

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

RECOMMENDATION

## **Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture**

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

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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. As a result of trial court restructuring and related amendments to provisions on civil procedure, jurisdiction of a bail forfeiture appeal became unclear.

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

The Commission 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,

Sidney Greathouse  
*Chairperson*

TRIAL COURT  
RESTRUCTURING: APPELLATE  
JURISDICTION OF BAIL  
FORFEITURE

When a criminal defendant has been released on bail<sup>1</sup> and then fails to appear in court when required, the bail may subsequently be forfeited according to a statutory procedure.<sup>2</sup> An order relating to bail forfeiture may be appealed.<sup>3</sup> Due to

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1. Bail may be posted by a surety, contracting with the government to either secure the defendant's presence when lawfully required or forfeit bail. Penal Code §§ 1268-1269, 1276, 1276.5, 1287, 1458-1459; *People v. Am. Contractors Indem. Co.*, 33 Cal. 4th 653, 657, 93 P.3d 1020, 16 Cal. Rptr. 3d 76 (2004) (citing *People v. Ranger Ins. Co.*, 31 Cal. App. 4th 13, 22, 36 Cal. Rptr. 2d 807 (1994)).

2. See Penal Code §§ 1305-1306. If the defendant fails to appear when lawfully required (for example, for arraignment, trial, judgment, etc.), "without sufficient excuse," a court must declare the bail forfeited (hereafter, a "bail forfeiture declaration order"). Penal Code § 1305(a). The bail forfeiture declaration order is not an actual forfeiture, but an initial step in forfeiture proceedings. *People v. Sur. Ins. Co.*, 82 Cal. App. 3d 229, 236-237, 147 Cal. Rptr. 65 (1978). Following the bail forfeiture declaration order, the surety is given notice of the defendant's absence. Penal Code § 1305(b) (notice required for deposits over \$400). If the surety secures the defendant's presence within a 180-day period, the court must vacate the bail forfeiture declaration order. Penal Code § 1305(c). However, if the defendant fails to appear without sufficient excuse, the court must enter summary judgment against the surety (hereafter, "bail forfeiture summary judgment"). Penal Code §§ 1305.1 (court with belief of sufficient excuse for absence may extend time period), 1306(a) (court shall enter summary judgment against bondsman). For further detail on bail forfeiture procedures, see *People v. Int'l Fid. Ins. Co.*, 151 Cal. App. 4th 1056, 60 Cal. Rptr. 3d 355 (2007).

3. A bail forfeiture declaration order may be challenged by a motion to vacate. See Penal Code § 1305; *People v. Hodges*, 205 Cal. 476, 478, 271 P. 897 (1928); 6 B. Witkin, *California Criminal Law Criminal Appeal* § 74, at 319 (3d ed. 2000). The order granting or denying the motion to vacate the bail forfeiture declaration order may be appealed. *People v. Wilcox*, 53 Cal. 2d 651, 654-655,

recent restructuring of the trial court system, some confusion exists regarding when such an appeal is to be filed in the court of appeal and when such an appeal is to be filed in the appellate division of the superior court.<sup>4</sup>

The Law Revision Commission is responsible for recommending revisions to the codes to implement trial court restructuring.<sup>5</sup> The Commission recommends that legislation

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349 P.2d 522, 2 Cal. Rptr. 754 (1960) (citing Code Civ. Proc. § 963 and *Howe v. Key Sys. Transit Co.*, 198 Cal. 525, 531, 246 P. 39 (1926)).

A bail forfeiture summary judgment against the surety is a consent judgment. See *Am. Contractors*, 33 Cal. 4th at 663-64. When the judgment is voidable because it was improperly entered, the judgment may be challenged by an appeal or a motion to set aside the order. *Id.* at 663-65; see also *People v. Allegheny Cas. Co.*, 41 Cal. 4th 704, 716 n.7, 161 P.3d 198, 61 Cal. Rptr. 3d 689 (2007).

An order relating to bail forfeiture may also be challenged by an extraordinary writ. See, e.g., *Newman v. Superior Court*, 67 Cal. 2d 620, 621, 432 P.2d 972, 63 Cal. Rptr. 284 (1967) (issuing writ of mandate). Because the jurisdiction of an extraordinary writ tracks appellate jurisdiction, there is no need for a special provision regarding a challenge in the form of an extraordinary writ. See Cal. Const. art. VI, § 10 (“The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.”); Code Civ. Proc. §§ 85, 904.1, 904.2, 1068(b), 1085(b), 1103(b).

4. See *People v. Ranger Ins. Co.*, No. H030919, 2007 WL 2175059, at \*2 n.5 (Cal. Ct. App. July 30, 2007) (unpublished decision) (“After unification... the proper appellate path of bail bond forfeiture proceedings ... seems unclear and is in need of legislative clarification.”); Letter from Alex Cerul, Santa Clara County Superior Court Staff Attorney, to California Law Revision Commission (Oct. 5, 2006) (Commission Staff Memorandum 2007-14 (April 18, 2007), Exhibit pp. 1-4 (available from the Commission, [www.clrc.ca.gov](http://www.clrc.ca.gov))).

5. Gov’t Code § 71674. The Commission has recommended revisions to hundreds of code provisions in response to this directive. Almost all of the recommended reforms have been enacted. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51 (1998) (hereafter, *Revision of Codes*), implemented by 1998 Cal. Stat. ch. 931; 1999 Cal. Stat. ch. 344; *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999 (Senate Bill 210)*, 29 Cal. L. Revision Comm’n Reports 657 (1999) (hereafter, *Report on Chapter 344*); *Statutes Made Obsolete by Trial Court*

be enacted to clarify the appellate jurisdiction of bail forfeiture cases.

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

### **Trial Court Unification**

One of the trial court restructuring reforms was unification of the trial courts. The process of trial court unification began in 1998 after California voters approved a measure permitting the municipal and superior courts in each county to unify.<sup>7</sup>

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*Restructuring: Part 1*, 32 Cal. L. Revision Comm'n Reports 1 (2002) (hereafter, *Trial Court Restructuring: Part 1*), implemented by 2002 Cal. Stat. ch. 784 & ACA 15, approved by the voters Nov. 5, 2002 (Proposition 48); *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm'n Reports 169 (2003) (hereafter, *Trial Court Restructuring: Part 2*), implemented by 2003 Cal. Stat. ch. 149; *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.

This directive to revise the codes follows an earlier legislative assignment in which the Commission made recommendations on the constitutional revisions necessary to implement trial court unification. See *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1 (1994) (hereafter, *Constitutional Revision*); *Trial Court Unification: Transitional Provisions for SCA 3*, 24 Cal. L. Revision Comm'n Reports 627 (1994).

6. See *Revision of Codes*, *supra* note 5, at 60; *Constitutional Revision*, *supra* note 5, at 18-19, 28.

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

Other major trial court restructuring reforms were:

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.<sup>8</sup>

Three guiding principles were used in revising the codes and the Constitution to accommodate unification. First, care was taken “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.”<sup>9</sup> Second, steps were taken to ensure that the court of appeal would continue to have jurisdiction over cases historically within its appellate jurisdiction.<sup>10</sup> Third, efforts were made to ensure that unification did not increase the workload of the courts of appeal, but generally left intact the respective workloads of the courts of appeal and appellate departments<sup>11</sup> of the superior courts.<sup>12</sup>

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

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

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); *Gen. Elec. Capital Auto Fin. Serv., Inc. v. Appellate Division of the Superior Court*, 88 Cal. App. 4th 136, 141, 105 Cal. Rptr. 2d 552 (2001).

10. See Cal. Const. art. VI, § 11(a); see also *People v. Nickerson*, 128 Cal. App. 4th 33, 38, 26 Cal. Rptr. 3d. 563 (2005) (“[T]rial court unification ... did not change the court to which cases were to be appealed.”).

11. The appellate department of the superior court was an entity created by statute. See former Code Civ. Proc. § 77 (1984 Cal. Stat. ch. 704). When unification on a county-by-county basis was approved by the voters in 1998, the appellate department was replaced by the appellate division of the superior court, an entity of constitutional dimension. See Cal. Const. art. VI, § 4; Code



By 2001, the trial courts in each county had unified, and the municipal courts were subsumed into a unified superior court.<sup>13</sup> Further revisions of the codes were made on Commission recommendation in 2002, 2003, and 2007 to reflect that municipal courts no longer existed.<sup>14</sup>

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

### **Appellate Jurisdiction of Bail Forfeiture**

Jurisdiction of a bail forfeiture appeal became unclear after provisions on civil procedure were amended to implement trial court unification. Even though a bail forfeiture arises in a criminal case, it is a civil matter.<sup>16</sup> The provisions governing

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Civ. Proc. § 77; 1998 Cal. Stat. ch. 931, § 21; 2 B. Witkin, *California Procedure Courts* § 346, at 141 (4th ed. 2006 Supp.); *Constitutional Revision*, *supra* note 5, at 30-33. The Constitution requires the Chief Justice to “assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.” Cal. Const. art. VI, § 4.

12. *Constitutional Revision*, *supra* note 5, at 32; see also *Nickerson*, 128 Cal. App. 4th at 38.

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

14. See *Trial Court Restructuring: Part 1*, *supra* note 5; *Trial Court Restructuring: Part 2*, *supra* note 5; *Trial Court Restructuring: Part 3*, *supra* note 5.

15. See *People v. Ranger Ins.*, No. H030919, 2007 WL 2175059, at \*2 n.5 (Cal. Ct. App. July 30, 2007) (unpublished decision); Letter from Alex Cerul, *supra* note 4.

16. See *People v. Am. Contractors Indem. Co.*, 33 Cal. 4th 653, 657, 93 P.3d 1020, 16 Cal. Rptr. 3d 76 (2004) (citing *People v. Wilcox*, 53 Cal. 2d 651, 654, 349 P.2d 522, 2 Cal. Rptr. 754 (1960)). Consequently, certain rules governing civil actions, such as the time to file a notice of appeal, apply to a bail forfeiture appeal. *People v. United Bonding Ins. Co.*, 272 Cal. App. 2d 441, 442, 77 Cal.

jurisdiction of a civil appeal involving a monetary sum base jurisdiction on the amount in controversy.<sup>17</sup> Before unification, however, jurisdiction of a bail forfeiture appeal was not based on the amount in controversy, i.e., the amount of bail.<sup>18</sup> Instead, it was determined by which court ordered the forfeiture.<sup>19</sup> Forfeiture ordered by the municipal court was appealed to the appellate department of the superior court.<sup>20</sup>

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Rptr. 310 (1969) (civil rules for time to file notice of appeal apply to bail forfeiture case).

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

18. *Newman v. Superior Court*, 67 Cal. 2d 620, 621-23, 432 P.2d 972, 63 Cal. Rptr. 284 (1967); see, e.g., *County of Los Angeles v. Am. Bankers Ins. Co.*, 202 Cal. App. 3d 1291, 1293, 1297, 249 Cal. Rptr. 540 (1988) (court of appeal heard bail forfeiture appeal involving failure to appear before superior court, even though bail amount was less than court of appeal's jurisdictional limit at that time).

19. *Newman*, 67 Cal. 2d at 621-23. In an unpublished opinion lacking precedential value, the Sixth District Court of Appeal recently provided a nice summary of pre-unification appellate jurisdiction of bail forfeiture. See *People v. Ranger Ins. Co.*, No. H030919, 2007 WL 2175059, at \*2 n.5 (Cal. Ct. App. July 30, 2007) (unpublished decision). The court stated:

Before unification, bond forfeiture ordered by the municipal court was appealed to the appellate department of the superior court and forfeiture ordered by the superior court was appealed to the court of appeal, regardless of the amount of the bond. This was true despite the civil nature of bail bond proceedings.

20. Former Cal. Const. art. VI § 11 (added Nov. 8, 1966) (appellate jurisdiction of superior court in causes statutorily prescribed as arising in municipal court); former Code Civ. Proc. §§ 77(e) (1984 Cal. Stat. ch. 704, § 1), 904.2 (1990 Cal. Stat. ch. 1305, § 5) (appealable orders from municipal court); see, e.g., *Newman*, 67 Cal. 2d at 621, 623-25 (determining that bail forfeiture order by magistrate in municipal court at preliminary examination is an order of that court, and ordering appellate department of superior court to accept appeal from such an order).

Forfeiture ordered by the superior court was appealed to the court of appeal.<sup>21</sup>

Since unification, a review of bail forfeiture appeals illustrates that courts are confused over which rules apply.<sup>22</sup> Courts do not uniformly apply the provisions governing the jurisdiction of civil appeals,<sup>23</sup> nor do they uniformly direct bail forfeiture appeals along the pre-unification path.<sup>24</sup> And in

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21. Former Cal. Const. art. VI § 11 (added Nov. 8, 1966) (appellate jurisdiction of court of appeal when superior court has original jurisdiction); former Code Civ. Proc. § 904.1 (1993 Cal. Stat. ch. 456, § 12) (appealable orders from superior court); see, e.g., *Am. Bankers*, 202 Cal. App. 3d at 1297.

22. Noting the confusion, the Sixth District Court of Appeal expressed a need for clarifying legislation. See *Ranger*, 2007 WL 2175059, at \*2 n.5. Additionally, the confusion is apparent from the Santa Clara County Superior Court's request for clarifying legislation. See Letter from Alex Cerul, *supra* note 4.

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

Some courts do not apply those provisions. See, e.g., *People v. Lincoln Gen'l Ins. Co.*, 2007 WL 2258284 (5th Dist.) (unpublished decision) (appeal from forfeiture of bail less than \$25,000 taken to court of appeal instead of appellate division of superior court); *People v. Granite State Ins. Co.*, 2003 WL 21227856 (2d Dist.) (unpublished decision) (same); *People v. Accredited Sur. & Cas. Co.*, 2003 WL 1542116 (6th Dist.) (unpublished decision) (same). Other courts apply such provisions, even when that causes an appeal to depart from the pre-unification path. See, e.g., *People v. Safety Nat'l Cas. Corp.*, 150 Cal. App. 4th 11, 57 Cal. Rptr. 3d 659 (5th Dist. 2007) (appeal from forfeiture of bail exceeding \$25,000 in misdemeanor case taken to court of appeal); *People v. Alistar Ins. Co.*, 115 Cal. App. 4th 122, 9 Cal. Rptr. 3d 497 (4th Dist. 2003) (same); see also discussion of "Appellate Jurisdiction Based on Pre-Unification Appeal Path" *infra*.

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

some cases, the appeal has followed neither the pre-unification path nor the provisions on civil procedure.<sup>25</sup> Legislation is needed to resolve the confusion.<sup>26</sup>

### **Possible Approaches**

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

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

If jurisdiction of a bail forfeiture appeal were based on the amount in controversy, like other civil cases, then an appeal

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25. See, e.g., *People v. Ranger Ins. Co.*, 2007 WL 2164928 (4th Dist.) (unpublished decision); *People v. Ranger Ins. Co.*, 145 Cal. App. 4th 23, 51 Cal. Rptr. 3d 326 (2d Dist. 2006).

The appeal in the *Ranger* case decided by the Fourth District Court of Appeal involved bail forfeiture of \$25,000 by a magistrate at the preliminary examination on a felony charge. 2007 WL 2164928 at \*1. If the provisions governing the appeal of a civil matter had been applied, the appeal would have been taken to the appellate division of the superior court, *not* the court of appeal. See Code Civ. Proc. §§ 85, 904.2. It is also apparent that the pre-unification path was not followed: Before unification, the appeal from a forfeiture by a magistrate at a preliminary examination on a felony charge went to the appellate department (now, the appellate division) of the superior court, *not* the court of appeal. See *supra* note 20.

Similarly, the appeal in the *Ranger* case decided by the Second District Court of Appeal involved forfeiture of bail less than \$25,000 by a magistrate at a preliminary proceeding on a felony charge. 145 Cal. App. 4th at 25-26. If the provisions governing civil appeals had been applied, the appeal would have been taken to the appellate division of the superior court, *not* the court of appeal. See Code Civ. Proc. §§ 85, 904.2. Nor was the pre-unification path followed, as the appeal would have been taken to the appellate division of the superior court, *not* the court of appeal. See *supra* note 20.

26. See *People v. Ranger Ins. Co.*, No. H030919, 2007 WL 2175059, at \*2 n.5 (Cal. Ct. App. July 30, 2007) (unpublished decision).

involving bail of \$25,000 or less would be heard by the appellate division of the superior court<sup>27</sup> and an appeal involving bail of more than \$25,000 would be heard by the court of appeal.<sup>28</sup> That approach has the appeal of simplicity. However, the Commission does not recommend this approach.

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

Moreover, basing jurisdiction on the amount of bail in certain appeals — those arising in a post-preliminary examination felony case in which bail of \$25,000 or less was forfeited — would unconstitutionally diminish the appellate jurisdiction of the courts of appeal from what it was as of June 30, 1995.<sup>29</sup>

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

A second possibility would be to direct bail forfeiture appeals in the same manner as before unification. This approach would be consistent with the overall policy of preserving existing rights and procedures despite

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27. See Code Civ. Proc. §§ 85, 904.2.

28. See Code Civ. Proc. §§ 85, 904.1.

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

unification.<sup>30</sup> It would also comply with the constitutional provision preserving the jurisdiction of the courts of appeal as of June 30, 1995.<sup>31</sup> For these reasons, the Commission recommends this approach.

The recommended legislation is thus based on the pre-unification path of bail forfeiture appeals. Before unification, jurisdiction of a bail forfeiture appeal depended on which trial court, municipal or superior, ordered the forfeiture.<sup>32</sup> Specifically, an appeal from bail forfeiture ordered in municipal court went to the appellate department of the superior court,<sup>33</sup> and an appeal from bail forfeiture ordered in superior court went to the court of appeal.<sup>34</sup>

To carry forward pre-unification procedures in a system without municipal courts, the recommended legislation uses a proxy for which trial court would have ordered a bail forfeiture before unification: the underlying criminal charge.<sup>35</sup> For a felony, the court ordering forfeiture also depended on the stage of the case. The proposal therefore bases jurisdiction of a bail forfeiture appeal on the underlying criminal charge and the stage of the proceeding at which bail was forfeited.<sup>36</sup>

The recommended legislation would direct an appeal from a bail forfeiture in a misdemeanor case<sup>37</sup> to the appellate

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

31. See *supra* note 29.

32. See *supra* note 19.

33. See *supra* note 20.

34. See *supra* note 21.

35. The underlying criminal charge determined which court, municipal or superior, had jurisdiction over the criminal case. See *infra* notes 39, 48.

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

37. A “misdemeanor case” only includes misdemeanor charges; it does not include a felony charge. Penal Code § 691(g); *cf. infra* note 41.

division of the superior court.<sup>38</sup> Before unification, a misdemeanor case was tried in the municipal court.<sup>39</sup> A bail forfeiture in a misdemeanor case was an order by the municipal court, and was appealed to the appellate department of the superior court.<sup>40</sup>

The recommended legislation would base appellate jurisdiction of a bail forfeiture in a felony case<sup>41</sup> according to when the forfeiture occurs. If the forfeiture occurs at a preliminary proceeding before a magistrate,<sup>42</sup> the appeal would be to the appellate division of the superior court.<sup>43</sup> This reflects the pre-unification practice that such preliminary proceedings were conducted by a magistrate in municipal

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

39. The municipal court had jurisdiction over a misdemeanor charge. Former Penal Code § 1462(a) (1991 Cal. Stat. ch. 613, § 8); *In re Joiner*, 180 Cal. App. 2d 250, 254-255, 4 Cal. Rptr. 667 (1960). The municipal court did not have jurisdiction over a felony. *Cf.* 11 B. Witkin, *California Criminal Law Jurisdiction & Venue* § 14, at 102-103 (3d. ed. 2000) (stating that municipal and superior courts did not have concurrent criminal jurisdiction of any particular case, that superior court had jurisdiction over felony, and that superior court had jurisdiction over misdemeanor joined with felony). This was true even though a magistrate sitting in municipal court could, and did, conduct preliminary proceedings related to a felony charge. See *infra* note 44; former Penal Code § 808 (1925 Cal. Stat. ch. 445, § 1) (adding municipal court judges to list of judges who are magistrates); see, e.g., *Newman v. Superior Court*, 67 Cal. 2d. 620, 432 P.2d 972, 63 Cal. Rptr. 284 (1967) (considering appeal relating to bail forfeiture ordered by magistrate in municipal court at preliminary examination).

40. See *supra* note 20.

41. A felony case may include a misdemeanor charged with a felony. See Penal Code § 691(f); see also *infra* note 48; *cf. supra* note 37.

42. Prosecution of a felony by information, rather than indictment, in superior court was (and still is) preceded by a preliminary hearing before a magistrate. See Cal. Const. art. I, § 14; Penal Code §§ 738-739, 806, 872; see also *infra* note 46.

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

court,<sup>44</sup> and that an appeal from that court went to the appellate department of the superior court.<sup>45</sup>

If the forfeiture occurs after an indictment or a legal commitment by a magistrate,<sup>46</sup> the appeal would be to the court of appeal.<sup>47</sup> This would also mirror the pre-unification situation: After an indictment or a legal commitment, a felony case was prosecuted in superior court<sup>48</sup> not municipal court, and an appeal of a bail forfeiture from that court went to the court of appeal.<sup>49</sup>

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44. See Cal. Const. art. I, § 14; Penal Code §§ 738-739, 806, 859, 872, 976; *People v. Thompson*, 50 Cal. 3d 134, 155, 785 P.2d 857, 266 Cal. Rptr. 309 (1990); *Lempert v. Superior Court*, 112 Cal. App. 4th 1161, 1168, 5 Cal Rptr. 3d 700 (2003); *People v. Valdez*, 33 Cal. App. 4th 1633, 1637, 39 Cal. Rptr. 818 (1995); see also Uelmen, *California Criminal Procedure and Trial Court Unification* (March 2002), at 2; *California Criminal Law Practice and Procedure Arraignment* § 6.10, at 144-45, *Preliminary Hearings* § 8.1, at 188-89; *California Judges Benchbook: Criminal Pretrial Proceedings, Commencing the Action* § 1.1, at 3.

45. See *supra* note 20.

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

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

48. The superior court had jurisdiction over a felony case, which included a misdemeanor committed in connection with a felony. See Penal Code § 954; *People v. Leney*, 213 Cal. App. 3d 265, 268, 261 Cal. Rptr. 541 (1989) (superior court jurisdiction over properly joined misdemeanor); 11 B. Witkin, *California Criminal Law Jurisdiction & Venue* § 14, at 102 (3d. ed. 2000) (citing Cal. Const. art. VI, § 10 and Penal Code § 1462(a)). The superior court retained jurisdiction over connected misdemeanor charges even if the felony charges were eliminated before trial. *People v. Clark*, 17 Cal. App. 3d 890, 897-898, 95 Cal. Rptr. 411 (1971).

49. See *supra* note 21.



***Effect of the Recommended Legislation***

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

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

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## PROPOSED LEGISLATION

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

SEC. \_\_\_\_\_. Section 1305.5 is added to the Penal Code, to read:

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

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

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

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

**Comment.** Section 1305.5 is added to clarify the appellate jurisdiction of bail forfeiture matters after trial court unification. The provision preserves the procedural pre-unification status quo. See, e.g., *Newman v. Superior Court*, 67 Cal. 2d 620, 623, 432 P.2d 972, 63 Cal. Rptr. 284 (1967) (amount of bail does not determine jurisdiction of appeal relating to bail forfeiture order); *People v. Topa Ins. Co.*, 32 Cal. App. 4th 296, 38 Cal. Rptr. 2d 167 (1995) (court of appeal heard bail forfeiture appeal involving failure to appear before superior court in felony case, even

though bail was less than jurisdictional limit of municipal court); *County of Los Angeles v. Am. Bankers Ins. Co.*, 202 Cal. App. 3d 1291, 249 Cal. Rptr. 540 (1988) (same); see also *People v. Leney*, 213 Cal. App. 3d 265, 268, 261 Cal. Rptr. 541 (1989) (superior court has jurisdiction to try remaining misdemeanor even if felony charge eliminated before trial); *People v. Clark*, 17 Cal. App. 3d 890, 897-898, 95 Cal. Rptr. 411 (1971) (same).

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

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

SEC. \_\_\_\_\_. Section 1306 of the Penal Code is amended to read:

1306. (a) When any bond is forfeited and the period of time specified in Section 1305 has elapsed without the forfeiture having been set aside, the court which has declared the forfeiture, ~~regardless of the amount of the bail~~, shall enter a summary judgment against each bondsman named in the bond in the amount for which the bondsman is bound. The judgment shall be the amount of the bond plus costs, and notwithstanding any other law, no penalty assessments shall be levied or added to the judgment.

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

to the amount of the costs owing at the time the summary judgment is entered, plus administrative costs and ~~interests~~ interest.

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

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

(e) The district attorney or county counsel shall:

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

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

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

**Comment.** Subdivision (a) of Section 1306 is amended to delete language that is obsolete due to trial court unification. Before unification, it was necessary to make clear that a municipal court was authorized to enter summary judgment based on a bail forfeiture even though the amount of bail exceeded the jurisdictional limit of the municipal court. See 1977 Cal. Stat. ch. 889, § 3.5; *Newman v. Superior Court*, 67 Cal. 2d

620, 622, 432 P.2d 972, 63 Cal. Rptr. 284 (1967); see also Department of Consumer Affairs, Analyst's Report SB 1107 (Song), p. 2. Because municipal courts no longer exist and the superior court has no jurisdictional limit, that language is no longer needed.

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

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

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