

Memorandum 2011-16

**Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture
(Comments on Tentative Recommendation)**

In early 2007, a staff attorney for the Santa Clara County Superior Court alerted the Commission that the proper jurisdiction of bail forfeiture appeals had become unclear due to unification of the municipal and superior courts and consequent revisions of the statutes that generally govern appellate jurisdiction in civil and criminal cases. The Commission studied the matter and recommended legislation to address the problem, but the legislation (AB 2166, introduced by Assembly Member Tran in 2008) was opposed by the bail industry and was not enacted. Thereafter, the Commission studied the matter further, and issued a tentative recommendation that takes a new approach. See Tentative Recommendation on *Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture* (Oct. 2010). This memorandum discusses the comments on that tentative recommendation, which are attached as follows:

- | | |
|--|-------------------|
| | <i>Exhibit p.</i> |
| • Greg Padilla, Golden State Bail Agents Ass’n (11/16/10) | 1 |
| • Rob White, Two Jinn, Inc. d/b/a Aladdin Bail Bonds (2/14/11) | 2 |

The memorandum begins by briefly summarizing the tentative recommendation. We then describe the comments received. **The Commission needs to decide whether to approve the proposal as a final recommendation (with or without revisions), for printing and submission to the Legislature.**

SUMMARY OF THE TENTATIVE RECOMMENDATION

The tentative recommendation proposes that jurisdiction of a bail forfeiture appeal would generally depend on the amount in controversy. Like other civil appeals, a bail forfeiture appeal involving more than \$25,000 would be within the jurisdiction of the local court of appeal. Similarly, a bail forfeiture appeal

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

involving less than \$25,000 generally would be within the jurisdiction of the appellate division of the local superior court. However, if a bail forfeiture occurs in a later stage of a felony case (at or after the sentencing hearing or after the indictment or the legal commitment by a magistrate), the appeal would be within the jurisdiction of the court of appeal, regardless of the amount in controversy. This special rule is necessary to comply with a constitutional provision (Cal. Const. art. VI, § 11) that preserves the appellate jurisdiction of the court of appeal as it existed on June 30, 1995.

COMMENTS ON THE TENTATIVE RECOMMENDATION

The Commission received only two comments on the tentative recommendation, both of which support the Commission's new approach. These comments were from (1) Golden State Bail Agents Association (hereafter, "GSBAA") and (2) Two Jinn, Inc. d/b/a Aladdin Bail Bonds (hereafter, "Aladdin").

GSBAA, a trade association representing the California bail industry, is headquartered in Sacramento, but has members throughout California. Its members "include bail employees, bail agents, and bail insurance companies." Exhibit p. 1.

GSBAA writes that it "supports the tentative recommendation of Memorandum 2010-43." *Id.* (Memorandum 2010-43 presented a draft of the tentative recommendation, which the Commission approved without substantive change. See Minutes (Oct. 2010), p. 9.)

Justifying its position, GSBAA explains that bail forfeiture proceedings are civil in nature, and "fairness requires that the subject matter of bail bond forfeiture proceedings should be determined as any other civil action would be, based on the amount in controversy." Exhibit p. 1.

Aladdin, "one of the largest providers of bail bonds in the state of California," also "supports the CLRC's proposed restructuring of appellate jurisdiction for bail forfeitures." Exhibit pp. 2, 3. Aladdin "believes that genuine confusion does exist among various jurisdictions as to the proper procedure for the appeal of a bail forfeiture judgment." *Id.* at 2. It explains:

The confusion arises because a bail forfeiture judgment is technically a civil matter but is also inherently linked to a criminal case. Thus, courts are unaware whether an appeal from a bail forfeiture judgment should follow criminal appellate rules or civil

appellate rules. It has been Aladdin's experience that various jurisdiction[s] follow different rules when handling bail forfeiture appeals. Sometimes variations will even exist among different court personnel within the same jurisdiction.

Id. Aladdin thus "supports the CLRC's effort to bring uniformity to the rules governing the appellate jurisdiction of bail forfeiture judgments." *Id.*

Further, because "bail bond proceedings are contractual in origin and civil in nature, Aladdin supports the CLRC's effort to assign civil appellate jurisdiction to appeals from bail forfeiture judgments." *Id.* In addition, Aladdin "does not object to the exception carved out by the CLRC's recommendation to send bail forfeiture matters concerning less than \$25,000 but involving felony criminal cases that have proceeded beyond an indictment or the completion of a preliminary examination to the Court of Appeal in compliance with the California Constitution." *Id.* at 2-3. In short, Aladdin believes that the Commission's proposal "will provide clarity to an area of the law where there is currently ambiguity," and is "based upon well established case law." *Id.* at 3.

ANALYSIS OF THE COMMENTS

GSBAA and Aladdin both objected to the Commission's previous proposal on this matter, which was not enacted. Their support of the current proposal, coupled with the apparent lack of any opposition, is encouraging. Another encouraging factor is that Commission staff developed the current proposal in close communication with contacts at the Administrative Office of the Courts ("AOC"). Although we have no official comment from the Judicial Council or any of its committees, our AOC contacts have informally told us that a key committee approves of the general concept behind the Commission's new approach. See Memorandum 2010-43, p. 5.

In light of this positive input, the staff recommends that the Commission **approve the current proposal as a final recommendation, for printing and submission to the Legislature, subject to the following minor technical revisions:**

- In the first paragraph of footnote 22, a new case should be added to the list of examples: *People v. Bankers*, 182 Cal. App. 4th 1377, 106 Cal. Rptr. 3d 680 (2d Dist. 2010).
- Three of the cases cited in footnote 22 are unpublished decisions. These citations should include a parenthetical indicating as much,

similar to the parentheticals included elsewhere in the proposal (e.g., footnote 21).

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel



Golden State BAIL AGENTS ASSOCIATION

Law Revision Commission
RECEIVED

NOV 19 2010

November 16, 2010

Ms. Catherine Bidart
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739

File: _____

RE: Support of Memorandum 2010-43 (Appellate Jurisdiction of Bail Forfeitures)

Dear Ms. Bidart:

Golden State Bail Agents Association (GSBAA) is a trade association representing the California bail industry. The purpose of the association is to promote the understanding of the bail industry's important role in California's criminal justice system and to protect the rights of its citizens. The Association is headquartered in Sacramento, California, but has members throughout California. The members of GSBAA include bail employees, bail agents and bail insurance companies.

GSBAA supports the tentative recommendation of Memorandum 2010-43.

The California Supreme Court held that:

"While bail bond proceedings occur in connection with criminal prosecutions, they are independent from and collateral to the prosecutions and are civil in nature." (People v. American Contractors Indemnity Co. (2004) 33 Cal.4th 653, 657, emphasis added)

Therefore, fairness requires that the subject matter jurisdiction of bail bond forfeiture proceedings should be determined as any other civil action would be, based on the amount in controversy. (CCP §85(a) and 88.)

Should you have any questions please contact our legislative advocate, Kathryn Lynch, at (916) 443-0202.

Sincerely,

Greg "Topo" Padilla, President
Golden State Bail Agents Association

- cc: Aaron Maguire, Deputy Legislative Secretary, Governor's Office
- Jerry McGuire, Consultant, Senate Committee on Public Safety
- Eric Csizmar, Policy Consultant, Senate Republican Caucus
- Gregory Pagan, Chief Consultant, Assembly Committee on Public Safety
- Gary Olson, Policy Consultant, Assembly Republican Caucus
- Kathryn Lynch, Legislative Advocate
- Golden State Bail Agents Association

P.O. Box 391 Sacramento, CA 95814
(866) 333-6551 Office ■ (866) 946-9330 Fax
www.gsbaa.org

**EMAIL FROM ROB WHITE ON BEHALF OF
TWO JINN, INC. D/B/A ALADDIN BAIL BONDS
(FEB. 14, 2011)**

Re: Appellate Jurisdiction of Bail Forfeiture

Ms. Gaal:

I am writing this letter on behalf of Two Jinn Inc. dba, Aladdin Bail Bonds, (“Aladdin”) in **support** of the California Law Review Commission’s (“CLRC”) recommendation to restructure the “Appellate Jurisdiction of Bail Forfeiture.” Aladdin believes the CLRC’s recommendation is legally sound and will help clear up confusion as to the proper jurisdiction for the appeal of a bail forfeiture judgment.

Aladdin is one of the largest providers of bail bonds in the state of California. Aladdin operates 45 retail outlets throughout California and employs over 200 licensed bail agents. Aladdin writes thousands of bonds every year and thus, inevitably, has numerous bail forfeiture matters that require appeal. Aladdin believes that genuine confusion does exist among various jurisdictions as to the proper procedure for the appeal of a bail forfeiture judgment. The confusion arises because a bail forfeiture judgment is technically a civil matter but is also inherently linked to a criminal case. Thus, courts are unaware whether an appeal from a bail forfeiture judgment should follow criminal appellate rules or civil appellate rules. It has been Aladdin’s experience that various jurisdiction follow different rules when handling bail forfeiture appeals. Sometimes variations will even exist among different court personnel within the same jurisdiction.

Accordingly, Aladdin supports the CLRC’s effort to bring uniformity to the rules governing the appellate jurisdiction of bail forfeiture judgments. In particular, Aladdin supports the CLRC’s recommendation because the recommendation properly treats appeals from bail forfeiture judgments as civil matters. As the California Supreme Court explained:

While bail bond proceedings occur in connection with criminal prosecutions, they are independent from and collateral to the prosecutions and are civil in nature...The bail bond is a contract between the surety and the government whereby the surety acts as a guarantor of the defendant’s appearance in court under the risk of forfeiture of the bond.

People v. American Contractors Indemnity Co. (2004) 33 Cal.4th 653, 657.

Given that bail bond proceedings are contractual in origin and civil in nature, Aladdin supports the CLRC’s effort to assign civil appellate jurisdiction to appeals from bail forfeiture judgments. Additionally, Aladdin does not object to the exception carved out by the CLRC’s recommendation to send bail forfeiture matters concerning less than \$25,000 but involving felony criminal cases that have proceeded beyond an indictment or

the completion of a preliminary examination to the Court of Appeal in compliance with the California Constitution.

The CLRC's proposed addition of Penal Code § 1305.5 will provide clarity to an area of the law where there is currently ambiguity. Further, Aladdin believes that the CLRC's recommendation is based upon well established case law. Therefore, Aladdin supports the CLRC's proposed restructuring of appellate jurisdiction for bail forfeitures.

Respectfully submitted,

Robert Tomlin White
Associate General Counsel
Two Jinn Inc. d/b/a Aladdin Bail Bonds