

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

RECOMMENDATION

## **Trial Court Restructuring: Transfer of Case Based on Lack of Jurisdiction**

December 2007

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739  
[www.clrc.ca.gov](http://www.clrc.ca.gov)

#### 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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CALIFORNIA LAW REVISION COMMISSION

4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739  
650-494-1335

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December 14, 2007

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

In the past decade, the trial court system has been dramatically restructured, necessitating revision of hundreds of code provisions. One major restructuring reform was the unification of the trial courts. As a result of trial court unification, the ongoing relevance of Code of Civil Procedure Section 396 became unclear.

Section 396 mandates transfer of a case based on a lack of subject matter jurisdiction from one state court to another state court that would have jurisdiction. After trial court unification, Section 396 is no longer relevant to a transfer between trial courts. Due to disagreement in the courts, it is unclear whether the section is obsolete, or whether it is relevant to a transfer by a trial court to an appellate court.

To resolve the ambiguity, the Commission recommends legislation that would repeal Section 396, and enact a new provision in its place that would clearly require a trial court to transfer a matter over which it lacks jurisdiction to an appellate court that would have jurisdiction.

This recommendation was prepared pursuant to Government Code Section 71674 and Resolution Chapter 100 of the Statutes of 2007.

Respectfully submitted,

Sidney Greathouse  
*Chairperson*

## TRIAL COURT RESTRUCTURING: TRANSFER OF CASE BASED ON LACK OF JURISDICTION

Over the past decade, California's trial court system has been dramatically restructured. A major trial court restructuring reform was the unification of the trial courts on a county-by-county basis.<sup>1</sup> Trial court operations have been consolidated in the superior court of each county and municipal courts no longer exist.<sup>2</sup>

As a result of trial court restructuring, hundreds of sections of the California codes became obsolete, in whole or in part. The Legislature authorized the Law Revision Commission to recommend changes to the statutes "that may be necessitated by court unification"<sup>3</sup> and directed the Commission to revise the statutes to eliminate material that became obsolete as a result of trial court restructuring.<sup>4</sup>

The Commission has completed a vast amount of work on trial court restructuring, and the Legislature has enacted several measures to implement the Commission's

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1. 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).

Other major trial court restructuring reforms include:

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

2. Upon unification of the courts in Kings County, on February 8, 2001, the courts in all 58 counties had unified.

3. 2007 Cal. Stat. res. ch. 100.

4. Gov't Code § 71674.

recommendations.<sup>5</sup> In this work, the Commission has sought to avoid making any substantive change, other than that necessary to implement the restructuring reform.<sup>6</sup>

### **Code of Civil Procedure Section 396**

Code of Civil Procedure Section 396 mandates that a trial court transfer a case, and prohibits dismissal of the case, when the trial court lacks subject matter jurisdiction and another state court would have such jurisdiction.

Before the municipal courts unified with the superior courts, the subject matter jurisdiction of the municipal court differed from the subject matter jurisdiction of the superior court.<sup>7</sup> When a municipal court lacked subject matter jurisdiction over a case, but the case was within the jurisdiction of the superior court, the municipal court

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5. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 60 (1998), implemented by 1998 Cal. Stat. ch. 931 (revising the codes to accommodate trial court unification) (hereafter, *Revision of Codes*); 1999 Cal. Stat. ch. 344; *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999 (Senate Bill 210)*, 29 Cal. L. Revision Comm'n Reports 657 (1999); *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm'n Reports 1 (2002), 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), implemented by 2003 Cal. Stat. ch. 149; *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm'n Reports 305 (2006), implemented by 2007 Cal. Stat. ch. 43.

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

7. See former Cal. Const. art VI, § 10 (adopted Nov. 8, 1966) ("Superior courts have original jurisdiction in all causes except those given by statute to other trial courts."); Former Code Civ. Proc. § 86 (1997 Cal. Stat. ch. 527, § 2) (municipal court jurisdiction in specified civil proceedings); former Penal Code § 1462 (1972 Cal. Stat. ch. 809, § 1) (municipal court jurisdiction in specified criminal proceedings).

transferred the case pursuant to Section 396 to the superior court, and vice versa.<sup>8</sup>

Now that the trial courts in each county have unified into a single court with broad subject matter jurisdiction, Section 396 is no longer relevant to a transfer between trial courts.<sup>9</sup> If a case is filed in the wrong division, department, or location of the superior court, other authority exists for a superior court to transfer the case to the proper division, department, or location.<sup>10</sup> Section 396 does not authorize such a transfer

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8. See e.g., *Walker v. Superior Court*, 53 Cal. 3d 257, 266-70, 807 P.2d 418, 279 Cal. Rptr. 576 (1991) (superior court to transfer to municipal court if verdict necessarily will be less than jurisdictional requirement that claim exceed \$25,000); *Cal. Employment Stabilization Comm'n v. Municipal Court*, 62 Cal. App. 2d 781, 787, 145 P.2d 361 (1944) (municipal court to transfer to superior court when superior court, not municipal court, has jurisdiction).

9. See Cal. Const. art. VI, §§ 1, 4, 10; Code Civ. Proc. § 116.210 (“small claims” court is division of superior court); *Snukal v. Flightways Mfg., Inc.*, 23 Cal. 4th 754, 763 n.2, 3 P.3d 286, 98 Cal. Rptr. 2d 1 (2000) (“On unification of the trial courts in a county, all causes will be within the original jurisdiction of the superior court.”) (quoting *Revision of Codes, supra* note 5, at 64-65); *Glade v. Glade*, 38 Cal. App. 4th 1441, 1449, 45 Cal. Rptr. 2d 695 (1995) (“Even though a superior court is divided into branches or departments, pursuant to California Constitution, article VI, section 4, there is only one superior court in a county and jurisdiction is therefore vested in that court, not in any particular judge or department. Whether sitting separately or together, the judges hold but one and the same court.”); 2 B. Witkin, *California Procedure Courts* § 225, at 293 (4th ed. 1996) (case in wrong department, often discussed as “wrong court,” is distinct from lack of subject matter jurisdiction); 2 B. Witkin, *California Procedure Jurisdiction* § 289, at 860 (4th ed. 1997) (“[I]f the action or proceeding is in the right superior court but the wrong department, jurisdiction of the subject matter exists.”); see also *Eldridge v. Richfield Oil Corp.*, 247 F. Supp. 407, 411 n.8 (1965) (Section 396 does not apply to require transfer by federal trial court to state trial court).

10. For example, Code of Civil Procedure section 402 authorizes the superior court to transfer a case to another location of the same court. See also, e.g., Code Civ. Proc. §§ 397(a) (court may, on motion, change place of trial when complaint designates wrong court), 403 (court may, on motion, transfer for coordination purposes), 403.040 (procedure to reclassify civil case as limited or unlimited), 404 (transfer for coordination purposes); *People v. Superior Court*, 104 Cal. App. 276, 281, 285 P. 871 (1930) (“The Juvenile Court is itself a

because the provision only applies, by its terms, when a court lacks subject matter jurisdiction.<sup>11</sup>

Although Section 396 is no longer relevant to a transfer between trial courts, it might serve another purpose. In a case decided before trial court unification, the Fifth District Court of Appeal held that if a superior court lacks jurisdiction of a case and a court of appeal or the Supreme Court (hereafter, “an appellate court”) would have jurisdiction, Section 396 requires the superior court to transfer the case to the appropriate appellate court.<sup>12</sup> After unification, however, the Second District Court of Appeal disagreed with the Fifth District’s opinion, and stated that Section 396 does not authorize a transfer by a superior court to an appellate court.<sup>13</sup>

The disagreement in the courts of appeal, and the ambiguity of the text of Section 396 as to its scope, make it unclear whether the provision requires a transfer by a superior court lacking subject matter jurisdiction to an appellate court that

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Superior Court, although acting in a particular class of cases, and has an inherent power to transfer a case to another department of the same court.”); Cal. R. Ct. 10.603(b)(1)(B) (superior court presiding judge may assign and reassign cases to departments in apportioning court business), 10.603(c)(1)(D) (superior court presiding judge to reassign cases between departments as convenience or necessity requires).

11. See *Rosenberg v. Superior Court*, 67 Cal. App. 4th 860, 867, 79 Cal. Rptr. 2d 365 (1988) (“The plain language of Code Civ. Proc., § 396, permits transfer only when the transferring court lacks jurisdiction of the subject matter.”); see also *supra* note 9.

12. *Padilla v. Dep’t of Alcoholic Beverage Control*, 43 Cal. App. 4th 1151, 1154, 51 Cal. Rptr. 2d 133 (1996) (Section 396 applies to “proceedings filed in the superior court which, by statute, may only be filed in the Supreme Court or the Court of Appeal.”).

13. *TrafficSchoolOnline, Inc. v. Superior Court*, 89 Cal. App. 4th 222, 225, 234-35, 107 Cal. Rptr. 2d 412 (2001) (stating disagreement with *Padilla* court and concluding that “the superior court is not vested with the authority by Code of Civil Procedure section 396 to transfer a case to the Court of Appeal or the Supreme Court”).



would have jurisdiction.<sup>14</sup> Because the meaning of the provision is unclear, in determining how to revise it, the Commission cannot simply follow the normal approach of avoiding any substantive change other than that necessary to account for trial court restructuring. Various options for how Section 396 could be handled, and the corresponding implications, are discussed below.

### ***Leave Section 396 Alone***

One approach would be to leave Section 396 as it is. This approach would continue the present ambiguity in the scope of the provision. By implication, however, it would endorse the position of the Fifth District and would imply that Section 396 requires a superior court without subject matter jurisdiction to transfer a case to an appellate court that would have jurisdiction.<sup>15</sup> If the provision was not construed to authorize such a transfer, there would be no justification for leaving it in place.

### ***Revise Section 396***

Another approach would be to revise Section 396 to delete the language that is only applicable to a transfer between trial courts. This approach would also endorse the Fifth District's opinion.<sup>16</sup> It would imply, more strongly than leaving Section 396 alone, that the provision requires a superior court to

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14. See *Pajaro Valley Mgmt. Agency v. McGrath*, 128 Cal. App. 4th 1093, 1104 n.4, 27 Cal. Rptr. 3d 741 (2005) (commenting on split in courts of appeal and speculating that Section 396 might retain vitality as empowering superior court to transfer cases within exclusive jurisdiction of court of appeal or Supreme Court); 3 B. Witkin, *California Procedure Jurisdiction* § 393A, at 321-22 (4th ed. Supp. 2007) (stating Section 396 “is not inapplicable” to transfer from superior court to court of appeal or Supreme Court and discussing cases comprising split).

15. See *supra* note 12.

16. *Id.*

transfer a case over which it lacks subject matter jurisdiction to an appellate court that would have jurisdiction.

### ***Repeal Section 396***

Conversely, a repeal of Section 396 would reject the Fifth District's view.<sup>17</sup> Repealing Section 396 would reflect a determination that the provision is no longer useful. Taking that step would thus endorse the Second District's view that the provision does not apply to a transfer by a superior court to an appellate court.<sup>18</sup>

### ***Repeal Section 396 and Enact a New Section 396***

Another approach would be to repeal Section 396 and enact a new provision in its place, which would clearly require a superior court to transfer a matter over which it lacks jurisdiction to an appellate court that would have jurisdiction. This approach would eliminate the uncertainty regarding the scope of Section 396.

The Commission recommends this approach. It would carry forward a widespread, long-standing policy behind Section 396 that allows a matter to be considered on its merits in the proper tribunal, despite a previous misfiling in the wrong court.<sup>19</sup>

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17. *Id.*

18. See *supra* note 13.

19. See *Friends of Mammoth v. Bd. of Supervisors*, 8 Cal. 3d 247, 268-69, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972) (naming Section 396 and applying its policy to petition for writ of mandamus that was promptly re-filed in superior court after dismissal from court of appeal); *Nichols v. Canoga Indus.*, 83 Cal. App. 3d 956, 959, 962, 148 Cal. Rptr. 459 (1978) (identifying established policy of relieving litigant that timely filed in wrong forum from statute of limitations, and concluding that federal court filing tolled state statute of limitations to allow re-filing in state court); *Morgan v. Somervell*, 40 Cal. App. 2d 398, 400, 104 P.2d 866 (1940) (Section 396 furthers "policy frequently exemplified in legislative acts" to consider timely filed matter on merits "notwithstanding

Absent authority to transfer, a court must dismiss a matter over which it lacks jurisdiction.<sup>20</sup> If a superior court dismisses a petition or appeal because it is within the exclusive jurisdiction of the courts of appeal or the Supreme Court, the time to re-file in the proper court might have expired.<sup>21</sup> That would bar consideration of the petition or appeal on the merits and would undermine the long-standing policy underlying Section 396. That undesirable result could be avoided, however, by repealing Section 396 and enacting proposed Section 396, which would clearly direct a superior

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defects in the form ... or *mistake in the tribunal invoked*.” (emphasis in original)).

Furthermore, a transfer of a matter to another court is broadly authorized in several other situations. See, e.g., Cal. Const. art. VI, § 12(a) (authorizing Supreme Court to transfer cases between itself and court of appeal); Code Civ. Proc. § 911 (granting court of appeal discretion to order transfer from superior court to promote uniformity or settle important legal question); Gov’t Code § 68915 (prohibiting dismissal and requiring transfer by Supreme Court and courts of appeal when appeal taken to wrong court); Penal Code § 1471 (granting court of appeal discretion to order transfer from superior court to promote uniformity or settle important legal question); *People v. Nickerson*, 128 Cal. App. 4th 33, 39-40, 26 Cal. Rptr. 3d 563 (2005) (court of appeal empowered by inherent authority and Government Code Section 68915 to transfer appeal, misdirected by court clerk, to appellate division of superior court); Cal. R. Ct. 10.1000(a) (Supreme Court may transfer case between courts and divisions of courts of appeal).

20. See *Goodwine v. Superior Court*, 63 Cal. 2d 481, 484, 407 P.2d 1, 47 Cal. Rptr. 201 (1965) (court lacking subject matter jurisdiction must dismiss on own motion).

21. See, e.g., Bus. & Prof. Code § 23090 (authorizing review of final order by Alcoholic Beverage Control Board in court of appeal or Supreme Court within 30 days); Code Civ. Proc. § 170.3(d) (review of judge disqualification order only by writ of mandate in court of appeal within 10 days); Welf. & Inst. Code § 366.26(l) (order to hold hearing pursuant to Section 366.26 — regarding placement of juvenile court dependents and parental rights termination — only appealable if extraordinary writ petition is timely filed); Cal. R. Ct. 8.452 (10 days to file writ to challenge order for Section 366.26 hearing); see also Cal. R. Ct. 8.751(a) (time to appeal).

court to transfer a case over which it lacks jurisdiction to an appellate court that would have jurisdiction.<sup>22</sup>

### FURTHER WORK

This recommendation does not deal with all remaining statutes that need revision due to trial court restructuring.<sup>23</sup> The Commission will continue to make recommendations 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. The statute may be the subject of a future recommendation by the Commission.

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22. The proposed new provision is modeled on Government Code Section 68915, which requires the courts of appeal and the Supreme Court to transfer, not dismiss, an appeal that is filed in the wrong court.

Like Government Code Section 68915, the new provision would apply to an appeal. Determining whether jurisdiction over a particular appeal is in the appellate division of the superior court or in the court of appeal can be difficult. The filing of an appeal in the wrong court could occur by no fault of the appellant. See *Nickerson*, 128 Cal. App. 4th at 35-36 (discussing difficulty in determining appellate jurisdiction of felony now that all notices of appeal are filed in unified superior court, and transferring appeal, misdirected by court clerk, to appellate division of superior court).

In contrast to Government Code Section 68915, the proposed new provision would expressly apply to a petition for a writ, for two reasons. First, it was in the context of a writ petition that the Fifth District held that Section 396 mandates a transfer from a superior court lacking jurisdiction to an appellate court that would have jurisdiction. See *Padilla v. Dep't of Alcoholic Beverage Control*, 43 Cal. App. 4th 1151, 1155, 51 Cal. Rptr. 2d 133 (1996). Second, the California Supreme Court has expressly applied the policy behind Section 396 to a writ. See *Friends of Mammoth*, 8 Cal. 3d at 268-69 (writ petition filed after deadline should be considered on merits, where petition had been dismissed but promptly re-filed in proper court).

23. For a detailed summary of the work that remained to be done as of February 2006, see Commission Staff Memorandum 2006-9 (available from the Commission, [www.clrc.ca.gov](http://www.clrc.ca.gov)).

## PROPOSED LEGISLATION

### **Code Civ. Proc. § 396 (repealed). Court without jurisdiction**

SEC. \_\_\_\_\_. Section 396 of the Code of Civil Procedure is repealed.

~~396. (a) If an action or proceeding is commenced in a court that lacks jurisdiction of the subject matter thereof, as determined by the complaint or petition, if there is a court of this state that has subject matter jurisdiction, the action or proceeding shall not be dismissed (except as provided in Section 399, and paragraph (1) of subdivision (b) of Section 581) but shall, on the application of either party, or on the court's own motion, be transferred to a court having jurisdiction of the subject matter that may be agreed upon by the parties, or, if they do not agree, to a court having subject matter jurisdiction that is designated by law as a proper court for the trial or determination thereof, and it shall thereupon be entered and prosecuted in the court to which it is transferred as if it had been commenced therein, all prior proceedings being saved. In that case, if summons is served prior to the filing of the action or proceeding in the court to which it is transferred, as to any defendant, so served, who has not appeared in the action or proceeding, the time to answer or otherwise plead shall date from service upon that defendant of written notice of filing of the action or proceeding in the court to which it is transferred.~~

~~(b) If an action or proceeding is commenced in or transferred to a court that has jurisdiction of the subject matter thereof as determined by the complaint or petition, and it thereafter appears from the verified pleadings, or at the trial, or hearing, that the determination of the action or proceeding, or of a cross complaint, will necessarily involve the determination of questions not within the jurisdiction of the court, in which the action or proceeding is pending, the~~

~~court, whenever that lack of jurisdiction appears, must suspend all further proceedings therein and transfer the action or proceeding and certify the pleadings (or if the pleadings be oral, a transcript of the same), and all papers and proceedings therein to a court having jurisdiction thereof that may be agreed upon by the parties, or, if they do not agree, to a court having subject matter jurisdiction that is designated by law as a proper court for the trial or determination thereof.~~

~~(c) An action or proceeding that is transferred under the provisions of this section shall be deemed to have been commenced at the time the complaint or petition was filed in the court from which it was originally transferred.~~

~~(d) This section may not be construed to preclude or affect the right to amend the pleadings as provided in this code.~~

~~(e) Upon the making of an order for transfer, proceedings shall be had as provided in Section 399, the costs and fees thereof, and of filing the case in the court to which transferred, to be paid by the party filing the pleading in which the question outside the jurisdiction of the court appears unless the court ordering the transfer shall otherwise direct.~~

**Comment.** Section 396 is repealed due to trial court unification. The provision directed a court not to dismiss but to transfer a case if the court lacked subject matter jurisdiction and another state court would have such jurisdiction. The provision was often invoked when a municipal court transferred a case outside its jurisdiction to the superior court, or vice versa. See, e.g., *Walker v. Superior Court*, 53 Cal. 3d 257, 807 P.2d 418, 279 Cal. Rptr. 576 (1991); *Cal. Employment Stabilization Comm'n v. Municipal Court*, 62 Cal. App. 2d 781, 145 P.2d 361 (1944). After unification of the municipal and superior courts, it no longer served that purpose.

There was a split of authority regarding whether the provision authorized a superior court lacking jurisdiction to transfer a case to a court of appeal or the state Supreme Court. Compare *TrafficSchoolOnline, Inc. v. Superior Court*, 89 Cal. App. 4th 222, 225, 107 Cal. Rptr. 2d 412 (2001) (“[T]he superior court is not vested with the authority by Code of Civil Procedure Section 396 to transfer a case to the

Court of Appeal or the Supreme Court.”), with *Padilla v. Dep’t of Alcoholic Beverage Control*, 43 Cal. App. 4th 1151, 1154, 51 Cal. Rptr. 2d 133 (1996) (Transfer requirement of Section 396 applies “in the case of proceedings filed in the superior court which, by statute, may be filed only in the Supreme Court or the Court of Appeal.”); see also *Pajaro Valley Water Mgmt. Agency v. McGrath*, 128 Cal. App. 4th 1093, 1104 n.4, 27 Cal. Rptr. 3d 741 (2005) (“It is possible, though a point of disagreement, that [Section 396] retains vitality as empowering the *superior* court to transfer cases within the exclusive original jurisdiction of the *appellate* courts.” (emphasis in original)).

Consistent with the key policy of deciding a case on its merits even if it is filed in the wrong tribunal, new Section 396 makes clear that if a superior court lacks jurisdiction of a matter and a state appellate court would have jurisdiction, the superior court must transfer the matter instead of dismissing it.

#### **Code Civ. Proc. § 396 (added). Court without jurisdiction**

SEC. \_\_\_\_\_. Section 396 is added to the Code of Civil Procedure, to read:

396. No appeal or petition filed in the superior court shall be dismissed solely because the appeal or petition was not filed in the proper state court. If the superior court lacks jurisdiction of an appeal or petition, and a court of appeal or the Supreme Court would have jurisdiction, the appeal or petition shall be transferred to the court having jurisdiction upon terms as to costs or otherwise as may be just, and proceeded with as if regularly filed therein.

**Comment.** Section 396 requires a superior court to transfer an appeal or petition over which the superior court lacks jurisdiction to an appellate court that has jurisdiction. The provision continues a policy that requires transfer and prohibits dismissal of a cause simply because it was filed in the wrong court. See, e.g., former Section 396 (2002 Cal. Stat. ch. 806, § 9); Gov’t Code § 68915; see *Friends of Mammoth v. Bd. of Supervisors*, 8 Cal. 3d 247, 268-69, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972); *Morgan v. Somervell*, 40 Cal. App. 2d 398, 400, 104 P.2d 866 (1940).

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