
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
JUNE 22-23, 2006
SACRAMENTO

The California Law Revision Commission met in Sacramento on June 22-23, 2006.

Commission:

Present: Edmund L. Regalia, Chairperson
David Huebner, Vice Chairperson
Diane F. Boyer-Vine, Legislative Counsel
Sidney Greathouse
Pamela L. Hemminger
Susan Duncan Lee
William E. Weinberger

Absent: Noreen Evans, Assembly Member
Frank Kaplan
Bill Morrow, Senate Member

Staff: Nathaniel Sterling, Executive Secretary
Brian P. Hebert, Assistant Executive Secretary
Steven E. Cohen, Staff Counsel
Barbara S. Gaal, Staff Counsel

Consultants: None

Other Persons:

Sam Abdulaziz, Los Angeles (June 22)
Oliver Burford, Executive Council of Homeowners (June 23)
Nicole Camarillo, San Francisco (June 22)
Joy Cheah, DHS/TPL Branch (June 22)
Frank Collard, Southern California Rock Products (June 22)
Karen D. Conlon, California Association of Community Managers (June 23)
Denise Duncan, Sacramento (June 22)
Steve Ingram, Consumer Attorneys of California
Charlotte Ito, State Bar Trusts & Estates Section (June 22)
David L. Mandel, Senior Legal Hotline (June 22)
Dick Nash, Building Industry Credit Association (June 22)
Craig Page, California Land Title Association (June 22)
Kate Sproul, Senate Office of Research (June 22)
Mary Pat Toups, Laguna Woods (June 22)

Jennifer Wada, California Association of Community Managers (June 23)
Norm Widman, Lumber Association of California and Nevada (June 22)
Brenda Thomas Wilson, Thomas Books, LLC

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MINUTES OF APRIL 27, 2006, COMMISSION MEETING

1 The Commission approved the Minutes of the April 27, 2006, Commission
2 meeting as submitted by the staff, subject to the following correction:

3 On page 15, line 31, “Section 2440” should read “Section 2040”.

4 The Commission also corrected the Minutes of the February 23, 2006,
5 Commission meeting (referred to in the Minutes of the April 27, 2006, meeting)
6 to indicate that the attendance of Bonnie Laderman and Larry Robinson,
7 residents of the Springfield Homeowners Association, was not on behalf of that
8 association.

LEGISLATIVE PROGRAM

9 The Commission considered Memorandum 2006-18, relating to the
10 Commission’s 2006 legislative program. The staff orally updated the chart
11 attached to the memorandum with the following information:

12 AB 69 (Harman), relating to ownership of amounts withdrawn from joint
13 account, is dead.

14 AB 770 (Mullin) and SB 551 (Lowenthal), relating to CID ombudsperson, are
15 still alive, but amendments are possible relating to mediation.

STUDY H-821 – MECHANICS LIEN LAW

16 The Commission considered Memorandum 2006-20 and the attached staff
17 draft of a tentative recommendation on mechanics lien law, together with
18 Memorandum 2006-26 containing suggested conforming revisions. The

1 Commission approved the draft tentative recommendation and conforming
2 revisions to circulate for public comment, subject to the revisions set out below.

3 **Preliminary Part of Tentative Recommendation**

4 In the preliminary part to the tentative recommendation, the reference on
5 page 8 to the identity of a fringe benefit trust should be deleted. On page 9 the
6 reference to an “individual trade” should be changed to an “individual contract”.

7 **Electronic Notice**

8 The Commission approved a provision along the following lines for inclusion
9 in the draft, relating to electronic notice. The staff should review the Code of
10 Civil Procedure provisions for electronic notice in court proceedings. The staff
11 should reconfigure the provision so that it is clear it applies to a commercial
12 transaction as well as to a consumer transaction.

13 **§ 7110. Electronic communication**

14 7110. (a) As used in this section, “electronic record” has the
15 meaning provided in Section 1633.2.

16 (b) A notice under this title may be given to a person in the form
17 of an electronic record if (i) the person has agreed to receive the
18 record by electronic means and, (ii) if the person is a consumer
19 within the meaning of Section 7006 of Title 15 of the United States
20 Code, the requirements of Section 7001 of Title 15 of the United
21 States Code relating to consumer consent to an electronic record are
22 satisfied.

23 **Comment.** Section 7110 is new. It combines the agreement
24 requirement of the California Uniform Electronic Transactions Act
25 (UETA) with the consumer protections of the federal Electronic
26 Signatures in Global and National Commerce Act (E-Sign).

27 A consumer within the meaning of E-Sign is an individual who
28 obtains products or services used primarily for personal, family, or
29 household purposes.” 15 USC § 7006(1). The consumer consent
30 requirements of E-Sign include (i) affirmative consent, (ii)
31 disclosure, (iii) electronic access, (iv) software and hardware
32 upgrades. See 15 USC § 7001(c)(1).

33 See also Section 7032 (“person” defined).

34 **Commencement**

35 The Commission approved a provision along the following lines for inclusion
36 in the draft, defining commencement of a work of improvement. The staff should
37 double check subdivision (a) to determine whether the case law requires

1 incorporation of materials in order for commencement to have occurred, or
2 whether delivery of materials that ultimately are incorporated is sufficient.

3 **§ 7003. Commencement**

4 7003. A work of improvement “commences” when either of the
5 following occurs:

6 (a) Material or supplies that are used or consumed in the work
7 of improvement are delivered to the site.

8 (b) There is actual visible work of a permanent nature on the
9 site.

10 **Comment.** Section 7003 is new. It codifies case law. See, e.g.,
11 Walker v. Lytton Sav. & Loan Assn., 2 Cal. 3d 152, 159, 84 Cal. Rptr.
12 521 (1970); Halbert's Lumber, Inc. v. Lucky Stores, Inc. 6 Cal. App.
13 4th 1233, 1240-1241, 8 Cal. Rptr. 2d 298 (1992).

14 **Notice of Completion**

15 The Commission revised the proposed revision of the notice of completion
16 statute to allow a notice of completion within 15 (rather than 10) days after
17 completion. That would ease the burden on the owner to determine that actual
18 completion has in fact occurred. The concept of allowing a notice of completion
19 at any time after completion should not be included in the draft.

20 **Knowledge**

21 The Commission approved an addition to the statute of a definition of
22 “knowledge” along the following lines:

23 **§ 7015. Know or knowledge**

24 7015. A person “knows” or “has knowledge” of information if
25 the person knows or should know that information.

26 **Comment.** Section 7015 is new.

27 See also Section 7032 (“person” defined).

28 **Reputed Owner**

29 The Commission approved addition of a definition of “reputed owner” along
30 the following lines.

31 **§ 7037. Reputed owner, direct contractor, or construction lender**

32 7037. (a) “Reputed owner” means a person that a claimant
33 reasonably and in good faith believes is an owner.

34 (b) “Reputed direct contractor” means a person that a claimant
35 reasonably and in good faith believes is a direct contractor.

1 (c) "Reputed construction lender" means a person that a
2 claimant reasonably and in good faith believes is a construction
3 lender.

4 **Comment.** Section 7037 is new. It codifies case law. See Kodiak
5 Industries, Inc. v. Ellis, 185 Cal. App. 3d 75, 85, 229 Cal. Rptr. 418
6 (1986). A reference in this part to a reputed owner, contractor, or
7 lender, includes co-owners, contractors, or lenders. See Section 14
8 (the singular includes the plural).

9 As the staff continues its review of ownership issues, the staff should
10 consider whether there should be a guideline for identification of a reputed
11 owner, e.g., as listed on the contract, building permit, or the like.

12 **Notice to Co-Owner**

13 The Commission approved the staff proposal to delete from the draft the
14 provision that notice to one co-owner is deemed to be notice to all co-owners.
15 Instead, the draft should require notice to the owner or reputed owner.

16 While the tentative recommendation is circulating for comment, the staff
17 should continue to work on issues relating to notice to co-owners, including the
18 possibility of explicitly requiring notice to all co-owners or reputed co-owners.

19 **Operative Date and Transitional Issues**

20 The Commission approved the concept of a one year deferral of the operative
21 date. On the operative date, the new law should apply to existing contracts, to
22 the extent practicable.

23 **Transitional provision**

24 (a) This act is operative January 1, 2009.

25 (b) Except as otherwise provided in this section, this act applies
26 to a contract for a work of improvement executed before, on, or
27 after the operative date.

28 (c) The effectiveness of a notice given, or other action taken,
29 before the operative date is governed by the applicable law in effect
30 before the operative date and not by this act.

31 While the tentative recommendation is circulating for comment, the staff
32 should develop a more detailed provision that identifies typical acts that would
33 be excepted from retroactive operation, such as a notice given in compliance with
34 the law in effect at the time it is given. The staff should present the more detailed
35 transitional provision for Commission review at the time comments on the
36 tentative recommendation are reviewed.

1 **Recordation of Lien**

2 The Commission approved the concept of generalizing throughout the
3 mechanics lien law the principle that an instrument filed for record with the
4 county recorder “shall be deemed duly recorded without acknowledgment.” A
5 conforming revision should be made to Government Code Section 27287.

6 **Invalid Lien**

7 The Commission approved the principle that a claim of lien should be subject
8 to a release order by the court if, “There is a final judgment in another
9 proceeding that the petitioner is not indebted to the claimant for the demand on
10 which the claim of lien is based.”

11 The Commission declined to adopt the “early test of validity” described in
12 the memorandum due to the staff’s inability to develop an effective automatic
13 discharge mechanism that would implement the proposed
14 affidavit/counteraffidavit exchange between the parties.

15 **Payment Bond**

16 The tentative recommendation should solicit comment on the concept of
17 requiring the owner to provide a copy of a payment bond to any claimant that
18 gives a preliminary notice. The tentative recommendation should indicate that
19 the consequence of failure to comply would be to toll the six month statute of
20 limitations for enforcement of a recorded bond until a copy of the bond is
21 provided. In the case of an unrecorded bond, the claimant would be unaware of
22 its existence, and would simply pursue lien and stop notice remedies instead.

23 **Preliminary Notice in Public Works Contract**

24 The Commission declined to adopt the requirement that a first tier
25 subcontractor under a public works contract should be required to give
26 preliminary notice. The original contractor under a public works contract is
27 required to list subcontractors, so preliminary notice by a first tier subcontractor
28 is not as critical as it is for a private work of improvement.

29 The Commission declined to adopt the proposal to eliminate the 75/15 day
30 post-completion notice on a payment bond. The same rule applies on a private
31 work of improvement, and it is unlikely that the parties adversely affected would
32 agree that this is an improvement in the law.

1 **Cessation of Labor in Public Works Contract**

2 The tentative recommendation should solicit comment on the rule that 30
3 days cessation of labor is completion. Does this cause problems in practice, and
4 should it be conformed to the 60 day rule applicable to a private work of
5 improvement?

6 **Conforming Revisions**

7 The conforming revisions should be supplemented by any additional
8 revisions the staff has discovered.

9 **STUDY H-855 – STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW**

10 The Commission considered Memorandum 2006-25 and its First and Second
11 Supplements, discussing a staff draft on the clarification and simplification of
12 CID law. The Commission approved the staff draft and the staff's
13 recommendations, subject to the following decisions.

14 **General Notice**

15 The staff will consider whether proposed Civil Code Section 4045 is broad
16 enough to include the posting of notice on an electronic kiosk.

17 **Executive Session**

18 The staff will examine the relationship between the general rules on a board
19 meeting in executive session and special rules that may apply in connection with
20 the collection of an assessment.

21 The staff will examine the application of Civil Code Section 47 to a statement
22 made at a board meeting.

23 A note will be added to proposed Civil Code Section 4540 inviting public
24 comment on whether a board should have discretion to meet in executive session
25 when the person who is the subject of the meeting wishes the meeting to be
26 open. The note will invite comment on whether there are values served by
27 meeting in executive session other than protecting the privacy of the person who
28 is the subject of the meeting (e.g., avoiding defamation, protecting complainant
29 privacy, etc.).

30 **Member Motion at Board Meeting**

31 The Commission disapproved a suggestion that a member be authorized to
32 make or second a motion at a board meeting.

1 **Inspection of Association Correspondence**

2 The Commission approved proposed Civil Code Section 4700(a)(13), with the
3 following revisions:

4 (13) ~~Official-written~~ Written correspondence of the association,
5 other than correspondence that relates to litigation, ~~the formation of~~
6 ~~a contract with a third party~~, personnel matters, member discipline,
7 an assessment dispute, or a request for a payment plan for overdue
8 assessments.

9 The Comment to proposed Civil Code Section 4700 will be revised to make
10 clear that: (1) the new provision does not affect the existing rule that privileged
11 communications are not subject to inspection and (2) the provision has no effect
12 on discovery in a civil or criminal case.

13 **Record Retention**

14 The Commission approved inclusion of proposed Civil Code Section 4780 in
15 the staff draft.

16 **Civil Action to Enforce Statute**

17 The term “member” will be used in proposed Civil Code Section 5130 in place
18 of the term “interested person.”

STUDY J-103 – ORAL ARGUMENT IN CIVIL PROCEDURE

19 The Commission considered Memorandum 2006-15 and the attached staff
20 draft of a report to the Legislature on oral argument in civil procedure. The
21 report indicates that current practice in the courts appears to be satisfactory, and
22 that proposed legislation on the matter would create more problems than it
23 resolves. The Commission approved the report for submission to the Legislature
24 as drafted.

STUDY J-111 – STATUTE OF LIMITATIONS FOR LEGAL MALPRACTICE

25 The Commission considered Memorandum 2006-17 and its First and Second
26 Supplements, relating to the statute of limitations for legal malpractice. The
27 Commission decided to discontinue work on this topic. In case future
28 developments make it worthwhile to recommence work, the topic should remain
29 on the Commission’s calendar of topics authorized for study.

1 any consumer described in Section 1985.3, or any employee
2 described in Section 1985.6, or upon the court's own motion after
3 giving counsel notice and an opportunity to be heard, may make an
4 order quashing the subpoena entirely, modifying it, or directing
5 compliance with it upon such terms or conditions as the court shall
6 declare, including protective orders. In addition, the court may
7 make any other order as may be appropriate to protect the parties,
8 the witness, ~~or the consumer~~, or the employee from unreasonable
9 or oppressive demands including unreasonable violations of a
10 ~~witness's or consumer's~~ the right of privacy of a witness, consumer,
11 or employee. Nothing herein shall require any ~~witness or party~~
12 person to move to quash, modify, or condition any subpoena duces
13 tecum of personal records of any consumer served under
14 paragraph (1) of subdivision (b) of Section 1985.3 or employment
15 records of any employee served under paragraph (1) of subdivision
16 (b) of Section 1985.6.

17 **Comment.** Section 1987.1 is amended to clarify its application
18 when employment records of an employee are subpoenaed under
19 Section 1985.6.

20 **Code Civ. Proc. § 2020.510 (amended). Subpoena for production**
21 **of tangible items and attendance and testimony of deponent**

22 2020.510. (a) A deposition subpoena that commands the
23 attendance and the testimony of the deponent, as well as the
24 production of business records, documents, and tangible things,
25 shall:

26 (1) Comply with the requirements of Section 2020.310.

27 (2) Designate the business records, documents, and tangible
28 things to be produced either by specifically describing each
29 individual item or by reasonably particularizing each category of
30 item.

31 (3) Specify any testing or sampling that is being sought.

32 (b) A deposition subpoena under subdivision (a) need not be
33 accompanied by an affidavit or declaration showing good cause for
34 the production of the documents and things designated.

35 (c) Where, as described in Section 1985.3, the person to whom
36 the deposition subpoena is directed is a witness, and the business
37 records described in the deposition subpoena are personal records
38 pertaining to a consumer, the service of the deposition subpoena
39 shall be accompanied either by a copy of the proof of service of the
40 notice to the consumer described in subdivision (e) of Section
41 1985.3, or by the consumer's written authorization to release
42 personal records described in paragraph (2) of subdivision (c) of
43 Section 1985.3.

44 (d) Where, as described in Section 1985.6, the person to whom
45 the deposition subpoena is directed is a witness, and the business
46 records described in the deposition subpoena are employment
47 records pertaining to an employee, the service of the deposition

1 subpoena shall be accompanied either by a copy of the proof of
2 service of the notice to the employee described in subdivision (e) of
3 Section 1985.6, or by the employee's written authorization to
4 release personal records described in paragraph (2) of subdivision
5 (c) of Section 1985.6.

6 **Comment.** Section 2020.510 is amended to clarify its application
7 when employment records of an employee are subpoenaed under
8 Section 1985.6.

9 **Code Civ. Proc. § 2025.240 (amended). Service of deposition**
10 **notice and related documents**

11 2025.240. (a) The party who prepares a notice of deposition shall
12 give the notice to every other party who has appeared in the action.
13 The deposition notice, or the accompanying proof of service, shall
14 list all the parties or attorneys for parties on whom it is served.

15 (b) Where, as defined in subdivision (a) of Section 1985.3 or
16 1985.6, the party giving notice of the deposition is a subpoenaing
17 party, and the deponent is a witness commanded by a deposition
18 subpoena to produce personal records of a consumer or
19 employment records of an employee, the subpoenaing party shall
20 serve on that consumer or employee all of the following:

21 (1) A notice of the deposition.

22 (2) The notice of privacy rights specified in subdivision (e) of
23 Section 1985.3 ~~and in Section~~ or 1985.6.

24 (3) A copy of the deposition subpoena.

25 (c) If the attendance of the deponent is to be compelled by
26 service of a deposition subpoena under Chapter 6 (commencing
27 with Section 2020.010), an identical copy of that subpoena shall be
28 served with the deposition notice.

29 **Comment.** Section 2025.240 is amended to clarify its application
30 when employment records of an employee are subpoenaed under
31 Section 1985.6.

32 Corresponding revisions should be made in the preliminary part (narrative
33 portion) of the draft.

34 **Forcible Entry and Forcible Detainer**

35 The Commission decided that the special provisions governing discovery in
36 an unlawful detainer case should also apply to a proceeding for forcible entry or
37 forcible detainer. The amendments shown in the draft (Code Civ. Proc. §§
38 2025.270, 2030.020, 2030.260, 2031.020, 2031.030, 2031.260, 2033.020, 2033.250)
39 should be revised to refer to "a proceeding under Chapter 4 (commencing with
40 Section 1159) of Title 3 of Part 3," instead of "an unlawful detainer action."

41 Corresponding revisions should be made in the preliminary part.

1 intent of the provision. To achieve that objective, the Commission tentatively
2 approved the following reforms:

3 **Code Civ. Proc. § 904.1 (amended). Appeal in unlimited civil case**

4 904.1. (a) An appeal, other than in a limited civil case, is to the
5 court of appeal. An appeal, other than in a limited civil case, may
6 be taken from any of the following:

7 (1) From a judgment, except (A) an interlocutory judgment,
8 other than as provided in paragraphs (8), (9), and (11), or (B) a
9 judgment of contempt that is made final and conclusive by Section
10 1222, ~~or (C) a judgment granting or denying a petition for issuance~~
11 ~~of a writ of mandamus or prohibition directed to a municipal court~~
12 ~~or the superior court in a county in which there is no municipal~~
13 ~~court or the judge or judges thereof that relates to a matter pending~~
14 ~~in the municipal or superior court. However, an appellate court~~
15 ~~may, in its discretion, review a judgment granting or denying a~~
16 ~~petition for issuance of a writ of mandamus or prohibition, or a~~
17 ~~judgment or order for the payment of monetary sanctions, upon~~
18 ~~petition for an extraordinary writ.~~

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

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

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

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

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

30 (7) From an order appointing a receiver.

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

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

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

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

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

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

1 (b) Sanction orders or judgments of five thousand dollars
2 (\$5,000) or less against a party or an attorney for a party may be
3 reviewed on an appeal by that party after entry of final judgment in
4 the main action, or, at the discretion of the court of appeal, may be
5 reviewed upon petition for an extraordinary writ.

6 **Comment.** Subdivision (a) of Section 904.1 is amended to reflect
7 unification of the municipal and superior courts pursuant to Article
8 VI, Section 5(e), of the California Constitution. Former Section
9 904.1(a)(1)(C) is continued in Section 904.3, with revisions to reflect
10 unification.

11 **Code Civ. Proc. § 904.2 (amended). Appeal from ruling by judicial**
12 **officer in limited civil case**

13 904.2. An appeal of a ruling by a superior court judge or other
14 judicial officer in a limited civil case is to the appellate division of
15 the superior court. An appeal of a ruling by a superior court judge
16 or other judicial officer in a limited civil case may be taken from
17 any of the following:

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

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

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

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

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

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

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

34 (h) From an order appointing a receiver.

35 **Comment.** Section 904.2 is amended to make clear that it
36 governs the appealability of a ruling by a superior court judge or
37 other judicial officer in a limited civil case. For the appealability of a
38 judgment by the appellate division of the superior court on a writ
39 petition in a limited civil case, see Section 904.3.

40 **Code Civ. Proc. § 904.3 (added). Appeal from judgment of**
41 **appellate division on petition for mandamus or prohibition**

42 904.3. An appeal may not be taken from a judgment of the
43 appellate division of a superior court granting or denying a petition
44 for issuance of a writ of mandamus or prohibition directed to the
45 superior court, or a judge thereof, in a limited civil case or a

1 misdemeanor or infraction case. An appellate court may, in its
2 discretion, upon petition for extraordinary writ, review the
3 judgment.

4 **Comment.** Section 904.3 continues the substance of former
5 Section 904.1(a)(1)(C), with revisions to reflect unification of the
6 municipal and superior courts pursuant to Article VI, Section 5(e),
7 of the California Constitution.

8 Before 1982, if a litigant disagreed with a prejudgment ruling of
9 a municipal or justice court, the litigant could seek an extraordinary
10 writ from the superior court. A judgment on the writ petition could
11 be appealed to the appropriate court of appeal. See *Gilbert v.*
12 *Municipal Court*, 73 Cal. App. 3d 723, 140 Cal. Rptr. 897 (1977);
13 *Burrus v. Municipal Court*, 36 Cal. App. 3d 233, 111 Cal. Rptr. 539
14 (1973).

15 In 1982, the Legislature amended Section 904.1 to preclude an
16 appeal from a superior court judgment on a petition for a writ of
17 mandamus or prohibition directed to a municipal or justice court.
18 See 1982 Cal. Stat. ch. 1198, § 63.2. The language added in 1982,
19 with some modifications, later became former Section
20 904.1(a)(1)(C). The provision was applicable not just in a civil case,
21 but also when a party to a misdemeanor case sought a petition for a
22 writ of mandamus or prohibition. See *Baluyut v. Superior Court*, 12
23 Cal. 4th 826, 829 n.3, 911 P.2d 1, 50 Cal. Rptr. 2d 101 (1996); *Serna v.*
24 *Superior Court*, 40 Cal. 3d 239, 245-46 & n.2, 707 P.2d 793, 219 Cal.
25 Rptr. 420 (1985); see also *Bermudez v. Municipal Court*, 1 Cal. 4th
26 855, 863, 823 P.2d 1210, 4 Cal. Rptr. 2d 609 (1992).

27 In a unified court system, civil cases that used to be adjudicated
28 in the municipal and justice courts are classified as limited civil
29 cases and adjudicated in the superior court. See Section 85 &
30 Comment; *Trial Court Unification: Revision of Codes*, 28 Cal. L.
31 Revision Comm'n Reports 51, 64-65 (1998). Misdemeanor and
32 infraction cases are also adjudicated in superior court. Cal. Const.
33 art. VI, § 10; see also Penal Code § 19.7 (jurisdiction of infraction). If
34 a litigant disagrees with a prejudgment ruling in a limited civil case
35 or a misdemeanor or infraction case, the litigant can seek an
36 extraordinary writ from the appellate division of the superior court.
37 See Cal. Const. art. VI, § 10; see also Sections 1068(b), 1085(b),
38 1103(b) & Comments.

39 By precluding an appeal from a judgment of the appellate
40 division on a petition for a writ of mandamus or prohibition
41 directed to the superior court in a limited civil case or a
42 misdemeanor or infraction case, Section 904.3 preserves the intent
43 of former Section 904.1(a)(1)(C). Like former Section 904.1(a)(1)(C),
44 Section 904.3 makes clear that although such a judgment cannot be
45 appealed, a litigant may seek review of the judgment by
46 extraordinary writ.

47 The clause in former Section 904.1(a)(1)(C) permitting an
48 appellate court to review a sanction order upon petition for an

1 extraordinary writ is not continued. That clause was unnecessary
2 and redundant. See Section 904.1(b) (sanction order of \$5,000 or less
3 against party or attorney for party may be reviewed on appeal after
4 entry of final judgment in main action, or, at discretion of court of
5 appeal, reviewed upon petition for extraordinary writ); see also
6 Section 904.1(a)(12) (sanction order exceeding \$5,000 is appealable).

7 The tentative recommendation should include a Note soliciting comment on
8 whether it is appropriate that proposed Section 904.3 refers to a writ petition in a
9 misdemeanor or infraction case, as well as a writ petition in a limited civil case.
10 The Note should also seek comment on the possibility of splitting the substance
11 of proposed Section 904.3 into two provisions: one in the Code of Civil Procedure
12 that pertains to a writ petition in a limited civil case, and one in the Penal Code
13 that pertains to a writ petition in a misdemeanor or infraction case.

14 *Obsolete Cross-References to Former Code of Civil Procedure Section 904.3*

15 The Commission tentatively approved the following amendments to
16 eliminate obsolete cross-references to former Code of Civil Procedure Section
17 904.3:

18 **Code Civ. Proc. § 399 (amended). Transfer of action or proceeding**

19 399. (a) When an order is made transferring an action or
20 proceeding under any of the provisions of this title, the clerk shall,
21 after expiration of the time within which a petition for writ of
22 mandate could have been filed pursuant to Section 400, or if ~~such a~~
23 writ petition is filed after judgment denying the writ becomes final,
24 and upon payment of the costs and fees, transmit the pleadings and
25 papers therein (or if the pleadings be oral a transcript of the same)
26 to the clerk of the court to which the same is transferred. When the
27 transfer is sought on any ground specified in subdivisions ~~2, 3, 4~~
28 ~~and 5~~ (b), (c), (d), and (e) of Section 397, the costs and fees thereof,
29 and of filing the papers in the court to which the transfer is
30 ordered, shall be paid at the time the notice of motion is filed, by
31 the party making the motion for the transfer. When the transfer is
32 sought solely, or is ordered, because the action or proceeding was
33 commenced in a court other than that designated as proper by this
34 title, ~~such those~~ costs and fees (including any expenses and
35 attorney's fees awarded defendant pursuant to Section 396b) shall
36 be paid by the plaintiff before ~~such the~~ transfer is made; and ~~if, in~~
37 ~~any such case,~~ if the defendant has paid ~~such those~~ costs and fees at
38 the time of filing ~~his or her~~ a notice of motion, the same shall be
39 repaid to the defendant, upon the making of ~~such the transfer~~
40 order. If ~~such those~~ costs and fees have not been so paid by the
41 plaintiff within five days after service of notice of ~~such the transfer~~
42 order, then any other party interested therein, whether named in

1 the complaint as a party or not, may pay ~~such~~ those costs and fees,
2 and the clerk shall thereupon transmit the papers and pleadings
3 therein as if ~~such~~ those costs and fees had been originally paid by
4 the plaintiff, and the same shall be a proper item of costs of the
5 party so paying the same, recoverable by ~~such~~ that party in the
6 event ~~he or she~~ that party prevails in the action; otherwise, the
7 same shall be offset against and deducted from the amount, if any,
8 awarded the plaintiff in the event the plaintiff prevails against ~~such~~
9 that party in ~~such~~ the action. The cause of action shall not be further
10 prosecuted in any court until ~~such~~ those costs and fees are paid. If
11 ~~such~~ those costs and fees are not paid within 30 days after service
12 of notice of ~~such~~ the transfer order, or if a copy of a petition for writ
13 of mandate pursuant to Section 400 is filed in the trial court, or if an
14 appeal is taken pursuant to Section 904.2 ~~or 904.3~~, then within 30
15 days after notice of finality of the order of transfer, the court on a
16 duly noticed motion by any party may dismiss the action without
17 prejudice to the cause on the condition that no other action on the
18 cause may be commenced in another court prior to satisfaction of
19 the court's order for costs and fees. When a petition for writ of
20 mandate or appeal does not result in a stay of proceedings, the time
21 for payment of ~~such~~ those costs shall be 60 days after service of the
22 notice of the order.

23 (b) At the time of transmittal of the papers and pleadings, the
24 clerk shall mail notice to all parties who have appeared in the
25 action or special proceeding, stating the date on which ~~such~~
26 transmittal occurred. Promptly upon receipt of ~~such~~ the papers and
27 pleadings, the clerk of the court to which the action or proceeding
28 is transferred shall mail notice to all parties who have appeared in
29 the action or special proceeding, stating the date of the filing of the
30 case and number assigned to the case in ~~such~~ the court.

31 (c) The court to which an action or proceeding is transferred
32 under this title shall have and exercise over the same the like
33 jurisdiction as if it had been originally commenced therein, all prior
34 proceedings being saved, and ~~such~~ the court may require ~~such~~
35 amended, additional, or supplemental pleadings, and the giving of
36 ~~such~~ notice, as may be necessary for the proper presentation and
37 determination of the action or proceeding in ~~such~~ the court.
38

39 **Comment.** Section 399 is amended to delete an obsolete cross-
40 reference to former Section 904.3, relating to appeals from justice
41 courts. The justice courts no longer exist and former Section 904.3
42 was repealed. See 1994 Cal. Stat. res. ch. 113 (SCA 7) (Prop. 191,
43 approved Nov. 8, 1994); 1976 Cal. Stat. ch. 1288, § 13.

44 Section 399 is also amended to correct the cross-references to
45 subdivisions of Section 397. Former subdivisions (2)-(5) were
46 relabeled as subdivisions (b)-(e). See 1992 Cal. Stat. ch. 163, § 19.
47 Section 399 is revised to reflect that change.

1 Section 399 is further amended to insert subdivisions and make
2 stylistic revisions.

3 **Code Civ. Proc. § 586 (amended). Judgment as if defendant failed**
4 **to answer**

5 586. (a) In the following cases the same proceedings shall be
6 had, and judgment shall be rendered in the same manner, as if the
7 defendant had failed to answer:

8 (1) If the complaint has been amended, and the defendant fails
9 to answer it, as amended, or demur thereto, or file a notice of
10 motion to strike, of the character specified in Section 585, within 30
11 days after service thereof or within the time allowed by the court.

12 (2) If the demurrer to the complaint is overruled and a motion
13 to strike, of the character specified in Section 585, is denied, or
14 where only one thereof is filed, if the demurrer is overruled or the
15 motion to strike is denied, and the defendant fails to answer the
16 complaint within the time allowed by the court.

17 (3) If a motion to strike, of the character specified in Section 585,
18 is granted in whole or in part, and the defendant fails to answer the
19 unstricken portion of the complaint within the time allowed by the
20 court, no demurrer having been sustained or being then pending.

21 (4) If a motion to quash service of summons or to stay or
22 ~~dismiss~~, dismiss the action has been filed, or writ of mandate
23 sought and notice thereof given, as provided in Section 418.10, and
24 upon denial of ~~such~~ the motion or writ, defendant fails to respond
25 to the ~~complaint~~, complaint within the time provided in ~~such~~ that
26 section or as otherwise provided by law.

27 (5) If the demurrer to the answer is sustained and the defendant
28 fails to amend the answer within the time allowed by the court.

29 (6)(A) If a motion to transfer pursuant to Section 396b is denied
30 and the defendant fails to respond to the complaint within the time
31 allowed by the court pursuant to subdivision (e) of Section 396b or
32 within the time provided in subparagraph (C).

33 (B) If a motion to transfer pursuant to Section 396b is granted
34 and the defendant fails to respond to the complaint within 30 days
35 of the mailing of notice of the filing and case number by the clerk of
36 the court to which the action or proceeding is transferred or within
37 the time provided in subparagraph (C).

38 (C) If the order granting or denying a motion to transfer
39 pursuant to Section 396a or 396b is the subject of an appeal
40 pursuant to Section 904.2 ~~or 904.3~~ in which a stay is granted or of a
41 mandate proceeding pursuant to Section 400, the court having
42 jurisdiction over the trial, upon application or on its own motion
43 after ~~such~~ the appeal or mandate proceeding becomes final or upon
44 earlier termination of a stay, shall allow the defendant a reasonable
45 time to respond to the complaint. Notice of the order allowing the
46 defendant further time to respond to the complaint shall be

1 promptly served by the party who obtained ~~such~~ the order or by
2 the clerk if the order is made on the court's own motion.

3 (7) If a motion to strike the answer in whole, of the character
4 specified in Section 585, is granted without leave to amend, or if a
5 motion to strike the answer in whole or in part, of the character
6 specified in Section 585, is granted with leave to amend and the
7 defendant fails to amend the answer within the time allowed by the
8 court.

9 (8) If a motion to dismiss pursuant to Section 583.250 is denied
10 and the defendant fails to respond within the time allowed by the
11 court.

12 (b) For the purposes of this section, "respond" means to answer,
13 to demur, or to move to strike.

14 **Comment.** Subdivision (a)(6)(C) of Section 586 is amended to
15 delete an obsolete cross-reference to former Section 904.3, relating
16 to appeals from justice courts. The justice courts no longer exist and
17 former Section 904.3 was repealed. See 1994 Cal. Stat. res. ch. 113
18 (SCA 7) (Prop. 191, approved Nov. 8, 1994); 1976 Cal. Stat. ch. 1288,
19 § 13.

20 Section 586 is further amended to make stylistic revisions.

21 Code of Civil Procedure Section 904 also contains an obsolete cross-reference
22 to former Code of Civil Procedure Section 904.3. The Commission's tentative
23 recommendation on *Technical and Minor Substantive Statutory Corrections* (April
24 2006) proposes to amend Section 904.3 to delete that cross-reference. The
25 amendment will require adjustment if a new Section 904.3 is added as proposed
26 in this study. The staff is to coordinate the two proposals as needed.

27 *Writ Jurisdiction in a Small Claims Case*

28 The Commission tentatively approved the following reforms relating to writ
29 jurisdiction in a small claims case:

30 **Code Civ. Proc. § 1068 (amended). Courts authorized to grant writ 31 of review**

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

37 (b) The appellate division of the superior court may grant a writ
38 of review directed to the superior court in a limited civil case
39 subject to its appellate jurisdiction or in a misdemeanor or
40 infraction case subject to its appellate jurisdiction. Where the
41 appellate division grants a writ of review directed to the superior

1 court, the superior court is an inferior tribunal for purposes of this
2 chapter.

3 **Comment.** Subdivision (b) of Section 1068 is amended to more
4 closely track the language of Article VI, Section 10, of the California
5 Constitution. This is not a substantive change.

6 The amendment helps clarify the treatment of a small claims
7 case. An appeal from a judgment in a small claims case is not
8 within the jurisdiction of the appellate division. Rather, such an
9 appeal consists of a new hearing before a judicial officer other than
10 the judicial officer who heard the action in the small claims
11 division. See Section 116.770(a). Because the appellate division
12 lacks jurisdiction of a small claims appeal, the appellate division
13 also lacks authority to review a judgment or a prejudgment ruling
14 in a small claims case by way of extraordinary writ. See Cal. Const.
15 art. VI, § 10. For further guidance on seeking a writ of review in a
16 small claims case, see Section 1068.5.

17 Section 1068 is also amended to make a stylistic revision.

18 **Code Civ. Proc. § 1068.5 (added). Writ of review in small claims**
19 **case**

20 1068.5. (a) A writ of review directed to a superior court with
21 respect to a judgment or a prejudgment ruling of the small claims
22 division may be granted by an appellate court or by a judicial
23 officer of the superior court, other than the judicial officer who
24 heard the case in the small claims division. Where a judicial officer
25 of a superior court grants a writ of review directed to the superior
26 court, the superior court is an inferior tribunal for purposes of this
27 chapter.

28 (b) A writ of review directed to the superior court with respect
29 to a postjudgment enforcement order in a small claims case may be
30 granted by an appellate court or by the appellate division of the
31 superior court.

32 **Comment.** Section 1068.5 is added to clarify the proper
33 treatment of a writ petition relating to a small claims case.

34 Subdivision (a) makes clear that if a writ of review is sought in
35 superior court with respect to a judgment or prejudgment ruling of
36 the small claims division, the writ proceeding is to be heard by a
37 judicial officer of the superior court other than the one who heard
38 the case in the small claims division. This parallels the treatment of
39 a small claims appeal. See Section 116.770 (small claims appeal is to
40 be heard by judicial officer of superior court other than officer who
41 heard case in small claims division); see also Section 1068 Comment
42 (200x) (appellate division lacks writ jurisdiction of judgment or
43 prejudgment ruling in small claims case); *City & County of San*
44 *Francisco v. Small Claims Court for the Northern Judicial District of*
45 *San Mateo County*, 141 Cal. App. 3d 470, 470, 481, 190 Cal. Rptr.
46 340 (1983) (affirming decision of superior court judge on writ
47 petition relating to small claims case, thus implicitly deciding that

1 superior court judge had writ jurisdiction); *Gardiana v. Small*
2 Claims Court for the San Leandro Hayward Judicial District of
3 Alameda County, 59 Cal. App. 3d 412, 412, 425, 130 Cal. Rptr. 675
4 (1976) (same).

5 Subdivision (b) codifies *General Electric Capital Auto Financial*
6 *Services, Inc. v. Appellate Division of the Superior Court of Los Angeles*
7 *County*, 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). A small
8 claims case is a limited civil case. *Id.* at 138. Where a statute or rule
9 applicable to a small claims case conflicts with a statute or rule
10 applicable to a limited civil case, the statute or rule applicable to a
11 small claims case governs. Section 87.

12 A special statute governs a small claims appeal (Section
13 116.770), so the general rule giving the appellate division
14 jurisdiction of an appeal in a limited civil case (Section 904.2) is
15 inapplicable. But there is no special statute governing appeal of a
16 postjudgment enforcement order in a small claims case.
17 Consequently, the situation is governed by the general rule giving
18 the appellate division jurisdiction of an appeal in a limited civil
19 case. *General Electric Capital*, 88 Cal. App. 4th at 138, 144.

20 Because the appellate division has appellate jurisdiction of a
21 postjudgment enforcement order in a small claims case, the
22 appellate division also has extraordinary writ jurisdiction of a
23 postjudgment enforcement order in a small claims case. *Id.* at 145;
24 see Cal. Const. art. VI, § 10. Subdivision (b) thus states the rule of
25 Section 1068(b) as applied in the specific context of a postjudgment
26 enforcement order in a small claims case.

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

29 1085. (a) A writ of mandate may be issued by any court to any
30 inferior tribunal, corporation, board, or person, to compel the
31 performance of an act which the law specially enjoins, as a duty
32 resulting from an office, trust, or station, or to compel the
33 admission of a party to the use and enjoyment of a right or office to
34 which the party is entitled, and from which the party is unlawfully
35 precluded by ~~such~~ that inferior tribunal, corporation, board, or
36 person.

37 (b) The appellate division of the superior court may grant a writ
38 of mandate directed to the superior court in a limited civil case
39 subject to its appellate jurisdiction or in a misdemeanor or
40 infraction case subject to its appellate jurisdiction. Where the
41 appellate division grants a writ of ~~review~~ mandate directed to the
42 superior court, the superior court is an inferior tribunal for
43 purposes of this chapter.

44 **Comment.** The first sentence of subdivision (b) of Section 1085
45 is amended to more closely track the language of Article VI, Section
46 10, of the California Constitution. This is not a substantive change.

1 The amendment helps clarify the treatment of a small claims
2 case. An appeal from a judgment in a small claims case is not
3 within the jurisdiction of the appellate division. Rather, such an
4 appeal consists of a new hearing before a judicial officer other than
5 the judicial officer who heard the action in the small claims
6 division. See Section 116.770(a). Because the appellate division
7 lacks jurisdiction of a small claims appeal, the appellate division
8 also lacks authority to review a judgment or a prejudgment ruling
9 in a small claims case by way of extraordinary writ. See Cal. Const.
10 art. VI, § 10. For further guidance on seeking a writ of mandate in a
11 small claims case, see Section 1085.3.

12 The second sentence of subdivision (b) is amended to refer to a
13 writ of mandate instead of a writ of review.

14 Section 1085 is also amended to make a stylistic revision.

15 **Code Civ. Proc. § 1085.3 (added). Writ of mandate in small claims**
16 **case**

17 1085.3. (a) A writ of mandate directed to a superior court with
18 respect to a judgment or prejudgment ruling of the small claims
19 division may be granted by an appellate court or by a judicial
20 officer of the superior court, other than the judicial officer who
21 heard the case in the small claims division. Where a judicial officer
22 of a superior court grants a writ of mandate directed to the superior
23 court, the superior court is an inferior tribunal for purposes of this
24 chapter.

25 (b) A writ of mandate directed to the superior court with respect
26 to a postjudgment enforcement order in a small claims case may be
27 granted by an appellate court or by the appellate division of the
28 superior court.

29 **Comment.** Section 1085.3 is added to clarify the proper
30 treatment of a writ petition relating to a small claims case.

31 Subdivision (a) makes clear that if a writ of mandate is sought in
32 superior court with respect to a judgment or prejudgment ruling of
33 the small claims division, the writ proceeding is to be heard by a
34 judicial officer of the superior court other than the one who heard
35 the case in the small claims division. This parallels the treatment of
36 a small claims appeal. See Section 116.770 (small claims appeal is to
37 be heard by judicial officer of superior court other than officer who
38 heard case in small claims division); see also Section 1085 Comment
39 (200x) (appellate division lacks writ jurisdiction of judgment or
40 prejudgment ruling in small claims case); *City & County of San*
41 *Francisco v. Small Claims Court for the Northern Judicial District of*
42 *San Mateo County*, 141 Cal. App. 3d 470, 470, 481, 190 Cal. Rptr.
43 340 (1983) (affirming decision of superior court judge on writ
44 petition relating to small claims case, thus implicitly deciding that
45 superior court judge had writ jurisdiction); *Gardiana v. Small*
46 *Claims Court for the San Leandro Hayward Judicial District of*

1 Alameda County, 59 Cal. App. 3d 412, 412, 425, 130 Cal. Rptr. 675
2 (1976) (same).

3 Subdivision (b) codifies *General Electric Capital Auto Financial*
4 *Services, Inc. v. Appellate Division of the Superior Court of Los Angeles*
5 *County*, 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). A small
6 claims case is a limited civil case. *Id.* at 138. Where a statute or rule
7 applicable to a small claims case conflicts with a statute or rule
8 applicable to a limited civil case, the statute or rule applicable to a
9 small claims case governs. Section 87.

10 A special statute governs a small claims appeal (Section
11 116.770), so the general rule giving the appellate division
12 jurisdiction of an appeal in a limited civil case (Section 904.2) is
13 inapplicable. But there is no special statute governing appeal of a
14 postjudgment enforcement order in a small claims case.
15 Consequently, the situation is governed by the general rule giving
16 the appellate division jurisdiction of an appeal in a limited civil
17 case. *General Electric Capital*, 88 Cal. App. 4th at 138, 144.

18 Because the appellate division has appellate jurisdiction of a
19 postjudgment enforcement order in a small claims case, the
20 appellate division also has extraordinary writ jurisdiction of a
21 postjudgment enforcement order in a small claims case. *Id.* at 145;
22 see Cal. Const. art. VI, § 10. Subdivision (b) thus states the rule of
23 Section 1085(b) as applied in the specific context of a postjudgment
24 enforcement order in a small claims case.

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

27 1103. (a) A writ of prohibition may be issued by any court to an
28 inferior tribunal or to a corporation, board, or person, in all cases
29 where there is not a plain, speedy, and adequate remedy in the
30 ordinary course of law. It is issued upon the verified petition of the
31 person beneficially interested.

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

39 **Comment.** The first sentence of subdivision (b) of Section 1103
40 is amended to more closely track the language of Article VI, Section
41 10, of the California Constitution. This is not a substantive change.

42 The amendment helps clarify the treatment of a small claims
43 case. An appeal from a judgment in a small claims case is not
44 within the jurisdiction of the appellate division. Rather, such an
45 appeal consists of a new hearing before a judicial officer other than
46 the judicial officer who heard the action in the small claims
47 division. See Section 116.770(a). Because the appellate division

1 lacks jurisdiction of a small claims appeal, the appellate division
2 also lacks authority to review a judgment or a prejudgment ruling
3 in a small claims case by way of extraordinary writ. See Cal. Const.
4 art. VI, § 10. For further guidance on seeking a writ of prohibition
5 in a small claims case, see Section 1103.5.

6 The second sentence of subdivision (b) is amended to refer to a
7 writ of prohibition instead of a writ of review.

8 **Code Civ. Proc. § 1103.5 (added). Writ of prohibition in small**
9 **claims case**

10 1103.5. (a) A writ of prohibition directed to a superior court
11 with respect to a judgment or a prejudgment ruling of the small
12 claims division may be granted by an appellate court or by a
13 judicial officer of the superior court, other than the judicial officer
14 who heard the case in the small claims division. Where a judicial
15 officer of a superior court grants a writ of prohibition directed to
16 the superior court, the superior court is an inferior tribunal for
17 purposes of this chapter.

18 (b) A writ of prohibition directed to the superior court with
19 respect to a postjudgment enforcement order in a small claims case
20 may be granted by an appellate court or by the appellate division of
21 the superior court.

22 **Comment.** Section 1103.5 is added to clarify the proper
23 treatment of a writ petition relating to a small claims case.

24 Subdivision (a) makes clear that if a writ of prohibition is sought
25 in superior court with respect to a judgment or prejudgment ruling
26 of the small claims division, the writ proceeding is to be heard by a
27 judicial officer of the superior court other than the one who heard
28 the case in the small claims division. This parallels the treatment of
29 a small claims appeal. See Section 116.770 (small claims appeal is to
30 be heard by judicial officer of superior court other than officer who
31 heard case in small claims division); see also Section 1085 Comment
32 (200x) (appellate division lacks writ jurisdiction of judgment or
33 prejudgment ruling in small claims case); *City & County of San*
34 *Francisco v. Small Claims Court for the Northern Judicial District of*
35 *San Mateo County*, 141 Cal. App. 3d 470, 470, 481, 190 Cal. Rptr.
36 340 (1983) (affirming decision of superior court judge on writ
37 petition relating to small claims case, thus implicitly deciding that
38 superior court judge had writ jurisdiction); *Gardiana v. Small*
39 *Claims Court for the San Leandro Hayward Judicial District of*
40 *Alameda County*, 59 Cal. App. 3d 412, 412, 425, 130 Cal. Rptr. 675
41 (1976) (same).

42 Subdivision (b) codifies *General Electric Capital Auto Financial*
43 *Services, Inc. v. Appellate Division of the Superior Court of Los Angeles*
44 *County*, 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). A small
45 claims case is a limited civil case. *Id.* at 138. Where a statute or rule
46 applicable to a small claims case conflicts with a statute or rule

1 applicable to a limited civil case, the statute or rule applicable to a
2 small claims case governs. Section 87.

3 A special statute governs a small claims appeal (Section
4 116.770), so the general rule giving the appellate division
5 jurisdiction of an appeal in a limited civil case (Section 904.2) is
6 inapplicable. But there is no special statute governing appeal of a
7 postjudgment enforcement order in a small claims case.
8 Consequently, the situation is governed by the general rule giving
9 the appellate division jurisdiction of an appeal in a limited civil
10 case. *General Electric Capital*, 88 Cal. App. 4th at 138, 144.

11 Because the appellate division has appellate jurisdiction of a
12 postjudgment enforcement order in a small claims case, the
13 appellate division also has extraordinary writ jurisdiction of a
14 postjudgment enforcement order in a small claims case. *Id.* at 145;
15 see Cal. Const. art. VI, § 10. Subdivision (b) thus states the rule of
16 Section 1103(b) as applied in the specific context of a postjudgment
17 enforcement order in a small claims case.

18 *Proper Tribunal for Seeking a Writ of Certiorari to Review a Contempt Order*

19 The Commission discussed the proper tribunal for a petition for a writ of
20 certiorari challenging a contempt order under Code of Civil Procedure Section
21 1209 *et seq.* relating to a limited civil case or a misdemeanor or infraction case.
22 The Commission considered John Hamilton Scott's concern that courts might
23 interpret the constitutional provision governing extraordinary writ jurisdiction of
24 the appellate division (Cal. Const. art. VI, § 10) to preclude the appellate division
25 from exercising jurisdiction over such a petition. See First Supplement to
26 Memorandum 2006-21, pp. 8-9 & Exhibit p. 4-5.

27 The Commission concluded that such an interpretation is unlikely because (1)
28 it would have resulted in disparity of treatment of similarly situated litigants as
29 unification proceeded on a county-by-county basis, and (2) it would amount to
30 an expansion of the jurisdiction of the courts of appeal. Consequently, the
31 Commission saw no need to propose a statute clarifying that the appellate
32 division has jurisdiction of a petition for a writ of certiorari challenging a
33 contempt order under Code of Civil Procedure Section 1209 *et seq.* relating to a
34 limited civil case or a misdemeanor or infraction case.

35 **Miscellaneous Issues**

36 The Commission considered Memorandum 2006-22 and its First Supplement,
37 relating to concurrent jurisdiction and court appearances by two-way electronic
38 audiovideo communication. The Commission made the following preliminary
39 decisions, to be incorporated into a draft of a tentative recommendation:

1 *Court Appearances By Two-Way Electronic Audiovideo Communication*

2 Penal Code Section 977 should be amended along the following lines:

3 **Penal Code § 977 (amended). Presence of defendant and counsel**

4 977. (a) (1) In all cases in which the accused is charged with a
5 misdemeanor only, he or she may appear by counsel only, except
6 as provided in paragraph (2). If the accused agrees, the initial court
7 appearance, arraignment, and plea may be by video, as provided
8 by subdivision (c).

9 (2) If the accused is charged with a misdemeanor offense
10 involving domestic violence, as defined in Section 6211 of the
11 Family Code, or a misdemeanor violation of Section 273.6, the
12 accused shall be present for arraignment and sentencing, and at
13 any time during the proceedings when ordered by the court for the
14 purpose of being informed of the conditions of a protective order
15 issued pursuant to Section 136.2.

16 (b)(1) In all cases in which a felony is charged, the accused shall
17 be present at the arraignment, at the time of plea, during the
18 preliminary hearing, during those portions of the trial when
19 evidence is taken before the trier of fact, and at the time of the
20 imposition of sentence. The accused shall be personally present at
21 all other proceedings unless he or she shall, with leave of court,
22 execute in open court, a written waiver of his or her right to be
23 personally present, as provided by paragraph (2). If the accused
24 agrees, the initial court appearance, arraignment, and plea may be
25 by video, as provided by subdivision (c).

26 (2) The accused may execute a written waiver of his or her right
27 to be personally present, approved by his or her counsel, and the
28 waiver shall be filed with the court. However, the court may
29 specifically direct the defendant to be personally present at any
30 particular proceeding or portion thereof. The waiver shall be
31 substantially in the following form:

32 "WAIVER OF DEFENDANT'S PERSONAL PRESENCE"

33 "The undersigned defendant, having been advised of his or her
34 right to be present at all stages of the proceedings, including, but
35 not limited to, presentation of and arguments on questions of fact
36 and law, and to be confronted by and cross-examine all witnesses,
37 hereby waives the right to be present at the hearing of any motion
38 or other proceeding in this cause. The undersigned defendant
39 hereby requests the court to proceed during every absence of the
40 defendant that the court may permit pursuant to this waiver, and
41 hereby agrees that his or her interest is represented at all times by
42 the presence of his or her attorney the same as if the defendant
43 were personally present in court, and further agrees that notice to
44 his or her attorney that his or her presence in court on a particular
45 day at a particular time is required is notice to the defendant of the
46 requirement of his or her appearance at that time and place."

1 (c) The court may permit the initial court appearance and
2 arraignment ~~in municipal or superior court~~ of defendants held in
3 any state, county, or local facility within the county on felony or
4 misdemeanor charges, except for those defendants who were
5 indicted by a grand jury, to be conducted by two-way electronic
6 audiovideo communication between the defendant and the
7 courtroom in lieu of the physical presence of the defendant in the
8 courtroom. If the defendant is represented by counsel, the attorney
9 shall be present with the defendant at the initial court appearance
10 and arraignment, and may enter a plea during the arraignment.
11 However, if the defendant is represented by counsel at an ~~initial~~
12 ~~hearing in superior court~~ arraignment on an information in a felony
13 case, and if the defendant does not plead guilty or nolo contendere
14 to any charge, the attorney shall be present with the defendant or if
15 the attorney is not present with the defendant, the attorney shall be
16 present in court during the hearing. The defendant shall have the
17 right to make his or her plea while physically present in the
18 courtroom if he or she so requests. If the defendant decides not to
19 exercise the right to be physically present in the courtroom, he or
20 she shall execute a written waiver of that right. A judge may order
21 a defendant's personal appearance in court for the initial court
22 appearance and arraignment. In a misdemeanor case, a judge may,
23 pursuant to this subdivision, accept a plea of guilty or no contest
24 from a defendant who is not physically in the courtroom. In a
25 felony case, a judge may, pursuant to this subdivision, accept a plea
26 of guilty or no contest from a defendant who is not physically in
27 the courtroom if the parties stipulate thereto.

28 (d) Notwithstanding subdivision (c), if the defendant is
29 represented by counsel, the attorney shall be present with the
30 defendant in any county exceeding 4,000,000 persons in population.

31 **Comment.** Subdivision (c) of Section 977 is amended to reflect
32 unification of the municipal and superior courts pursuant to Article
33 VI, Section 5(e), of the California Constitution.

34 In the first sentence, the reference to "municipal or superior
35 court" is deleted because municipal courts no longer exist and all
36 arraignments are held before a judicial officer of the superior court.

37 In the third sentence, the reference to "an initial hearing in
38 superior court in a felony case" is replaced by a reference to "an
39 arraignment on an information in a felony case." This revision is
40 necessary to clarify the type of proceeding to which the sentence
41 applies.

42 Before unification, a felony defendant was either (1) indicted
43 and arraigned on the indictment in superior court or (2) arraigned
44 on a complaint before a magistrate in municipal court and, if held
45 to answer at a preliminary hearing, later arraigned on an
46 information in superior court. Because subdivision (c) is expressly
47 inapplicable to an indicted defendant, the reference to "an initial
48 hearing in superior court in a felony case" in the third sentence was

1 sufficient to indicate that the sentence pertained to an arraignment
2 on an information, not an arraignment on a felony complaint.

3 Now that the municipal and superior courts have unified, both
4 an arraignment on a felony complaint and an arraignment on an
5 information occur in superior court (technically, the arraignment on
6 the complaint occurs before a superior court judge acting as
7 magistrate). The phrase “initial hearing in superior court in a felony
8 case” is thus vague; it could encompass either an arraignment on a
9 felony complaint or an arraignment on an information or both. The
10 amendment eliminates this ambiguity consistent with the pre-
11 unification status quo.

12 This amendment will require adjustment if Assembly Bill 2174 (Villines) is
13 enacted and amends Penal Code Section 977.

14 Penal Code Section 977.2 should be amended along the following lines:

15 **Penal Code § 977.2. Appearance and arraignment by two-way**
16 **electronic audiovideo communication**

17 977.2. (a) Notwithstanding Section 977 or any other law, in any
18 case in which the defendant is charged with a misdemeanor or a
19 felony and is currently incarcerated in the state prison, the
20 Department of Corrections may arrange for all court appearances
21 in superior court, except for the preliminary hearing, trial,
22 judgment and sentencing, and motions to suppress, to be
23 conducted by two-way electronic audiovideo communication
24 between the defendant and the courtroom in lieu of the physical
25 presence of the defendant in the courtroom. Nothing in this section
26 shall be interpreted to eliminate the authority of the court to issue
27 an order requiring the defendant to be physically present in the
28 courtroom in those cases where the court finds circumstances that
29 require the physical presence of the defendant in the courtroom.
30 For those court appearances that the department determines to
31 conduct by two-way electronic audiovideo communication, the
32 department shall arrange for two-way electronic audiovideo
33 communication between the superior court and any state prison
34 facility located in the county. The department shall provide
35 properly maintained equipment and adequately trained staff at the
36 prison as well as appropriate training for court staff to ensure that
37 consistently effective two-way communication is provided between
38 the prison facility and the courtroom for all appearances that the
39 department determines to conduct by two-way electronic
40 audiovideo communication.

41 (b) If the defendant is represented by counsel, the attorney shall
42 be present with the defendant at the initial court appearance and
43 arraignment, and may enter a plea during the arraignment.
44 However, if the defendant is represented by counsel at an ~~initial~~
45 ~~hearing in superior court arraignment on an information or~~
46 ~~indictment~~ in a felony case, and if the defendant does not plead

1 guilty or nolo contendere to any charge, the attorney shall be
2 present with the defendant or if the attorney is not present with the
3 defendant, the attorney shall be present in court during the
4 hearing.

5 (c) In lieu of the physical presence of the defendant's counsel at
6 the institution with the defendant, the court and the department
7 shall establish a confidential telephone and facsimile transmission
8 line between the court and the institution for communication
9 between the defendant's counsel in court and the defendant at the
10 institution. In this case, counsel for the defendant shall not be
11 required to be physically present at the institution during any court
12 appearance that is conducted via electronic audiovideo
13 communication. Nothing in this section shall be construed to
14 prohibit the physical presence of the defense counsel with the
15 defendant at the state prison.

16 **Comment.** Subdivision (b) of Section 977.2 is amended to reflect
17 unification of the municipal and superior courts pursuant to Article
18 VI, Section 5(e), of the California Constitution.

19 The reference to "an initial hearing in superior court in a felony
20 case" is replaced by a reference to "an arraignment on an
21 information or indictment in a felony case." This revision is
22 necessary to clarify the types of proceeding to which the sentence
23 applies.

24 Before unification, a felony defendant was either (1) indicted
25 and arraigned on the indictment in superior court or (2) arraigned
26 on a complaint before a magistrate in municipal court and, if held
27 to answer at a preliminary hearing, later arraigned on an
28 information in superior court. The reference to "an initial hearing in
29 superior court in a felony case" was thus sufficient to indicate that
30 the sentence pertained to an arraignment on an information or
31 indictment, not an arraignment on a felony complaint.

32 Now that the municipal and superior courts have unified, all
33 three kinds of arraignment occur in superior court (technically, an
34 arraignment on a felony complaint occurs before a superior court
35 judge acting as magistrate). The phrase "initial hearing in superior
36 court in a felony case" is thus imprecise; it could be construed to
37 encompass an arraignment on a felony complaint, as well as an
38 arraignment on an information or indictment. The amendment
39 eliminates this ambiguity consistent with the pre-unification status
40 quo.

41 *Concurrent Jurisdiction*

42 In its previous work on trial court unification, the Commission consistently
43 adhered to the principle of maintaining the pre-unification status quo while
44 adjusting statutes as necessary to reflect unification. The Commission discussed
45 whether to apply that approach with regard to Business and Professions Code

1 Section 12606 and similar statutes, which might be viewed as deviations from the
2 general rule that a municipal court could not issue a permanent injunction. A
3 possibility would be to revise those provisions to track the post-unification
4 equivalent of that general rule, rather than preserving the pre-unification status
5 quo. See Memorandum 2006-22, pp. 20-23. The Commission rejected that
6 approach and decided to stick with the principle of maintaining the pre-
7 unification status quo while adjusting statutes as necessary to reflect unification.

8 Consistent with that principle, Business and Professions Code Section 6455
9 should be amended along the following lines:

10 **Bus. & Prof. Code § 6455 (amended). Violation of chapter**
11 **governing paralegals**

12 6455. (a) Any consumer injured by a violation of this chapter
13 may file a complaint and seek redress in ~~any municipal or~~ superior
14 court for injunctive relief, restitution, and damages. Attorney's fees
15 shall be awarded in this action to the prevailing plaintiff.

16 (b) Any person who violates the provisions of Section 6451 or
17 6452 is guilty of an infraction for the first violation, which is
18 punishable upon conviction by a fine of up to two thousand five
19 hundred dollars (\$2,500) as to each consumer with respect to whom
20 a violation occurs, and is guilty of a misdemeanor for the second
21 and each subsequent violation, which is punishable upon
22 conviction by a fine of two thousand five hundred dollars (\$2,500)
23 as to each consumer with respect to whom a violation occurs, or
24 imprisonment in a county jail for not more than one year, or by
25 both that fine and imprisonment. Any person convicted of a
26 violation of this section shall be ordered by the court to pay
27 restitution to the victim pursuant to Section 1202.4 of the Penal
28 Code.

29 **Comment.** Subdivision (a) of Section 6455 is amended to reflect
30 unification of the municipal and superior courts pursuant to Article
31 VI, Section 5(e), of the California Constitution. For the jurisdictional
32 classification of an action under subdivision (a), see Code of Civil
33 Procedure Sections 85 (limited civil cases) and 580 (relief
34 awardable).

35 Business and Professions Code Section 12606 should be amended along the
36 following lines:

37 **Bus. & Prof. Code § 12606 (amended). Misleading packaging of**
38 **commodity**

39 12606. (a) No container wherein commodities are packed shall
40 have a false bottom, false sidewalls, false lid or covering, or be

1 otherwise so constructed or filled, wholly or partially, as to
2 facilitate the perpetration of deception or fraud.

3 (b) No container shall be made, formed, or filled as to be
4 misleading. A container that does not allow the consumer to fully
5 view its contents shall be considered to be filled as to be misleading
6 if it contains nonfunctional slack fill. Slack fill is the difference
7 between the actual capacity of a container and the volume of
8 product contained therein. Nonfunctional slack fill is the empty
9 space in a package that is filled to less than its capacity for reasons
10 other than the following:

11 (1) Protection of the contents of the package.

12 (2) The requirements of machines used for enclosing the
13 contents of the package.

14 (3) Unavoidable product settling during shipping and handling.

15 (4) The need to utilize a larger than required package or
16 container to provide adequate space for the legible presentation of
17 mandatory and necessary labeling information, such as those based
18 on the regulations adopted by the Food and Drug Administration
19 or state or federal agencies under federal or state law, laws or
20 regulations adopted by foreign governments, or under an
21 industrywide voluntary labeling program.

22 (5) The fact that the product consists of a commodity that is
23 packaged in a decorative or representational container where the
24 container is part of the presentation of the product and has value
25 that is both significant in proportion to the value of the product and
26 independent of its function to hold the product, such as a gift
27 combined with a container that is intended for further use after the
28 product is consumed, or durable commemorative or promotional
29 packages.

30 (6) An inability to increase the level of fill or to further reduce
31 the size of the package, such as where some minimum package size
32 is necessary to accommodate required labeling, discourage
33 pilfering, facilitate handling, or accommodate tamper-resistant
34 devices.

35 (7) The product container bears a reasonable relationship to the
36 actual amount of product contained inside, and the dimensions of
37 the actual product container, the product, or the amount of product
38 therein is visible to the consumer at the point of sale, or where
39 obvious secondary use packaging is involved.

40 (8) The dimensions of the product or immediate product
41 container are visible through the exterior packaging, or where the
42 actual size of the product or immediate product container is clearly
43 and conspicuously depicted on the exterior packaging,
44 accompanied by a clear and conspicuous disclosure that the
45 representation is the "actual size" of the product or the immediate
46 product container.

47 (9) The presence of any head space within an immediate
48 product container necessary to facilitate the mixing, adding,

1 shaking, or dispensing of liquids or powders by consumers prior to
2 use.

3 (10) The exterior packaging contains a product delivery or
4 dosing device if the device is visible, or a clear and conspicuous
5 depiction of the device appears on the exterior packaging, or it is
6 readily apparent from the conspicuous exterior disclosures or the
7 nature and name of the product that a delivery or dosing device is
8 contained in the package.

9 (11) The exterior packaging or immediate product container is a
10 kit that consists of a system, or multiple components, designed to
11 produce a particular result that is not dependent upon the quantity
12 of the contents, if the purpose of the kit is clearly and
13 conspicuously disclosed on the exterior packaging.

14 (12) The exterior packaging of the product is routinely
15 displayed using tester units or demonstrations to consumers in
16 retail stores, so that customers can see the actual, immediate
17 container of the product being sold, or a depiction of the actual size
18 thereof prior to purchase.

19 (13) The exterior packaging consists of single or multi-unit
20 presentation boxes of holiday or gift packages if the purchaser can
21 adequately determine the quantity and sizes of the immediate
22 product container at the point of sale.

23 (14) The exterior packaging is for a combination of one
24 purchased product, together with a free sample or gift, wherein the
25 exterior packaging is necessarily larger than it would otherwise be
26 due to the inclusion of the sample or gift, if the presence of both
27 products and the quantity of each product are clearly and
28 conspicuously disclosed on the exterior packaging.

29 (15) The exterior packaging or immediate product container
30 encloses computer hardware or software designed to serve a
31 particular computer function, if the particular computer function to
32 be performed by the computer hardware or software is clearly and
33 conspicuously disclosed on the exterior packaging.

34 (c) Any sealer may seize a container that facilitates the
35 perpetration of deception or fraud and the contents of the
36 container. By order of the ~~municipal~~ or superior court of the ~~city~~ or
37 county within which a violation of this section occurs, the
38 containers seized shall be condemned and destroyed or released
39 upon ~~such~~ conditions as the court may impose to insure against
40 their use in violation of this chapter. The contents of any
41 condemned container shall be returned to the owner thereof if the
42 owner furnishes proper facilities for the return. A proceeding
43 under this section is a limited civil case if the value of the property
44 in controversy is less than or equal to the maximum amount in
45 controversy for a limited civil case under Section 85 of the Code of
46 Civil Procedure.

1 **Comment.** Subdivision (c) of Section 12606 is amended to reflect
2 unification of the municipal and superior courts pursuant to Article
3 VI, Section 5(e), of the California Constitution.

4 As amended, subdivision (c) makes clear that if the value of
5 seized containers is less than or equal to the maximum amount in
6 controversy for a limited civil case, a proceeding under this section
7 is a limited civil case even though permanent injunctive relief
8 generally is not allowed in a limited civil case (Code Civ. Proc. §§
9 85, 580). This preserves the pre-unification status quo, under which
10 a municipal court had authority to order condemnation of
11 containers under this section in specified circumstances.

12 Subdivision (c) is also amended to make stylistic revisions.

13 Business and Professions Code Section 12606.2 should be amended along the
14 following lines:

15 **Bus. & Prof. Code § 12606.2 (amended). Misleading food**
16 **containers**

17 12606.2. (a) This section applies to food containers subject to
18 Section 403 (d) of the Federal Food, Drug and Cosmetic Act (21
19 U.S.C. Sec. 343 (d)), and Section 100.100 of Title 21 of the Code of
20 Federal Regulations. Section 12606 does not apply to food
21 containers subject to this section.

22 (b) No food containers shall be made, formed, or filled as to be
23 misleading.

24 (c) A container that does not allow the consumer to fully view
25 its contents shall be considered to be filled as to be misleading if it
26 contains nonfunctional slack fill. Slack fill is the difference between
27 the actual capacity of a container and the volume of product
28 contained therein. Nonfunctional slack fill is the empty space in a
29 package that is filled to less than its capacity for reasons other than
30 the following:

31 (1) Protection of the contents of the package.

32 (2) The requirements of the machines used for enclosing the
33 contents in the package.

34 (3) Unavoidable product settling during shipping and handling.

35 (4) The need for the package to perform a specific function, such
36 as where packaging plays a role in the preparation or consumption
37 of a food, if that function is inherent to the nature of the food and is
38 clearly communicated to consumers.

39 (5) The fact that the product consists of a food packaged in a
40 reusable container where the container is part of the presentation of
41 the food and has value that is both significant in proportion to the
42 value of the product and independent of its function to hold the
43 food, such as a gift product consisting of a food or foods combined
44 with a container that is intended for further use after the food is
45 consumed or durable commemorative or promotional packages.

1 (6) Inability to increase the level of fill or to further reduce the
2 size of the package, such as where some minimum package size is
3 necessary to accommodate required food labeling exclusive of any
4 vignettes or other nonmandatory designs or label information,
5 discourage pilfering, facilitate handling, or accommodate ~~tamper-~~
6 ~~resistant~~ tamper-resistant devices.

7 This section shall be interpreted consistent with the comments
8 by the United States Food and Drug Administration on the
9 regulations contained in Section 100.100 of Title 21 of the Code of
10 Federal Regulations, interpreting Section 403(d) of the Federal
11 Food, Drug and Cosmetic Act (21 U.S.C. Sec. 343(d)), as those
12 comments are reported on pages 64123 to 64137, inclusive, of
13 Volume 58 of the Federal Register.

14 (d) If the requirements of this section do not impose the same
15 requirements as are imposed by Section 403(d) of the Federal Food,
16 Drug and Cosmetic Act (21 U.S.C. Sec. ~~343(d), 343(d))~~, or any
17 regulation promulgated pursuant thereto, then this section is not
18 operative to the extent that it is not identical to the federal
19 requirements, and for this purpose those federal requirements are
20 incorporated into this section and shall apply as if they were set
21 forth in this section.

22 (e) Any sealer may seize any container that is in violation of this
23 section and the contents of the container. By order of the ~~municipal~~
24 ~~or~~ superior court of the ~~city or~~ county within which a violation of
25 this section occurs, the containers seized shall be condemned and
26 destroyed or released upon any conditions that the court may
27 impose to ensure against their use in violation of this chapter. The
28 contents of any condemned container shall be returned to the
29 owner thereof if the owner furnishes proper facilities for the return.
30 A proceeding under this section is a limited civil case if the value of
31 the property in controversy is less than or equal to the maximum
32 amount in controversy for a limited civil case under Section 85 of
33 the Code of Civil Procedure.

34 **Comment.** Subdivision (e) of Section 12606.2 is amended to
35 reflect unification of the municipal and superior courts pursuant to
36 Article VI, Section 5(e), of the California Constitution.

37 As amended, subdivision (e) makes clear that if the value of
38 seized containers is less than or equal to the maximum amount in
39 controversy for a limited civil case, a proceeding under this section
40 is a limited civil case even though permanent injunctive relief
41 generally is not allowed in a limited civil case (Code Civ. Proc. §§
42 85, 580). This preserves the pre-unification status quo, under which
43 a municipal court had authority to order condemnation of
44 containers under this section in specified circumstances.

45 Section 12606.2 is also amended to correct a spelling error in
46 subdivision (c)(6) and a typographical mistake in subdivision (d).

1 This amendment will require adjustment if Senate Bill 1852 (Committee on
2 Judiciary) is enacted and amends Business and Professions Code Section 12606.2.

3 Code of Civil Procedure Section 580 should be amended along the following
4 lines:

5 **Code Civ. Proc. § 580 (amended). Relief awardable**

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

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

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

20 (2) A permanent injunction, except as otherwise authorized by
21 statute.

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

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

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

25 **Comment.** Subdivision (b) of Section 580 is amended to clarify
26 its interrelationship with provisions such as Business and
27 Professions Code Section 12606, under which a court in a limited
28 civil case is authorized to grant relief that might be considered a
29 permanent injunction (e.g., an order to destroy property packed in
30 misleading containers). See also Bus. & Prof. Code § 12606.2; Food
31 & Agric. Code §§ 25564, 29733, 43039, 59289.

32 Section 580 is also amended to make stylistic revisions.

33 This amendment will require adjustment if Assembly Bill 2126 (Lieu & Leno) is
34 enacted and amends Code of Civil Procedure Section 580.

35 Food and Agricultural Code Section 25564 should be amended along the
36 following lines:

37 **Food & Agric. Code § 25564 (amended). Destruction of perishable**
38 **noncomplying lot of poultry meat**

39 25564. If the lot of poultry meat which is held is perishable or
40 subject to rapid deterioration, the enforcing officer may file a
41 verified petition in ~~any superior or municipal court of the state~~ to
42 destroy ~~such~~ the lot or otherwise abate the nuisance. The petition
43 shall show the condition of the lot, that the lot is situated within the

1 county, that the lot is held, and that notice of noncompliance has
2 been served pursuant to this chapter. The court may thereupon
3 order that ~~such~~ the lot be forthwith destroyed or the nuisance
4 otherwise abated as set forth in ~~such~~ the order. A proceeding under
5 this section is a limited civil case if the value of the property in
6 controversy is less than or equal to the maximum amount in
7 controversy for a limited civil case under Section 85 of the Code of
8 Civil Procedure.

9 **Comment.** Section 25564 is amended to reflect unification of the
10 municipal and superior courts pursuant to Article VI, Section 5(e),
11 of the California Constitution.

12 As amended, the provision makes clear that if the value of
13 poultry meat is less than or equal to the maximum amount in
14 controversy for a limited civil case, a proceeding under this section
15 is a limited civil case even though permanent injunctive relief
16 generally is not allowed in a limited civil case (Code Civ. Proc. §§
17 85, 580). This preserves the pre-unification status quo, under which
18 a municipal court had authority to order destruction of poultry
19 meat under this section in specified circumstances.

20 Section 25564 is also amended to make stylistic revisions.

21 Food and Agricultural Code Section 29733 should be amended along the
22 following lines:

23 **Food & Agric. Code § 29733 (amended). Failure to recondition or**
24 **remark honey**

25 29733. If a packer or owner of honey, or the agent of either, after
26 notification to the packer, owner, or agent that the honey and its
27 containers are a public nuisance, refuses, or fails within a
28 reasonable time, to recondition or remark the honey so as to
29 comply with all requirements of this chapter, the honey and its
30 containers:

31 (a) May be seized by the director or any enforcement officer.

32 (b) By order of the ~~municipal or~~ superior court of the county ~~or~~
33 ~~city~~ within which the honey and its containers may be, shall be
34 condemned and destroyed, or released upon ~~such~~ conditions as the
35 court, in its discretion, may impose to insure that it will not be
36 packed, delivered for shipment, shipped, transported, or sold in
37 violation of this chapter. A proceeding under this section is a
38 limited civil case if the value of the property in controversy is less
39 than or equal to the maximum amount in controversy for a limited
40 civil case under Section 85 of the Code of Civil Procedure.

41 **Comment.** Section 29733 is amended to reflect unification of the
42 municipal and superior courts pursuant to Article VI, Section 5(e),
43 of the California Constitution.

44 As amended, the provision makes clear that if the value of
45 honey product is less than or equal to the maximum amount in

1 controversy for a limited civil case, a proceeding under this section
2 is a limited civil case even though permanent injunctive relief
3 generally is not allowed in a limited civil case (Code Civ. Proc. §§
4 85, 580). This preserves the pre-unification status quo, under which
5 a municipal court had authority to order destruction of honey
6 product under this section in specified circumstances.

7 Section 29733 is also amended to make stylistic revisions.

8 Food and Agricultural Code Section 43039 should be amended along the
9 following lines:

10 **Food & Agric. Code § 43039 (amended). Destruction of perishable**
11 **noncomplying lot of fruits, nuts, or vegetables**

12 43039. If the lot which is held is perishable or subject to rapid
13 deterioration, the enforcing officer may file a verified petition in
14 ~~any superior or municipal court of the state~~ to destroy the lot or
15 otherwise abate the nuisance. The petition shall show the condition
16 of the lot, that the lot is situated within the county, that the lot is
17 held, and that notice of noncompliance has been served as
18 provided in this article. The court may thereupon order that the lot
19 be forthwith destroyed or the nuisance otherwise abated as set
20 forth in the order. A proceeding under this section is a limited civil
21 case if the value of the property in controversy is less than or equal
22 to the maximum amount in controversy for a limited civil case
23 under Section 85 of the Code of Civil Procedure.

24 **Comment.** Section 43039 is amended to reflect unification of the
25 municipal and superior courts pursuant to Article VI, Section 5(e),
26 of the California Constitution.

27 As amended, the provision makes clear that if the value of food
28 product is less than or equal to the maximum amount in
29 controversy for a limited civil case, a proceeding under this section
30 is a limited civil case even though permanent injunctive relief
31 generally is not allowed in a limited civil case (Code Civ. Proc. §§
32 85, 580). This preserves the pre-unification status quo, under which
33 a municipal court had authority to order destruction of food
34 product under this section in specified circumstances.

35 Food and Agricultural Code Section 59289 should be amended along the
36 following lines:

37 **Food & Agric. Code § 59289 (amended). Petition to divert or**
38 **destroy lot in violation of marketing order or agreement**

39 59289. (a) The enforcing officer may file a verified petition in
40 ~~any superior or municipal court of this state~~ requesting permission
41 to divert ~~such~~ the lot to any other available lawful use or to destroy
42 the lot. The verified petition shall show all of the following:

43 (a) (1) The condition of the lot.

1 ~~(b)~~ (2) That the lot is situated within the territorial jurisdiction of
2 the court in which the petition is being filed.

3 ~~(c)~~ (3) That the lot is held, and that the notice of noncompliance
4 has been served as provided in Section 59285.

5 ~~(d)~~ (4) That the lot has not been reconditioned as required.

6 ~~(e)~~ (5) The name and address of the owner and the person in
7 possession of the lot.

8 ~~(f)~~ (6) That the owner has refused permission to divert or to
9 destroy the lot.

10 **(b) A proceeding under this section is a limited civil case if the**
11 **value of the property in controversy is less than or equal to the**
12 **maximum amount in controversy for a limited civil case under**
13 **Section 85 of the Code of Civil Procedure.**

14 **Comment.** Section 59289 is amended to reflect unification of the
15 municipal and superior courts pursuant to Article VI, Section 5(e),
16 of the California Constitution.

17 As amended, the provision makes clear that if the value of the
18 lot in question is less than or equal to the maximum amount in
19 controversy for a limited civil case, a proceeding under this section
20 is a limited civil case even though permanent injunctive relief
21 generally is not allowed in a limited civil case (Code Civ. Proc. §§
22 85, 580). This preserves the pre-unification status quo, under which
23 a municipal court had authority to order destruction of a lot under
24 this section in specified circumstances.

25 Section 59289 is also amended to make stylistic revisions.

26 Government Code Section 12965 should be amended along the following
27 lines:

28 **Gov't Code § 12965 (amended). Accusation or civil action for**
29 **unlawful employment practice**

30 12965. (a) In the case of failure to eliminate an unlawful practice
31 under this part through conference, conciliation, or persuasion, or
32 in advance thereof if circumstances warrant, the director in his or
33 her discretion may cause to be issued in the name of the
34 department a written accusation. The accusation shall contain the
35 name of the person, employer, labor organization, or employment
36 agency accused, which shall be known as the respondent, shall set
37 forth the nature of the charges, shall be served upon the respondent
38 together with a copy of the verified complaint, as amended, and
39 shall require the respondent to answer the charges at a hearing.

40 For any complaint treated by the director as a group or class
41 complaint for purposes of investigation, conciliation, and
42 accusation pursuant to Section 12961, an accusation shall be issued,
43 if at all, within two years after the filing of the complaint. For any
44 complaint alleging a violation of Section 51.7 of the Civil Code, an
45 accusation shall be issued, if at all, within two years after the filing
46 of the complaint. For all other complaints, an accusation shall be

1 issued, if at all, within one year after the filing of a complaint. If the
2 director determines, pursuant to Section 12961, that a complaint
3 investigated as a group or class complaint under Section 12961 is to
4 be treated as a group or class complaint for purposes of conciliation
5 and accusation as well, that determination shall be made and shall
6 be communicated in writing within one year after the filing of the
7 complaint to each person, employer, labor organization,
8 employment agency, or public entity alleged in the complaint to
9 have committed an unlawful practice.

10 (b) If an accusation is not issued within 150 days after the filing
11 of a complaint, or if the department earlier determines that no
12 accusation will issue, the department shall promptly notify, in
13 writing, the person claiming to be aggrieved that the department
14 shall issue, on his or her request, the right-to-sue notice. This notice
15 shall indicate that the person claiming to be aggrieved may bring a
16 civil action under this part against the person, employer, labor
17 organization, or employment agency named in the verified
18 complaint within one year from the date of that notice. If the person
19 claiming to be aggrieved does not request a right-to-sue notice, the
20 department shall issue the notice upon completion of its
21 investigation, and not later than one year after the filing of the
22 complaint. A city, county, or district attorney in a location having
23 an enforcement unit established on or before March 1, 1991,
24 pursuant to a local ordinance enacted for the purpose of
25 prosecuting HIV/AIDS discrimination claims, acting on behalf of
26 any person claiming to be aggrieved due to HIV/AIDS
27 discrimination, may also bring a civil action under this part against
28 the person, employer, labor organization, or employment agency
29 named in the notice. The superior ~~and municipal~~ courts of the State
30 of California shall have jurisdiction of those actions, and the
31 aggrieved person may file in ~~any~~ of these courts. An action may be
32 brought in any county in the state in which the unlawful practice is
33 alleged to have been committed, in the county in which the records
34 relevant to the practice are maintained and administered, or in the
35 county in which the aggrieved person would have worked or
36 would have had access to the public accommodation but for the
37 alleged unlawful practice, but if the defendant is not found within
38 any of these counties, an action may be brought within the county
39 of the defendant's residence or principal office. A copy of any
40 complaint filed pursuant to this part shall be served on the
41 principal offices of the department and of the commission. The
42 remedy for failure to send a copy of a complaint is an order to do
43 so. Those actions may not be filed as class actions or may not be
44 maintained as class actions by the person or persons claiming to be
45 aggrieved where those persons have filed a civil class action in the
46 federal courts alleging a comparable claim of employment
47 discrimination against the same defendant or defendants. In actions
48 brought under this section, the court, in its discretion, may award
49 to the prevailing party reasonable attorney's fees and costs,

1 including expert witness fees, except where the action is filed by a
2 public agency or a public official, acting in an official capacity.

3 (c) (1) If an accusation includes a prayer either for damages for
4 emotional injuries as a component of actual damages, or for
5 administrative fines, or for both, or if an accusation is amended for
6 the purpose of adding a prayer either for damages for emotional
7 injuries as a component of actual damages, or for administrative
8 fines, or both, the respondent may within 30 days after service of
9 the accusation or amended accusation, elect to transfer the
10 proceedings to a court in lieu of a hearing pursuant to subdivision
11 (a) by serving a written notice to that effect on the department, the
12 commission, and the person claiming to be aggrieved. The
13 commission shall prescribe the form and manner of giving written
14 notice.

15 (2) No later than 30 days after the completion of service of the
16 notice of election pursuant to paragraph (1), the department shall
17 dismiss the accusation and shall, either itself or, at its election,
18 through the Attorney General, file in the appropriate court an
19 action in its own name on behalf of the person claiming to be
20 aggrieved as the real party in interest. In this action, the person
21 claiming to be aggrieved shall be the real party in interest and shall
22 have the right to participate as a party and be represented by his or
23 her own counsel. Complaints filed pursuant to this section shall be
24 filed in the appropriate superior court in any county in which
25 unlawful practices are alleged to have been committed, in the
26 county in which records relevant to the alleged unlawful practices
27 are maintained and administered, or in the county in which the
28 person claiming to be aggrieved would have worked or would
29 have had access to public accommodation, but for the alleged
30 unlawful practices. If the defendant is not found in any of these
31 counties, the action may be brought within the county of the
32 defendant's residence or principal office. Those actions shall be
33 assigned to the court's delay reduction program, or otherwise
34 given priority for disposition by the court in which the action is
35 filed.

36 (3) A court may grant as relief in any action filed pursuant to
37 this subdivision any relief a court is empowered to grant in a civil
38 action brought pursuant to subdivision (b), in addition to any other
39 relief that, in the judgment of the court, will effectuate the purpose
40 of this part. This relief may include a requirement that the
41 employer conduct training for all employees, supervisors, and
42 management on the requirements of this part, the rights and
43 remedies of those who allege a violation of this part, and the
44 employer's internal grievance procedures.

45 (4) The department may amend an accusation to pray for either
46 damages for emotional injury or for administrative fines, or both,
47 provided that the amendment is made within 30 days of the
48 issuance of the original accusation.

1 (d) (1) Notwithstanding subdivision (b), the one-year statute of
2 limitations, commencing from the date of the right-to-sue notice by
3 the Department of Fair Employment and Housing, to the person
4 claiming to be aggrieved, shall be tolled when all of the following
5 requirements have been met:

6 (A) A charge of discrimination or harassment is timely filed
7 concurrently with the Equal Employment Opportunity
8 Commission and the Department of Fair Employment and
9 Housing.

10 (B) The investigation of the charge is deferred by the
11 Department of Fair Employment and Housing to the Equal
12 Employment Opportunity Commission.

13 (C) A right-to-sue notice is issued to the person claiming to be
14 aggrieved upon deferral of the charge by the Department of Fair
15 Employment and Housing to the Equal Employment Opportunity
16 Commission.

17 (2) The time for commencing an action for which the statute of
18 limitations is tolled under paragraph (1) expires when the federal
19 right-to-sue period to commence a civil action expires, or one year
20 from the date of the right-to-sue notice by the Department of Fair
21 Employment and Housing, whichever is later.

22 (3) This subdivision is intended to codify the holding in *Downs*
23 *v. Department of Water and Power of City of Los Angeles* (1997) 58
24 *Cal.App.4th* 1093.

25 (e) (1) Notwithstanding subdivision (b), the one-year statute of
26 limitations, commencing from the date of the right-to-sue notice by
27 the Department of Fair Employment and Housing, to the person
28 claiming to be aggrieved, shall be tolled when all of the following
29 requirements have been met:

30 (A) A charge of discrimination or harassment is timely filed
31 concurrently with the Equal Employment Opportunity
32 Commission and the Department of Fair Employment and
33 Housing.

34 (B) The investigation of the charge is deferred by the Equal
35 Employment Opportunity Commission to the Department of Fair
36 Employment and Housing.

37 (C) After investigation and determination by the Department of
38 Fair Employment and Housing, the Equal Employment
39 Opportunity Commission agrees to perform a substantial weight
40 review of the determination of the department or conducts its own
41 investigation of the claim filed by the aggrieved person.

42 (2) The time for commencing an action for which the statute of
43 limitations is tolled under paragraph (1) shall expire when the
44 federal right-to-sue period to commence a civil action expires, or
45 one year from the date of the right-to-sue notice by the Department
46 of Fair Employment and Housing, whichever is later.

47 **Comment.** Subdivision (b) of Section 12965 is amended to
48 reflect unification of the municipal and superior courts pursuant to

1 Article VI, Section 5(e), of the California Constitution. For the
2 jurisdictional classification of an action under this section, see Code
3 of Civil Procedure Sections 85 (limited civil cases) and 580 (relief
4 awardable).

5 Subdivision (c)(2) is amended to delete surplusage. Formerly,
6 the provision referred to “the appropriate superior or municipal
7 court.” The reference to municipal court was deleted by 2003 Cal.
8 Stat. ch. 62, § 118. Because there is only one superior court in each
9 county, it is no longer necessary to refer to the “appropriate” court
10 in a specified county.

11 Government Code Section 12980 should be amended along the following
12 lines:

13 **Gov’t Code § 12980. Complaint, accusation, and civil action for**
14 **housing discrimination**

15 12980. This article governs the procedure for the prevention and
16 elimination of discrimination in housing made unlawful pursuant
17 to Article 2 (commencing with Section 12955) of Chapter 6.

18 (a) Any person claiming to be aggrieved by an alleged violation
19 of Section 12955, 12955.1, or 12955.7 may file with the department a
20 verified complaint in writing that shall state the name and address
21 of the person alleged to have committed the violation complained
22 of, and that shall set forth the particulars of the alleged violation
23 and contain any other information required by the department.

24 The filing of a complaint and pursuit of conciliation or remedy
25 under this part shall not prejudice the complainant’s right to
26 pursue effective judicial relief under other applicable laws, but if a
27 civil action has been filed under Section 52 of the Civil Code, the
28 department shall terminate proceedings upon notification of the
29 entry of final judgment unless the judgment is a dismissal entered
30 at the complainant’s request.

31 (b) The Attorney General or the director may, in a like manner,
32 make, sign, and file complaints citing practices that appear to
33 violate the purpose of this part or any specific provisions of this
34 part relating to housing discrimination.

35 No complaint may be filed after the expiration of one year from
36 the date upon which the alleged violation occurred or terminated.

37 (c) The department may thereupon proceed upon the complaint
38 in the same manner and with the same powers as provided in this
39 part in the case of an unlawful practice, except that where the
40 provisions of this article provide greater rights and remedies to an
41 aggrieved person than the provisions of Article 1 (commencing
42 with Section 12960), the provisions of this article shall prevail.

43 (d) Upon the filing of a complaint, the department shall serve
44 notice upon the complainant of the time limits, rights of the parties,
45 and choice of forums provided for under the law.

1 (e) The department shall commence proceedings with respect to
2 a complaint within 30 days of filing of the complaint.

3 (f) An investigation of allegations contained in any complaint
4 filed with the department shall be completed within 100 days after
5 receipt of the complaint, unless it is impracticable to do so. If the
6 investigation is not completed within 100 days, the complainant
7 and respondent shall be notified, in writing, of the department's
8 reasons for not doing so.

9 (g) Upon the conclusion of each investigation, the department
10 shall prepare a final investigative report containing all of the
11 following:

12 (1) The names of any witnesses and the dates of any contacts
13 with those witnesses.

14 (2) A summary of the dates of any correspondence or other
15 contacts with the aggrieved persons or the respondent.

16 (3) A summary of witness statements.

17 (4) Answers to interrogatories.

18 (5) A summary description of other pertinent records.

19 A final investigative report may be amended if additional
20 evidence is later discovered.

21 (h) If an accusation is not issued within 100 days after the filing
22 of a complaint, or if the department earlier determines that no
23 accusation will issue, the department shall promptly notify the
24 person claiming to be aggrieved. This notice shall, in any event, be
25 issued no more than 30 days after the date of the determination or
26 30 days after the date of the expiration of the 100-day period,
27 whichever date first occurs. The notice shall indicate that the
28 person claiming to be aggrieved may bring a civil action under this
29 part against the person named in the verified complaint within the
30 time period specified in Section 12989.1. The notice shall also
31 indicate, unless the department has determined that no accusation
32 will be issued, that the person claiming to be aggrieved has the
33 option of continuing to seek redress for the alleged discrimination
34 through the procedures of the department if he or she does not
35 desire to file a civil action. The superior ~~and municipal~~ courts of the
36 State of California shall have jurisdiction of these actions, and the
37 aggrieved person may file in ~~any~~ of these courts. The action may be
38 brought in any county in the state in which the violation is alleged
39 to have been committed, or in the county in which the records
40 relevant to the alleged violation are maintained and administered,
41 but if the defendant is not found within that county, the action may
42 be brought within the county of the defendant's residence or
43 principal office. A copy of any complaint filed pursuant to this part
44 shall be served on the principal offices of the department and of the
45 commission. The remedy for failure to send a copy of a complaint is
46 an order to do so. In a civil action brought under this section, the
47 court, in its discretion, may award to the prevailing party
48 reasonable attorneys' fees.

1 (i) All agreements reached in settlement of any housing
2 discrimination complaint filed pursuant to this section shall be
3 made public, unless otherwise agreed by the complainant and
4 respondent, and the department determines that the disclosure is
5 not required to further the purposes of the act.

6 (j) All agreements reached in settlement of any housing
7 discrimination complaint filed pursuant to this section shall be
8 agreements between the respondent and complainant, and shall be
9 subject to approval by the department.

10 **Comment.** Subdivision (h) of Section 12980 is amended to
11 reflect unification of the municipal and superior courts pursuant to
12 Article VI, Section 5(e), of the California Constitution. For the
13 jurisdictional classification of an action under this section, see Code
14 of Civil Procedure Sections 85 (limited civil cases) and 580 (relief
15 awardable).

STUDY L-3032 – BENEFICIARY DEEDS

16 The Commission considered Memorandum 2006-19, together with material
17 distributed at the meeting (attached to the First Supplement to Memorandum
18 2006-19), relating to beneficiary deeds. The Commission directed the staff to
19 prepare a draft tentative recommendation for consideration by the Commission
20 proposing adoption in California of a transfer on death deed (TOD deed) statute.
21 The content of the draft should be as outlined in Memorandum 2006-19, subject
22 to the following changes.

23 **Terminology**

24 The instrument should be denominated a “revocable” transfer on death deed.
25 That will help reinforce the concept that the deed is revocable.

26 **Property Subject to TOD Deed**

27 The Commission requested the staff to investigate possible application of the
28 statute to an interest such as an occupancy license in federal lands. The matter
29 should be made clear in the draft tentative recommendation.

30 **Recordation**

31 The draft should incorporate a provision to the effect that a recordation
32 requirement under the statute is satisfied by delivery of the deed to the
33 recorder’s office for recordation. This might be done by reference to or
34 duplication of the Civil Code recording standard.

1 **Interest Transferred**

2 The draft should provide that the deed in effect quitclaims the transferor's
3 interest to the named beneficiary, but the draft should solicit comment on the
4 concept of allowing the deed to fractionate the transfer between a life estate and
5 remainder interest.

6 **Effect of Transfer of Joint Tenancy Property**

7 The statutory form of deed should inform the transferor that the effect of the
8 deed will be to sever any joint tenancy interest the transferor has in the property
9 when the transferor dies and transfer the transferor's interest to the named
10 beneficiary rather than to the joint tenant.

11 **Contest of TOD Deed**

12 The statute should be clear that the transferor's conservator may be able to test
13 the validity of a TOD deed under the Probate Code Section 2580 substituted
14 judgment procedure.

15 **Omitted Spouse or Child**

16 Omitted spouse and child protections applicable to a will or trust should not
17 apply to a TOD deed. However, the Commission requested that the staff raise the
18 possibility of applying omitted spouse and child protections to nonprobate
19 transfers globally, when the Commission reviews new topics and priorities this
20 fall.

21 **Rights of Creditors**

22 The Commission directed the staff to prepare a draft concerning the liability
23 of a beneficiary to creditors of a TOD transferor that incorporates the small estate
24 affidavit provisions or adapts them for inclusion in the TOD deed statute. The
25 Commission also requested that the staff raise the possibility of applying creditor
26 remedies to nonprobate transfers globally, when the Commission reviews new
27 topics and priorities this fall.

28 **Priorities As Between Creditors of Transferor and Creditors of Beneficiary**

29 The staff should review the proposed draft language on priorities of creditors
30 in light of the Commission's decision on application of the small estate affidavit
31 procedure liability scheme.

1 **Rights of Third Party Transferee**

2 The Commission requested that the California Land Title Association review
3 the BFP protection in the draft to ensure that it is effective to allow insurable
4 transfer of title under a TOD deed.

5 **Statutory Forms**

6 The Commission directed the staff to attempt to make the statutory forms
7 more user-friendly (e.g., use “you” rather than “the transferor”), and to consult
8 with experienced forms makers, if possible.

9

- APPROVED AS SUBMITTED
- APPROVED AS CORRECTED
(for corrections, see Minutes of next meeting)

_____ Date

_____ Chairperson

_____ Executive Secretary