

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture

June 2007

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN September 21, 2007.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

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

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

The Commission solicits public comment on the proposal.

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

This recommendation was prepared pursuant to Government Code Section 71674.

TRIAL COURT RESTRUCTURING: APPELLATE JURISDICTION OF BAIL FORFEITURE

1 When a criminal defendant has been released on bail¹ and then fails to appear in
2 court when required, the bail may subsequently be forfeited according to a
3 statutory procedure.² An order relating to bail forfeiture may be appealed.³ Due to
4 recent restructuring of the trial court system, some confusion exists regarding
5 when such an appeal is to be filed in the court of appeal and when such an appeal
6 is to be filed in the appellate division of the superior court.⁴

1. Bail may be posted by a surety, contracting with the government to either secure the defendant's presence when lawfully required or forfeit bail. Penal Code §§ 1268-1269, 1276, 1276.5, 1287, 1458-1459; *People v. Am. Contractors Indem. Co.*, 33 Cal. 4th 653, 657, 16 Cal. Rptr. 3d 76 (2004) (citing *People v. Ranger Ins. Co.*, 31 Cal. App. 4th 13, 22, 36 Cal. Rptr. 2d 807, 813 (1994)).

2. See Penal Code §§ 1305-1306. If the defendant fails to appear when lawfully required (for example, for arraignment, trial, judgment, etc.), "without sufficient excuse," a court must declare the bail forfeited (hereafter, a "bail forfeiture declaration order"). Penal Code § 1305(a). The bail forfeiture declaration order is not an actual forfeiture, but an initial step in forfeiture proceedings. *People v. Sur. Ins. Co.*, 82 Cal. App. 3d 229, 236-237, 147 Cal. Rptr. 65 (1978). Following the bail forfeiture declaration order, the surety is given notice of the defendant's absence. Penal Code § 1305(b) (notice required for deposits over \$400). If the surety secures the defendant's presence within a 180-day period, the court must vacate the bail forfeiture declaration order. Penal Code § 1305(c). However, if the defendant fails to appear without sufficient excuse, the court must enter summary judgment against the surety (hereafter, "bail forfeiture summary judgment"). Penal Code §§ 1305.1 (court with belief of sufficient excuse for absence may extend time period), 1306(a) (court shall enter summary judgment against bondsman). For further detail on bail forfeiture procedures, see *People v. Int'l Fid. Ins. Co.*, 151 Cal. App. 4th 1056, __ Cal. Rptr. 3d __ (2007).

3. A bail forfeiture declaration order may be challenged by a motion to vacate. See Penal Code § 1305; *People v. Hodges*, 205 Cal. 476, 478, 271 P. 897 (1928); 6 B. Witkin, *California Criminal Law Criminal Appeal* § 74, at 319 (3d ed. 2000). The order granting or denying the motion to vacate the bail forfeiture declaration order may be appealed. *People v. Wilcox*, 53 Cal. 2d 651, 654-655, 2 Cal. Rptr. 754, 349 P. 2d 522 (1960) (citing Code Civ. Proc. § 963 and *Howe v. Key Sys. Transit Co.*, 198 Cal. 525, 531, 246 P. 39, 41 (1926)).

A bail forfeiture summary judgment against the surety is a consent judgment. *People v. Am. Contractors Indem. Co.*, 33 Cal. 4th 653, 663-664, 93 P.3d 1020, 16 Cal. Rptr. 3d 76 (citing *People v. Nat'l Auto. & Cas. Co.*, 242 Cal. App. 2d 150, 152 n. 2, 51 Cal. Rptr. 212 (1966)). As such, the summary judgment is only appealable if it was not entered according to the consent in the bond. *Id.* at 664 (citing *County of Los Angeles v. Sur. Ins. Co.*, 164 Cal. App. 3d 1221, 1224, 211 Cal. Rptr. 201, 203 (1985)).

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

4. See Letter from Alex Cerul to California Law Revision Commission (October 5, 2006) (Commission Staff Memorandum 2007-14, Exhibit pp. 1-4 (available from the Commission, www.clrc.ca.gov)).

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

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

10 **Trial Court Unification**

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

17 Three guiding principles were used in revising the codes and the Constitution to
18 accommodate unification. First, care was taken “to preserve existing rights and

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

Some reforms recommended by the Commission are pending before the Governor. See *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm’n Reports __ (2006), which would be implemented by Senate Bill 649 (Committee on Judiciary) (2007-2008 Reg. Sess.).

6. See *Revision of Codes*, *supra* note 5, at 60; *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm’n Reports 1, 18-19, 28 (1994) (hereafter, *Constitutional Revision*).

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

Other major trial court restructuring reforms were:

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

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

1 procedures despite unification, with no disparity of treatment between a party
2 appearing in municipal court and a similarly situated party appearing in superior
3 court as a result of unification of the municipal and superior courts in the county.”⁹
4 Second, steps were taken to ensure that the court of appeal would continue to have
5 jurisdiction over cases historically within its appellate jurisdiction.¹⁰ Third, efforts
6 were made to ensure that unification did not increase the workload of the courts of
7 appeal, but generally left intact the respective workloads of the courts of appeal
8 and appellate departments¹¹ of the superior courts.¹²

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

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

17 **Appellate Jurisdiction of Bail Forfeiture**

18 Jurisdiction of a bail forfeiture appeal became unclear after provisions on civil
19 procedure were amended to implement trial court unification. Even though a bail
20 forfeiture arises in a criminal case, it is a civil matter.¹⁶ The rules governing
21 jurisdiction of a civil appeal currently base jurisdiction on the amount in

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

10. See Cal. Const. art. VI, § 11(a).

11. The appellate department of the superior court was an entity created by statute. See former Code Civ. Proc. § 77 (1984 Cal. Stat. ch. 704). When unification on a county-by-county basis was approved by the voters in 1998, the appellate department was replaced by the appellate division of the superior court, an entity of constitutional dimension. See Cal. Const. art. VI, § 4; Code Civ. Proc. § 77; 1998 Cal. Stat. ch. 931, § 21; 2 B. Witkin, *California Procedure Courts* § 346, at 141 (4th ed. 2006 Supp.); *Constitutional Revision*, *supra* note 6, at 30-33. The Constitution requires the Chief Justice to “assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.” Cal. Const. art. VI, § 4.

12. *Constitutional Revision*, *supra* note 6, at 32.

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

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

15. See Letter from Alex Cerul, *supra* note 4.

16. Consequently, civil, not criminal, provisions apply to a bail forfeiture appeal. See *People v. Am. Contractors Indem. Co.*, 33 Cal. 4th 653, 657, 16 Cal. Rptr. 3d 76 (2004) (citing *People v. Wilcox*, 53 Cal. 2d 651, 654, 2 Cal. Rptr. 754, 349 P. 2d 522 (1960)); *People v. United Bonding Co.*, 272 Cal. App. 2d 441, 442, 77 Cal. Rptr. 310 (1969) (civil appellate rules for time to file notice of appeal apply to bail forfeiture case).

1 controversy.¹⁷ Before unification, however, jurisdiction of a bail forfeiture appeal
2 was not based on the amount in controversy, i.e., the amount of bail.¹⁸ Instead, it
3 was determined by which court ordered the forfeiture. Forfeiture ordered by the
4 municipal court was appealed to the appellate department of the superior court.¹⁹
5 Forfeiture ordered by the superior court was appealed to the court of appeal.²⁰

6 Since unification, a review of bail forfeiture appeals illustrates that courts are
7 confused over which rules apply.²¹ Courts do not uniformly apply the provisions
8 governing the jurisdiction of civil appeals,²² nor do they uniformly direct bail
9 forfeiture appeals along the pre-unification path.²³ In at least one case, the appeal
10 followed neither the pre-unification path nor the provisions on civil procedure.²⁴
11 Legislation is needed to resolve the confusion.

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

18. *Newman v. Super. Ct. of Los Angeles County*, 67 Cal. 2d 620, 621-623, 432 P.2d 972, 63 Cal. Rptr. 284 (1967); see, e.g., *County of Los Angeles v. Am. Bankers Ins. Co.*, 202 Cal. App. 3d 1291, 1293, 1297, 249 Cal. Rptr. 540 (1988) (court of appeal heard bail forfeiture appeal involving failure to appear before superior court, even though amount of bail was less than jurisdictional limit at that time).

19. Former Cal. Const. art. VI § 11 (added Nov. 8, 1966) (appellate jurisdiction of superior court in causes statutorily prescribed as arising in municipal court); former Code Civ. Proc. §§ 77(e) (1984 Cal. Stat. ch. 704, § 1), 904.2 (1990 Cal. Stat. ch. 1305, § 5) (appealable orders from municipal court); see also *Newman*, 67 Cal. 2d at 620-625.

20. Former Cal. Const. art. VI § 11 (added Nov. 8, 1966) (appellate jurisdiction of court of appeal when superior court has original jurisdiction); former Code Civ. Proc. § 904.1 (1993 Cal. Stat. ch. 456, § 12) (appealable orders from superior court); see, e.g., *County of Los Angeles v. Am. Bankers Ins. Co.*, 202 Cal. App. 3d 1291, 1297, 249 Cal. Rptr. 540 (1988).

21. Such confusion is also demonstrated by the Santa Clara County Superior Court's request for clarification. See Letter from Alex Cerul, *supra* note 4.

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

Some courts do not apply those provisions. See, e.g., *People v. Granite State Ins. Co.*, 2003 WL 21227856 (appeal from forfeiture of bail less than \$25,000 taken to court of appeal instead of appellate division of superior court); *People v. Accredited Sur. & Cas. Co.*, 2003 WL 1542116 (same). Other courts apply such provisions, even when that causes an appeal to depart from the pre-unification path. See, e.g., *People v. Safety Nat'l Cas. Corp.*, 150 Cal. App. 4th 11, 57 Cal. Rptr. 3d 659 (2007) (appeal from forfeiture of bail exceeding \$25,000 in misdemeanor case taken to court of appeal); *People v. Alistar*, 115 Cal. App. 4th 122, 9 Cal. Rptr. 3d 497 (2003) (same); see also discussion of "Appellate Jurisdiction Based on Pre-Unification Appeal Path" *infra*.

23. See, e.g., *County of Orange v. Ranger*, 135 Cal. App. 4th 820, 37 Cal. Rptr. 3d 575 (2005) (appeal from forfeiture of bail by magistrate at preliminary proceeding taken to court of appeal, instead of appellate division of superior court); see *Safety Nat'l.*, 150 Cal. App. 4th 11 (appeal from forfeiture of bail exceeding \$25,000 in misdemeanor case taken to court of appeal); *Alistar*, 115 Cal. App. 4th 122 (same); see also discussion of "Appellate Jurisdiction Based on Pre-Unification Appeal Path" *infra*.

24. See, e.g., *People v. Ranger*, 145 Cal. App. 4th 23, 51 Cal. Rptr. 3d 326 (2006). The case involved an appeal from forfeiture by a magistrate at a preliminary proceeding on a felony charge of bail less than \$25,000. *Id* at 25. The appeal was taken to the court of appeal. *Id* at 23, 31. If the provisions governing the

1 **Possible Approaches**

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

7 ***Appellate Jurisdiction Based on Amount in Controversy***

8 If jurisdiction of a bail forfeiture appeal were based on the amount in
9 controversy, as in other civil cases, then an appeal involving bail of \$25,000 or
10 less would be heard by the appellate division of the superior court²⁵ and an appeal
11 involving bail of more than \$25,000 would be heard by the court of appeal.²⁶ That
12 approach has the appeal of simplicity. However, the Commission does not
13 recommend this approach.

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

19 Moreover, basing jurisdiction on the amount of bail in certain appeals — those
20 arising in a post-preliminary examination felony case in which bail of \$25,000 or
21 less was forfeited — would unconstitutionally diminish the appellate jurisdiction
22 of the courts of appeal from what it was as of June 30, 1995.²⁷

23 ***Appellate Jurisdiction Based on Pre-Unification Appeal Path***

24 A second possibility would be to direct bail forfeiture appeals in the same
25 manner as before unification. This approach would be consistent with the overall
26 policy of preserving existing rights and procedures despite unification.²⁸ It would
27 also comply with the constitutional provision preserving the jurisdiction of the

appeal of a civil matter had been applied, the appeal would have been taken to the appellate division of the superior court, *not* the court of appeal. See Code Civ. Proc. §§ 85, 904.2. It is also apparent that the pre-unification path was not followed: Before unification, the appeal from a forfeiture by a magistrate at a preliminary proceeding on a felony charge went to the appellate department (now, the appellate division) of the superior court, *not* the court of appeal. See note 43 *infra*.

25. See Code Civ. Proc. §§ 85, 904.2.

26. See Code Civ. Proc. §§ 85, 904.1.

27. See Cal. Const. art. VI § 11(a) (“courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995”). Because an appeal from a bail forfeiture that occurred in a felony prosecution in superior court involving an amount of bail less than \$25,000 was in the appellate jurisdiction of the courts of appeal as of June 30, 1995, the Legislature cannot constitutionally remove it from the court of appeal. See *id.*

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

1 courts of appeal as of June 30, 1995.²⁹ For these reasons, the Commission
2 recommends this approach.

3 The recommended legislation is thus based on the pre-unification path of bail
4 forfeiture appeals. Before unification, jurisdiction of a bail forfeiture appeal
5 depended on which trial court, municipal or superior, ordered the forfeiture.³⁰
6 Specifically, an appeal from a bail forfeiture ordered in municipal court went to
7 the appellate department of the superior court,³¹ and an appeal from bail forfeiture
8 ordered in superior court went to the court of appeal.³²

9 To carry forward pre-unification procedures in a system without municipal
10 courts, the recommended legislation uses a proxy for which trial court would have
11 ordered a bail forfeiture before unification: the underlying criminal charge.³³ For a
12 felony, the court ordering forfeiture also depended on the stage of the case. The
13 proposal therefore bases jurisdiction of a bail forfeiture appeal on the underlying
14 criminal charge and the stage of the proceeding at which bail was forfeited.³⁴

15 The recommended legislation would direct an appeal from a bail forfeiture in a
16 misdemeanor case³⁵ to the appellate division of the superior court.³⁶ Before
17 unification, a misdemeanor case was tried in the municipal court.³⁷ A bail
18 forfeiture in a misdemeanor case was an order by the municipal court, and was
19 appealed to the appellate department of the superior court.³⁸

20 The recommended legislation would base appellate jurisdiction of a bail
21 forfeiture in a felony case³⁹ according to when the forfeiture occurs. If the
22 forfeiture occurs at a preliminary proceeding before a magistrate,⁴⁰ the appeal

29. See *supra* note 27.

30. *Newman v. Super. Ct. of Los Angeles County*, 67 Cal. 2d 620, 621-623, 432 P.2d 972, 63 Cal. Rptr. 284 (1967).

31. See *supra* note 19.

32. See *supra* note 20.

33. The underlying criminal charge determined which court, municipal or superior, had jurisdiction over the criminal case. See *infra* notes 37, 46.

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

35. A “misdemeanor case” only includes misdemeanor charges; it does not include a felony charge. Penal Code § 671(g); *cf.* note 39 *infra*.

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

37. The municipal court had jurisdiction over a misdemeanor charge. Former Penal Code § 1462(a) (1991 Cal. Stat. ch. 613, § 8). The municipal court had no jurisdiction over a felony. *In re Joiner*, 180 Cal. App. 2d 250, 254, 4 Cal. Rptr. 667 (1960).

38. See *supra* note 19.

39. A felony case may include a misdemeanor charged with a felony. See Penal Code § 671(f); see also note 46 *infra*; *cf.* *supra* note 35.

40. Prosecution of a felony by information, rather than indictment, in superior court was (and still is) preceded by a preliminary hearing before a magistrate. See Cal. Const. art. I, § 14; Penal Code §§ 738-739, 806, 872; see also note 44 *infra*.

1 would be to the appellate division of the superior court.⁴¹ This reflects the pre-
2 unification practice that such preliminary proceedings were conducted by a
3 magistrate in municipal court,⁴² and that an appeal from that court went to the
4 appellate department of the superior court.⁴³

5 If the forfeiture occurs after a legal commitment by a magistrate or an
6 indictment,⁴⁴ the appeal would be to the court of appeal.⁴⁵ This would also mirror
7 the pre-unification situation: After a legal commitment or an indictment, a felony
8 case was prosecuted in superior court⁴⁶ not municipal court, and an appeal of a bail
9 forfeiture from that court went to the court of appeal.⁴⁷

10 ***Effect of the Recommended Legislation***

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

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

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

42. See Cal. Const. art. I, § 14; Penal Code §§ 738-739, 806; *People v. Thompson*, 50 Cal. 3d 134, 155, 785 P.2d 857, 266 Cal. Rptr. 309 (1990); *Lempert v. Super. Ct. of Santa Clara County*, 112 Cal. App. 4th 1161, 1168, 5 Cal Rptr. 3d 700 (2003); see also Uelmen, *California Criminal Procedure and Trial Court Unification* (March 2002), at 2; *California Criminal Law Practice and Procedure Arraignment* § 6.10, at 144-45, *Preliminary Hearings* § 8.1, at 188-89, *California Judges Benchbook: Criminal Pretrial Proceedings, Commencing the Action* § 1.1, at 3.

43. See former Code Civ. Proc. §§ 77(e) (1984 Cal. Stat. ch. 704, § 1), 904.2 (1990 Cal. Stat. ch. 1305, § 5); *Newman v. Super. Ct. of Los Angeles County*, 67 Cal. 2d 620, 432 P.2d 972, 63 Cal. Rptr. 284 (1967) (directing appeal from forfeiture by magistrate in municipal court at preliminary hearing on felony charge to appellate department of superior court).

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

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

46. The superior court had jurisdiction over a felony case, which included a misdemeanor committed in connection with a felony. See Penal Code § 954; *People v. Leney*, 213 Cal. App. 3d 265, 268, 261 Cal. Rptr. 541 (1989) (superior court jurisdiction over properly joined misdemeanor); 4 B. Witkin, *California Criminal Law Jurisdiction & Venue* § 14, at 102 (3d. ed. 2000) (citing Cal. Const. art. VI, § 10 and Penal Code § 1462(a)). The superior court retained jurisdiction over connected misdemeanor charges even if the felony charges were eliminated before trial. *People v. Clark*, 17 Cal. App. 3d 890, 897-898, 95 Cal. Rptr. 411 (1971).

47. See *supra* note 20.

PROPOSED LEGISLATION

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

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

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

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

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

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

21 **Comment.** Section 1305.5 is added to clarify the appellate jurisdiction of bail forfeiture
22 matters after trial court unification. The provision preserves the procedural pre-unification status
23 quo. See, e.g., *Newman v. Super. Ct. of Los Angeles County*, 67 Cal. 2d 620, 623, 432 P.2d 972,
24 63 Cal. Rptr. 284 (1967) (amount of bail does not determine jurisdiction of appeal relating to bail
25 forfeiture order); *People v. Topa Ins. Co.*, 32 Cal. App. 4th 296, 38 Cal. Rptr. 2d 167 (1995)
26 (court of appeal heard bail forfeiture appeal involving failure to appear before superior court in
27 felony case, even though bail was less than jurisdictional limit of municipal court); *County of Los*
28 *Angeles v. Am. Bankers Ins. Co.*, 202 Cal. App. 3d 1291, 249 Cal. Rptr. 540 (1988) (same); see
29 also *People v. Leney*, 213 Cal. App. 3d 265, 268, 261 Cal. Rptr. 541 (1989) (superior court has
30 jurisdiction to try remaining misdemeanor even if felony charge eliminated before judgment);
31 *People v. Clark*, 17 Cal. App. 3d 890, 897-898, 95 Cal. Rptr. 411 (1971) (superior court has
32 jurisdiction to try connected misdemeanor even if felony charge eliminated before trial).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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