

## Memorandum 2021-56

**Statutes Made Obsolete by Trial Court Restructuring (Part 9):  
Jurisdictional Classification of a Drug Asset Forfeiture Proceeding**

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A recent letter from attorney Mark Lomax encourages the Commission to propose legislation to expressly clarify the jurisdictional classification of a drug asset forfeiture proceeding. Mr. Lomax's letter is attached as an Exhibit. This memorandum discusses his suggestion and seeks guidance on how to proceed.

Mr. Lomax's suggestion was prompted by Memorandum 2021-22,<sup>1</sup> which the Commission considered in June. Before turning to his suggestion, it may be helpful to review some of the background information from that memorandum<sup>2</sup> and the guidance that the Commission gave on the issue raised in it.

## BACKGROUND INFORMATION AND PRIOR DECISION

In the past, California had two types of trial courts: municipal courts and superior courts. They handled different kinds of cases. The municipal courts had limited jurisdiction, which was specified by statute as required by the California Constitution. The superior courts were constitutionally vested with jurisdiction of all other causes.

There were some key distinctions between how civil cases were handled in municipal court, as opposed to superior court. In particular, a superior court judgment was appealable to the court of appeal, while a municipal court judgment (other than a judgment in a small claims case) was appealable to the appellate department of the local superior court. Municipal court cases were also subject to special filing fees, limitations on the relief awardable, and economic litigation procedures.

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1. 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.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. Memorandum 2021-22 includes supporting citations, but they are not reiterated in this memorandum.

In 1998, the voters passed a constitutional amendment that permitted the municipal and superior courts in each county to unify their operations in the superior court upon a vote of a majority of the county's municipal court judges and a majority of the county's superior court judges. By early 2001, the trial courts in all of California's 58 counties had unified. Each county now has a unified superior court, which handles all trial court operations in that county.

Many statutes had to be revised to facilitate and later reflect this structural change. The Commission was responsible for preparing the necessary legislation. In that work, a guiding principle was to preserve preexisting procedural distinctions between traditional municipal court cases and traditional superior court cases, so that there would be no disparity of treatment between a litigant in a county where the courts had unified and a similarly-situated litigant in a county where the courts had not yet unified.

To achieve that objective, it was necessary to differentiate between traditional municipal court cases and traditional superior court cases. In the civil context, that was accomplished by adding a new provision to the code, which serves to identify the types of civil cases formerly brought in municipal court and calls them "limited civil cases."<sup>3</sup> In addition, numerous statutes throughout the codes were amended to replace a reference to a municipal court case with a reference to a "limited civil case."

Of particular note, the statutes relating to jurisdiction of an appeal from a municipal court judgment, economic litigation procedures, and municipal court filing fees were amended to apply to limited civil cases. Another statute was amended to specify the types of relief that could not be awarded in a limited civil case (the same types of relief that could not be awarded in a municipal court case).

Thus, a limited civil case is treated the same way as a civil case was in municipal court. Similarly, an "unlimited civil case" is a case that would have been within the jurisdiction of the superior court before trial court unification; it is now treated the same way as a traditional superior court case.

The constitutional provision on appellate jurisdiction further ensures that courts treat a traditional superior court case the same way that they did before unification.<sup>4</sup> As amended by the 1998 unification measure, it says that except in

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3. See Code Civ. Proc. § 85.

4. Cal. Const. art. VI, § 11.

death penalty cases, “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.”<sup>5</sup> In other words, if a type of case was appealable to the court of appeal on June 30, 1995, the California Constitution guarantees that such a case is still appealable to the court of appeal.

In revising the codes to implement the above approach, the Commission had to examine every statutory reference to municipal court, to determine whether to replace it with a reference to a limited civil case. The Commission did not, however, have to examine every statutory reference to superior court.

Because the jurisdiction of the municipal courts was specified by statute, the traditional municipal court civil cases (the newly-named “limited civil cases”) could be readily identified by searching the codes for “municipal court.” Then the traditional superior court civil cases (now known as “unlimited civil cases”) could be defined as everything else, without having to enumerate them.<sup>6</sup>

That was fortuitous, because the codes contain thousands of references to the superior courts. Reviewing each of them would have been extremely time-consuming and would have significantly impeded the process of making the codes workable in a unified court system.

Although it was not strictly necessary to enumerate the unlimited civil cases (it was sufficient to statutorily specify which cases are limited civil cases), the Commission recognized that such guidance might be helpful in some instances. Thus, one project on its lengthy “to do” list for trial court restructuring was to check all of the statutory references to “superior court,” to determine whether it would be helpful to add language regarding jurisdictional classification.

In June, the Commission considered how to handle that project. After assessing the situation, it decided to follow an approach of “no review and very limited treatment.” In other words, it decided that instead of systematically reviewing each of the thousands of statutory references to “superior court,” it will only examine such a reference if it learns that the reference is presenting an actual (not hypothetical) problem relating to jurisdictional classification.<sup>7</sup>

That approach was driven by practical considerations. As the staff explained:

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5. Emphasis added.

6. See Code Civ. Proc. § 88.

7. Minutes (June 2021), pp. 4-5.

Examining each statutory reference to “superior court” ... would be a huge project and would consume an enormous amount of Commission resources.... [Based on preliminary sampling], it would take about 280 weeks of staff time (over five years) just to do a preliminary analysis of all 14,000+ superior court references, much less present the issues to the Commission and eventually develop a final recommendation. Moreover, the jurisdictional concepts are not easy to explain, so effectively shepherding such a proposal through the legislative process would be challenging, burdensome, and perhaps unsuccessful.

There does not seem to be a pressing need or demand for this magnitude of effort. The existing statutes are not wrong, they are just less-than-ideal because they do not provide explicit guidance on jurisdictional classification....

[T]here are many treatises, manuals, and online self-help resources on probate law, family law, eminent domain, and other types of legal matters. These materials may provide sufficient, readily-accessible guidance on jurisdictional classification, which is based on the less-explicit but legally-binding guidance in the codes, the legislative history, and the constitutional provision on appellate jurisdiction ....<sup>8</sup>

#### SUGGESTION RELATING TO DRUG ASSET FORFEITURE PROCEEDINGS

Mr. Lomax says that drug asset forfeiture proceedings are a special situation, where there is a particular need for express clarification regarding jurisdictional classification. He explains that point in a carefully organized and well-supported letter.

#### **Background Information on Drug Asset Forfeiture Proceedings**

Mr. Lomax begins by providing some background information on drug asset forfeiture proceedings, which are governed by Health and Safety Code Sections 11469 to 11495. Under those statutes, “property connected with certain unlawful drug activity may be subject to forfeiture to the state or local government ...”<sup>9</sup> “The law is intended to be ‘remedial by removing the tools and profits from those engaged in the illicit drug trade.’”<sup>10</sup>

Mr. Lomax correctly notes that “[a]lthough forfeiture proceedings arise from a criminal violation, they are civil in rem proceedings in which the property to be forfeited is named as the defendant or respondent, based on the fiction that the

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8. Memorandum 2021-22, p. 9.

9. Ramirez v. Tulare County Dist. Atty’s Office (2017) 9 Cal.App.5th 911, 917.

10. *Id.*, quoting Health & Safety Code § 11469(j).

property itself is the guilty party.”<sup>11</sup> The forfeiture proceeding “is not a suit for money damages, but an action for return of property ....”<sup>12</sup>

As Mr. Lomax points out, a drug asset forfeiture proceeding “can be filed only by the Attorney General or a district attorney.”<sup>13</sup> The Code of Civil Procedure governs drug asset forfeiture proceedings “unless otherwise inconsistent with the provisions or procedures” set forth in Health and Safety Code Sections 11469 to 11495.<sup>14</sup>

Mr. Lomax further explains that there are two types of drug asset forfeiture proceedings, nonjudicial and judicial.<sup>15</sup> A nonjudicial forfeiture is permitted only for personal property less than \$25,000 in value. If the Attorney General or local district attorney provides notice of the proceeding as statutorily required and does not receive a timely claim in response, the prosecutor may order forfeiture of such property without going to court.<sup>16</sup> Providing a “streamlined process” for a nonjudicial forfeiture spares the government the time and expense of conducting a judicial proceeding where the property at stake is of small value.<sup>17</sup>

A judicial forfeiture (involving a court proceeding) “is required if a claim is timely filed in a nonjudicial forfeiture ....”<sup>18</sup> A judicial forfeiture is also required “if the prosecutor seeks to forfeit real property of any value or cash or personal property valued at over \$25,000.”<sup>19</sup>

### **Jurisdictional Classification of a Drug Asset Forfeiture Proceeding**

Mr. Lomax points out that nothing in Health and Safety Code Sections 11469 to 11495 or in the Code of Civil Procedure expressly says whether a drug asset forfeiture proceeding is a limited civil case or an unlimited civil case.<sup>20</sup> He correctly explains, however, that before trial court unification all drug forfeiture petitions had to be filed in superior court, “regardless of the value of the

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11. Exhibit p 1; see *People v. Superior Court (Plascencia)* (2002) 103 Cal.App.4th 409, 418; *Juaregi v. Superior Court* (1999) 72 Cal.App.4th 931, 937-38.

12. *People v. Superior Court (Rishwain)* (1989) 215 Cal.App.3d 1411, 1414.

13. Exhibit p. 1; see Health & Safety Code § 11488.1; see also Health & Safety Code §§ 11488.4(a)(1); 11488.4(j).

14. Health & Safety Code § 11488.5(c)(3).

15. Exhibit p. 1.

16. Health & Safety Code § 11488.4(j).

17. See, e.g., *Ramirez*, 9 Cal.App.5th at 927.

18. Exhibit pp. 1-2; see Health & Safety Code § 11488(j)(5)(C).

19. Exhibit pp. 1-2; see Health & Safety Code § 11488(a)(1).

20. Exhibit p. 2.

property to be forfeited.”<sup>21</sup> Accordingly, he properly concludes that “a drug asset forfeiture proceeding is an unlimited civil case, regardless of the value of the property to be forfeited.”<sup>22</sup>

### **Need for Clarification**

Mr. Lomax observes that “[s]ince the jurisdictional classification of a drug asset forfeiture proceeding is not expressly specified by statute, determining the jurisdictional classification requires knowing (1) that case types required pre-unification to be filed in superior court are unlimited civil cases post-unification, and (2) that pre-unification, all drug asset forfeiture proceedings, regardless of the value of the property to be forfeited, were required to be filed in superior court.”<sup>23</sup> He says this “is probably not common knowledge among the bench and the bar ....”<sup>24</sup>

Mr. Lomax also notes that that determining the jurisdictional classification of drug asset forfeiture proceedings “can be particularly problematic” because the threshold between a limited and an unlimited case is \$25,000, which is the same as the threshold between a nonjudicial and a judicial forfeiture.<sup>25</sup> As he explains:

This causes confusion concerning the jurisdictional classification of drug asset forfeiture proceedings because the value of the property to be forfeited is sometimes equated with the amount in controversy, as defined in subdivision (a) of Code of Civil Procedure section 85. This mistake causes some drug forfeiture proceedings for property valued at \$25,000 or less to be misclassified as limited cases.<sup>26</sup>

For these reasons, Mr. Lomax “urge[s] the commission to sponsor an amendment to expressly designate the jurisdictional classification of drug asset forfeiture proceedings ....”<sup>27</sup>

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21. See 1994 Cal. Stat. ch. 314, § 13 (version of Health & Safety Code § 11488.4(a) that was in effect just before trial court unification); see also 1997 Cal. Stat. ch. 241, § 2 (version of Health & Safety Code § 11488.5(a)(1) that was in effect just before trial court unification).

22. Exhibit p. 2.

23. *Id.*

24. *Id.*

25. *Id.*

26. Exhibit pp. 2-3.

27. Exhibit p. 1.

## STAFF ANALYSIS

Mr. Lomax's suggestion makes sense and is simple and straightforward. It could be implemented by amending Health and Safety Code Section 11488.4(a)(1) along the following lines:

### **Health & Safety Code § 11488.4 (amended). Petition of forfeiture**

SEC. \_\_\_\_\_. Section 11488.4 of the Health and Safety Code is amended to read:

11488.4. (a)(1) Except as provided in subdivision (j), if the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, negotiable instruments, securities, or other things of value seized or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter, the Attorney General or district attorney shall file a petition of forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense or in which the property subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the property subject to forfeiture is located. A petition under this section is an unlimited civil case, regardless of the amount in controversy. If the petition alleges that real property is forfeitable, the prosecuting attorney shall cause a lis pendens to be recorded in the office of the county recorder of each county in which the real property is located.

....

**Comment.** Section 11488.4 is amended to make explicit that a drug asset forfeiture petition is an unlimited civil case, regardless of the amount in controversy. This is not a substantive change. See, e.g., *AP-Colton LLC v. Ohaeri* (2015) 240 Cal.App.4th 500, 506 (after trial court unification, civil cases formerly within jurisdiction of municipal courts are classified as limited civil cases, while matters formerly within the jurisdiction of the superior courts are classified as unlimited civil cases); *Ytuarte v. Superior Court* (2005) 129 Cal.App.4th 266, 274 (same). See also 1994 Cal. Stat. ch. 314, § 13 (version of Health & Safety Code § 11488.4(a) in effect just before trial court unification, which stated that "the Attorney General or district attorney shall file a petition of forfeiture *with the superior court* ....") (emphasis added); 1997 Cal. Stat. ch. 241, § 2 (version of Health & Safety Code § 11488.5(a)(1) in effect just before trial court unification, which permitted any person claiming an interest in seized property to file a claim for the property "with the superior court").

The purpose of this amendment is to provide useful information where it is particularly needed due to a high potential for confusion (the monetary cutoff for a limited civil case under Code of Civil

Procedure Section 85 is \$25,000, the same as the monetary cutoff for a nonjudicial foreclosure under Section 11488.4). No inferences should be drawn from the failure to include similar statutory language elsewhere in the codes.<sup>28</sup>

Such a clarification may help to prevent confusion and unnecessary disputes over the jurisdictional classification of a drug asset forfeiture proceeding. By avoiding a waste of time, expense, and effort, it could help to conserve judicial resources while also benefiting both prosecutors and those contesting forfeiture proceedings.

It is always difficult to predict how complicated a law reform proposal will turn out to be. In this instance, it would be relatively easy for the staff to prepare a tentative recommendation along the lines discussed above. Despite the seemingly innocuous nature of the proposal, however, it might encounter resistance.

In particular, the Legislature has noted that drug asset forfeiture proceedings “can have harsh effects on property owners in some circumstance.”<sup>29</sup> Thus, it is “well settled” that statutes imposing forfeitures are disfavored and must be strictly construed in favor of persons contesting such action.<sup>30</sup>

There has been some strong criticism of drug asset forfeiture proceedings. They might be a target for more fundamental reforms. That matter might be within the jurisdiction of the Committee on Revision of the Penal Code, the new, independent decision-making body within the Commission.

Given that situation, it might not be advisable to proceed with a narrow clarification of those statutes at this time. There is a chance that some persons might view such a refinement as a stamp of approval on the status quo. It may be preferable to hang onto Mr. Lomax’s suggestion, for possible reconsideration at a later date.

**How would the Commission like to proceed?**

Respectfully submitted,

Barbara Gaal  
Chief Deputy Director

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28. A somewhat similar clarification of Health and Safety Code Section 11488.5 might also be helpful.

29. Health & Safety Code § 11469(j).

30. See, e.g., *Ramirez*, 9 Cal.App.5th at 928.



## Mark W. Lomax, Attorney at Law

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70 N. Catalina Ave., Apt. 208  
Pasadena, CA 91106-2354  
mlomax1074@gmail.com  
626-214-5219

August 25, 2021

Mr. Brian Hebert  
Executive Director  
California Law Revision Commission  
c/o UC Davis School of Law  
400 Mrak Hall Dr.  
Davis, CA 95616

Dear Mr. Hebert:

### **SPECIFICATION OF JURISDICTIONAL CLASSIFICATION OF PRE-UNIFICATION SUPERIOR COURT SPECIAL PROCEEDINGS**

I write to urge the commission to sponsor an amendment to expressly designate the jurisdictional classification of drug asset forfeiture proceedings, a civil special proceeding. My recommendation relates to the issues described in the commission's staff memorandum No. 2021-22.

#### ***Nature and Governing Law of Drug Asset Proceedings***

Health and Safety Code sections 11469-11495 provide for forfeiture of assets connected with drug offenses. Although forfeiture proceedings arise from a criminal violation, they are civil in rem proceedings in which the property to be forfeited is named as the defendant or respondent, based on the fiction that the property itself is the guilty party. (*Jauregi v. Superior Court* (1999) 72 Cal.App.4th 931, 937-938.) A forfeiture action is not a suit for money damages; it is an action for the return of property. (*People v. Superior Court (Rishwain)* (1989) 215 Cal.App.3d 1411, 1414.) Drug asset forfeiture proceedings can be filed only by the Attorney General or a district attorney. (Health & Saf. Code §11488.1.) The Code of Civil Procedure applies to drug asset forfeiture proceedings unless it is inconsistent with provisions or procedures prescribed by sections 11469-11495. (Health & Saf. Code §11488.5, subd. (c)(3).)

There are two types of drug asset forfeitures, nonjudicial and judicial. A nonjudicial forfeiture can be commenced if the property seized is cash or personal property whose value is \$25,000 or less. (Health & Saf. Code §11488.4, subd. (j).) In a nonjudicial forfeiture, the prosecutor can declare the property forfeited without a court order if no claim is timely filed after notice is served and published. (Health & Saf. Code §11488.4, subds. (j), (j)(5)(B).) A judicial forfeiture is required if a claim is timely filed in a nonjudicial

forfeiture or if the prosecutor seeks to forfeit real property of any value or cash or personal property valued at over \$25,000. (Health & Saf. Code §11488.4, subds. (a)(1), (j), (j)(5)(C).)

### ***Jurisdictional Classification of Forfeiture Proceedings***

Nothing in sections 11469-11495 or in the Code of Civil Procedure expressly addresses the jurisdictional classification of a drug asset forfeiture proceeding as a limited or an unlimited civil case. But before unification of municipal and superior courts, all forfeiture petitions—regardless of the value of the property to be forfeited—were required to be filed in superior court. (See Health & Saf. Code §11488.4, subd. (a), as added by Stats. 1994, ch. 314, §13.) Likewise, before unification, all claims opposing a forfeiture were required to be filed in superior court. (See Health & Saf. Code §11488.5, subd. (a)(1), as added by Stats. 1994, ch. 314, §15, and amended by Stats. 1997, ch. 241, §2.) Since unification of the trial courts, civil cases formerly within the jurisdiction of municipal courts have been classified as limited cases, and civil cases formerly within the jurisdiction of superior courts have been classified as unlimited cases. (*AP-Colton LLC v. Ohaeri* (2015) 240 Cal.App.4th 500, 506; *Ytuarte v. Superior Court* (2005) 129 Cal.App.4th 266, 274.) Therefore, a drug asset forfeiture proceeding is an unlimited case, regardless of the value of the property to be forfeited.

### ***Special Problems with Drug Asset Forfeiture Proceedings***

Since the jurisdictional classification of a drug asset forfeiture proceeding is not expressly specified by statute, determining the jurisdictional classification requires knowing (1) that case types required pre-unification to be filed in superior court are unlimited cases post-unification, and (2) that pre-unification, all drug asset forfeiture proceedings, regardless of the value of the property to be forfeited, were required to be filed in superior court. This is probably not common knowledge among the bench and the bar, but, as is noted in memorandum No. 2021-22, there are many existing statutes that require specified civil proceedings to be filed in superior court without specifying the jurisdictional classification of the proceeding. Still, determining the jurisdictional classification of drug asset proceedings can be particularly problematic for at least one reason: The threshold between a limited and an unlimited case is \$25,000, and the threshold between a nonjudicial and a judicial forfeiture is \$25,000. This causes confusion concerning the jurisdictional classification of drug asset forfeiture proceedings because the value of the property to be forfeited is sometimes equated with the amount in controversy, as defined in subdivision (a)

Mr. Brian Hebert  
August 25, 2021  
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of Code of Civil Procedure section 85. This mistake causes some drug forfeiture proceedings for property valued at \$25,000 or less to be misclassified as limited cases.

Very truly yours,



MARK W. LOMAX