STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

2006-2007 RECOMMENDATIONS

Time Limits for Discovery in an Unlawful Detainer Case 271

Statutes Made Obsolete by Trial Court Restructuring: Part 3 341

December 2006

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

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Time Limits for Discovery in an Unlawful Detainer Case

October 2006

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

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

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STATE OF CALIFORNIA

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October 27, 2006

To: The Honorable Arnold Schwarzenegger
Governor of California, and
The Legislature of California

An unlawful detainer case is a special proceeding by a landlord to regain possession of real property from a tenant. The statutory procedure is designed to provide an expeditious means for a landlord to regain possession when a tenant wrongfully refuses to leave.

Consistent with the goal of promoting expeditious resolution of landlord-tenant disputes, a number of provisions in the Civil Discovery Act specify a special deadline, notice period, or other time limit for an unlawful detainer case. These time limits are substantially shorter than the corresponding time limits for other types of cases.

In most of these discovery provisions, the language establishing a special time limit for an unlawful detainer case is mixed with language specifying the time limit for other types of cases. This drafting technique creates ambiguities. The Law Revision Commission recommends that these ambiguities be eliminated by amending each provision to

separately state the special time limit for an unlawful detainer case.

The Commission also recommends amending a provision in which the special time limit for an unlawful detainer case is separately stated, but is unclear in its application. The proposed amendment would eliminate this ambiguity; it would also clarify how the provision applies when employment records are subpoenaed. Similar clarifying revisions would be made in several other discovery provisions that fail to specify how to treat a request for employment records of an employee.

The Commission further recommends that each provision establishing a special time limit for discovery in an unlawful detainer case be made expressly applicable to other types of summary proceedings for possession of real property (forcible entry and forcible detainer). The same expedited discovery procedures should apply in all of these types of proceedings.

Finally, the Commission recommends that a new provision be added to the Code of Civil Procedure, which would establish a shortened five day notice requirement for a discovery motion in an unlawful detainer case or other summary proceeding for possession of real property. This would help promote fair yet expeditious resolution of landlord-tenant disputes.

This recommendation was prepared pursuant to Resolution Chapter 1 of the Statutes of 2006.

Respectfully submitted,

David Huebner
Chairperson

TIME LIMITS FOR DISCOVERY IN AN UNLAWFUL DETAINER CASE

An unlawful detainer case is a special proceeding by a landlord to regain possession of real property from a tenant, such as when a tenant fails to pay rent for an apartment.[1] The procedure for an unlawful detainer case is prescribed by statute.[2] The procedure is designed to provide an expeditious means for a landlord to regain possession when a tenant wrongfully refuses to leave.[3] The underlying goal is to promote peaceful resolution of landlord-tenant disputes.[4]

The Civil Discovery Act[5] includes a number of provisions that specify a special time limit for an unlawful detainer case. In most of these provisions, the language specifying the special time limit for an unlawful detainer case is mixed with language specifying the time limit for other types of cases.

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1. See Code Civ. Proc. § 1161. Unless otherwise specified, all further statutory references are to the Code of Civil Procedure.

2. Sections 1161-1179a.

3. Deal v. Municipal Court, 157 Cal. App. 3d 991, 995, 204 Cal. Rptr. 79 (1984); see also Section 1179a.

4. *Deal*, 157 Cal. App. 3d at 995.

5. Sections 2016.010-2036.050.

The Commission is conducting a study of civil discovery; this recommendation was prepared as part of that study. Several other discovery reforms recommended by the Commission have already been enacted. See 2005 Cal. Stat. ch. 294; *Report of the California Law Revision Commission on Chapter 294 of the Statutes of 2005 (Assembly Bill 333)*, 35 Cal. L. Revision Comm'n Reports 77 (2005); *Civil Discovery: Correction of Obsolete Cross-References*, 34 Cal. L. Revision Comm'n Reports 161 (2004); *Civil Discovery: Statutory Clarification and Minor Substantive Improvements*, 34 Cal. L. Revision Comm'n Reports 137 (2004); *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003).

This drafting technique creates ambiguities.[6] The Law Revision Commission recommends that these ambiguities be eliminated by amending each provision to separately state the special time limit for an unlawful detainer case.

The Commission also recommends several related reforms:

- Amend a provision in which the special time limit for an unlawful detainer case is separately stated, but is unclear in its application.
- Clarify how that provision and three other provisions apply when employment records of an employee are subpoenaed.
- Make explicit that the special time limits for discovery in an unlawful detainer case also apply to discovery in other types of summary proceedings for possession of real property.
- Add a new provision to the codes, which would establish a special notice period for a discovery motion in an unlawful detainer case. To help implement this new provision, the Judicial Council would be directed to establish a briefing schedule for such a motion, as well as for certain other motions that are heard on short notice in an unlawful detainer case.

The Commission's recommendations are explained below. Its work on civil discovery is continuing. In the future, the

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6. These ambiguities predate the 2004 nonsubstantive reorganization of the Civil Discovery Act, which was enacted on recommendation of the Law Revision Commission. 2004 Cal. Stat. ch. 182; *Civil Discovery: Nonsubstantive Reform*, *supra* note 5. The Commission did not attempt to eliminate such ambiguities when reorganizing the Civil Discovery Act, because that might have prompted concerns about whether the reorganization was truly nonsubstantive. Now that the Civil Discovery Act has been reorganized into short sections, it is easier to address the ambiguities than in the past, when the ambiguities were buried in lengthy provisions and there was no room to insert new subdivisions or paragraphs clarifying the ambiguous points.

Commission may address additional issues relating to discovery in an unlawful detainer case.

Ambiguity that Arises Because the Special Time Limit for an Unlawful Detainer Case Is Not Separately Stated

In some discovery provisions, language specifying a special time limit for an unlawful detainer case is mixed with language specifying the time limit for other types of cases. These include the provisions governing (1) service of a response to written discovery, (2) commencement of written discovery by the plaintiff, and (3) the time of an inspection.

Service of a Response to Written Discovery

Under the provision governing service of a response to interrogatories,[7] the response is due thirty days after service of the interrogatories. In an unlawful detainer case, however, the response is due five days after service of the interrogatories.

A court may shorten the thirty day deadline on motion of the propounding party, and may extend that deadline on motion of the responding party. A court may also shorten the five day unlawful detainer deadline on motion of the propounding party. Because of the way the statute is drafted, however, it is unclear whether a court may extend the five day unlawful detainer deadline on motion of the responding party.

Specifically, the first sentence of the provision suggests that a court may extend the five day unlawful detainer deadline over a party's objection, while the second sentence suggests that a court may not do so:

> 2030.260. (a) Within 30 days after service of interrogatories*, or in unlawful detainer actions within five*

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7. Section 2030.260.

> *days after service of interrogatories* the party to whom the interrogatories are propounded shall serve the original of the response to them on the propounding party, unless on motion of the propounding party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response. *In unlawful detainer actions, the party to whom the interrogatories are propounded shall have five days from the date of service to respond unless on motion of the propounding party the court has shortened the time for response.*
>
> ....[8]

Similar ambiguities exist in the provisions governing service of a response to an inspection demand[9] and service of a response to a request for admissions.[10]

As a matter of policy, a court should be permitted to extend the deadlines for responding to written discovery in an unlawful detainer case, even if a party objects. Those five day deadlines are very short. It might not always be realistic to expect a party to respond in the period provided. Often, the parties may be able to resolve such problems by agreement.[11] But if a party refuses a reasonable request for an extension, it

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8. Emphasis added. The predecessor of Section 2030.260, former Section 2030(h), contained identical language. See 1991 Cal. Stat. ch. 1090, § 11; Section 2030.260 Comment.

9. Section 2031.260; see also former Section 2031(i), 2000 Cal. Stat. ch. 688, § 12 (predecessor of Section 2031.260).

10. Section 2033.250; see also former Section 2033(h), 1991 Cal. Stat. ch. 1090, § 13 (predecessor of Section 2033.250).

11. See Sections 2016.030 (unless court orders otherwise, parties may modify discovery procedures by written stipulation), 2030.270 (parties may agree to extend time for service of response to interrogatories), 2031.270 (parties may agree to extend time for service of response to inspection demand), 2033.260 (parties may agree to extend time for service of response to request for admissions).

may be appropriate for a court to extend the deadline over the party's objection.

The Law Revision Commission therefore recommends that the provision governing service of a response to interrogatories be amended to make clear that a court may extend, as well as shorten, the five day unlawful detainer deadline.[12] The Commission also recommends similar amendments of the provisions governing service of a response to an inspection demand and service of a response to a request for admissions.[13]

Commencement of Written Discovery By the Plaintiff

The Civil Discovery Act includes restrictions on how soon a plaintiff may commence written discovery after filing a lawsuit. For example, the provision governing when a plaintiff may propound interrogatories states:

> A plaintiff may propound interrogatories to a party without leave of court at any time that is 10 days after the service of the summons on, or in unlawful detainer actions five days after service of the summons on or appearance by, that party, whichever occurs first.[14]

The provisions governing when a plaintiff may make an inspection demand[15] and when a plaintiff may make requests for admission[16] are similar.

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12. See proposed amendment to Section 2030.260 *infra*.

13. See proposed amendments to Sections 2031.260 and 2033.250 *infra*.

14. Section 2030.020(b). The predecessor of this provision, former Section 2030(b), contained identical language. See 1991 Cal. Stat. ch. 1090, § 11; Section 2030.020 Comment.

15. Section 2031.020(b); see also former Section 2031(b), 2000 Cal. Stat. ch. 688, § 12 (predecessor of Section 2031.020).

16. Section 2033.020(b); see also former Section 2033(b), 1991 Cal. Stat. ch. 1090, § 13 (predecessor of Section 2033.020).

Each of these provisions establishes a ten day hold period for most cases, and a special five day hold period for unlawful detainer cases. But it is not clear what is meant to trigger the running of each hold period: (1) service of the summons on the responding party, or (2) service of the summons on, or appearance by, the responding party, whichever occurs first.

For example, a court might conclude that the ten day hold period for propounding interrogatories runs from service of the summons on the responding party, while the five day hold period runs from service of the summons on, or appearance by, the responding party, whichever occurs first. Such an interpretation would be consistent with the current placement of the commas in the provision, because only the clause relating to unlawful detainer actions refers to an appearance.[17] But that interpretation would be grammatically problematic with respect to the ten day hold period: If the clause referring to unlawful detainer actions relates only to such actions, then the remaining statutory text would not make sense as applied to other types of actions.[18]

It seems likely that the Legislature inadvertently omitted a comma after the reference to service of the summons in an unlawful detainer action — i.e., the provision was intended to read: "A plaintiff may propound interrogatories to a party ... 10 days after the service of the summons on, or in unlawful detainer actions five days after service of the summons on, or appearance by, that party, whichever occurs first." With a

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17. Section 2030.020(b) reads: "A plaintiff may propound interrogatories to a party ... 10 days after the service of the summons on, or in unlawful detainer actions five days after service of the summons on or appearance by, that party, whichever occurs first."

18. With the clause relating to unlawful detainer actions excised, Section 2030.020(b) would read: "A plaintiff may propound interrogatories to a party ... 10 days after the service of the summons on ... that party, whichever occurs first."

comma inserted as indicated, the most natural and logical (but not the only possible) interpretation of the provision would be that *both* the five day and the ten day hold periods run from service of the summons on, or appearance by, the responding party, whichever occurs first.

That interpretation not only makes sense from a grammatical standpoint, but also from a substantive standpoint: There does not seem to be a policy basis for treating the five day and ten day hold periods differently.[19] Rather, it is logical to use the same trigger for both the five day and the ten day hold periods. If a party has been served with a summons, or has appeared in an action, the clock should start ticking for taking discovery from that party. That should be the rule regardless of whether the case is an unlawful detainer case or another type of case.

The Law Revision Commission recommends that each provision be amended to clearly implement that approach. That can be done by stating the special unlawful detainer hold period in a separate subdivision, instead of including it in the same subdivision as the general rule.[20] Amending the provisions in this manner would help to prevent confusion over how to calculate the hold periods.

Time of Inspection

An inspection demand must "[s]pecify a reasonable time for the inspection that is at least 30 days after service of the demand, or in unlawful detainer actions five days after

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19. The idea that the Legislature inadvertently omitted a comma in Section 2030.020(b) also draws support from Section 2033.020(b), a parallel provision on making requests for admission. Notably, Section 2033.020(b) includes a comma in precisely the place where one appears to have been accidentally omitted in the other provision.

20. See proposed amendments to Sections 2030.020, 2031.020, and 2033.020 *infra*.

service of the demand, unless the court for good cause shown has granted leave to specify an earlier date."[21] It is ambiguous from this language whether the good cause exception exists for unlawful detainer cases, other types of cases, or both.

The Law Revision Commission recommends that the provision be amended to separately state the special five day unlawful detainer rule, making clear that the good cause exception applies both to that rule and to the thirty day rule for other types of cases.[22] Applying the good cause exception in both contexts is sound policy, ensuring leeway to deviate from the statutorily specified time periods when justified.[23]

Special Time Limit that is Separately Stated But Unclear in Its Application: Time of Taking an Oral Deposition

In the provision that governs the time of taking an oral deposition, the special time limit for an unlawful detainer case is separately stated but unclear in its application. The Law Revision Commission recommends that this defect be fixed.

An oral deposition must be scheduled at least ten days after service of the deposition notice.[24] If the deponent is required to produce personal records of a consumer pursuant to a subpoena, the deposition must be scheduled at least twenty days after issuance of the subpoena.[25]

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21. Section 2031.030(c)(2). The predecessor of this provision, former Section 2031(c)(2), contained identical language. 2000 Cal. Stat. ch. 688, § 12; Section 2031.030 Comment.

22. See proposed amendment to Section 2031.030 *infra*.

23. See generally Deal v. Municipal Court, 157 Cal. App. 3d 991, 997-98, 204 Cal. Rptr. 79 (1984) (referring to good cause exception in rejecting due process challenge to five day deadline to respond to unlawful detainer complaint).

24. Section 2025.270(a).

25. *Id*.

The provision stating these rules includes an exception for an unlawful detainer case. An oral deposition in such a case must be scheduled at least five days after service of the deposition notice, but not later than five days before trial.[26] This special notice period for an unlawful detainer case is stated in a separate subdivision, not mixed with the language specifying the notice period for other types of cases.

It is unclear, however, whether the unlawful detainer exception applies when personal records of a consumer are subpoenaed in an unlawful detainer case. The statute could be interpreted such that the special five day unlawful detainer notice period applies regardless of whether personal records of a consumer are subpoenaed. Alternatively, the statute could be interpreted such that the twenty day notice period, not the five day notice period, applies when personal records of a consumer are subpoenaed in an unlawful detainer case.[27] There does not appear to be any published decision addressing this point.

The statute should be amended to eliminate the ambiguity. It should clearly indicate which notice period applies when

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26. Section 2025.270(b).

27. The predecessor of Section 2025.270, former Section 2025(f), contained the same ambiguity. It read:

> (f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.
>
> On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

2002 Cal. Stat. ch. 1068, § 2.

personal records of a consumer are subpoenaed in an unlawful detainer case.

The five day notice period for a deposition in an unlawful detainer case is designed to facilitate expeditious and peaceful resolution of such disputes, helping to safeguard the property rights of the landlord.[28] The twenty day notice requirement for a deposition in which personal records of a consumer are subpoenaed is designed to protect consumer privacy by giving the consumer ample time to object to production of the personal records.[29] A notice period like this is mandated by the state constitutional right of privacy;[30] personal records of a consumer cannot constitutionally be produced without affording the consumer reasonable notice and an opportunity to object to production.[31]

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28. See generally Lindsey v. Normet, 405 U.S. 56, 70-73 (1972); Deal v. Municipal Court, 157 Cal. App. 3d 991, 995, 996, 204 Cal. Rptr. 79 (1984).

29. Lantz v. Superior Court, 28 Cal. App. 4th 1839, 1848, 34 Cal. Rptr. 2d 358 (1994); Sasson v. Katash, 146 Cal. App. 3d 119, 124, 194 Cal. Rptr. 46 (1983).

30. Cal. Const. art. I, § 1.

31. See, e.g., Valley Bank of Nevada v. Superior Court, 15 Cal. 3d 652, 658, 542 P.2d 977, 125 Cal. Rptr. 553 (1975) ("Striking a balance between [a customer's constitutional right of privacy and a civil litigant's right to discover relevant facts], we conclude that before confidential customer information may be disclosed in the course of civil discovery proceedings, [a] bank must take reasonable steps to notify its customer of the pendency and nature of the proceedings and to afford the customer a fair opportunity to assert his interests by objecting to disclosure, by seeking an appropriate protective order, or by instituting other legal proceedings to limit the scope or nature of the matters sought to be discovered."); Gilbert v. City of San Jose, 114 Cal. App. 4th 606, 615-16, 7 Cal. Rptr. 3d 692 (2003) ("[P]rivacy rights created by the California Constitution [require that] before defendant discloses personal information collected under the Ordinance, it must take reasonable steps to notify the person to whom the information pertains of the pendency and nature of the request for the information and to afford the person a fair opportunity to object to disclosure, to join in resisting disclosure, or to resist disclosure or limit the scope or nature of the matters sought to be discovered."); Sehlmeyer v. Department of General Services, 17 Cal. App. 4th 1072, 1080-81, 21 Cal. Rptr. 2d 840 (1993)

Because of this constitutional constraint, it would be problematic to apply the five day notice period when personal records pertaining to a consumer are subpoenaed for a deposition in an unlawful detainer case. It would be pointless to permit a party to take such a deposition on five days notice to the other litigants instead of the usual twenty days, unless adjustments were also made in:

(1) The requirement that the consumer be served with the subpoena and a notice of privacy rights not less than ten days before the date set for production.[32]

(2) The requirement that the consumer be served with the subpoena and a notice of privacy rights at least five days before service on the custodian of records.[33]

(3) The requirement that the custodian of records be given a reasonable time to locate and produce the records, no earlier than twenty days after the issuance, or fifteen days after the service, of the deposition subpoena, whichever is later.[34]

If these three steps were condensed into a five day time period, however, the timing would be too tight to adequately protect the consumer's constitutional right of privacy.

On initial consideration, it would likewise seem to be problematic to apply the twenty day notice period when

(“Striking a balance between [a nonparty's constitutional right of privacy and an administrative litigant's right to discovery relevant facts], we conclude that before confidential third party personal records may be disclosed in the course of an administrative proceeding, the subpoenaing party must take reasonable steps to notify the third party of the pendency and nature of the proceedings and to afford the third party a fair opportunity to assert her interests by objecting to disclosure, by seeking an appropriate protective order from the administrative tribunal, or by instituting other legal proceedings to limit the scope or nature of the matters sought to be discovered.”).

32. Section 1985.3(b)(2).

33. Section 1985.3(b)(3).

34. Sections 1985.3(d), 2020.410(c).

personal records of a consumer are subpoenaed for a deposition in an unlawful detainer case. If a defendant appears in an unlawful detainer case, trial is to be held "not later than the 20th day following the date that the request to set the time of the trial is made."[35] The short time period for scheduling an unlawful detainer trial could be viewed as inconsistent with requiring twenty days notice when subpoenaing consumer records in an unlawful detainer case.

But there are a number of mitigating factors. A request for trial in an unlawful detainer case cannot be made until after the defendant appears.[36] The defendant is not required to respond to the complaint until five days after it is served (more if ordered by the court for good cause shown).[37] The trial date can be continued upon taking certain steps to protect the landlord's interests.[38] Further, the notice requirement for a deposition involving production of records can be shortened for good cause shown.[39] Likewise, the special statutory deadlines for notifying a consumer regarding a request for production of personal records[40] or notifying a custodian of records regarding such a request[41] can be shortened "[u]pon

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35. Section 1170.5(a).

36. See Judicial Council Form UD-150.

37. Code Civ. Proc. § 1167.3.

38. Code Civ. Proc. § 1170.5(b)-(c); see also Code Civ. Proc. § 1167.5.

39. Code Civ. Proc. § 2025.270(c).

40. A consumer must be served with the subpoena, any supporting affidavit, a statutorily prescribed Notice of Privacy Rights, and a proof of service. This service must be made at least ten days before the date set for production of the personal records and at least five days before service on the custodian of records. Section 1985.3(b).

41. A custodian of records must be served with the subpoena and either (i) proof of serving the required documents on the consumer or (ii) a properly executed written authorization to release the consumer's records. Section 1985.3(c). This service must be made "in sufficient time to allow the witness a reasonable time, as provided in Section 2020.410, to locate and produce the

good cause shown and provided that the rights of witnesses and consumers are preserved ....”[42]

There is thus leeway to accommodate both the unlawful detainer deadlines and the statutory requirements for producing consumer records. The short fuse for trial in an unlawful detainer case does not necessarily require deviation from the normal requirements for subpoenaing consumer records. The Law Revision Commission therefore recommends that the provision governing the time of taking an oral deposition be amended to make clear that the twenty day notice requirement for a deposition involving production of personal records of a consumer applies even in an unlawful detainer case.[43]

Employment Records of an Employee

Just as there are special rules for producing personal records pertaining to a consumer,[44] there are also special rules for producing employment records of an employee.[45] The provision governing the latter situation was enacted after and modeled on the provision governing production of personal records pertaining to a consumer. The procedure for producing employment records of an employee is closely

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records or copies thereof.” Section 1985.3(d). The date for production shall thus be “no earlier than 20 days after the issuance, or 15 days after the service, of the deposition subpoena, whichever date is later.” Section 2020.410(c). As a practical matter, because the consumer must be served at least five days before the custodian, and the custodian must be served at least 15 days before the date of production, the consumer must be served at least 20 days before the date of production. Weil & Brown, California Practice Guide: Civil Procedure Before Trial *Depositions* § 8:590.1, at 8E-60 (2005).

42. Section 1985.3(h).

43. See proposed amendment to Section 2025.270 *infra*.

44. Section 1985.3.

45. Section 1985.6.

similar to the procedure for producing personal records pertaining to a consumer.

Although the provision governing the time of taking an oral deposition[46] expressly states how it applies when the deposing party seeks personal records pertaining to a consumer, the provision does not state how it applies when the deposing party seeks employment records of an employee. This appears to be an oversight. The Law Revision Commission recommends that the provision be amended to clarify its application to a deposition involving production of employment records of an employee.[47]

Similar, apparently inadvertent gaps exist in several other discovery provisions; these provisions refer to the procedure for producing personal records pertaining to a consumer but do not refer to the procedure for producing employment records of an employee.[48] These gaps in coverage should also be remedied.[49]

Application of Special Time Limits to a Proceeding for Forcible Entry or Forcible Detainer

An unlawful detainer case is not the only type of summary proceeding for possession of real property. Other such proceedings include forcible entry[50] and forcible detainer.[51]

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46. Section 2025.270.

47. See proposed amendment to Section 2025.270 *infra*.

48. See Sections 1987.1, 2020.510, 2025.240.

49. See proposed amendments to Sections 1987.1, 2020.510, and 2025.240 *infra*.

50. Section 1159 defines forcible entry as:

> 1159. Every person is guilty of a forcible entry who either:
>
> 1. By breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror enters upon or into any real property; or,
>
> 2. Who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct, the party in possession.

The statutory provisions governing forcible entry and forcible detainer are in the same chapter of the Code of Civil Procedure as the provisions governing unlawful detainer.[52] The procedure for these types of proceedings is essentially the same as the procedure for an unlawful detainer case.[53] Like an unlawful detainer case, a proceeding for forcible entry or forcible detainer is entitled to trial setting precedence over almost all other civil actions, so that such proceedings "shall be quickly heard and determined."[54]

Nonetheless, the various special time limits for discovery in an unlawful detainer case do not expressly apply to discovery in a proceeding for forcible entry or forcible detainer.[55] The Law Revision Commission recommends that the special time limits expressly apply to a proceeding for forcible entry or

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The "party in possession" means any person who hires real property and includes a boarder or lodger, except those persons whose occupancy is described in subdivision (b) of Section 1940 of the Civil Code.

51. Section 1160 defines forcible detainer as:

1160. Every person is guilty of a forcible detainer who either:

1. By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or,

2. Who, in the night-time, or during the absence of the occupant of any lands, unlawfully enters upon real property, and who, after demand made for the surrender thereof, for the period of five days, refuses to surrender the same to such former occupant.

The occupant of real property, within the meaning of this subdivision, is one who, within five days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

52. See Sections 1159-1179a.

53. M. Moskovitz, N. Lenvin, et al., California Landlord-Tenant Practice *Terminating the Tenancy* § 8.145, at 753 (2d ed. 2006); see generally Jordan v. Talbot, 55 Cal. 2d 597, 604, 361 P.2d 20, 12 Cal. Rptr. 488 (1961).

54. Section 1179a.

55. See Sections 2025.270, 2030.020, 2030.260, 2031.020, 2031.030, 2031.260, 2033.020, 2033.250.

forcible detainer, as well as an unlawful detainer case.[56] The same expedited discovery procedures should be used in all summary proceedings for possession of real property.

Notice Period for a Discovery Motion in an Unlawful Detainer Case

The Legislature has mandated that courts handle unlawful detainer cases and other summary proceedings for possession of real property on an expedited basis.[57] The special short time requirements for many procedural steps in an unlawful detainer case serve that purpose. For example, a party in an unlawful detainer case may calendar a summary judgment motion on five days notice, rather than the seventy-five days notice required in other types of cases.[58]

There is, however, no special shortened time requirement for a discovery motion in an unlawful detainer case. Rather, a party bringing such a motion must give sixteen court days notice of the hearing on the motion, the same as in most other civil cases.[59]

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56. See proposed amendments to Sections 2025.270, 2030.020, 2030.260, 2031.020, 2031.030, 2031.260, 2033.020, and 2033.250 *infra*.

57. Section 1179a.

58. Section 437c(a), 1170.7; see also Sections 1167.3 (five day period for responding to complaint in unlawful detainer case), 1170.5 (trial in unlawful detainer case must be set no later than 20th day following date of request to set trial), 2025.270 (five day notice requirement for deposition in unlawful detainer case), 2030.020 (five day hold on interrogatories propounded by plaintiff in unlawful detainer case), 2030.260 (five day period for responding to interrogatories in unlawful detainer case), 2031.020 (five day hold on inspection demand by plaintiff in unlawful detainer case), 2031.030 (five day notice requirement for inspection in unlawful detainer case), 2031.260 (five day period for responding to inspection demand in unlawful detainer case), 2033.020 (five day hold on requests for admission by plaintiff in unlawful detainer case), 2033.250 (five day period for responding to requests for admission in unlawful detainer case).

59. Section 1005(b).

It is incongruous to allow a potentially dispositive summary judgment motion to be heard on five days notice, while requiring a full sixteen court days notice for a motion to resolve a mere discovery dispute. To eliminate this unwarranted disparity in treatment, the Law Revision Commission recommends that a new provision be added to the Code of Civil Procedure, which would establish a five day notice requirement for a discovery motion in an unlawful detainer case or other summary proceeding for possession of real property.[60]

This new provision would not specify when an opposition or a reply brief, if any, would be due. That would be covered by another new provision, which would direct the Judicial Council to establish a briefing schedule.[61] Once established, the briefing schedule would help to prevent confusion and disputes over when to file and serve responsive papers.

Such guidance is needed not only for a discovery motion, but also for two other types of motions that can be brought on unusually short notice in an unlawful detainer case: A summary judgment motion[62] and a motion to quash.[63] The Judicial Council would be directed to establish a briefing schedule for each of these motions as well.[64]

These reforms relating to motion practice in an unlawful detainer case, together with the other reforms recommended by the Commission, would help clarify the applicable rules and streamline the procedures for an unlawful detainer case or

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60. See proposed Section 1170.8 *infra*.

61. See proposed Section 1170.9 *infra*.

62. See Section 1170.7 (five day notice requirement for summary judgment motion in unlawful detainer case).

63. See Section 1167.4 (in summary proceeding for possession of real property, motion to quash shall be made "not less than three days nor more than seven days after the filing of the notice").

64. See proposed Section 1170.9 *infra*.

other summary proceeding for possession of real property. Both landlords and tenants would benefit, and courts would be spared from resolving unnecessary disputes over unclear statutory language.

PROPOSED LEGISLATION

Code Civ. Proc. § 1170.8 (added). Time for discovery motion

SEC. ____. Section 1170.8 is added to the Code of Civil Procedure, to read:

1170.8. In any action under this chapter, a discovery motion may be made at any time upon giving five days notice.

Comment. Section 1170.8 is new. The section provides for an expedited hearing on a discovery motion in a forcible entry or forcible or unlawful detainer case, consistent with the precedence for such cases expressed in Section 1179a. The section is modeled on Section 1170.7 (five days notice required for summary judgment motion in action under this chapter).

Code Civ. Proc. § 1170.9 (added). Judicial Council rules

SEC. ____. Section 1170.9 is added to the Code of Civil Procedure, to read:

1170.9. The Judicial Council shall promulgate rules, not inconsistent with statute, prescribing the time for filing and service of opposition and reply papers, if any, relating to a motion under Section 1167.4, 1170.7, or 1170.8.

Comment. Section 1170.9 is new. To prevent confusion and disputes, it directs the Judicial Council to establish briefing schedules for a motion to quash, summary judgment motion, and discovery motion in a summary proceeding for possession of real property. For general guidance on means of service, including service by overnight delivery, see Sections 1010-1020; see also Cal. R. Ct. 2.200-2.306.

Code Civ. Proc. § 1987.1 (amended). Motion to quash, modify, or condition subpoena

SEC. ____. Section 1987.1 of the Code of Civil Procedure is amended to read:

1987.1. When a subpoena requires the attendance of a witness or the production of books, documents or other things before a court, or at the trial of an issue therein, or at the

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

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

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

SEC. ____. Section 2020.510 of the Code of Civil Procedure is amended to read:

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

(1) Comply with the requirements of Section 2020.310.

(2) Designate the business records, documents, and tangible things to be produced either by specifically describing each

individual item or by reasonably particularizing each category of item.

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

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

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

(d) Where, as described in Section 1985.6, the person to whom the deposition subpoena is directed is a witness, and the business records described in the deposition subpoena are employment records pertaining to an employee, the service of the deposition subpoena shall be accompanied either by a copy of the proof of service of the notice to the employee described in subdivision (e) of Section 1985.6, or by the employee's written authorization to release personal records described in paragraph (2) of subdivision (c) of Section 1985.6.

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

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

SEC. ____. Section 2025.240 of the Code of Civil Procedure is amended to read:

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

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

(1) A notice of the deposition.

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

(3) A copy of the deposition subpoena.

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

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

Code Civ. Proc. § 2025.270 (amended). Time of taking oral deposition

SEC. ____. Section 2025.270 of the Code of Civil Procedure is amended to read:

2025.270. (a) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. ~~If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition~~

~~shall be scheduled for a date at least 20 days after issuance of that subpoena.~~

(b) Notwithstanding subdivision (a), in an unlawful detainer action *or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3,* an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

(c) *Notwithstanding subdivisions (a) and (b), if, as defined in Section 1985.3 or 1985.6, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer or employment records of an employee, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena.*

(d) On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under Section 2025.420.

Comment. Section 2025.270 is amended to clarify its application when personal records of a consumer are subpoenaed in an unlawful detainer case. The provision is also amended to clarify its application when employment records of an employee are subpoenaed. Further, the amendment makes clear that the special notice requirement for an unlawful detainer case also applies to a proceeding for forcible entry (see Section 1159) or forcible detainer (see Section 1160).

Under subdivision (c), a litigant must give twenty days notice when subpoenaing personal records of a consumer or employment records of an employee. This rule applies even in an unlawful detainer case or other summary proceeding for possession of real property.

Under subdivision (d), a court may adjust the notice period for good cause shown. Likewise, on a showing of good cause, a court may shorten the time limits for serving a consumer or a custodian of records under Section 1985.3, provided that the rights of witnesses and consumers are preserved. See Section 1985.3(h). Similarly, on a showing of good cause, a court may shorten the time limits for serving an employee or a custodian of records under Section 1985.6, provided that the rights of witnesses and employees are preserved. See Section 1985.6(g). In

addition, under specified circumstances, a court may continue the trial date or extend other time limits in an unlawful detainer case or other summary proceeding for possession of real property. See Sections 1167.3, 1167.5, 1170.5; see also Deal v. Municipal Court, 157 Cal. App. 3d 991, 997-98, 204 Cal. Rptr. 79 (1984).

Code Civ. Proc. § 2030.020 (amended). Time of propounding interrogatories

SEC. ____. Section 2030.020 of the Code of Civil Procedure is amended to read:

2030.020. (a) A defendant may propound interrogatories to a party to the action without leave of court at any time.

(b) A plaintiff may propound interrogatories to a party without leave of court at any time that is 10 days after the service of the summons on, ~~or in unlawful detainer actions five days after service of the summons on~~ or appearance by, that party, whichever occurs first.

(c) Notwithstanding subdivision (b), *in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, a plaintiff may propound interrogatories to a party without leave of court at any time that is five days after service of the summons on, or appearance by, that party, whichever occurs first.*

(d) Notwithstanding subdivisions (b) and (c), on motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to propound interrogatories at an earlier time.

Comment. Section 2030.020 is amended to improve clarity by separately stating the special hold period for an unlawful detainer case. The amendment also makes clear that the special hold period applies to a proceeding for forcible entry (see Section 1159) or forcible detainer (see Section 1160), as well as to an unlawful detainer case.

Code Civ. Proc. § 2030.260 (amended). Service of response to interrogatories

SEC. ____. Section 2030.260 of the Code of Civil Procedure is amended to read:

2030.260. (a) Within 30 days after service of interrogatories, ~~or in unlawful detainer actions within five days after service of interrogatories~~ the party to whom the interrogatories are propounded shall serve the original of the response to them on the propounding party, unless on motion of the propounding party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response. ~~In unlawful detainer actions,~~

(b) Notwithstanding subdivision (a), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the party to whom the interrogatories are propounded shall have five days from the date of service to respond, unless on motion of the propounding party the court has shortened the time for response*, or unless on motion of the responding party the court has extended the time for response*.

~~(b)~~ *(c)* The party to whom the interrogatories are propounded shall also serve a copy of the response on all other parties who have appeared in the action. On motion, with or without notice, the court may relieve the party from this requirement on its determination that service on all other parties would be unduly expensive or burdensome.

Comment. Section 2030.260 is amended to improve clarity by separately stating the special deadline for an unlawful detainer case. The amendment also makes clear that the special deadline applies to a proceeding for forcible entry (see Section 1159) or forcible detainer (see Section 1160), as well as to an unlawful detainer case. In addition, the amendment eliminates an ambiguity by clearly permitting a court to extend, as well as shorten, the time to respond to interrogatories in an unlawful detainer case.

Code Civ. Proc. § 2031.020 (amended). Time of making inspection demand

SEC. ____. Section 2031.020 of the Code of Civil Procedure is amended to read:

2031.020. (a) A defendant may make a demand for inspection without leave of court at any time.

(b) A plaintiff may make a demand for inspection without leave of court at any time that is 10 days after the service of the summons on, ~~or in unlawful detainer actions within five days after service of the summons on~~ or appearance by, the party to whom the demand is directed, whichever occurs first.

(c) Notwithstanding subdivision (b), *in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, a plaintiff may make a demand for inspection without leave of court at any time that is five days after service of the summons on, or appearance by, the party to whom the demand is directed, whichever occurs first.*

(d) Notwithstanding subdivisions (b) and (c), on motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to make an inspection demand at an earlier time.

Comment. Section 2031.020 is amended to improve clarity by separately stating the special hold period for an unlawful detainer case. The amendment also makes clear that the special hold period applies to a proceeding for forcible entry (see Section 1159) or forcible detainer (see Section 1160), as well as to an unlawful detainer case.

Code Civ. Proc. § 2031.030 (amended). Form of inspection demand

SEC. ____. Section 2031.030 of the Code of Civil Procedure is amended to read:

2031.030. (a) A party demanding an inspection shall number each set of demands consecutively.

(b) In the first paragraph immediately below the title of the case, there shall appear the identity of the demanding party, the set number, and the identity of the responding party.

(c) Each demand in a set shall be separately set forth, identified by number or letter, and shall do all of the following:

(1) Designate the documents, tangible things, or land or other property to be inspected either by specifically describing each individual item or by reasonably particularizing each category of item.

(2) Specify a reasonable time for the inspection that is at least 30 days after service of the demand, ~~or in unlawful detainer actions at least five days after service of the demand,~~ unless the court for good cause shown has granted leave to specify an earlier date. *In an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the demand shall specify a reasonable time for the inspection that is at least five days after service of the demand, unless the court for good cause shown has granted leave to specify an earlier date*.

(3) Specify a reasonable place for making the inspection, copying, and performing any related activity.

(4) Specify any related activity that is being demanded in addition to an inspection and copying, as well as the manner in which that related activity will be performed, and whether that activity will permanently alter or destroy the item involved.

Comment. Subdivision (c) of Section 2031.030 is amended to improve clarity by separately stating the special time requirement for an unlawful detainer case. The amendment also makes clear that the special time requirement applies to a proceeding for forcible entry (see Section 1159) or forcible detainer (see Section 1160), as well as to an unlawful detainer case.

Code Civ. Proc. § 2031.260 (amended). Service of response to inspection demand

SEC. ____. Section 2031.260 of the Code of Civil Procedure is amended to read:

2031.260. *(a)* Within 30 days after service of an inspection demand, ~~or in unlawful detainer actions within five days of an inspection demand,~~ the party to whom the demand is directed shall serve the original of the response to it on the party making the demand, and a copy of the response on all other parties who have appeared in the action, unless on motion of the party making the demand, the court has shortened the time for response, or unless on motion of the party to whom the demand has been directed, the court has extended the time for response. ~~In unlawful detainer actions,~~

(b) Notwithstanding subdivision (a), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the party to whom an inspection demand is directed shall have at least five days from the ~~dates~~ *date* of service of the demand to respond, unless on motion of the party making the demand, the court has shortened the time for the response*, or unless on motion of the party to whom the demand has been directed, the court has extended the time for response*.

Comment. Section 2031.260 is amended to improve clarity by separately stating the special deadline for an unlawful detainer case. The amendment also makes clear that the special deadline applies to a proceeding for forcible entry (see Section 1159) or forcible detainer (see Section 1160), as well as to an unlawful detainer case. In addition, the amendment eliminates an ambiguity by clearly permitting a court to extend, as well as shorten, the time to respond to an inspection demand in an unlawful detainer case.

Section 2031.260 is further amended to make stylistic revisions.

Code Civ. Proc. § 2033.020 (amended). Time of making request for admissions

SEC. ____. Section 2033.020 of the Code of Civil Procedure is amended to read:

2033.020. (a) A defendant may make requests for admission by a party without leave of court at any time.

(b) A plaintiff may make requests for admission by a party without leave of court at any time that is 10 days after the service of the summons on, ~~or, in unlawful detainer actions, five days after the service of the summons on,~~ or appearance by, that party, whichever occurs first.

(c) Notwithstanding subdivision (b), *in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, a plaintiff may make requests for admission by a party without leave of court at any time that is five days after the service of the summons on, or appearance by, that party, whichever occurs first.*

(c) Notwithstanding subdivisions (b) and (c), on motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to make requests for admission at an earlier time.

Comment. Section 2033.020 is amended to improve clarity by separately stating the special hold period for an unlawful detainer case. The amendment also makes clear that the special hold period applies to a proceeding for forcible entry (see Section 1159) or forcible detainer (see Section 1160), as well as to an unlawful detainer case.

Code Civ. Proc. § 2033.250 (amended). Service of response to requests for admission

SEC. ____. Section 2033.250 of the Code of Civil Procedure is amended to read:

2033.250. *(a)* Within 30 days after service of requests for admission, ~~or in unlawful detainer actions within five days after service of requests for admission,~~ the party to whom the

requests are directed shall serve the original of the response to them on the requesting party, and a copy of the response on all other parties who have appeared, unless on motion of the requesting party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response. ~~In unlawful detainer actions,~~

(b) Notwithstanding subdivision (a), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the party to whom the request is directed shall have at least five days from the date of service to respond*,* unless on motion of the requesting party the court has shortened the time for response*, or unless on motion of the responding party the court has extended the time for response*.

Comment. Section 2033.250 is amended to improve clarity by separately stating the special deadline for an unlawful detainer case. The amendment also makes clear that the special deadline applies to a proceeding for forcible entry (see Section 1159) or forcible detainer (see Section 1160), as well as to an unlawful detainer case. In addition, the amendment eliminates an ambiguity by clearly permitting a court to extend, as well as shorten, the time to respond to requests for admission in an unlawful detainer case.

Section 2033.250 is further amended to make a stylistic revision.

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Statutes Made Obsolete by Trial Court Restructuring: Part 3

December 2006

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

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

Cite this report as *Statutes Made Obsolete by Trial Court Restructuring: Part 3,* 36 Cal. L. Revision Comm'n Reports 305 (2006). This is part of publication #227.

STATE OF CALIFORNIA

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December 8, 2006

To: The Honorable Arnold Schwarzenegger
Governor of California, and
The Legislature of California

In the past decade, California's trial court system has been dramatically restructured. As a result, hundreds of sections of the California codes became obsolete, in whole or in part.

By statute, the Law Revision Commission is responsible for revising the codes to reflect trial court restructuring. The Commission has already done much work along those lines and several major reforms have been enacted. But some statutes have not yet been revised, because stakeholders could not reach agreement on key issues, further research was necessary on complex legal matters, or additional time was required to prepare appropriate revisions due to the large volume of material involved.

Of the work that remains to be done, this recommendation addresses the following areas:

- Government Code Section 71601.
- Court appearance by two-way audiovideo communication.
- Appellate jurisdiction.

- Statutes that might be construed to confer concurrent jurisdiction on the municipal and superior courts.

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.

Respectfully submitted,

David Huebner
Chairperson

STATUTES MADE OBSOLETE BY TRIAL COURT RESTRUCTURING: PART 3

Over the past decade, California's trial court system has been dramatically restructured. Major reforms include:

- State, as opposed to local, funding of trial court operations.[1]
- Trial court unification on a county-by-county basis, eventually occurring in all counties. Trial court operations have been consolidated in the superior court of each county and municipal courts no longer exist.[2]
- Enactment of the Trial Court Employment Protection and Governance Act, which established a new personnel system for trial court employees.[3]

As a result of these reforms, hundreds of sections of the California codes became obsolete, in whole or in part. The Legislature directed the Law Revision Commission to revise the codes to eliminate the obsolete material.[4]

The Commission has already done extensive work in response to this directive, and several measures have been

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1. The Lockyer-Isenberg Trial Court Funding Act, enacted in 1997, made the state responsible for funding trial court operations. See 1997 Cal. Stat. ch. 850; see generally Gov't Code §§ 77000-77655.

2. In 1998, California voters approved a measure that amended the California Constitution to permit the municipal and superior courts in each county to unify on a vote of a majority of the municipal court judges and a majority of the superior court judges in the county. Former Cal. Const. art. VI, § 5(e), approved by the voters June 2, 1998 (Proposition 220). By early 2001, unification had occurred in all 58 counties.

3. 2000 Cal. Stat. ch. 1010; see Gov't Code §§ 71600-71675.

4. Gov't Code § 71674.

enacted to implement the Commission's recommendations.[5] Some work has not yet been completed, because stakeholders could not reach agreement on key issues, further research was necessary on complex legal matters, or additional time was required to prepare appropriate revisions due to the large volume of material involved.[6]

Of the topics that still require attention, this recommendation addresses the following:

- Government Code Section 71601.
- Court appearance by two-way audiovideo communication.
- Appellate jurisdiction.
- Statutes that might be construed to confer concurrent jurisdiction on the municipal and superior courts.

The Commission has studied these topics and reached conclusions regarding how to revise the pertinent statutes to reflect trial court restructuring.

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5. See *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm'n Reports 1 (2002) (hereafter "*TCR: Part 1*"), implemented by 2002 Cal. Stat. ch. 784 & ACA 15, approved by the voters Nov. 5, 2002 (Proposition 48); *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm'n Reports 169 (2003) (hereafter "*TCR: Part 2*"), implemented by 2003 Cal. Stat. ch. 149; see also *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 (revising the codes to accommodate trial court unification); 1999 Cal. Stat. ch. 344 (same); *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*").

6. For a detailed summary of the work that remains to be done, see Commission Staff Memorandum 2006-9 (Feb. 14, 2006) (available from the Commission, www.clrc.ca.gov).

RECOMMENDED REFORMS

Each of the reforms in this recommendation relates to trial court unification, a process that began in 1998, when California voters approved a measure permitting the municipal and superior courts in each county to unify.[7] The same year, the codes were revised on Commission recommendation to accommodate unification — i.e., to make the statutes workable in a county in which the municipal and superior courts decided to unify.[8] In determining how to revise the codes to accommodate unification, a guiding principle was "to preserve existing rights and procedures despite unification, with no disparity of treatment between a party appearing in municipal court and a similarly situated party appearing in superior court as a result of unification of the municipal and superior courts in the county."[9]

By 2001, the municipal and superior courts in all 58 California counties had unified their operations in the superior court.[10] It thus became possible to further revise the codes to reflect that municipal courts no longer existed. Many revisions along these lines were enacted on Commission recommendation in 2002 and 2003.[11] Some provisions were not revised at that time because they were complex and

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7. 1996 Cal. Stat. res. ch. 36 (SCA 4), approved by the voters June 2, 1998 (Proposition 220).

8. *Revision of Codes, supra* note 5, implemented by 1998 Cal. Stat. ch. 931; see also 1999 Cal. Stat. ch. 344; *Report on Chapter 344, supra* note 5.

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

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

11. See *TCR: Part 1, supra* note 5, implemented by 2002 Cal. Stat. ch. 784 & ACA 15, approved by the voters Nov. 5, 2002 (Proposition 48); *TCR: Part 2, supra* note 5, implemented by 2003 Cal. Stat. ch. 149.

required further study. This recommendation addresses a number of those matters. As before, the Commission has tried to maintain the pre-unification status quo, while making the law workable in a unified court system.

Government Code Section 71601

Government Code Section 71601 defines various terms for purposes of the Trial Court Employment Protection and Governance Act. "Trial court" is defined as "a superior court or a municipal court."[12] Due to the elimination of the municipal courts, the reference to municipal court is now obsolete.

In 2002, the Commission recommended that the provision be amended to delete the municipal court reference.[13] The Commission also recommended technical revisions of another definition in the same provision.[14]

The amendment recommended by the Commission was enacted,[15] but chaptered out (i.e., nullified) by another bill

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12. Gov't Code § 71601(k).

13. *TCR: Part 1*, *supra* note 5, at 319-22.

14. Government Code Section 71601(i) defines "subordinate judicial officer" as "an officer appointed to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution, including but not limited to, a court commissioner, probate commissioner, referee, traffic referee, juvenile referee, and judge pro tempore." The Commission recommended that the provision be amended to refer to three types of subordinate judicial officers not currently enumerated: a child support commissioner, a traffic trial commissioner, and a juvenile hearing officer. For consistency of terminology, the Commission also recommended that "judge pro tempore" be changed to "temporary judge." *TCR: Part 1*, *supra* note 5, at 319-22; see Cal. Const. art. VI, § 21 (temporary judge). Similarly, the Commission recommended that "juvenile referee" be changed to "juvenile court referee." *TCR: Part 1*, *supra* note 5, at 319-22; see, e.g., Gov't Code § 70045.4 (juvenile court referee); Penal Code § 853.6a (same); Veh. Code § 40502 (same); Welf. & Inst. Code § 264 (same).

15. 2002 Cal. Stat. ch. 784, § 358.

amending the same section.[16] The same thing happened the next year.[17] In 2005, an amendment incorporating some of the revisions recommended by the Commission was included in a bill that passed the Legislature, but the bill was vetoed by the Governor for reasons unrelated to the revisions recommended by the Commission.[18] That happened again in 2006.[19]

The revisions the Commission recommended in 2002, particularly the deletion of the obsolete reference to municipal court, are still in order. The Commission recommends that these revisions be made without further delay.[20]

Court Appearance by Two-Way Electronic Audiovideo Communication

By statute, a court may conduct certain proceedings in a criminal case by two-way audiovideo communication under specified circumstances.[21] The pertinent provisions each contain a reference to "an initial hearing in superior court in a felony case."[22] Due to trial court unification, these references are ambiguous.

Before trial court unification, a felony defendant was either:

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16. 2002 Cal. Stat. ch. 905, § 2; see Gov't Code § 9605 ("[I]n the absence of any express provision to the contrary in the statute which has a higher chapter number, it shall be presumed that a statute which has a higher chapter number was intended by the Legislature to prevail over a statute which is enacted at the same session but has a lower chapter number.").

17. See 2003 Cal. Stat. ch. 149, § 60; 2003 Cal. Stat. ch. 592, § 22.

18. See AB 176 (Bermudez) (2005-2006 Reg. Sess.).

19. See AB 1797 (Bermudez) (2005-2006 Reg. Sess.).

20. See proposed amendment to Gov't Code § 71601 *infra*. This amendment is what the Commission recommended in 2002, with adjustments to reflect recent, unrelated legislation affecting the section.

21. Penal Code §§ 977, 977.2.

22. Penal Code §§ 977(c), 977.2(b).

(1) Indicted and arraigned on the indictment in superior court,[23] or

(2) Arraigned on a complaint before a magistrate, virtually always in municipal court. If held to answer at a preliminary hearing, the defendant would later be arraigned on an information in superior court.[24]

Thus, when the provisions governing the use of two-way audiovideo communication were enacted, the phrase "initial hearing in superior court in a felony case" could only refer to an arraignment on an indictment or an arraignment on an information. The phrase could not be construed to include an arraignment on a complaint, because such an arraignment typically did not occur in superior court.

Now that municipal courts no longer exist, the situation is different. Under the second approach for initiating a felony prosecution, both the arraignment on the complaint and the arraignment on the information are conducted in superior court.[25] A court or party might thus construe the phrase "initial hearing in superior court in a felony case" to include

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23. See Cal. Const. art. I, § 14; Penal Code §§ 737, 976; California Criminal Law Practice and Procedure *Arraignment* § 6.10, at 144-45, *Preliminary Hearings* § 8.1, at 188 (CEB 2006); California Judges Benchbook: Criminal Pretrial Proceedings *Commencing the Action* § 1.1, at 3, § 1.10, at 10 (CJER 1991).

24. Uelmen, *California Criminal Procedure and Trial Court Unification* (March 2002), at 2 (available from the Commission, www.clrc.ca.gov); see also Cal. Const. art. I, § 14; Penal Code §§ 737, 738, 806, 866, 872, 976; former Penal Code § 1462; California Criminal Law, *supra* note 23, *Arraignment* § 6.10, at 144-45, *Preliminary Hearings* § 8.1, at 188-89; California Judges Benchbook, *supra* note 23, *Commencing the Action* § 1.1, at 3.

25. Technically, the arraignment on the complaint is before a superior court judge acting as magistrate (see Cal. Const. art. I, § 14), rather than before the superior court. This distinction is subtle and insufficient to prevent confusion about whether the phrase "initial hearing in superior court in a felony case" includes an arraignment on a complaint.

an arraignment on a complaint, contrary to the statutory intent.

The Law Revision Commission therefore recommends that the provisions governing the use of two-way audiovideo communication be amended to prevent such misinterpretation. This could be achieved by replacing the phrase "initial hearing in superior court in a felony case" with a more precise phrase, either "arraignment on an information" or "arraignment on an information or indictment," depending on whether the statutory provision in question applies to an indicted defendant.[26]

Appellate Jurisdiction

Code of Civil Procedure Sections 904.1 and 904.2 govern appellate jurisdiction in a civil case. Section 904.1 still contains a provision that refers to the municipal court in several places:

> 904.1. (a) An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following:
>
> (1) From a judgment, except ... (C) a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition directed to a *municipal court* or the superior court in a county in which there is no *municipal court* or the judge or judges thereof that relates to a matter pending in the *municipal* or superior court. However, an appellate

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26. See proposed amendments to Penal Code Sections 977 and 977.2 *infra*.

Section 977(c) is expressly inapplicable to a defendant who is indicted by a grand jury. Consequently, in that provision the phrase "initial hearing in superior court in a felony case" could only have been meant to refer to an arraignment on an information. The provision should be amended accordingly.

In contrast, Section 977.2 contains no exception for an indicted defendant. In that context, the phrase "initial hearing in superior court in a felony case" was meant to include both an arraignment on an indictment and an arraignment on an information. The provision should be amended to refer to both of these types of arraignment.

> court may, in its discretion, review a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition, or a judgment or order for the payment of monetary sanctions, upon petition for an extraordinary writ. ....[27]

This provision was added by the Legislature in slightly different form in 1982, in response to a perceived problem. At the time, there were three different kinds of trial courts: superior courts, municipal courts, and justice courts. The perceived problem related to judicial review of a pretrial ruling made by a municipal or justice court.

Judicial Review of a Pretrial Ruling Made by a Municipal or Justice Court

Before the Legislature added the provision in question, if a litigant disagreed with a pretrial ruling made by a municipal or justice court, and did not want to wait until after entry of judgment to challenge the ruling, the litigant could seek an extraordinary writ from the superior court. Depending on the circumstances, the litigant could seek a writ of certiorari (also known as a writ of review),[28] a writ of mandamus (also known as a writ of mandate),[29] a writ of prohibition,[30] or some combination of these extraordinary writs.

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27. Emphasis added.

28. A writ of certiorari is a means of reviewing judicial action when no other means of review is available. B. Witkin, California Procedure *Extraordinary Writs* § 4, at 784-85 (4th ed. 1997). A writ of certiorari "may be granted by any court when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy." Code Civ. Proc. § 1068(a). "Certiorari in purpose and effect is quite similar to appeal." B. Witkin, *supra*, *Extraordinary Writs* § 11, at 791.

29. A writ of mandamus is a "broad remedy to compel performance of a ministerial duty or to restore rights and privileges of a public or private office." B. Witkin, *supra* note 28, *Extraordinary Writs* § 6, at 785. It "may be issued by any court to any inferior tribunal, corporation, board, or person, *to compel the*

The superior court would rule on the writ petition in much the same manner that courts handle writs today.[31] Regardless of whether the superior court granted or denied the writ, its decision on whether to issue the writ was appealable to the appropriate court of appeal.[32] Because the decision was appealable, review by the court of appeal on the merits was mandatory, not discretionary as in a writ proceeding.

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performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to *compel the admission of a party to the use and enjoyment of a right or office* to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board, or person." Code Civ. Proc. § 1085(a) (emphasis added).

30. A writ of prohibition is a "writ to *restrain* judicial action in excess of jurisdiction where there is no other adequate remedy." B. Witkin, *supra* note 28, *Extraordinary Writs* § 5, at 785 (emphasis in original). The writ "arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person." Code Civ. Proc. § 1102. It "may be issued by any court to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law." Code Civ. Proc. § 1103(a).

31. A writ proceeding is initiated by filing a petition seeking a particular writ. The court in which the petition is filed may summarily deny the writ, without considering the merits. Alternatively, the court may issue an order to show cause (often in the form of an alternative writ, which essentially directs the respondent to do what is sought by the petition and/or show cause why the respondent should not have to do so). If the court issues an order to show cause, the matter is fully briefed by the parties and decided by the court on the merits, either by granting the relief requested in the petition or by denying such relief. In rare instances, the court proceeds directly to a determination on the merits, without issuing an order to show cause. See Lewis v. Superior Court, 19 Cal. 4th 1232, 1240, 970 P.2d 872, 82 Cal. Rptr. 2d 85 (1999); B. Witkin, *supra* note 28, *Extraordinary Writs* § 159, at 959-60, § 182, at 978, § 186, at 981; Scott, *Writs in California State Courts Before and After Conviction*, *in* Appeals and Writs in Criminal Cases §§ 2.121-2.134, at 461-75 (Cal. Cont. Ed. Bar 2006).

32. See, e.g., Gilbert v. Municipal Court, 73 Cal. App. 3d 723, 140 Cal. Rptr. 897 (1977); Burrus v. Municipal Court, 36 Cal. App. 3d 233, 111 Cal. Rptr. 539 (1973).

Criticism of the Review Process

Courts and others criticized this process for reviewing a prejudgment ruling made by a municipal or justice court. One court explained that the process was inequitable. While a municipal or justice court litigant was *entitled* to have a court of appeal consider the propriety of writ relief with regard to a prejudgment ruling, a superior court litigant who disagreed with a pretrial ruling could only ask a court of appeal to *exercise its discretion* to review the ruling before entry of judgment.[33] Courts also pointed out that allowing a municipal or justice court litigant to appeal in these circumstances was a waste of appellate court resources,[34] could lead to undue delay in resolving litigation,[35] unnecessarily increased

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33. See *Gilbert*, 73 Cal. App. 3d at 728-29. The appellate court found this difference in treatment "puzzling, to say the least." *Id*. at 729. Because more was at stake in a superior court case than in a municipal or justice court case, the court maintained that a superior court litigant ought to have a greater, or at least equal, opportunity for review as compared to a municipal or justice court litigant. *Id*.

34. In *Burrus*, 36 Cal. App. 3d at 238, the court explained:

> The policy expressed in the Constitution ... is that litigation arising in municipal and justice courts will not go beyond the superior court except under very limited circumstances. This is desirable both to relieve the burden on the higher courts and to spare litigants the delay and expense which would result from successive appeals through all levels of review.

The court observed that these policy objectives were not served by the practice of allowing a municipal or justice court litigant to appeal from a superior court decision on issuance of an extraordinary writ. *Id*. at 238-39.

Similarly, in *Gilbert*, 73 Cal. App. 3d at 733-34, the court wrote:

> In our search for perfect justice we have become review happy. Still there must be realistic limitations. Currently, the justices of the Courts of Appeal, together with their attorneys and other staff, are grinding out over six thousand opinions a year. The judicial fabric is stretched thin. It would appear only reasonable that the Courts of Appeal should not be called upon to automatically review pretrial orders from justice and municipal courts.

35. *Gilbert*, 73 Cal. App. 3d at 732; *Burrus*, 36 Cal. App. 3d at 237-38.

litigation expenses,[36] and might result in procedural complications.[37] The courts urged the Legislature to address the situation.[38]

1982 Legislation

In 1982, the Legislature amended Code of Civil Procedure Section 904.1 to preclude an appeal from a superior court order granting or denying a writ of mandamus or prohibition directed to a municipal or justice court.[39] As amended, the key portion of the statute read:

> 904.1. An appeal may be taken from a superior court in the following cases:
>
> (a) From a judgment, except ... (4) a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition directed to a municipal court or a justice court or the judge or judges thereof which relates to a matter pending in the municipal or justice court. However, an appellate court may, in its discretion, review a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition upon petition for an extraordinary writ.
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> ....[40]

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36. *Burrus*, 36 Cal. App. 3d at 238.

37. *Gilbert*, 73 Cal. App. 3d at 731-32.

38. *Gilbert*, 73 Cal. App. 3d at 734; see also *Burrus*, 36 Cal. App. 3d at 237-38.

39. 1982 Cal. Stat. ch. 1198, § 63.2.

Several years earlier, the Judicial Council issued a report recommending that Section 904.1 be amended to preclude an appeal from a superior court decision granting or denying a petition for a writ of mandamus or a writ of prohibition. *Gilbert*, 73 Cal. App. 3d at 730 & n.2. A bill along those lines was introduced in the Legislature in 1976, but the bill died in committee. *Id*. at 730.

40. 1982 Cal. Stat. ch. 1198, § 63.2.

With some modifications, this provision eventually became subdivision (a)(1)(C), the provision that still needs to be revised to reflect the elimination of the municipal courts.[41]

As added in 1982 and as it still exists today, this provision refers only to a writ of mandamus or a writ of prohibition; it does not apply to a writ of certiorari.[42] Although located in the Code of Civil Procedure in a statute governing civil appeals,[43] the provision has been repeatedly applied not only

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41. In 1989, Section 904.1 was amended to add subdivision (k), which allowed an appeal from a superior court order requiring payment of sanctions over $750. The new subdivision expressly stated that "[l]esser sanction judgments against a party or an attorney for a party may be reviewed on appeal by that party after entry of final judgment in the main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ." See 1989 Cal. Stat. ch. 1416, § 25. Nonetheless, the last sentence of the portion of Section 904.1(a)(4) was also amended, to emphasize that "an appellate court may, in its discretion, review a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition, <u>or a judgment or order for the payment of monetary sanctions,</u> upon petition for an extraordinary writ." *Id.* (new material shown in underscore).

In 1993, Section 904.1(a)(4) was relabeled as Section 904.1(a)(1)(D). See 1993 Cal. Stat. ch. 456, § 12. Soon afterwards, justice courts were eliminated. See 1994 Cal. Stat. res. ch. 113, approved by the voters Nov. 8, 1994 (Proposition 191).

In 1998, Section 904.1 was amended to accommodate trial court unification and reflect the elimination of the justice court. 1998 Cal. Stat. ch. 931, § 100. Instead of specifying when an appeal can be taken from a superior court, the statute now states when an appeal can be taken "other than in a limited civil case." The statute also makes clear that "[a]n appeal, other than in a limited civil case, is to the court of appeal." The substance of former Section 904.1(a)(1)(D), as revised to accommodate unification, became what is now Section 904.1(a)(1)(C).

42. Bermudez v. Municipal Court, 1 Cal. 4th 855, 823 P.2d 1210, 4 Cal. Rptr. 2d 609 (1992).

43. See Code Civ. Proc. § 904.

in the civil context, but also when a party to a misdemeanor case sought a petition for a writ of mandamus or prohibition.[44]

Preserving the Intent of the 1982 Legislation

The Law Revision Commission recommends several statutory reforms to preserve the intended effect of the 1982 amendment now that the municipal courts have been eliminated through unification.

First, subdivision (a)(1)(C) should be deleted from Section 904.1.[45] The provision no longer fits there because it was meant to apply to issuance of a writ in the types of cases that used to be adjudicated in the municipal and justice courts — i.e., misdemeanor and infraction cases and what are now known as limited civil cases.[46] In contrast, Section 904.1 currently applies to an appeal "other than in a limited civil case."

Second, a new provision should be added to the codes to preserve the intended effect of what is now subdivision (a)(1)(C). The original intent of that statutory material was to preclude an appeal of a superior court order granting or denying a petition for a writ of mandamus or prohibition directed to a municipal or justice court.

In a unified court system, cases that used to be adjudicated in municipal or justice court are now adjudicated in superior court. If a litigant disagrees with a ruling made by a superior court in a limited civil case or a misdemeanor or infraction case, and the litigant wants the ruling reviewed before entry of judgment, the litigant can seek a writ from the appellate

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44. See, e.g., Baluyut v. Superior Court, 12 Cal. 4th 826, 829 n.3, 911 P.2d 1, 50 Cal. Rptr. 2d 101 (1996); Serna v. Superior Court, 40 Cal. 3d 239, 245-46 & n.2, 707 P.2d 793, 219 Cal. Rptr. 420 (1985); *Bermudez*, 1 Cal. 4th at 863.

45. See proposed amendment to Code of Civil Procedure Section 904.1 *infra*.

46. See Cal. Const. art. VI, § 10; Code Civ. Proc. § 85 & Comment; Penal Code § 19.7; *Revision of Codes, supra* note 5, at 64-65, 66-67.

division of the superior court.[47] Thus, to preserve the intended effect of Section 904.1(a)(1)(C), the new provision should preclude an appeal from a judgment of the appellate division of a superior court granting or denying a petition for a writ of mandamus or prohibition in a limited civil case or a misdemeanor or infraction case.[48]

The Law Revision Commission recommends that this new provision be located in the Code of Civil Procedure, like the provision it would replace.[49] The Commission further recommends that the new provision expressly refer to a writ petition relating to a misdemeanor or infraction case, not just a writ petition relating to a limited civil case.

In addition to deleting subdivision (a)(1)(C) from Section 904.1 and continuing its substance in a new provision (with

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47. See Cal. Const. art. VI, § 10; Code Civ. Proc. §§ 1068(b), 1085(b), 1103(b) & Comments.

48. The Law Revision Commission considered the possibility of also precluding an appeal from a judgment of the appellate division of a superior court granting or denying a petition for a writ of certiorari in a limited civil case or a misdemeanor or infraction case. The Commission rejected that approach because (1) it would go beyond merely adjusting the codes to reflect trial court unification, and (2) it might be challenged as unconstitutional under Article VI, Section 11, of the California Constitution (Except in death penalty cases, "courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in other causes prescribed by statute."). The Commission expresses no opinion on whether a constitutional challenge to such a reform would be meritorious.

49. See proposed Code of Civil Procedure Section 904.3 *infra*.

Currently, there is no Section 904.3 in the Code of Civil Procedure, so that number is available for use. In the past, there was a Section 904.3, which related to an appeal from a justice court. That provision was repealed in 1976 (see 1976 Cal. Stat. ch. 1288, § 13), but some cross-references to it remain in the codes. The Law Revision Commission recommends that these obsolete cross-references be eliminated. See proposed amendments to Code of Civil Procedure Sections 399 and 586 *infra*; see also *Technical and Minor Substantive Statutory Corrections*, 35 Cal. L. Revision Comm'n Reports 219, 224 & n.2, 251 (2006) (proposed amendment to Code Civ. Proc. § 904).

modifications to reflect trial court unification), the Law Revision Commission recommends one further reform to provide clarity in this procedural area. Specifically, Code of Civil Procedure Section 904.2 states that "an appeal in a limited civil case is to the appellate division of the superior court." The statute also lists circumstances in which an appeal may be taken in a limited civil case.

Section 904.2 is intended to govern the appealability of a ruling *by a superior court judge or other judicial officer* in a limited civil case. In contrast, the recommended new provision replacing Section 904.1(a)(1)(C) would govern the appealability of a judgment *by the appellate division of the superior court on a writ petition* in a limited civil case.

The Law Revision Commission recommends that Section 904.2 be amended to emphasize this difference in coverage.[50] In conjunction with the two other recommended reforms, such an amendment would faithfully preserve the legislative policy underlying Section 904.1(a)(1)(C).

Concurrent Jurisdiction

In previous work on trial court restructuring, the Law Revision Commission identified a number of provisions that could, but need not necessarily, be construed to confer concurrent jurisdiction on the municipal and superior courts. Put differently, these provisions conceivably could be interpreted such that a litigant would have a choice of whether to pursue a particular claim in municipal court or in superior court. The Commission did not revise the provisions at that time, because they required extra study to ensure that they were properly adjusted to account for trial court unification.

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50. See proposed amendment to Code of Civil Procedure Section 904.2 *infra*.

The Commission has since examined each provision and its context, determined the probable intent, and determined how to revise each provision to faithfully preserve that intent in a unified court system. In reaching its conclusions, the Commission relied on basic principles governing distinctions between different categories of civil cases.

Distinctions Between Different Categories of Civil Cases

Before trial court unification, the superior courts had jurisdiction in "all causes except those given by statute to other trial courts."[51] By statute, a municipal court had jurisdiction in all cases at law in which the demand, exclusive of interest, or value of the property in controversy was $25,000 or less, except certain tax cases.[52] Under various different statutes, a municipal court also had jurisdiction in certain other types of cases.

A municipal court was statutorily authorized to issue a preliminary injunction or temporary restraining order where necessary to preserve the property or rights of a party to an action within the court's jurisdiction.[53] As a general rule, however, a municipal court lacked authority to enter a permanent injunction, determine title to real property, or grant declaratory relief.[54]

With limited exceptions, a civil case in municipal court was subject to economic litigation procedures.[55] An appeal from a municipal court judgment was to the superior court, not to the court of appeal.[56] In contrast, a civil case in superior court

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51. Former Cal. Const. art. VI, § 10.

52. Former Code Civ. Proc. § 86(a)(1).

53. Former Code Civ. Proc. § 86(a)(8).

54. See Code Civ. Proc. § 580 Comment & authorities cited.

55. Former Code Civ. Proc. § 91.

56. Former Cal. Const. art. VI, § 11.

was subject to normal discovery and litigation procedures, not economic litigation procedures. An appeal from a superior court judgment was to the court of appeal.[57]

To accommodate trial court unification, the codes were revised on Commission recommendation to differentiate between limited civil cases and unlimited civil cases. A limited civil case is a case formerly within the jurisdiction of the municipal court; it is treated the same way as a municipal court case.[58] An unlimited civil case is a case that would have been within the jurisdiction of the superior court before trial court unification; it is treated the same way as a traditional superior court case.[59]

Code of Civil Procedure Section 85 is the key provision on what constitutes a limited civil case. It establishes three requirements for a limited civil case:

(1) *The amount in controversy cannot exceed $25,000.* This requirement essentially preserves the $25,000 amount in controversy limit that applied to municipal court.[60]

(2) *The relief sought must be of a type that can be granted in a limited civil case.* A separate provision, Code of Civil Procedure Section 580, states that certain types of relief cannot be granted in a limited civil case: relief exceeding the amount in controversy limit for a limited civil case, a permanent injunction, a determination of title to real property, and most declaratory relief. Together, Sections 85 and 580 preserve traditional limitations on the types of relief available in municipal court.

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57. *Id.*

58. See *Revision of Codes, supra* note 5, at 64.

59. See *id.*; see also Code Civ. Proc. § 88.

60. See Code Civ. Proc. § 85 Comment.

(3) *The type of relief sought must be described in a statute that either (i) classifies a matter as a limited civil case or (ii) provides that a matter is within the original jurisdiction of the municipal court.* Among such statutes is a provision establishing a general rule that a case at law is a limited civil case if the demand or the value of the property in controversy is $25,000 or less.[61]

Like a municipal court case, a limited civil case is generally subject to economic litigation procedures.[62] Similarly, an appeal from a judgment in a limited civil case is to the appellate division of the superior court, not to the court of appeal.[63] In contrast, an unlimited civil case is subject to normal discovery and litigation procedures, not economic litigation procedures. An appeal from a judgment in an unlimited civil case is to the court of appeal.[64]

Provisions That Only Require Deletion of Municipal Court References

Some of the provisions that might be construed to confer concurrent jurisdiction can be adjusted for unification simply by deleting the municipal court references. For example, Business and Professions Code Section 6455 is in a chapter governing qualifications, duties, and conduct of a paralegal. The provision states that "[a]ny consumer injured by a violation of this chapter may file a complaint and seek redress in *any municipal or superior court* for injunctive relief, restitution, and damages."[65]

The phrase "any municipal or superior court" is unclear. It could be interpreted to allow a plaintiff to select any

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61. Code Civ. Proc. § 86(a)(1).

62. Code Civ. Proc. § 91.

63. Cal. Const. art. VI, § 11; Code Civ. Proc. § 904.2.

64. *Id.*

65. Emphasis added.

municipal or superior court as a forum for a claim under the chapter, regardless of the nature of the claim. Alternatively, it could be interpreted to allow a plaintiff to select any municipal court for a claim under the chapter that is within the jurisdictional requirements of the municipal court, and any superior court for a claim under the chapter that is within the jurisdictional requirements of the superior court.

The latter interpretation is more probable. It is unlikely that before unification the Legislature intended to allow a claimant to sue a paralegal for a small sum ($25,000 or less) in superior court, or to allow a claimant to sue a paralegal for a large sum (more than $25,000) or permanent injunctive relief in municipal court.

Accordingly, all that needs to be done now is to delete the reference to municipal court. There is no need to add new language clarifying whether a claim under the chapter is to be treated as a limited civil case. The proper jurisdictional classification, and thus the proper appeal path and procedural rules, will be determined by the general rules in Code of Civil Procedure Sections 85 and 580, and by provisions referenced in Section 85.[66]

A similar analysis applies to Government Code Sections 12965 and 12980, which relate to unlawful employment practices and housing discrimination, respectively. The Law Revision Commission recommends that all three provisions be revised to delete the municipal court references.[67]

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66. For example, Code of Civil Procedure Section 86(a)(1), which classifies a damage claim as a limited civil case if the demand or the value of the property in controversy is $25,000 or less.

67. See proposed amendments to Business and Professions Code Section 6455 and Government Code Sections 12965 and 12980 *infra*.

Provisions That Require Addition of Language Regarding Jurisdictional Classification

Other provisions that might be construed to confer concurrent jurisdiction cannot be adjusted for unification simply by deleting the municipal court references. It is also necessary to add language specifying the proper jurisdictional classification of a proceeding under the provision.

For example, Business and Professions Code Section 12606 prohibits misleading packaging of commodities. Subdivision (c) provides:

> (c) Any sealer may seize a container that facilitates the perpetration of deception or fraud and the contents of the container. By order of the *municipal or superior court* of the city or county within which a violation of this section occurs, the containers seized shall be condemned and destroyed or released upon such conditions as the court may impose to insure against their use in violation of this chapter. The contents of any condemned container shall be returned to the owner thereof if the owner furnishes proper facilities for the return.[68]

Here, there seems to be clear legislative intent to allow a municipal court to order that noncomplying containers "be condemned and destroyed or released upon such conditions as the court may impose to insure against their use in violation of this chapter." It is possible that this would be considered a deviation from the general rule that a municipal court could not issue a permanent injunction. Presumably, the intent was to give a municipal court such authority only with regard to noncomplying containers with a value of $25,000 or less.

To faithfully preserve this scheme post-unification, it appears necessary not only to delete the municipal court reference, but also to add language specifying the proper jurisdictional classification of a proceeding under the

68. Emphasis added.

provision. The Law Revision Commission recommends adding a sentence stating that "[a] proceeding under this section is a limited civil case if the value of the property in controversy is less than or equal to the maximum amount in controversy for a limited civil case under Section 85 of the Code of Civil Procedure."[69] It also appears advisable to amend Code of Civil Procedure Section 580 to make clear that it does not preclude a proceeding under Section 12606 from being treated as a limited civil case.[70]

Several other provisions are similar to Business and Professions Code Section 12606 in their apparent intent.[71] They should be amended in the same manner.[72]

Code of Civil Procedure Section 688.010

Code of Civil Procedure Section 688.010 governs jurisdiction to enforce a state tax liability pursuant to a warrant or a notice of levy. Unlike the other provisions, this provision unambiguously provides for municipal court jurisdiction in circumstances in which the superior court also has jurisdiction:

> 688.010. For the purpose of the remedies provided under this article, jurisdiction is conferred upon any of the following courts:
>
> (a) The superior court, *regardless of whether the municipal court also has jurisdiction under subdivision (b).*
>
> (b) The municipal court if (1) the amount of liability sought to be collected does not exceed the jurisdictional

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69. See proposed amendment to Business and Professions Code Section 12606 *infra*.

70. See proposed amendment to Code of Civil Procedure Section 580 *infra*.

71. See Bus. & Prof. Code § 12606.2; Food & Agric. Code §§ 25564, 29733, 43039, 59289.

72. See proposed amendments to Business and Professions Code Section 12606.2 and Food and Agricultural Code Sections 25564, 29733, 43039, and 59289 *infra*.

amount of the court and (2) the legality of the liability being enforced is not contested by the person against whom enforcement is sought.[73]

The provision was originally enacted in 1982, as part of the Enforcement of Judgments Law, a comprehensive reform recommended by the Law Revision Commission.[74] The Commission's recommendation explains that under the law existing at the time of enactment, the superior court had jurisdiction when judicial proceedings were required for enforcement of a tax liability.[75] The recommendation further explains that Section 688.010 "continues the provision for superior court jurisdiction and adds concurrent jurisdiction in the municipal or justice court when the amount of the tax claim being enforced is within the jurisdictional limits of the municipal or justice court and the legality of the tax liability is not contested."[76]

Each of the provisions superseded by Section 688.010 expressly provided for superior court jurisdiction of specified proceedings to enforce state tax liability.[77] At the same time, Code of Civil Procedure Section 86(a)(1) gave the municipal

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73. Emphasis added.

74. 1982 Cal. Stat. ch. 1364; see *Recommendation Relating to Enforcement of Judgments Law*, 16 Cal. L. Revision Comm'n Reports 2001 (1980). Section 688.010 was amended in 1998 to delete an obsolete reference to justice court. Other than that, the provision has not been changed since it was first enacted.

75. *Enforcement of Judgments Law, supra* note 74, at 1153; see also Code Civ. Proc. § 688.010 Comment; former Code Civ. Proc. §§ 689d, 690.51, 722.5.

76. *Id.* The Commission's recommendation and Comment to Section 688.010 are entitled to substantial weight in construing the legislation. See, e.g., Jevne v. Superior Court, 35 Cal. 4th 935, 947, 11 P.3d 954, 28 Cal. Rptr. 3d 685 (2005); Brian W. v. Superior Court, 20 Cal. 3d 618, 623, 574 P.2d 788, 143 Cal. Rptr. 717 (1978); Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc., 133 Cal. App. 4th 26, 36 (2005); *2005-2006 Annual Report*, 35 Cal. L. Revision Comm'n Reports 1 (2005) & sources cited.

77. See former Code Civ. Proc. §§ 689d, 690.51, 722.5.

and justice courts jurisdiction of civil cases at law where the amount in controversy was $5,000 or less, "except cases which involve the legality of any tax, impost, assessment, toll, or municipal fine, except such courts shall have jurisdiction in actions to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant."[78]

Then-existing Section 86(a)(1) reflected a legislative determination that municipal courts were competent to resolve a tax claim, at least one involving delinquent unsecured personal property taxes, so long as the claim was within the court's jurisdictional limit and there was no dispute relating to the legality of the tax. Section 688.010 reinforced and expanded the scope of that policy determination; the provision gives a municipal court jurisdiction of any claim relating to enforcement of a state tax liability by a warrant or a notice of levy, so long as the claim is within the court's jurisdictional limit and the legality of the tax liability is uncontested. By providing for concurrent municipal and superior court jurisdiction, the statute afforded leeway to adjudicate a claim in superior court together with related claims, even when liability was uncontested and the claim could have been handled in municipal court.

In a unified court system, the superior court hears all types of civil cases, both traditional superior court cases (now known as unlimited civil cases) and traditional municipal court cases (now known as limited civil cases). Thus, regardless of whether a tax enforcement case is classified as limited or unlimited, it will be heard by the same court as a related case, so long as both cases are brought in the same county.

78. 1976 Cal. Stat. ch. 1288, § 5.

Considerations of convenience are thus insufficient to justify the current equivalent of concurrent jurisdiction (i.e., allowing a choice of which jurisdictional classification to use, as opposed to the normal practice of requiring a particular type of case to be classified as either limited or unlimited).[79] Further, it might not be constitutional to allow a choice of how to classify a particular type of matter.[80]

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79. The convenience of trying related cases in the same court would only be a relevant factor at the appellate level — i.e., if a superior court decided two related tax cases, a limited civil case and an unlimited civil case, and both decisions were appealed. Then the decision in the unlimited civil case would be appealable to the court of appeal, while the decision in the other case would be appealable to the appellate division. That situation probably would be rare. It would not seem to justify a deviation from the normal practice of requiring a particular type of case to be classified as either limited or unlimited, as opposed to allowing a choice of which classification to use (the equivalent of concurrent jurisdiction in a unified court).

80. Before unification, the California Constitution said that "[s]uperior courts have original jurisdiction in all causes except those given by statute to other trial courts." Former Cal. Const. art. VI, § 10. Case law interpreted this provision to mean that the superior court "does not have concurrent jurisdiction with the municipal courts within the same county." Williams v. Superior Court, 219 Cal. App. 3d 171, 175 n.4, 268 Cal. Rptr. (1990); see also Marlow v. Campbell, 7 Cal. App. 4th 921, 925-26, 9 Cal. Rptr. 2d 516 (1992). Put differently, courts took the view that municipal court jurisdiction was carved out of superior court jurisdiction; the two types of jurisdiction could not constitutionally overlap. *Marlow*, 7 Cal. App. 4th at 926; Castellini v. Municipal Court, 7 Cal. App. 3d 174, 176, 86 Cal. Rptr. 698 (1970).

Similarly, although the concept of a limited civil case is not embedded in the current California Constitution, the constitutional provision governing appellate jurisdiction might be interpreted to preclude concurrent appellate jurisdiction. Under that provision, the appellate division of the superior court has appellate jurisdiction in causes prescribed by statute, *except* where the appellate courts have appellate jurisdiction. Cal. Const. art. VI, § 11. Courts might interpret this language to mean that a particular type of cause must either be appealable to the appellate division or appealable to an appellate court, but not both. Consequently, courts might invalidate a statute that permits a particular type of cause to be classified as either a limited civil case or an unlimited civil case. In effect, a statute like this would put such a cause within the appellate jurisdiction of both the appellate division and the court of appeal.

For these reasons, it seems inadvisable to continue the concurrent jurisdiction feature of Section 688.010. Rather, the Law Revision Commission recommends that the provision be amended to mandate that a tax enforcement proceeding be classified as a limited civil case under specified circumstances.[81]

FURTHER WORK

This recommendation does not purport to deal with all remaining statutes made obsolete by trial court restructuring. The Commission will continue to propose reforms addressing obsolete statutes as issues are resolved and time warrants. Failure to address a particular statute in this recommendation should not be construed to mean that the Commission has decided the statute should be preserved over the general restructuring provisions. The statute may be the subject of a future recommendation by the Commission.

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81. See proposed amendment to Code of Civil Procedure Section 688.010 *infra*. The Commission also recommends a conforming revision of a nearby provision. See proposed amendment to Code of Civil Procedure Section 688.030 *infra*.

Contents

Bus. & Prof. Code § 6455 (amended). Violation of chapter governing paralegals 337
Bus. & Prof. Code § 12606 (amended). Misleading packaging of commodity 338
Bus. & Prof. Code § 12606.2 (amended). Misleading food containers 341
Code Civ. Proc. § 399 (amended). Transfer of action or proceeding 343
Code Civ. Proc. § 580 (amended). Relief awardable 346
Code Civ. Proc. § 586 (amended). Judgment as if defendant failed to answer 347
Code Civ. Proc. § 688.010 (amended). Classification of proceeding to enforce tax liability pursuant to warrant or notice of levy 349
Code Civ. Proc. § 688.030 (amended). Exemption or third-party claim when property is levied on for tax collection 350
Code Civ. Proc. § 904.1 (amended). Appeal in unlimited civil case 351
Code Civ. Proc. § 904.2 (amended). Appeal from ruling by judicial officer in limited civil case 353
Code Civ. Proc. § 904.3 (added). Appeal from judgment of appellate division on petition for mandamus or prohibition 354
Food & Agric. Code § 25564 (amended). Destruction of perishable noncomplying lot of poultry meat 355
Food & Agric. Code § 29733 (amended). Failure to recondition or remark honey 356
Food & Agric. Code § 43039 (amended). Destruction of perishable noncomplying lot of fruits, nuts, or vegetables 357
Food & Agric. Code § 59289 (amended). Petition to divert or destroy lot in violation of marketing order or agreement 358
Gov't Code § 12965 (amended). Accusation or civil action for unlawful employment practice 359
Gov't Code § 12980 (amended). Complaint, accusation, and civil action for housing discrimination 364
Gov't Code § 71601 (amended). Definitions 367
Penal Code § 977 (amended). Presence of defendant and counsel 371

Penal Code § 977.2 (amended). Appearance and arraignment by two-way electronic audiovideo communication 374

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PROPOSED LEGISLATION

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

SEC. ____. Section 6455 of the Business and Professions Code is amended to read:

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

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

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

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

SEC. ____. Section 12606 of the Business and Professions Code is amended to read:

12606. (a) No container wherein commodities are packed shall have a false bottom, false sidewalls, false lid or covering, or be otherwise so constructed or filled, wholly or partially, as to facilitate the perpetration of deception or fraud.

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

(1) Protection of the contents of the package.

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

(3) Unavoidable product settling during shipping and handling.

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

(5) The fact that the product consists of a commodity that is packaged in a decorative or representational container where the container is part of the presentation of the product and has value that is both significant in proportion to the value of the product and independent of its function to hold the product,

such as a gift combined with a container that is intended for further use after the product is consumed, or durable commemorative or promotional packages.

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

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

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

(9) The presence of any head space within an immediate product container necessary to facilitate the mixing, adding, shaking, or dispensing of liquids or powders by consumers prior to use.

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

(11) The exterior packaging or immediate product container is a kit that consists of a system, or multiple components, designed to produce a particular result that is not dependent

upon the quantity of the contents, if the purpose of the kit is clearly and conspicuously disclosed on the exterior packaging.

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

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

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

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

(c) Any sealer may seize a container that facilitates the perpetration of deception or fraud and the contents of the container. By order of the ~~municipal or~~ superior court of the ~~city or~~ county within which a violation of this section occurs, the containers seized shall be condemned and destroyed or released upon ~~such~~ conditions ~~as~~ the court may impose to insure against their use in violation of this chapter. The contents of any condemned container shall be returned to the owner thereof if the owner furnishes proper facilities for the

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

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

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

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

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

SEC. ____. Section 12606.2 of the Business and Professions Code is amended to read:

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

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

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

(1) Protection of the contents of the package.

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

(3) Unavoidable product settling during shipping and handling.

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

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

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

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

(e) If the requirements of this section do not impose the same requirements as are imposed by Section 403(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343(d)), or any regulation promulgated pursuant thereto, then this section is not operative to the extent that it is not identical to the federal requirements, and for this purpose those federal

requirements are incorporated into this section and shall apply as if they were set forth in this section.

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

Comment. Subdivision (f) of Section 12606.2 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution. As amended, subdivision (f) makes clear that if the value of seized containers is less than or equal to the maximum amount in controversy for a limited civil case, a proceeding under this section is a limited civil case even though permanent injunctive relief generally is not allowed in a limited civil case (Code Civ. Proc. §§ 85, 580). This preserves the pre-unification status quo, under which a municipal court had authority to order condemnation of containers under this section in specified circumstances.

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

SEC. ____. Section 399 of the Code of Civil Procedure is amended to read:

399. *(a)* When an order is made transferring an action or proceeding under any of the provisions of this title, the clerk shall, after expiration of the time within which a petition for writ of mandate could have been filed pursuant to Section 400, or if ~~such~~ *a writ* petition is filed after judgment denying the writ becomes final, and upon payment of the costs and

fees, transmit the pleadings and papers therein (or if the pleadings be oral a transcript of the same) to the clerk of the court to which the same is transferred. When the transfer is sought on any ground specified in subdivisions ~~2, 3, 4 and 5~~ *(b), (c), (d), and (e)* of Section 397, the costs and fees thereof, and of filing the papers in the court to which the transfer is ordered, shall be paid at the time the notice of motion is filed, by the party making the motion for the transfer. When the transfer is sought solely, or is ordered, because the action or proceeding was commenced in a court other than that designated as proper by this title, ~~such~~ *those* costs and fees (including any expenses and attorney's fees awarded defendant pursuant to Section 396b) shall be paid by the plaintiff before ~~such~~ *the* transfer is made; and ~~if, in any such case,~~ *if* the defendant has paid ~~such~~ *those* costs and fees at the time of filing ~~his or her~~ *a* notice of motion, the same shall be repaid to the defendant, upon the making of ~~such~~ *the transfer* order. If ~~such~~ *those* costs and fees have not been so paid by the plaintiff within five days after service of notice of ~~such~~ *the transfer* order, then any other party interested therein, whether named in the complaint as a party or not, may pay ~~such~~ *those* costs and fees, and the clerk shall thereupon transmit the papers and pleadings therein as if ~~such~~ *those* costs and fees had been originally paid by the plaintiff, and the same shall be a proper item of costs of the party so paying the same, recoverable by ~~such~~ *that* party in the event ~~he or she~~ *that party* prevails in the action; otherwise, the same shall be offset against and deducted from the amount, if any, awarded the plaintiff in the event the plaintiff prevails against ~~such~~ *that* party in ~~such~~ *the* action. The cause of action shall not be further prosecuted in any court until ~~such~~ *those* costs and fees are paid. If ~~such~~ *those* costs and fees are not paid within 30 days after service of notice of ~~such~~ *the transfer* order, or if a copy of a petition for writ of mandate pursuant to Section 400

is filed in the trial court, or if an appeal is taken pursuant to Section 904.2 ~~or 904.3~~, then within 30 days after notice of finality of the order of transfer, the court on a duly noticed motion by any party may dismiss the action without prejudice to the cause on the condition that no other action on the cause may be commenced in another court prior to satisfaction of the court's order for costs and fees. When a petition for writ of mandate or appeal does not result in a stay of proceedings, the time for payment of ~~such~~ *those* costs shall be 60 days after service of the notice of the order.

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

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

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

Section 399 is also amended to correct the cross-references to subdivisions of Section 397. Former subdivisions (2)-(5) were relabeled

as subdivisions (b)-(e). See 1992 Cal. Stat. ch. 163, § 19. Section 399 is revised to reflect that change.

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

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

SEC. ____. Section 580 of the Code of Civil Procedure is amended to read:

580. (a) The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115; but in any other case, the court may grant the plaintiff any relief consistent with the case made by the complaint and embraced within the issue. The court may impose liability, regardless of whether the theory upon which liability is sought to be imposed involves legal or equitable principles.

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

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

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

(3) A determination of title to real property.

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

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

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

SEC. ____. Section 586 of the Code of Civil Procedure is amended to read:

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

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

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

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

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

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

(6)(A) If a motion to transfer pursuant to Section 396b is denied and the defendant fails to respond to the complaint

within the time allowed by the court pursuant to subdivision (e) of Section 396b or within the time provided in subparagraph (C).

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

(C) If the order granting or denying a motion to transfer pursuant to Section 396a or 396b is the subject of an appeal pursuant to Section 904.2 ~~or 904.3~~ in which a stay is granted or of a mandate proceeding pursuant to Section 400, the court having jurisdiction over the trial, upon application or on its own motion after ~~such~~ *the* appeal or mandate proceeding becomes final or upon earlier termination of a stay, shall allow the defendant a reasonable time to respond to the complaint. Notice of the order allowing the defendant further time to respond to the complaint shall be promptly served by the party who obtained ~~such~~ *the* order or by the clerk if the order is made on the court's own motion.

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

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

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

Comment. Subdivision (a)(6)(C) of Section 586 is amended to delete an obsolete cross-reference to former Section 904.3, relating to appeals from justice courts. The justice courts no longer exist and former Section

904.3 was repealed. See 1994 Cal. Stat. res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994); 1976 Cal. Stat. ch. 1288, § 13.

Section 586 is further amended to make stylistic revisions.

Code Civ. Proc. § 688.010 (amended). Classification of proceeding to enforce tax liability pursuant to warrant or notice of levy

SEC. ____. Section 688.010 of the Code of Civil Procedure is amended to read:

688.010. ~~For~~ *A proceeding for* the purpose of the remedies provided under this ~~article, jurisdiction is conferred upon any of the following courts:~~

~~(a) The superior court, regardless of whether the municipal court also has jurisdiction under subdivision (b).~~

~~(b) The municipal court~~ *article is a limited civil case* if (1) the amount of liability sought to be collected does not exceed the ~~jurisdictional amount of the court~~ *maximum amount in controversy for a limited civil case provided in Section 85,* and (2) the legality of the liability being enforced is not contested by the person against whom enforcement is sought.

Comment. Section 688.010 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

In a unified court system, the superior court has original jurisdiction of all causes except certain writ proceedings. Cal. Const. art. VI, § 10. Consequently, it is no longer necessary to specify which court has jurisdiction of a proceeding under this article. Language to that effect is deleted as obsolete.

Before unification, both the superior court and the municipal court had jurisdiction of a proceeding under this article if the amount sought was within the jurisdictional limit of the municipal court and the legality of the liability was uncontested. In a unified court system, that would be equivalent to permitting such a proceeding to be treated as either a limited civil case or an unlimited civil case. See Sections 85 & Comment (limited civil cases), 88 (unlimited civil cases). This concurrent jurisdiction feature is not continued. Under Section 688.010 as amended, it is mandatory, not optional, to treat a proceeding under this article as a limited civil case if the amount in controversy is within the maximum for a limited civil case and the legality of the liability is uncontested.

Code Civ. Proc. § 688.030 (amended). Exemption or third-party claim when property is levied on for tax collection

SEC. ____. Section 688.030 of the Code of Civil Procedure is amended to read:

688.030. (a) Whenever pursuant to any provision of the Public Resources Code, Revenue and Taxation Code (excluding Sections 3201 to 3204, inclusive), or Unemployment Insurance Code, property is levied upon pursuant to a warrant or notice of levy issued by the state or by a department or agency of the state for the collection of a liability:

(1) If the debtor is a natural person, the debtor is entitled to the same exemptions to which a judgment debtor is entitled. Except as provided in subdivisions (b) and (c), the claim of exemption shall be made, heard, and determined as provided in Chapter 4 (commencing with Section 703.010) of Division 2 in the same manner as if the property were levied upon under a writ of execution.

(2) A third person may claim ownership or the right to possession of the property or a security interest in or lien on the property. Except as provided in subdivisions (b) and (c) or as otherwise provided by statute, the third-party claim shall be made, heard, and determined as provided in Division 4 (commencing with Section 720.010) in the same manner as if the property were levied upon under a writ of execution.

(b) In the case of a levy pursuant to a notice of levy:

(1) The claim of exemption or the third-party claim shall be filed with the state department or agency that issued the notice of levy.

(2) The state department or agency that issued the notice of levy shall perform the duties of the levying officer, except that the state department or agency need not give itself the notices that the levying officer is required to serve on a judgment creditor or creditor or the notices that a judgment

creditor or creditor is required to give to the levying officer. The state department or agency in performing the duties of the levying officer under this paragraph has no obligation to search public records or otherwise seek to determine whether any lien or encumbrance exists on property sold or collected.

(c) A claim of exemption or a third-party claim pursuant to this section shall be heard and determined in the *superior* court ~~specified in Section 688.010~~ in the county where the property levied upon is located.

Comment. Section 688.030 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

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

SEC. ____. Section 904.1 of the Code of Civil Procedure is amended to read:

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

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

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

(3) From an order granting a motion to quash service of summons or granting a motion to stay the action on the ground of inconvenient forum, or from a written order of dismissal under Section 581d following an order granting a motion to dismiss the action on the ground of inconvenient forum.

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

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

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

(7) From an order appointing a receiver.

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

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

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

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

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

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

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

of appeal, may be reviewed upon petition for an extraordinary writ.

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

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

SEC. ____. Section 904.2 of the Code of Civil Procedure is amended to read:

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

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

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

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

(d) From an order granting a motion to quash service of summons or granting a motion to stay the action on the ground of inconvenient forum, or from a written order of dismissal under Section 581d following an order granting a motion to dismiss the action on the ground of inconvenient forum.

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

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

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

(h) From an order appointing a receiver.

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

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

SEC. ____. Section 904.3 is added to the Code of Civil Procedure, to read:

904.3. An appeal may not be taken from a judgment of the appellate division of a superior court granting or denying a petition for issuance of a writ of mandamus or prohibition directed to the superior court, or a judge thereof, in a limited civil case or a misdemeanor or infraction case. An appellate court may, in its discretion, upon petition for extraordinary writ, review the judgment.

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

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

In 1982, the Legislature amended Section 904.1 to preclude an appeal from a superior court judgment on a petition for a writ of mandamus or prohibition directed to a municipal or justice court. See 1982 Cal. Stat. ch. 1198, § 63.2. The language added in 1982, with some modifications, later became former Section 904.1(a)(1)(C). The provision was applicable not just in a civil case, but also when a party to a misdemeanor case sought a petition for a writ of mandamus or prohibition. See Baluyut v. Superior Court, 12 Cal. 4th 826, 829 n.3, 911 P.2d 1, 50 Cal. Rptr. 2d 101 (1996); Serna v. Superior Court, 40 Cal. 3d

239, 245-46 & n.2, 707 P.2d 793, 219 Cal. Rptr. 420 (1985); see also Bermudez v. Municipal Court, 1 Cal. 4th 855, 863, 823 P.2d 1210, 4 Cal. Rptr. 2d 609 (1992).

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

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

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

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

SEC. ____. Section 25564 of the Food and Agricultural Code is amended to read:

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

of noncompliance has been served pursuant to this chapter. The court may thereupon order that ~~such~~ *the* lot be forthwith destroyed or the nuisance otherwise abated as set forth in ~~such~~ *the* order. *A proceeding under this section is a limited civil case if the value of the property in controversy is less than or equal to the maximum amount in controversy for a limited civil case under Section 85 of the Code of Civil Procedure.*

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

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

Section 25564 is also amended to make stylistic revisions.

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

SEC. ____. Section 29733 of the Food and Agricultural Code is amended to read:

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

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

(b) By order of the ~~municipal or~~ superior court of the county ~~or city~~ within which the honey and its containers may be, shall be condemned and destroyed, or released upon ~~such~~ conditions ~~as~~ the court, in its discretion, may impose to insure

that it will not be packed, delivered for shipment, shipped, transported, or sold in violation of this chapter. *A proceeding under this section is a limited civil case if the value of the property in controversy is less than or equal to the maximum amount in controversy for a limited civil case under Section 85 of the Code of Civil Procedure.*

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

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

Section 29733 is also amended to make stylistic revisions.

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

SEC. ____. Section 43039 of the Food and Agricultural Code is amended to read:

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

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

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

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

SEC. ____. Section 59289 of the Food and Agricultural Code is amended to read:

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

~~(a)~~ *(1)* The condition of the lot.

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

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

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

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

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

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

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

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

Section 59289 is also amended to make stylistic revisions.

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

SEC. ____. Section 12965 of the Government Code is amended to read:

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

For any complaint treated by the director as a group or class complaint for purposes of investigation, conciliation, and accusation pursuant to Section 12961, an accusation shall be issued, if at all, within two years after the filing of the complaint. For any complaint alleging a violation of Section 51.7 of the Civil Code, an accusation shall be issued, if at all, within two years after the filing of the complaint. For all other complaints, an accusation shall be issued, if at all, within one year after the filing of a complaint. If the director determines, pursuant to Section 12961, that a complaint investigated as a

group or class complaint under Section 12961 is to be treated as a group or class complaint for purposes of conciliation and accusation as well, that determination shall be made and shall be communicated in writing within one year after the filing of the complaint to each person, employer, labor organization, employment agency, or public entity alleged in the complaint to have committed an unlawful practice.

(b) If an accusation is not issued within 150 days after the filing of a complaint, or if the department earlier determines that no accusation will issue, the department shall promptly notify, in writing, the person claiming to be aggrieved that the department shall issue, on his or her request, the right-to-sue notice. This notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person, employer, labor organization, or employment agency named in the verified complaint within one year from the date of that notice. If the person claiming to be aggrieved does not request a right-to-sue notice, the department shall issue the notice upon completion of its investigation, and not later than one year after the filing of the complaint. A city, county, or district attorney in a location having an enforcement unit established on or before March 1, 1991, pursuant to a local ordinance enacted for the purpose of prosecuting HIV/AIDS discrimination claims, acting on behalf of any person claiming to be aggrieved due to HIV/AIDS discrimination, may also bring a civil action under this part against the person, employer, labor organization, or employment agency named in the notice. The superior ~~and municipal~~ courts of the State of California shall have jurisdiction of those actions, and the aggrieved person may file in ~~any of~~ these courts. An action may be brought in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to the practice are maintained and administered, or in

the county in which the aggrieved person would have worked or would have had access to the public accommodation but for the alleged unlawful practice, but if the defendant is not found within any of these counties, an action may be brought within the county of the defendant's residence or principal office. A copy of any complaint filed pursuant to this part shall be served on the principal offices of the department and of the commission. The remedy for failure to send a copy of a complaint is an order to do so. Those actions may not be filed as class actions or may not be maintained as class actions by the person or persons claiming to be aggrieved where those persons have filed a civil class action in the federal courts alleging a comparable claim of employment discrimination against the same defendant or defendants. In actions brought under this section, the court, in its discretion, may award to the prevailing party reasonable attorney's fees and costs, including expert witness fees, except where the action is filed by a public agency or a public official, acting in an official capacity.

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

(2) No later than 30 days after the completion of service of the notice of election pursuant to paragraph (1), the

department shall dismiss the accusation and shall, either itself or, at its election, through the Attorney General, file in the appropriate court an action in its own name on behalf of the person claiming to be aggrieved as the real party in interest. In this action, the person claiming to be aggrieved shall be the real party in interest and shall have the right to participate as a party and be represented by his or her own counsel. Complaints filed pursuant to this section shall be filed in the ~~appropriate~~ superior court in any county in which unlawful practices are alleged to have been committed, in the county in which records relevant to the alleged unlawful practices are maintained and administered, or in the county in which the person claiming to be aggrieved would have worked or would have had access to public accommodation, but for the alleged unlawful practices. If the defendant is not found in any of these counties, the action may be brought within the county of the defendant's residence or principal office. Those actions shall be assigned to the court's delay reduction program, or otherwise given priority for disposition by the court in which the action is filed.

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

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

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

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

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

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

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

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

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

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

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

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

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

Comment. Subdivision (b) of Section 12965 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution. For the jurisdictional classification of an action under this section, see Code of Civil Procedure Sections 85 (limited civil cases) and 580 (relief awardable).

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

Gov't Code § 12980 (amended). Complaint, accusation, and civil action for housing discrimination

SEC. ____. Section 12980 of the Government Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

(3) A summary of witness statements.

(4) Answers to interrogatories.

(5) A summary description of other pertinent records.

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

(h) If an accusation is not issued within 100 days after the filing of a complaint, or if the department earlier determines that no accusation will issue, the department shall promptly notify the person claiming to be aggrieved. This notice shall, in any event, be issued no more than 30 days after the date of the determination or 30 days after the date of the expiration of the 100-day period, whichever date first occurs. The notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person named in the verified complaint within the time period specified in Section 12989.1. The notice shall also indicate, unless the department has determined that no accusation will be issued, that the person claiming to be aggrieved has the option of continuing to seek redress for the alleged discrimination through the procedures of the department if he or she does not

desire to file a civil action. The superior ~~and municipal~~ courts of the State of California shall have jurisdiction of these actions, and the aggrieved person may file in ~~any of~~ these courts. The action may be brought in any county in the state in which the violation is alleged to have been committed, or in the county in which the records relevant to the alleged violation are maintained and administered, but if the defendant is not found within that county, the action may be brought within the county of the defendant's residence or principal office. A copy of any complaint filed pursuant to this part shall be served on the principal offices of the department and of the commission. The remedy for failure to send a copy of a complaint is an order to do so. In a civil action brought under this section, the court, in its discretion, may award to the prevailing party reasonable attorneys' fees.

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

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

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

Gov't Code § 71601 (amended). Definitions

SEC. ____. Section 71601 of the Government Code is amended to read:

71601. For purposes of this chapter, the following definitions shall apply:

(a) “Appointment” means the offer to and acceptance by a person of a position in the trial court in accordance with this chapter and the trial court’s personnel policies, procedures, and plans.

(b) “Employee organization” means either of the following:

(1) Any organization that includes trial court employees and has as one of its primary purposes representing those employees in their relations with that trial court.

(2) Any organization that seeks to represent trial court employees in their relations with that trial court.

(c) “Hiring” means appointment as defined in subdivision (a).

(d) “Mediation” means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between representatives of the trial court and the recognized employee organization or recognized employee organizations through interpretation, suggestion, and advice.

(e) “Meet and confer in good faith” means that a trial court or representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The process should include adequate time for the resolution of impasses where specific procedures for resolution are contained in this chapter or in a local rule, or when the procedures are utilized by mutual consent.

(f) “Personnel rules,” “personnel policies, procedures, and plans,” and “rules and regulations” mean policies, procedures,

plans, rules, or regulations adopted by a trial court or its designee pertaining to conditions of employment of trial court employees, subject to meet and confer in good faith.

(g) "Promotion" means promotion within the trial court as defined in the trial court's personnel policies, procedures, and plans, subject to meet and confer in good faith.

(h) "Recognized employee organization" means an employee organization that has been formally acknowledged to represent trial court employees by the county under Sections 3500 to 3510, inclusive, prior to the implementation date of this chapter, or by the trial court under Rules 2201 to 2210, inclusive, of the California Rules of Court, as those rules read on April 23, 1997, Sections 70210 to 70219, inclusive, or Article 3 (commencing with Section 71630) of this chapter.

(i) "Subordinate judicial officer" means an officer appointed to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution, including, but not limited to, a court commissioner, probate commissioner, *child support commissioner,* referee, *traffic trial commissioner,* traffic referee, juvenile *court* referee, *juvenile hearing officer,* and *temporary* judge ~~pro tempore~~.

(j) "Transfer" means transfer within the trial court as defined in the trial court's personnel policies, procedures, and plans, subject to meet and confer in good faith.

(k) "Trial court" means a superior court ~~or a municipal court~~.

(*l*) "Trial court employee" means a person who is both of the following:

(1) Paid from the trial court's budget, regardless of the funding source. For the purpose of this paragraph, "trial court's budget" means funds from which the presiding judge of a trial court, or his or her designee, has authority to control, authorize, and direct expenditures, including, but not limited

to, local revenues, all grant funds, and trial court operations funds.

(2) Subject to the trial court's right to control the manner and means of his or her work because of the trial court's authority to hire, supervise, discipline, and terminate employment. For purposes of this paragraph only, the "trial court" includes the judges of a trial court or their appointees who are vested with or delegated the authority to hire, supervise, discipline, and terminate.

(m) A person is a "trial court employee" if and only if both paragraphs (1) and (2) of subdivision (*l*) are true irrespective of job classification or whether the functions performed by that person are identified in Rule 810 of the California Rules of Court. The phrase "trial court employee" includes those subordinate judicial officers who satisfy paragraphs (1) and (2) of subdivision (*l*). The phrase "trial court employee" does not include temporary employees hired through agencies, jurors, individuals hired by the trial court pursuant to an independent contractor agreement, individuals for whom the county or trial court reports income to the Internal Revenue Service on a Form 1099 and does not withhold employment taxes, sheriffs, and judges whether elected or appointed. Any temporary employee, whether hired through an agency or not, shall not be employed in the trial court for a period exceeding 180 calendar days, except that for court reporters in a county of the first class, a trial court and a recognized employee organization may provide otherwise by mutual agreement in a memorandum of understanding or other agreement.

Comment. Subdivision (i) of Section 71601 is amended to refer to types of subordinate judicial officers. See former Section 72450 (traffic trial commissioners); Fam. Code §§ 4250-4253 (child support commissioners); Welf. & Inst. Code § 255 (juvenile hearing officers). Subdivision (i) is also amended for consistency of terminology. See Cal. Const. art. VI, § 21 (temporary judge). See also Gov't Code § 70045.4 (juvenile court referee); Penal Code § 853.6a (same); Veh. Code § 40502 (same); Welf. & Inst. Code § 264 (same).

Subdivision (k) is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

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

SEC. ____. Section 977 of the Penal Code is amended to read:

977. (a)(1) In all cases in which the accused is charged with a misdemeanor only, he or she may appear by counsel only, except as provided in paragraphs (2) and (3). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (c).

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

(3) If the accused is charged with a misdemeanor offense involving driving under the influence, in an appropriate case, the court may order a defendant to be present for arraignment, at the time of plea, or at sentencing. For purposes of this paragraph, a misdemeanor offense involving driving under the influence shall include a misdemeanor violation of any of the following:

(A) Paragraph (3) of subdivision (c) of Section 192.

(B) Section 23103 as specified in Section 23103.5 of the Vehicle Code.

(C) Section 23152 of the Vehicle Code.

(D) Section 23153 of the Vehicle Code.

(b)(1) In all cases in which a felony is charged, the accused shall be present at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial

when evidence is taken before the trier of fact, and at the time of the imposition of sentence. The accused shall be personally present at all other proceedings unless he or she shall, with leave of court, execute in open court, a written waiver of his or her right to be personally present, as provided by paragraph (2). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (c).

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

"WAIVER OF DEFENDANT'S PERSONAL PRESENCE"

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

(c) The court may permit the initial court appearance and arraignment ~~in municipal or superior court~~ of defendants held

in any state, county, or local facility within the county on felony or misdemeanor charges, except for those defendants who were indicted by a grand jury, to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. If the defendant is represented by counsel, the attorney shall be present with the defendant at the initial court appearance and arraignment, and may enter a plea during the arraignment. However, if the defendant is represented by counsel at an ~~initial hearing in superior court~~ *arraignment on an information* in a felony case, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing. The defendant shall have the right to make his or her plea while physically present in the courtroom if he or she so requests. If the defendant decides not to exercise the right to be physically present in the courtroom, he or she shall execute a written waiver of that right. A judge may order a defendant's personal appearance in court for the initial court appearance and arraignment. In a misdemeanor case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom. In a felony case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom if the parties stipulate thereto.

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

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

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

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

Before unification, a felony defendant was either (1) indicted and arraigned on the indictment in superior court or (2) arraigned on a complaint before a magistrate in municipal court and, if held to answer at a preliminary hearing, later arraigned on an information in superior court. Because subdivision (c) is expressly inapplicable to an indicted defendant, the reference to “an initial hearing in superior court in a felony case” in the third sentence was sufficient to indicate that the sentence pertained to an arraignment on an information, not an arraignment on a felony complaint.

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

Penal Code § 977.2 (amended). Appearance and arraignment by two-way electronic audiovideo communication

SEC. ____. Section 977.2 of the Penal Code is amended to read:

977.2. (a) Notwithstanding Section 977 or any other law, in any case in which the defendant is charged with a misdemeanor or a felony and is currently incarcerated in the state prison, the Department of Corrections may arrange for all court appearances in superior court, except for the preliminary hearing, trial, judgment and sentencing, and motions to suppress, to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. Nothing in this section shall be interpreted to

eliminate the authority of the court to issue an order requiring the defendant to be physically present in the courtroom in those cases where the court finds circumstances that require the physical presence of the defendant in the courtroom. For those court appearances that the department determines to conduct by two-way electronic audiovideo communication, the department shall arrange for two-way electronic audiovideo communication between the superior court and any state prison facility located in the county. The department shall provide properly maintained equipment and adequately trained staff at the prison as well as appropriate training for court staff to ensure that consistently effective two-way communication is provided between the prison facility and the courtroom for all appearances that the department determines to conduct by two-way electronic audiovideo communication.

(b) If the defendant is represented by counsel, the attorney shall be present with the defendant at the initial court appearance and arraignment, and may enter a plea during the arraignment. However, if the defendant is represented by counsel at an ~~initial hearing in superior court~~ *arraignment on an information or indictment* in a felony case, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing.

(c) In lieu of the physical presence of the defendant's counsel at the institution with the defendant, the court and the department shall establish a confidential telephone and facsimile transmission line between the court and the institution for communication between the defendant's counsel in court and the defendant at the institution. In this case, counsel for the defendant shall not be required to be physically present at the institution during any court

appearance that is conducted via electronic audiovideo communication. Nothing in this section shall be construed to prohibit the physical presence of the defense counsel with the defendant at the state prison.

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

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

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

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