the superior court. To the contrary, the proposal seeks to *maintain the pre-unification workload balance of appeals*.

Third, the federal and state constitutions prohibit the *setting* of bail at an excessive amount. See U.S. Const. amend. XIII; Cal. Const. art. I, § 12(c); see also 7 B. Witkin, *California Criminal Law Pretrial Proceedings* § 90, at 289-290 (3d. ed. 2000 & 2007 Supp.). Thus, the constitutional protection extends to the amount of bail that may be set, not the cost of obtaining a surety for bail. *Id.* Therefore, assuming *arguendo* that the proposal would cause fewer reversals and make it more expensive to obtain a bail surety, it nevertheless appears that such greater expense would not contravene the Constitution's protection from excessive bail.

#### *Recommendation*

The staff disagrees that the proposal raises concerns relating to due process, equal protection, or the right to bail. Accordingly, the staff recommends **no change to the proposal in response to comments on those issues**.

#### **Confuses Rather than Clarifies**

Mr. Nuñez states that the proposal confuses rather than clarifies because there are always variables in determining the charge or the stage of the

proceeding. See Exhibit p. 8. He argues that it would be simpler to base the appeal on the amount in controversy. See Exhibit p. 9.

Basing appeals on the amount in controversy might seem simple at first. However, the simplicity would be lost if an exception were carved out to preserve the constitutionally protected pre-unification appellate jurisdiction of the court of appeal. See Tentative Recommendation at 5. Legislation must comply with constitutional constraints. **In this context, that can best be achieved by preserving the pre-unification path of bail forfeiture appeals, as proposed in the tentative recommendation.**

#### MINOR DRAFTING ISSUE

One minor drafting issue should be addressed. Proposed Penal Code Section 1305.5(a)(1) would direct an appeal from forfeiture in a felony case at the sentencing hearing to the court of appeal. That provision should apply to any proceeding that may occur after a sentencing hearing, such as a remittitur following an appeal. **To clarify that the provision is to cover any proceeding that may occur after a sentencing hearing, the staff recommends revising the provision as follows:**

1305.5. Notwithstanding Sections 85, 580, 904.1, and 904.2 of the Code of Civil Procedure, if the people, a surety, or other person appeals from an order of the superior court on 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 forfeiture occurred at or after the sentencing hearing or after the indictment or the legal commitment by a magistrate, the appeal is to the court of appeal and it shall be treated as an unlimited civil case, regardless of the amount of bail.

....

The above change is reflected in the attached draft final recommendation. The staff recommends that **the Commission approve the draft to be submitted as a final recommendation.**

Respectfully submitted,

Catherine Bidart  
Staff Counsel



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October 31, 2007

Ms. Catherine Bidart  
Staff Counsel  
California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, California 94303-4739

Dear Ms. Bidart:

I am writing as staff counsel to the Judicial Council's Appellate Advisory Committee to convey that committee's support for the California Law Revision Commission's June 2007 tentative recommendation to clarify appellate jurisdiction in bail forfeiture proceedings.

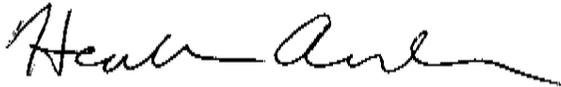
The Commission's tentative recommendation would clarify which court—the Court of Appeal or the appellate division of the superior court—has jurisdiction over appeals of bail forfeiture decisions. The Appellate Advisory Committee believes that clarifying this jurisdictional question should eliminate confusion and reduce disputes over this issue, making such appeals easier for both litigants and the courts.

The Appellate Advisory Committee also believes that, consistent with both the California Constitution and the Commission's historic approach to unification, the tentative recommendation would appropriately assign jurisdiction so that responsibilities for these appeals are allocated between the Court of Appeal and superior court appellate division in the same way as they were before unification of the municipal and superior courts. The committee agrees with the general principles that the Commission has used to guide this tentative recommendation, including ensuring that the Court of Appeal continues to have jurisdiction over cases historically within its appellate jurisdiction and that the respective workloads of the Court of Appeal and appellate division are left intact. These principles are grounded in Article VI, section 11 of the California Constitution, which provides that "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."

Ms. Catherine Bidart  
California Law Revision Commission  
October 31, 2007  
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Thank you for the opportunity to comment on this tentative recommendation and please feel free to contact me if you have any questions about the committee's position on this recommendation.

Sincerely,



Heather Anderson  
Committee Counsel

HA/cf

SEP 21 2007

File: \_\_\_\_\_

September 19, 2007

California Law Revision Commission  
4000 Middlefield Rd. Rm. D-1  
Palo Alto, CA 94303-4739

Re: Comment on Memorandum 2007-22, Trial Court  
Restructuring: Appellate Jurisdiction of Bail Forfeiture

Dear Commission Members:

I had previously commented on Memorandum 2007-14 (Study J-1450) regarding appellate jurisdiction in bail forfeiture cases. My comment generated a response from staff attorney Catherine Bidart in the form of Memorandum 2007-22, on which I now comment.

### **Court Uniformity**

Citing three isolated cases, Ms. Bidart states that clarification of appellate jurisdiction is underscored by the fact that there have been some instances in which appeals involving amounts under \$25,000 have landed in the court of appeal instead of the appellate department of the superior court. Such instances could very well have been inadvertent, either because the attorney filing the notice of appeal erroneously directed it to the wrong court for filing or because the clerk failed to note that the amount in controversy invoked the jurisdiction of a different court. The fact is that the vast majority of appeals our office has filed since court unification have been directed to the proper court based on the jurisdictional and monetary limit as provided in sections 85, 904.1 and 904.2 of the Code of Civil Procedure. Moreover, courts throughout California, except those in Santa Clara County, have been using the same statutory criteria in determining appellate jurisdiction since unification, routing appeals involving amounts of \$25,000 or less to the appellate division and those in excess of \$25,000 to the court of appeal.

The problem arises from the failure to accept the defining distinction that a bail forfeiture proceeding is civil. A long line of authority establishes the civil nature of a bail forfeiture proceeding. *People v. Wilcox*, 53 Cal.2d 651, 654-655 (1960); *Newman v. Superior Court*, 67 Cal.2d 620, 625 (1967); *People v. Doe*, 172 Cal.App.2d Supp. 812, 815 (1959); *People v. Walling*, 195 Cal.App.2d 640, 649 (1961); *People v. Meidell*, 220 Cal.App.2d 105, 107 (1963); *People v. Hadley*, 257 Cal.App.2d Supp. 871, 877 (1967); *People v. United Bonding Ins. Co.*,

272 Cal.App.2d 441, 442 (1969); *People v. Surety Ins. Co.*, 18 Cal. App.3d Supp. 1, 4 (1971); *People v. Surety Ins. Co.*, 48 Cal.App.3d 123, 126 (1975); *People v. Argonaut Ins. Co.*, 71 Cal.App.2d 441, 442 (1969); *People v. Surety Ins. Co.*, 18 Cal. App.3d Supp. 1, 4 (1971); *People v. Surety Ins. Co.*, 48 Cal.App.3d 123, 126 (1975); *People v. Argonaut Ins. Co.*, 71 Cal.App.3d 994, 997 (1977); *County of Sacramento v. Ins. Co. of the West*, 139 Cal. App.3d 561, 565 (1983); *People v. Sue Sarkis Bail Bonds*, 182 Cal.App.3d 650, 653 (1986); *City of Los Angeles v. County of Los Angeles*, 216 Cal.App.3d 916, 923 (1989); *County of Orange v. Classified Ins. Corp.*, 218 Cal.App.3d 555, 557 (1990); *People v. Accredited Surety & Cas. Co.*, 74 Cal.App.4th 1037, 1049 (1999); *People v. Accredited Surety & Cas. Co.*, 125 Cal.App.4th 1, 8 (2004); *People v. Accredited Surety & Cas. Co.*, 132 Cal.App.4th 1134, 1138 (2004). In a decision more recent than *Wilcox* and *Newman*, the Supreme Court again spoke of the civil nature of a bail forfeiture proceeding and made it even clearer:

While bail bond proceedings occur in connection with criminal prosecutions, they are independent from and collateral to the prosecutions and are civil in nature. [Citation.] . . . the ‘bail bond is a **contract** between the surety and the government whereby the surety acts as a guarantor of the defendant’s appearance in court under the risk of forfeiture of the bond.’ [Citations.] *People v. American Contractors Indemnity Co.*, 33 Cal.4th 653, 657 (2004), emphasis supplied.

In short, bail bond proceedings are a **contract** between the surety and the state. The contract has nothing to do with the character and processing of the criminal charge, that is, whether it is a felony or misdemeanor and whether the prosecution is at one stage or the other, such as before or after preliminary examination. This is what independent means. The bail bond aspect of a criminal case is a civil proceeding, period. It is tied to the criminal case only because the bond is guaranteeing the defendant’s appearance. If a bonded defendant fails to appear and the bail is declared forfeited, the proceedings to determine the liability of the surety are purely civil. That liability is predicated on the breach (failure of defendant to appear) and is defined by the amount of the bond. As with any other breach of contract, the only matter to be determined is whether the surety is liable and the amount of the liability. Whether the criminal charge is a felony or misdemeanor or whether the criminal case is in the pre- or post-preliminary examination stage is completely irrelevant to the surety’s civil liability on the bail bond.

Ms. Bidart dismisses the Supreme Court’s analysis in *Newman* as moot due to a 1977 statutory amendment that allowed the court that declared the forfeiture to enter the summary judgment, regardless of the amount of the bail. Ms. Bidart misses the point.

In *Newman*, the Supreme Court was considering the question whether the municipal court had jurisdiction to **declare** a bail forfeiture where the defendant failed to appear for preliminary examination in a felony case where bail was \$16,500, an amount otherwise beyond the jurisdiction of the municipal court at that time. The performance of the defendant in the criminal case is, of course, within the jurisdiction of the court in which he is required to appear. Under the former structure of the courts, if the case was in the preliminary examination stage in the municipal court, it is manifestly clear that such court had jurisdiction to declare a bail forfeiture upon a defendant's failure to appear. That is precisely what occurred in the *Newman* case, the municipal court declared a forfeiture when the defendant failed to appear.

The problem arose when the surety's agent's motion to set aside the forfeiture was denied by the municipal court and he took an appeal to the appellate department. The appellate department, noting that the amount of the bail exceeded its jurisdiction, declined to entertain it, and the agent then sued a writ of mandate to compel the appellate department to entertain the appeal. The order of forfeiture is in the nature of an order to show cause and does not establish liability on the part of the surety. *People v. Surety Ins. Co.*, 82 Cal.App.3d 229, 236-237 (1978). Nevertheless, the validity of such order is subject to contest, if a motion to set it aside is granted or denied. Pen. Code §1308; *People v. Wilcox*, 53 Cal.2d 651, *supra* at 654-655. Thus, if the municipal court had jurisdiction to declare the forfeiture, the appellate department had jurisdiction to determine an appeal from an order denying a motion to set aside the forfeiture. This is what the *Newman* court held, that the **declaration of forfeiture** could be made by the municipal court despite the fact that the amount of the bail otherwise exceeded the jurisdiction of a municipal court in a civil case. *Newman v. Superior Court*, 67 Cal.2d 620, *supra* at 622.

However, the court pointed out that entry of the money judgment for the amount of the bond could only be entered by the court with jurisdiction to do so. *Ibid*. In other words, if the amount of the bond exceeded the jurisdiction of the municipal court, it could not enter the money judgment, as only the superior court would have jurisdiction to do so. This is the chief purpose for citing the *Newman* case in my comments, to assert that even under the former scheme, the Supreme Court was aware that in the purely civil aspect of the forfeiture proceeding, jurisdiction is determined by the amount in controversy.

The juggling of cases to determine which court would enter judgment apparently created enough confusion that the Legislature, as Ms. Bidart points out, amended Penal Code section 1306 some ten years after *Newman* to provide that the court that declared the forfeiture could enter the summary judgment regardless of the amount of bail. That amendment, to be sure, was addressing a problem that existed only so long as there were two courts, municipal and superior. It addressed a problem at the trial court level and had nothing to do with appellate jurisdiction.

In retrospect, the 1977 amendment was an aberration. That no one ever attacked the legislation as discriminating against a class of civil litigants without just or reasonable basis is almost incomprehensible. Time, however, has cured the aberration. The elimination of municipal courts and ensuing unification into a single superior court rendered the 1977 amendment *apropos*, since there is only one court now, a superior court, that declares the forfeiture and renders summary judgment. The confusion the 1977 amendment intended to clear up has now been cleared up by the unification of the courts. Regardless of the character of the charge (felony or misdemeanor) or the stage of the proceedings (before or after preliminary examination), the criminal case is before a unified superior court for purposes of processing the criminal case. If a defendant fails to appear and bail must be declared forfeited, the single superior court has power to do so. It likewise has power to enter the money judgment.

Court uniformity is inherent in the treatment of bail forfeiture controversies as civil. It has been held:

A bail forfeiture proceeding is a special proceeding, civil in nature, and governed by the rules which govern *all civil appeals*. [Citation.] ***Such a judgment is like any other civil judgment.*** We note, for example, that like any other civil money judgment, a bail bond forfeiture judgment draws post-judgment interest. [Citation.] And, enforcement of such a judgment is stayed only if an appeal bond is posted. [Citation.] *County of Orange v. Classified Ins. Corp.*, 218 Cal.App.3d 555, 557 (1990), emphasis supplied.

If the rules that govern all civil appeals also govern bail forfeiture proceedings, then the uniform thing is to determine appellate jurisdiction under the same rules applicable to all civil appeals. The Code of Civil Procedure lays down very clear, crisp and concise rules for appellate jurisdiction in civil cases. Code Civ. Pro. §§85, 904.1, 904.2. The proposed legislation to set different rules for appellate jurisdiction in bail forfeiture cases for no good reason but simply to accommodate the few courts that have resisted the changes brought about by court unification or to accommodate their outdated procedures is by no means a step in the direction of court uniformity.

### **Constitutionality**

By raising the specter of unconstitutionality, Ms. Bidart betrays that she is likewise culpable of failing to regard bail forfeiture proceedings as civil and completely separate from the criminal prosecution. She argues (p. 3) that it would be unconstitutional to apply civil appellate

rules to bail forfeiture appeals because courts of appeal would be deprived of jurisdiction where the charge is a felony but the bail is under \$25,000 (an unlikely occurrence, by the way). That is absolutely not true, if Ms. Bidart is under the impression that an appeal from the felony conviction or some other aspect of the felony prosecution is swept into the appellate division of some superior court simply because the surety is litigating the validity of a forfeiture under \$25,000. Independent and separate means just that, independent and separate. The bail forfeiture proceeding is completely *separate* from the criminal action. Thus, if the amount in controversy in the bail forfeiture proceeding is under \$25,000 and an appeal is taken, only the bail issues go to the appellate court. The appeal does not concern the criminal prosecution, and the criminal case remains in the superior court. If the felony defendant were to reappear, even while the appeal was in progress, the superior court has complete jurisdiction to continue with the prosecution, and if he is convicted and an appeal is taken, the appeal from the felony conviction would go to the court of appeal. The court of appeal would not be deprived of jurisdiction. Moreover, there would be no need to amend the appellate rules to provide an exception for bail forfeiture appeals in a felony case where bail was under \$25,000. Again, only the civil issues relating to the bail forfeiture go to the appellate court, because the bail forfeiture proceeding is a completely separate civil proceeding that has nothing to do with issues concerning the criminal prosecution.

If there is a constitutionality issue, it is the differential treatment of a class of litigants for no other reason than to accommodate the courts of Santa Clara County. Preserving pre-unification procedures is not a reasonable goal, when there are no longer municipal and superior courts and there is no longer the need to determine which *trial* court has jurisdiction to declare forfeiture and enter summary judgment. That was the sole reason for the pre-unification procedures, the existence of two different courts. With a single superior court, there is no longer any question but the single court can declare forfeiture and enter judgment. Appellate jurisdiction, however, must be determined in accordance with the rules that apply to all civil appeals, which are the Code of Civil Procedure provisions that establish the monetary limit for jurisdiction.

### **Proposed Legislation Confuses Rather Than Clarifies Appellate Jurisdiction**

The Commission's proposed legislation to clarify appellate jurisdiction in bail forfeiture proceedings will create confusion where none presently exists. For example, Ms. Bidart's memorandum identifies yet another scenario where forfeiture of bail could have occurred before unification, at sentencing of a felony defendant before filing of an information. Memorandum, p. 6. After stating that appellate jurisdiction could be in either the appellate division or the court of appeal, Ms. Bidart frankly admits that it is difficult to craft legislation that tracks the pre-unification path. *Ibid.* That will be the problem in every case, if one has to determine the charge or the stage of the criminal proceeding. There are always variables in such an exercise.

On the other hand, if one recognizes that bail forfeiture proceedings are, as the Supreme Court has held, independent from and collateral to the criminal prosecution and civil in nature, there will be no such problem. The proceeding is always civil and separate, and the same rules that apply to all civil appeals. With respect to appellate jurisdiction, the rule is very simple. If the amount in controversy is \$25,000 or less, the appeal is to the appellate division of the superior court. Otherwise, the appeal is to the court of appeal. Neither the nature of the criminal charge nor the stage of the criminal proceedings has anything to do with the civil appeal relating to the bail forfeiture. The determination of appellate jurisdiction as in any other civil appeal will always be a constant and invariable exercise that will depend solely on the amount in controversy in each case.

### **Even Application of Appellate Rules**

Ms. Bidart disparages the call for a policy that applies the rules even-handedly to all litigants, including bail sureties and their indemnitors. Memorandum, p. 3. The Legislature, in its wisdom, and not this writer or any litigant, determined that the proper means of protecting persons and their property is by setting a monetary level at which recourse is to a lower or a higher court. Even the courts have recognized that in bail forfeiture proceedings the statutory scheme should protect those who stand to lose their property:

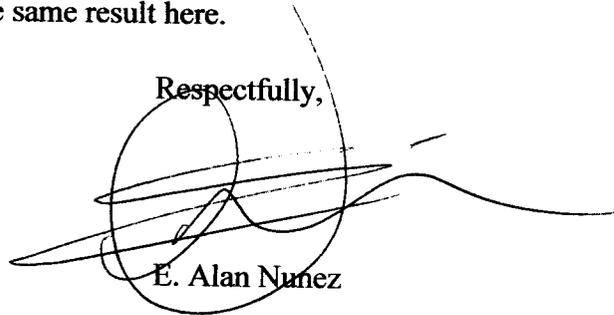
In adopting a rule of strict construction the courts' concern is not so much for the bail bond companies, to whom forfeiture is an everyday risk of doing business, but for those who bear the ultimate weight of the forfeiture, family members and friends who have pledged their homes and other financial assets to the bonding companies to secure the defendant's release. *County of Los Angeles v. American Contractors Indemnity Co.*, 152 Cal.App.4th 661, 666 (2007).

Protecting the innocent parties who stand at the end of the line of liability is not a policy to be disparaged. Such a policy is the ilk on which our notions of justice are built. There is not a one of us who, standing in a fray that could cost us a penny more than \$25,000, would not prefer to be treated the same as any other civil litigant with the right to recourse in the court of appeal. Neither should this Commission or any legislation condemn bail sureties and their indemnitors to an unequal treatment under the law on the basis of criminal action distinctions (such as felony or misdemeanor, before or after preliminary examination) that have absolutely no relation to a bail controversy to determine civil liability.

**Conclusion**

The present statutory scheme for appellate jurisdiction in bail forfeiture controversies has been in place and running smoothly for a number years. Only the courts of Santa Clara County have been heard to complain that the new framework does not fit their prehistoric procedures. Bail forfeiture controversies are clearly civil proceedings, and the law is likewise patently clear that the rules applicable to civil appeals apply to bail cases as well. Santa Clara County courts are asking this Commission for preferential treatment that will legitimize their ancient procedures to the detriment of all other courts in the state that have smoothly transitioned and adapted to post-unification procedures in the handling of bail forfeiture appeals. Were any party or entity before the Commission making a similar request, there can be no doubt that it would be roundly rejected. Justice and fairness require the same result here.

Respectfully,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right. The signature is positioned above the printed name "E. Alan Nunez".

E. Alan Nunez

EAN:man

cc: Catherine Bidart





Via Facsimile: (650) 494-1827 and Federal Express: 8391 4584 4620

September 20, 2007

California Law Review Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

**Re: Comment on Memorandum 2007-22  
Appellate Jurisdiction of Bail Bond Forfeitures**

Dear Commission Members:

The California Supreme Court recently held that:

“While bail bond proceedings occur in connection with criminal prosecutions, they are independent from and collateral to the prosecutions and are civil in nature.” (People v. American Contractors Indemnity Co. (2004) 33 Cal.4<sup>th</sup> 653, 657, emphasis added)

Therefore, the subject matter jurisdiction of bail bond forfeiture proceedings should be determined as any other civil action would be, based on the amount in controversy. (CCP §85(a) and 88)

The commission’s proposal is inequitable because it treats bail forfeiture litigation as the illegitimate step child of the civil litigation system. The amounts in controversy in bail forfeiture cases do not change based on when the forfeiture occurs. Under the commission’s proposal a forfeiture that is issued by the limited court prior to preliminary hearing would be treated as a limited civil case regardless of the amount in controversy. This will restrict the bail industry’s due process rights because the right to appeal the trial courts decision would be limited to the appellate department of the superior court. It is common knowledge that appellate departments of the superior courts are less independent than the district courts of appeal and are less likely to overrule their fellow judges that they work and socialize with daily.

This is especially troubling given the fact that California’s bail schedules are the highest in the nation and therefore the amounts in controversy in these limited cases could be in the hundreds of thousands or even millions of dollars. OJ Simpson’s recent \$125,000 bail in Las Vegas, Nevada is illustrative of this point. Pursuant to the Los Angeles County Bail Schedule, Mr. Simpson’s bail would have been \$500,000 on the kidnapping charge alone if he had committed that offense in Los Angeles County. Even more

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common offenses such as spousal abuse and terrorist threats carry bails of \$50,000 each in Los Angeles County.

Furthermore, the commission's proposal would increase the cost of bail because the bail industry will lose more bail forfeiture cases and will pass along these costs to the indemnitors on the bail bonds. The defendant's family and friends indemnify the bail bond companies against losses associated with the defendant's bail bond. As bail companies lose more forfeiture cases due to restrictions on their due process rights, they will be forced to recover these losses by foreclosing on the indemnitor's real property and/or initiating civil litigation against the indemnitors to reimburse them for payment of the forfeiture. Additionally, bail companies will be forced to tighten their underwriting procedures thereby making fewer defendants eligible for bail.

The right to bail is guaranteed by Article I, Section 12 of the California Constitution and the Eighth Amendment of the U.S. Constitution. The framers included the right to bail because they understood that unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning. The right to bail permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. However, the right to bail is of little consequence if no one can afford it.

Finally, the commission's proposal would also be harmful to counties because their rights to appeal adverse bail forfeiture rulings would also be limited to the appellate departments of the superior courts.

For the reasons stated above, the commission should drop their proposal and stop entertaining the unreasonable and stubborn demands of Santa Clara County to preserve their archaic bail forfeiture procedures.

Sincerely,



Albert W. Ramirez, Secretary  
Golden State Bail Agents Association

cc: Catherine Bidart, Staff Counsel  
Via Facsimile: (916) 739-7382 and Email: [cbidart@clrc.ca.gov](mailto:cbidart@clrc.ca.gov)



Via Facsimile: (650) 494-1827

September 21, 2007

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

Re: Comment on Memorandum 2007-22  
Appellate Jurisdiction of Bail Bond Forfeitures

Dear Commission Members:

I am writing on behalf of Two Jinn Inc., dba Aladdin Bail Bonds, to voice our opposition to the proposal currently before the commission. We strongly feel that bail forfeiture litigation should be treated the same way as any other civil action. It is well established in case law that, “[w]hile bail bond proceedings occur in connection with criminal prosecutions, they are independent from and collateral to the prosecutions and are civil in nature.” (See *People v. American Contractors Indemnity Co.* (2004) 33 Cal.4<sup>th</sup> 653, 657. Emphasis added.) Accordingly, we strongly object to any rule that limits the due process rights of bail forfeiture litigants.

The commission’s proposal unfairly singles out bail forfeiture litigants as somehow not worthy of the same appellate review available to other civil litigants. As set forth in California Civil Code of Procedure §§ 85(a) and 88, the subject matter jurisdiction of any civil case should be determined on the amount in controversy. If adopted, the commission’s proposal would unnecessarily establish new appellate procedures that would solely target bail forfeiture litigants and effectively hinder their ability to seek appellate review as provided by current statutes.

There is no justifiable reason why the due process rights of bail forfeiture litigants should be curtailed by this proposal. Therefore, we sincerely urge the commission to maintain due process equality among civil litigants and **not** approve the proposal.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Robert Tomlin White', with a long horizontal flourish extending to the right.

Robert Tomlin White  
Associate General Counsel  
Two Jinn Inc., dba Aladdin Bail Bonds

cc: Catherine Bidart, Staff Counsel  
Via email: [cbidart@clrc.ca.gov](mailto:cbidart@clrc.ca.gov)

#J-1450

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

**STAFF DRAFT**

RECOMMENDATION

**Trial Court Restructuring:  
Appellate Jurisdiction of Bail Forfeiture**

December 2007

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739  
650-494-1335  
<commission@clrc.ca.gov>

## SUMMARY OF RECOMMENDATION

In the past decade, the trial court system has been dramatically restructured, necessitating revision of hundreds of code provisions. As a result of trial court restructuring and related amendments to provisions on civil procedure, jurisdiction of a bail forfeiture appeal became unclear.

In this tentative recommendation, the Commission proposes legislation that would clarify jurisdiction of a bail forfeiture appeal. The proposed legislation would require such an appeal to be handled as it was before unification of the municipal and superior courts. The proposal to preserve pre-unification procedures is consistent with previous work by the Commission and previous legislation on trial court restructuring.

The Commission solicits public comment on the proposal.

The Commission is continuing its work on trial court restructuring and plans to address other subjects in future recommendations.

This recommendation was prepared pursuant to Government Code Section 71674.

## TRIAL COURT RESTRUCTURING: APPELLATE JURISDICTION OF BAIL FORFEITURE

1       When a criminal defendant has been released on bail<sup>1</sup> and then fails to appear in  
2       court when required, the bail may subsequently be forfeited according to a  
3       statutory procedure.<sup>2</sup> An order relating to bail forfeiture may be appealed.<sup>3</sup> Due to  
4       recent restructuring of the trial court system, some confusion exists regarding  
5       when such an appeal is to be filed in the court of appeal and when such an appeal  
6       is to be filed in the appellate division of the superior court.<sup>4</sup>

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1. Bail may be posted by a surety, contracting with the government to either secure the defendant's presence when lawfully required or forfeit bail. Penal Code §§ 1268-1269, 1276, 1276.5, 1287, 1458-1459; *People v. Am. Contractors Indem. Co.*, 33 Cal. 4th 653, 657, 93 P.3d 1020, 16 Cal. Rptr. 3d 76 (2004) (citing *People v. Ranger Ins. Co.*, 31 Cal. App. 4th 13, 22, 36 Cal. Rptr. 2d 807 (1994)).

2. See Penal Code §§ 1305-1306. If the defendant fails to appear when lawfully required (for example, for arraignment, trial, judgment, etc.), "without sufficient excuse," a court must declare the bail forfeited (hereafter, a "bail forfeiture declaration order"). Penal Code § 1305(a). The bail forfeiture declaration order is not an actual forfeiture, but an initial step in forfeiture proceedings. *People v. Sur. Ins. Co.*, 82 Cal. App. 3d 229, 236-37, 147 Cal. Rptr. 65 (1978). Following the bail forfeiture declaration order, the surety is given notice of the defendant's absence. Penal Code § 1305(b) (notice required for deposits over \$400). If the surety secures the defendant's presence within a 180-day period, the court must vacate the bail forfeiture declaration order. Penal Code § 1305(c). However, if the defendant fails to appear without sufficient excuse, the court must enter summary judgment against the surety (hereafter, "bail forfeiture summary judgment"). 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). For further detail on bail forfeiture procedures, see *People v. Int'l Fid. Ins. Co.*, 151 Cal. App. 4th 1056, 60 Cal. Rptr. 3d 355 (2007).

3. A bail forfeiture declaration order may be challenged by a motion to vacate. See Penal Code § 1305; *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 vacate the bail forfeiture declaration order may be appealed. *People v. Wilcox*, 53 Cal. 2d 651, 654-55, 349 P. 2d 522, 2 Cal. Rptr. 754 (1960) (citing Code Civ. Proc. § 963 and *Howe v. Key Sys. Transit Co.*, 198 Cal. 525, 531, 246 P. 39 (1926)).

A bail forfeiture summary judgment against the surety is a consent judgment. See *Am. Contractors*, 33 Cal. 4th at 663-64. When the judgment is voidable because it was improperly entered, the judgment may be challenged by an appeal or a motion to set aside the order. *Id.* at 663-65; see also *People v. Allegheny Cas. Co.*, 41 Cal. 4th 704, 716 n.7, 161 P.3d 198, 61 Cal. Rptr. 3d 689 (2007).

An order relating to bail forfeiture may also be challenged by an extraordinary writ. See, e.g., *Newman v. Superior Court*, 67 Cal. 2d 620, 621, 432 P.2d 972, 63 Cal. Rptr. 284 (1967) (issuing writ of mandate). Because the jurisdiction of an extraordinary writ tracks appellate jurisdiction, there is no need for a special provision regarding a challenge in the form of an extraordinary writ. See Cal. Const. art. VI, § 10 ("The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction."); Code of Civil Procedure §§ 85, 904.1, 904.2, 1068(b), 1085(b), 1103(b).

4. See *People v. Ranger Ins. Co.*, 2007 WL 2175059 at \*2 n.5 (6th Dist.) (unpublished decision) ("After unification ... the proper appellate path of bail bond forfeiture proceedings ... seems unclear and is in need of legislative clarification."); Letter from Alex Cerul to California Law Revision Commission (October 5, 2006) (Commission Staff Memorandum 2007-14 (April 18, 2007), Exhibit pp. 1-4 (available from the Commission, [www.clrc.ca.gov](http://www.clrc.ca.gov))).

1 The Law Revision Commission is responsible for recommending revisions to  
 2 the codes to implement trial court restructuring.<sup>5</sup> The Commission recommends  
 3 that legislation be enacted to clarify the appellate jurisdiction of bail forfeiture  
 4 cases.

5 Throughout the process of implementing trial court restructuring, the  
 6 Commission has been careful not to make any substantive change, other than  
 7 adjusting a provision to account for unification.<sup>6</sup> This tentative recommendation  
 8 continues that practice by recommending legislation that would preserve the pre-  
 9 unification path of bail forfeiture appeals.

### 10 **Trial Court Unification**

11 One of the trial court restructuring reforms was unification of the trial courts.  
 12 The process of trial court unification began in 1998 after California voters  
 13 approved a measure permitting the municipal and superior courts in each county to  
 14 unify.<sup>7</sup> The same year, the codes were revised on Commission recommendation to  
 15 accommodate unification, i.e., to make the statutes workable in a county in which  
 16 the municipal and superior courts decided to unify.<sup>8</sup>

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5. Gov't Code § 71674. The Commission has recommended revisions to hundreds of code provisions in response to this directive. Almost all of the recommended reforms have been enacted. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51 (1998) (hereafter, *Revision of Codes*), implemented by 1998 Cal. Stat. ch. 931; 1999 Cal. Stat. ch. 344; *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999 (Senate Bill 210)*, 29 Cal. L. Revision Comm'n Reports 657 (1999) (hereafter, *Report on Chapter 344*), implemented by 1999 Cal. Stat. ch. 344; *Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm'n Reports 1 (2002) (hereafter, *Trial Court Restructuring: Part 1*), implemented by 2002 Cal. Stat. ch. 784 & ACA 15, approved by the voters Nov. 5, 2002 (Proposition 48); *Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm'n Reports 169 (2003) (hereafter, *Trial Court Restructuring: Part 2*), implemented by 2003 Cal. Stat. ch. 149; *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm'n Reports 305 (2006), implemented by 2007 Cal. Stat. ch. 43.

This directive to revise the codes follows an earlier legislative assignment in which the Commission made recommendations on the constitutional revisions necessary to implement trial court unification. See *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1 (hereafter, *Constitutional Revision*); *Trial Court Unification: Transitional Provisions for SCA 3*, 24 Cal. L. Revision Comm'n Reports 627 (1994).

6. See *Revision of Codes*, *supra* note 5, at 60; *Constitutional Revision*, *supra* note 5, at 18-19, 28.

7. The measure permitted the municipal and superior courts in each county to unify on a majority vote by the municipal court judges and a majority vote by the superior court judges in the county. Former Cal. Const. art. VI, § 5(e); 1996 Cal. Stat. res. ch. 36 (SCA 4), approved by the voters June 2, 1998 (Proposition 220).

Other major trial court restructuring reforms were:

- State, instead of local, funding of trial court operations. See 1997 Cal. Stat. ch. 850; Gov't Code §§ 77000-77655.
- Enactment of the Trial Court Protection and Governance Act, which established a new personnel system for trial court employees. See 2000 Cal. Stat. ch. 1010; Gov't Code §§ 71600-71675.

8. *Revision of Codes*, *supra* note 5; see also 1999 Cal. Stat. ch. 344; *Report on Chapter 344*, *supra* note 5.

1 Three guiding principles were used in revising the codes and the Constitution to  
 2 accommodate unification. First, care was taken “to preserve existing rights and  
 3 procedures despite unification, with no disparity of treatment between a party  
 4 appearing in municipal court and a similarly situated party appearing in superior  
 5 court as a result of unification of the municipal and superior courts in the county.”<sup>9</sup>  
 6 Second, steps were taken to ensure that the court of appeal would continue to have  
 7 jurisdiction over cases historically within its appellate jurisdiction.<sup>10</sup> Third, efforts  
 8 were made to ensure that unification did not increase the workload of the courts of  
 9 appeal, but generally left intact the respective workloads of the courts of appeal  
 10 and appellate departments<sup>11</sup> of the superior courts.<sup>12</sup>

11 By 2001, the trial courts in each county had unified, and the municipal courts  
 12 were subsumed into a unified superior court.<sup>13</sup> Further revisions of the codes were  
 13 made on Commission recommendation in 2002 and 2003 to reflect that municipal  
 14 courts no longer existed.<sup>14</sup>

15 This recommendation addresses a matter, jurisdiction of bail forfeiture appeals,  
 16 which was recently identified as needing attention.<sup>15</sup> As before, the Commission  
 17 has tried to maintain the pre-unification procedural status quo, while making the  
 18 law workable in a unified court system.

#### 19 **Appellate Jurisdiction of Bail Forfeiture**

20 Jurisdiction of a bail forfeiture appeal became unclear after provisions on civil  
 21 procedure were amended to implement trial court unification. Even though a bail  
 22 forfeiture arises in a criminal case, it is a civil matter.<sup>16</sup> The provisions governing

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9. *Revision of Codes*, *supra* note 5, at 60; see also *Lempert v. Superior Court*, 112 Cal. App. 4th 1161, 1169, 5 Cal. Rptr. 3d 700 (2003); *Gen. Elec. Capital Auto Fin. Serv., Inc. v. Appellate Division of the Superior Court*, 88 Cal. App. 4th 136, 141, 105 Cal. Rptr. 2d 552 (2001).

10. See Cal. Const. art. VI, § 11(a); see also *People v. Nickerson*, 128 Cal. App. 4th 33, 38, 26 Cal. Rptr. 3d. 563 (2005) (“[T]rial court unification ... did not change the court to which cases were to be appealed.”).

11. The appellate department of the superior court was an entity created by statute. See former Code Civ. Proc. § 77 (1984 Cal. Stat. ch. 704). When unification on a county-by-county basis was approved by the voters in 1998, the appellate department was replaced by the appellate division of the superior court, an entity of constitutional dimension. See Cal. Const. art. VI, § 4; Code Civ. Proc. § 77; 1998 Cal. Stat. ch. 931, § 21; 2 B. Witkin, *California Procedure Courts* § 346, at 141 (4th ed. 2006 Supp.); *Constitutional Revision*, *supra* note 5, at 30-33. The Constitution requires the Chief Justice to “assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.” Cal. Const. art. VI, § 4.

12. *Constitutional Revision*, *supra* note 5, at 32; see also *Nickerson*, *supra* note 10.

13. The courts in Kings County were the last to unify, on February 8, 2001.

14. See *Trial Court Restructuring: Part 1*, *supra* note 5; *Trial Court Restructuring: Part 2*, *supra* note 5.

15. See *People v. Ranger Ins. Co.*, 2007 WL 2175059 at \*2 n.5 (6th Dist.) (unpublished decision), *supra* note 4; Letter from Alex Cerul, *supra* note 4.

16. See *People v. Am. Contractors Indem. Co.*, 33 Cal. 4th 653, 657, 93 P.3d 1020, 16 Cal. Rptr. 3d 76 (2004) (citing *People v. Wilcox*, 53 Cal. 2d 651, 654, 349 P. 2d 522, 2 Cal. Rptr. 754 (1960)). Consequently, certain rules, such as the time to file a notice of appeal, governing civil actions apply to a

1 jurisdiction of a civil appeal involving a monetary sum base jurisdiction on the  
 2 amount in controversy.<sup>17</sup> Before unification, however, jurisdiction of a bail  
 3 forfeiture appeal was not based on the amount in controversy, i.e., the amount of  
 4 bail.<sup>18</sup> Instead, it was determined by which court ordered the forfeiture.<sup>19</sup>  
 5 Forfeiture ordered by the municipal court was appealed to the appellate  
 6 department of the superior court.<sup>20</sup> Forfeiture ordered by the superior court was  
 7 appealed to the court of appeal.<sup>21</sup>

8 Since unification, a review of bail forfeiture appeals illustrates that courts are  
 9 confused over which rules apply.<sup>22</sup> Courts do not uniformly apply the provisions  
 10 governing the jurisdiction of civil appeals,<sup>23</sup> nor do they uniformly direct bail

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bail forfeiture appeal. *People v. United Bonding Ins. Co.*, 272 Cal. App. 2d 441, 442, 77 Cal. Rptr. 310 (1969) (civil rules for time to file notice of appeal apply to bail forfeiture case).

17. Code Civ. Proc. §§ 85 (limited civil case is generally one in which amount in controversy is not more than \$25,000), 904.1 (appeal of case other than limited civil case is to court of appeal), 904.2 (appeal of limited civil case is to appellate division of superior court).

18. *Newman v. Superior Court*, 67 Cal. 2d 620, 621-23, 432 P.2d 972, 63 Cal. Rptr. 284 (1967); see, e.g., *County of Los Angeles v. Am. Bankers Ins. Co.*, 202 Cal. App. 3d 1291, 1293, 1297, 249 Cal. Rptr. 540 (1988) (court of appeal heard bail forfeiture appeal involving failure to appear before superior court, even though bail amount was less than court of appeal's jurisdictional limit at that time).

19. *Newman*, 67 Cal. 2d at 621-23. Although in an unpublished opinion lacking precedential value, the Sixth District Court of Appeal recently provided a nice summary of pre-unification appellate jurisdiction of bail forfeiture. See *People v. Ranger Ins. Co.*, 2007 WL 2175059 at \*2 n.5 (6th Dist.). The court stated:

Before unification, bond forfeiture ordered by the municipal court was appealed to the appellate department of the superior court and forfeiture ordered by the superior court was appealed to the court of appeal, regardless of the amount of the bond. This was true despite the civil nature of bail bond proceedings.

20. Former Cal. Const. art. VI § 11 (added Nov. 8, 1966) (appellate jurisdiction of superior court in causes statutorily prescribed as arising in municipal court); former Code Civ. Proc. §§ 77(e) (1984 Cal. Stat. ch. 704, § 1), 904.2 (1990 Cal. Stat. ch. 1305, § 5) (appealable orders from municipal court); see, e.g., *Newman*, 67 Cal. 2d at 621, 623-25 (determining that bail forfeiture order by magistrate in municipal court at preliminary examination is an order of that court, and ordering appellate department of superior court to accept appeal from such an order).

21. Former Cal. Const. art. VI § 11 (added Nov. 8, 1966) (appellate jurisdiction of court of appeal when superior court has original jurisdiction); former Code Civ. Proc. § 904.1 (1993 Cal. Stat. ch. 456, § 12) (appealable orders from superior court); see, e.g., *Am. Bankers*, 202 Cal. App. 3d at 1297.

22. Noting the confusion, the Sixth District Court of Appeal expressed a need for clarifying legislation. See *Ranger*, 2007 WL 2175059 at \*2 n.5 (6th Dist.) (unpublished decision), *supra* note 4. Additionally, the confusion is apparent from the the Santa Clara County Superior Court's request for clarifying legislation. See Letter from Alex Cerul, *supra* note 4.

23. Under those provisions, an appeal involving an amount in controversy of \$25,000 or less is taken to the appellate division of the superior court. Code Civ. Proc. §§ 85, 904.2. If the appeal involves an amount in controversy exceeding \$25,000, the appeal is taken to the court of appeal. Code Civ. Proc. §§ 85, 904.1.

Some courts do not apply those provisions. See, e.g., *People v. Lincoln Gen'l Ins. Co.*, 2007 WL 2258284 (5th Dist.) (unpublished decision) (appeal from forfeiture of bail less than \$25,000 taken to court of appeal instead of appellate division of superior court); *People v. Granite State Ins. Co.*, 2003 WL 21227856 (2d Dist.) (unpublished decision) (same); *People v. Accredited Sur. & Cas. Co.*, 2003 WL 1542116 (6th Dist.) (unpublished decision) (same). Other courts apply such provisions, even when that

1 forfeiture appeals along the pre-unification path.<sup>24</sup> And in some cases, the appeal  
 2 has followed neither the pre-unification path nor the provisions on civil  
 3 procedure.<sup>25</sup> Legislation is needed to resolve the confusion.<sup>26</sup>

#### 4 **Possible Approaches**

5 One way to resolve the confusion would be to make clear that jurisdiction of a  
 6 bail forfeiture appeal is based on the amount in controversy, like other civil  
 7 appeals. Another possibility would be to treat bail forfeiture appeals the same way  
 8 as before unification, when jurisdiction was not dependent on the amount in  
 9 controversy.

#### 10 ***Appellate Jurisdiction Based on Amount in Controversy***

11 If jurisdiction of a bail forfeiture appeal were based on the amount in  
 12 controversy, like other civil cases, then an appeal involving bail of \$25,000 or less  
 13 would be heard by the appellate division of the superior court<sup>27</sup> and an appeal  
 14 involving bail of more than \$25,000 would be heard by the court of appeal.<sup>28</sup> That

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causes an appeal to depart from the pre-unification path. See, e.g., *People v. Safety Nat'l Cas. Corp.*, 150 Cal. App. 4th 11, 57 Cal. Rptr. 3d 659 (5th Dist. 2007) (appeal from forfeiture of bail exceeding \$25,000 in misdemeanor case taken to court of appeal); *People v. Alistar Ins. Co.*, 115 Cal. App. 4th 122, 9 Cal. Rptr. 3d 497 (4th Dist. 2003) (same); see also discussion of “Appellate Jurisdiction Based on Pre-Unification Appeal Path” *infra*.

24. See, e.g., *County of Orange v. Ranger Ins. Co.*, 135 Cal. App. 4th 820, 37 Cal. Rptr. 3d 575 (4th Dist. 2005) (appeal from forfeiture of bail by magistrate at preliminary proceeding taken to court of appeal, instead of appellate division of superior court); see *Safety Nat'l*, 150 Cal. App. 4th 11 (appeal from forfeiture of bail in misdemeanor case taken to court of appeal); *Alistar*, 115 Cal. App. 4th 122 (same); see also discussion of “Appellate Jurisdiction Based on Pre-Unification Appeal Path” *infra*.

25. See, e.g., *People v. Ranger Ins. Co.*, 2007 WL 2164928 (4th Dist.) (unpublished decision); *People v. Ranger Ins. Co.*, 145 Cal. App. 4th 23, 51 Cal. Rptr. 3d 326 (2d Dist. 2006).

The appeal in the *Ranger* case decided by the Fourth District Court of Appeal involved bail forfeiture of \$25,000 by a magistrate at the preliminary examination on a felony charge. 2007 WL 2164928 at \*1. If the provisions governing the appeal of a civil matter had been applied, the appeal would have been taken to the appellate division of the superior court, *not* the court of appeal. See Code Civ. Proc. §§ 85, 904.2. It is also apparent that the pre-unification path was not followed: Before unification, the appeal from a forfeiture by a magistrate at a preliminary examination on a felony charge went to the appellate department (now, the appellate division) of the superior court, *not* the court of appeal. See *supra* note 20.

Similarly, the appeal in the *Ranger* case decided by the Second District Court of Appeal involved forfeiture of bail less than \$25,000 by a magistrate at a preliminary proceeding on a felony charge. 145 Cal. App. 4th at 25-26. If the provisions governing civil appeals had been applied, the appeal would have been taken to the appellate division of the superior court, *not* the court of appeal. See Code Civ. Proc. §§ 85, 904.2. Nor was the pre-unification path followed, as the appeal would have been taken to the appellate division of the superior court, *not* the court of appeal. See *supra* note 20.

26. See *People v. Ranger Ins. Co.*, 2007 WL 2175059 at \*2 n.5 (6th Dist.) (unpublished decision), *supra* note 4.

27. See Code Civ. Proc. §§ 85, 904.2.

28. See Code Civ. Proc. §§ 85, 904.1.

1 approach has the appeal of simplicity. However, the Commission does not  
2 recommend this approach.

3 The approach would cause some appeals to depart from the pre-unification path.  
4 Such a departure would clash with guiding principles of unification: to avoid  
5 disruption of pre-existing rights and procedures, leave the historical jurisdiction of  
6 the courts of appeal intact, and preserve the workload balance between the courts  
7 of appeal and the appellate divisions of the superior court.

8 Moreover, basing jurisdiction on the amount of bail in certain appeals — those  
9 arising in a post-preliminary examination felony case in which bail of \$25,000 or  
10 less was forfeited — would unconstitutionally diminish the appellate jurisdiction  
11 of the courts of appeal from what it was as of June 30, 1995.<sup>29</sup>

### 12 *Appellate Jurisdiction Based on Pre-Unification Appeal Path*

13 A second possibility would be to direct bail forfeiture appeals in the same  
14 manner as before unification. This approach would be consistent with the overall  
15 policy of preserving existing rights and procedures despite unification.<sup>30</sup> It would  
16 also comply with the constitutional provision preserving the jurisdiction of the  
17 courts of appeal as of June 30, 1995.<sup>31</sup> For these reasons, the Commission  
18 recommends this approach.

19 The recommended legislation is thus based on the pre-unification path of bail  
20 forfeiture appeals. Before unification, jurisdiction of a bail forfeiture appeal  
21 depended on which trial court, municipal or superior, ordered the forfeiture.<sup>32</sup>  
22 Specifically, an appeal from bail forfeiture ordered in municipal court went to the  
23 appellate department of the superior court,<sup>33</sup> and an appeal from bail forfeiture  
24 ordered in superior court went to the court of appeal.<sup>34</sup>

25 To carry forward pre-unification procedures in a system without municipal  
26 courts, the recommended legislation uses a proxy for which trial court would have  
27 ordered a bail forfeiture before unification: the underlying criminal charge.<sup>35</sup> For a  
28 felony, the court ordering forfeiture also depended on the stage of the case. The

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29. See 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”). Because an appeal from a bail forfeiture that occurred in a felony prosecution in superior court involving bail of \$25,000 or less was in the appellate jurisdiction of the courts of appeal as of June 30, 1995, the Legislature cannot constitutionally remove such appeals from the court of appeal. See *id.*

30. See discussion of “Trial Court Unification” *supra*.

31. See *supra* note 29.

32. See *supra* note 19.

33. See *supra* note 20.

34. See *supra* note 21.

35. The underlying criminal charge determined which court, municipal or superior, had jurisdiction over the criminal case. See notes 39, 48 *infra*.

1 proposal therefore bases jurisdiction of a bail forfeiture appeal on the underlying  
2 criminal charge and the stage of the proceeding at which bail was forfeited.<sup>36</sup>

3 The recommended legislation would direct an appeal from a bail forfeiture in a  
4 misdemeanor case<sup>37</sup> to the appellate division of the superior court.<sup>38</sup> Before  
5 unification, a misdemeanor case was tried in the municipal court.<sup>39</sup> A bail  
6 forfeiture in a misdemeanor case was an order by the municipal court, and was  
7 appealed to the appellate department of the superior court.<sup>40</sup>

8 The recommended legislation would base appellate jurisdiction of a bail  
9 forfeiture in a felony case<sup>41</sup> according to when the forfeiture occurs. If the  
10 forfeiture occurs at a preliminary proceeding before a magistrate,<sup>42</sup> the appeal  
11 would be to the appellate division of the superior court.<sup>43</sup> This reflects the pre-  
12 unification practice that such preliminary proceedings were conducted by a  
13 magistrate in municipal court,<sup>44</sup> and that an appeal from that court went to the  
14 appellate department of the superior court.<sup>45</sup>

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36. See proposed Penal Code § 1305.5 *infra*.

37. A “misdemeanor case” only includes misdemeanor charges; it does not include a felony charge. Penal Code § 691(g); *cf.* note 41 *infra*.

38. See proposed Penal Code § 1305.5(c) *infra*.

39. The municipal court had jurisdiction over a misdemeanor charge. Former Penal Code § 1462(a) (1991 Cal. Stat. ch. 613, § 8); *In re Joiner*, 180 Cal. App. 2d 250, 254-55, 4 Cal. Rptr. 667 (1960). The municipal court did not have jurisdiction over a felony. *Cf.* 11 B. Witkin, *California Criminal Law Jurisdiction & Venue* § 14, at 102-103 (3d. ed. 2000) (stating that municipal and superior courts did not have concurrent criminal jurisdiction of any particular case, that superior court had jurisdiction over felony, and that superior court had jurisdiction with felony joined with misdemeanor). This was true even though a magistrate sitting in municipal court could, and did, conduct preliminary proceedings related to a felony charge. See note 44 *infra*; former Penal Code § 808 (1925 Cal. Stat. ch. 445, § 1) (adding municipal court judges to list of judges who are magistrates) see, e.g., *Newman v. Superior Court*, 67 Cal. 2d. 620, 432 P.2d 972, 63 Cal. Rptr. 284 (1967) (considering appeal relating to bail forfeiture ordered by magistrate in municipal court at preliminary examination).

40. See *supra* note 20.

41. A felony case may include a misdemeanor charged with a felony. See Penal Code § 691(f); see also note 48 *infra*; *cf. supra* note 37.

42. Prosecution of a felony by information, rather than indictment, in superior court was (and still is) preceded by a preliminary hearing before a magistrate. See Cal. Const. art. I, § 14; Penal Code §§ 738-739, 806, 872; see also note 46 *infra*.

43. See proposed Penal Code § 1305.5(b) *infra*.

44. See Cal. Const. art. I, § 14; Penal Code §§ 738-739, 806, 859, 872, 976; *People v. Thompson*, 50 Cal. 3d 134, 155, 785 P.2d 857, 266 Cal. Rptr. 309 (1990); *Lempert v. Superior Court*, 112 Cal. App. 4th 1161, 1168, 5 Cal Rptr. 3d 700 (2003); *People v. Valdez*, 33 Cal. App. 4th 1633, 1637, 39 Cal. Rptr. 818 (1995); see also Uelmen, *California Criminal Procedure and Trial Court Unification* (March 2002), at 2; *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.

45. See *supra* note 20.

1 If the forfeiture occurs after a legal commitment by a magistrate or an  
2 indictment,<sup>46</sup> the appeal would be to the court of appeal.<sup>47</sup> This would also mirror  
3 the pre-unification situation: After a legal commitment or an indictment, a felony  
4 case was prosecuted in superior court<sup>48</sup> not municipal court, and an appeal of a bail  
5 forfeiture from that court went to the court of appeal.<sup>49</sup>

6 ***Effect of the Recommended Legislation***

7 Pursuant to constitutional and unification principles, the Commission proposes  
8 legislation that would direct bail forfeiture appeals as they were before unification.

9 The recommended legislation would help to prevent disputes and confusion over  
10 the proper jurisdiction for a bail forfeiture appeal. That would benefit the public by  
11 (1) reducing litigation expenses of the People and of other parties to bail forfeiture  
12 proceedings, and (2) conserving judicial resources. The recommended legislation  
13 should be promptly enacted to achieve these results.

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46. A felony is prosecuted either upon an indictment or upon an information, which occurs after a legal commitment by a magistrate. See Cal. Const. art I, § 14; Penal Code §§ 739, 872.

47. See proposed Penal Code § 1305.5(a) *infra*.

48. The superior court had jurisdiction over a felony case, which included a misdemeanor committed in connection with a felony. See Penal Code § 954; *People v. Leney*, 213 Cal. App. 3d 265, 268, 261 Cal. Rptr. 541 (1989) (superior court jurisdiction over properly joined misdemeanor); 11 B. Witkin, *California Criminal Law Jurisdiction & Venue* § 14, at 102 (3d. ed. 2000) (citing Cal. Const. art. VI, § 10 and Penal Code § 1462(a)). The superior court retained jurisdiction over connected misdemeanor charges even if the felony charges were eliminated before trial. *People v. Clark*, 17 Cal. App. 3d 890, 897-98, 95 Cal. Rptr. 411 (1971).

49. See *supra* note 21.

PROPOSED LEGISLATION

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

3 SEC. \_\_\_\_\_. Section 1305.5 is added to the Penal Code, to read:

4 1305.5. Notwithstanding Sections 85, 580, 904.1, and 904.2 of the Code of Civil  
5 Procedure, if the people, a surety, or other person appeals from an order of the  
6 superior court on a motion to vacate a bail forfeiture declared under Section 1305,  
7 the following rules apply:

8 (a) If the bail forfeiture was in a felony case, or in a case in which both a felony  
9 and a misdemeanor were charged, and the forfeiture occurred at or after the  
10 sentencing hearing or after the indictment or the legal commitment by a  
11 magistrate, the appeal is to the court of appeal and it shall be treated as an  
12 unlimited civil case, regardless of the amount of bail.

13 (b) If the bail forfeiture was in a felony case, or in a case in which both a felony  
14 and a misdemeanor were charged, and the forfeiture occurred at the preliminary  
15 hearing or at another proceeding before the legal commitment by a magistrate, the  
16 appeal is to the appellate division of the superior court and it shall be treated as a  
17 limited civil case, regardless of the amount of bail.

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

21 **Comment.** Section 1305.5 is added to clarify the appellate jurisdiction of bail forfeiture  
22 matters after trial court unification. The provision preserves the procedural pre-unification status  
23 quo. See, e.g., *Newman v. Superior Court*, 67 Cal. 2d 620, 623, 432 P.2d 972, 63 Cal. Rptr. 284  
24 (1967) (amount of bail does not determine jurisdiction of appeal relating to bail forfeiture order);  
25 *People v. Topa Ins. Co.*, 32 Cal. App. 4th 296, 38 Cal. Rptr. 2d 167 (1995) (court of appeal heard  
26 bail forfeiture appeal involving failure to appear before superior court in felony case, even though  
27 bail was less than jurisdictional limit of municipal court); *County of Los Angeles v. Am. Bankers*  
28 *Ins. Co.*, 202 Cal. App. 3d 1291, 249 Cal. Rptr. 540 (1988) (same); see also *People v. Leney*, 213  
29 Cal. App. 3d 265, 268, 261 Cal. Rptr. 541 (1989) (superior court has jurisdiction to try remaining  
30 misdemeanor even if felony charge eliminated before trial); *People v. Clark*, 17 Cal. App. 3d 890,  
31 897-98, 95 Cal. Rptr. 411 (1971) (same).

32 See also Section 691 (“felony case” and “misdemeanor or infraction case” defined).

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

34 SEC. \_\_\_\_\_. Section 1306 of the Penal Code is amended to read:

35 1306. (a) When any bond is forfeited and the period of time specified in Section  
36 1305 has elapsed without the forfeiture having been set aside, the court which has  
37 declared the forfeiture, ~~regardless of the amount of the bail,~~ shall enter a summary  
38 judgment against each bondsman named in the bond in the amount for which the  
39 bondsman is bound. The judgment shall be the amount of the bond plus costs, and

1 notwithstanding any other law, no penalty assessments shall be levied or added to  
2 the judgment.

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

15 (c) If, because of the failure of any court to promptly perform the duties  
16 enjoined upon it pursuant to this section, summary judgment is not entered within  
17 90 days after the date upon which it may first be entered, the right to do so expires  
18 and the bail is exonerated.

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

22 (e) The district attorney or county counsel shall:

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

25 (2) If the judgment remains unpaid for a period of 20 days after demand has  
26 been made, shall forthwith enforce the judgment in the manner provided for  
27 enforcement of money judgments generally. If the judgment is appealed by the  
28 surety or bondsman, the undertaking required to be given in these cases shall be  
29 provided by a surety other than the one filing the appeal. The undertaking shall  
30 comply with the enforcement requirements of Section 917.1 of the Code of Civil  
31 Procedure. Notwithstanding Sections 85, 580, 904.1, and 904.2 of the Code of  
32 Civil Procedure, jurisdiction of the appeal, and treatment of the appeal as a limited  
33 civil case or an unlimited civil case, is governed by Section 1305.5.

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

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

44 Subdivision (b) is amended to correct an apparent typographical error.

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

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