

TEXT OF COMMENTS TO SECTIONS AFFECTED BY
2007 COMMISSION RECOMMENDATIONS

CLRC Staff Note. This document sets out the text of Official Comments to three Commission-sponsored bills enacted in the 2007 legislative session — 2007 Cal. Stat. chs. 43, 113, and 263. The source for each Comment is given in the accompanying Table of Sections Affected by 2007 Commission Legislation.

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BUSINESS AND PROFESSIONS CODE

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

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

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

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.

Bus. & Prof. Code § 21710 (amended). Enforcement of owner's lien

Comment. Subdivision (c) of Section 21710 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Section 21710 is also amended to make a stylistic revision.

CIVIL CODE

Civ. Code § 3154 (amended). Petition to release property from lien

Comment. Subdivision (c) of Section 3154 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Section 3154 is also amended to make a stylistic revision.

CODE OF CIVIL PROCEDURE

Code Civ. Proc. § 12a (amended). Calculation of time

Comment. Subdivision (b) of Section 12a is amended to correct the cross-reference to former Section 946, which was repealed by 1968 Cal. Stat. ch. 385, § 1. The relevant substance of former Section 946 is continued in Section 921.

Subdivision (b) is further amended to delete the cross-references to former Sections 974 to 982. Those provisions have been repealed. See 1963 Cal. Stat. ch. 871, § 15. Justice and police courts no longer exist, so there are no corresponding new provisions.

Section 12a is also amended to make grammatical corrections and delete surplus language.

Code Civ. Proc. § 222 (amended). Selection of juror names

Comment. Section 222 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Code Civ. Proc. § 396a (amended). Transfer of actions

Comment. Subdivision (b) of Section 396a is amended to delete the reference to a “docket,” because courts no longer maintain a record denominated a “docket” in civil cases. Actions taken in open court are now recorded in the minutes of a superior court. See Gov't Code § 69844 (minutes of superior court); see also *Copley Press v. Superior Court*, 6 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992).

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

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

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. § 585 (amended). Judgment by default

Comment. Section 585 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Section 585 is also amended to make stylistic revisions.

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

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. § 618 (amended). Receipt of verdict

Comment. Section 618 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Section 618 is also amended to make stylistic revisions and make the statute gender neutral.

Code Civ. Proc. § 644 (amended). Decision of referee or commissioner

Comment. Section 644 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

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

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

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 (amended). Appeal in a civil action or proceeding

Comment. Section 904 is amended to delete an obsolete cross-reference. Former Section 904.4, relating to an appeal from a justice court, was repealed by 1976 Cal. Stat. ch. 1288, § 14.

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

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

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

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).

Code Civ. Proc. § 990 (amended). Summons

Comment. Section 990 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Section 990 is also amended to make stylistic revisions and make the statute gender neutral.

Code Civ. Proc. § 1011 (amended). Service of papers

Comment. Section 1011 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Code Civ. Proc. § 1015 (amended). Service on nonresident party

Comment. Section 1015 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Section 1015 is also amended to make stylistic revisions and make the statute gender neutral.

Code Civ. Proc. § 1169 (amended). Default and default judgment

Comment. Section 1169 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

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

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

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. § 1986 (amended). Obtaining of subpoena

Comment. Section 1986 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

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

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

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

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

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

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

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

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

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

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

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

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.

CORPORATIONS CODE

Corp. Code § 16701 (amended). Buyout of dissociated partner's interest

Comment. Subdivision (c) of Section 16701 is amended to correct a cross-reference.

Corp. Code § 16701.5 (amended). Dissociation within 90 days prior to dissolution

Comment. Section 16701.5 is amended to correct a cross-reference.

Corp. Code § 16914 (amended). Rights and obligations following merger

Comment. Paragraph (2) of subdivision (b) of Section 16914 is amended to correct a cross-reference. Former Government Code Section 12206 was repealed by 1999 Cal. Stat. ch. 1000, § 53, and replaced by subdivision (c) of Government Code Section 12197.

Subdivision (e) of Section 16914 is amended to conform with existing usage of the term “dissociation” throughout the Corporations Code.

EDUCATION CODE

Educ. Code § 17595 (amended). School district purchase through Department of General Services

Comment. Section 17595 is amended to correct a cross-reference. Former Government Code Section 14814, enacted by 1965 Cal. Stat. ch. 371, § 179, was repealed by 1983 Cal. Stat. ch. 1231, § 1.5. It was replaced by former Public Contract Code Section 10324, which in turn was repealed by 2000 Cal. Stat. ch. 918, § 8. The provision now most similar to former Government Code Section 14814 is Public Contract Code Section 10299.

Educ. Code § 43040.5 (repealed). Application of chapter

Comment. Section 43040.5 is repealed as obsolete. As a result of litigation in *California Bldg. Industry Ass’n v. Governing Bd.*, 206 Cal. App. 3d 212, 253 Cal. Rptr. 497 (1988), Section 43040.5 never became operative. See former Section 43060(c).

Educ. Code § 43060 (repealed). Litigation to determine validity of special election of June 2, 1987

Comment. Section 43060 is repealed as obsolete. The litigation described in subdivision (a), *California Bldg. Industry Ass’n v. Governing Bd.*, 206 Cal. App. 3d 212, 253 Cal. Rptr. 497 (1988), overturned the assessment upon which the section is based, and was final on December 29, 1988.

FISH AND GAME CODE

Fish & Game Code § 8610.7 (repealed). Compensation for discontinued fishing

Comment. Section 8610.7 is repealed as obsolete. In order to obtain compensation under this section, all required acts had to be performed by January 1, 1994.

Fish & Game Code § 8610.8 (repealed). Marine resources protection account

Comment. Section 8610.8 is repealed as obsolete. Subdivision (f) of Section 8610.8 provides that the section shall become inoperative on January 1, 1995.

Fish & Game Code § 8610.13 (amended). Penalty for use of gill or trammel nets

Comment. Section 8610.13 is amended to eliminate redundancy with identical language in Section 12003.5.

Fish & Game Code § 12003.5 (amended). Penalty for use of gill or trammel nets

Comment. Section 12003.5 is amended to reflect the repeal of former Section 8610.8.

FOOD AND AGRICULTURAL CODE

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

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

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

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

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.

GOVERNMENT CODE

Gov't Code § 7910 (amended). Determinations to be made by each local jurisdiction

Comment. The former second paragraph of Section 7910 is deleted as obsolete. The former third paragraph (now subdivision (b)) is amended to make a conforming change.

Section 7910 is also amended to make stylistic revisions.

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

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

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 § 26801 (amended). County clerk as clerk of board of supervisors

Comment. Section 26801 is amended to reflect the repeal of Section 26800 and to make the provision gender neutral.

PENAL CODE

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

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

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.

Penal Code § 1196 (amended). Issuance of bench warrant outside county

Comment. Section 1196 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov’t Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Penal Code § 1207 (amended). Entry of judgment

Comment. Section 1207 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov’t Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Section 1207 is also amended to make a stylistic revision.

Penal Code § 1213 (amended). Furnishing of probationary order or judgment

Comment. Section 1213 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov’t Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Section 1213 is also amended to insert subdivisions and make a stylistic revision.

Penal Code § 1326 (amended). Subpoenaing of witnesses

Comment. Section 1326 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov’t Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

VEHICLE CODE

Veh. Code § 1803.3 (amended). Notification of reversal of conviction or dismissal

Comment. Section 1803.3 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Veh. Code § 23140 (amended). Driving under the influence by person under 21

Comment. Subdivision (c) of Section 23140 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Veh. Code § 23229.1. (amended). Operating limousine for hire containing alcoholic beverage

Comment. Subdivision (c) of Section 23229.1 is amended to delete unnecessary language authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of court).

Subdivision (c) is also amended to make a stylistic revision.

Subdivision (d) is deleted as obsolete.