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MINUTES OF MEETING  
CALIFORNIA LAW REVISION COMMISSION  
JUNE 22-23, 2006  
SACRAMENTO

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The California Law Revision Commission met in Sacramento on June 22-23, 2006.

**Commission:**

*Present:* Edmund L. Regalia, Chairperson  
David Huebner, Vice Chairperson  
Diane F. Boyer-Vine, Legislative Counsel  
Sidney Greathouse  
Pamela L. Hemminger  
Susan Duncan Lee  
William E. Weinberger

*Absent:* Noreen Evans, Assembly Member  
Frank Kaplan  
Bill Morrow, Senate Member

**Staff:** Nathaniel Sterling, Executive Secretary  
Brian P. Hebert, Assistant Executive Secretary  
Steven E. Cohen, Staff Counsel  
Barbara S. Gaal, Staff Counsel

**Consultants:** None

**Other Persons:**

Sam Abdulaziz, Los Angeles (June 22)  
Oliver Burford, Executive Council of Homeowners (June 23)  
Nicole Camarillo, San Francisco (June 22)  
Joy Cheah, DHS/TPL Branch (June 22)  
Frank Collard, Southern California Rock Products (June 22)  
Karen D. Conlon, California Association of Community Managers (June 23)  
Denise Duncan, Sacramento (June 22)  
Steve Ingram, Consumer Attorneys of California  
Charlotte Ito, State Bar Trusts & Estates Section (June 22)  
David L. Mandel, Senior Legal Hotline (June 22)  
Dick Nash, Building Industry Credit Association (June 22)  
Craig Page, California Land Title Association (June 22)  
Kate Sproul, Senate Office of Research (June 22)  
Mary Pat Toups, Laguna Woods (June 22)

Jennifer Wada, California Association of Community Managers (June 23)  
Norm Widman, Lumber Association of California and Nevada (June 22)  
Brenda Thomas Wilson, Thomas Books, LLC

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MINUTES OF APRIL 27, 2006, COMMISSION MEETING

1 The Commission approved the Minutes of the April 27, 2006, Commission  
2 meeting as submitted by the staff, subject to the following correction:

3 On page 15, line 31, “Section 2440” should read “Section 2040”.

4 The Commission also corrected the Minutes of the February 23, 2006,  
5 Commission meeting (referred to in the Minutes of the April 27, 2006, meeting)  
6 to indicate that the attendance of Bonnie Laderman and Larry Robinson,  
7 residents of the Springfield Homeowners Association, was not on behalf of that  
8 association.

LEGISLATIVE PROGRAM

9 The Commission considered Memorandum 2006-18, relating to the  
10 Commission’s 2006 legislative program. The staff orally updated the chart  
11 attached to the memorandum with the following information:

12 AB 69 (Harman), relating to ownership of amounts withdrawn from joint  
13 account, is dead.

14 AB 770 (Mullin) and SB 551 (Lowenthal), relating to CID ombudsperson, are  
15 still alive, but amendments are possible relating to mediation.

STUDY H-821 – MECHANICS LIEN LAW

16 The Commission considered Memorandum 2006-20 and the attached staff  
17 draft of a tentative recommendation on mechanics lien law, together with  
18 Memorandum 2006-26 containing suggested conforming revisions. The

1 Commission approved the draft tentative recommendation and conforming  
2 revisions to circulate for public comment, subject to the revisions set out below.

3 **Preliminary Part of Tentative Recommendation**

4 In the preliminary part to the tentative recommendation, the reference on  
5 page 8 to the identity of a fringe benefit trust should be deleted. On page 9 the  
6 reference to an “individual trade” should be changed to an “individual contract”.

7 **Electronic Notice**

8 The Commission approved a provision along the following lines for inclusion  
9 in the draft, relating to electronic notice. The staff should review the Code of  
10 Civil Procedure provisions for electronic notice in court proceedings. The staff  
11 should reconfigure the provision so that it is clear it applies to a commercial  
12 transaction as well as to a consumer transaction.

13 **§ 7110. Electronic communication**

14 7110. (a) As used in this section, “electronic record” has the  
15 meaning provided in Section 1633.2.

16 (b) A notice under this title may be given to a person in the form  
17 of an electronic record if (i) the person has agreed to receive the  
18 record by electronic means and, (ii) if the person is a consumer  
19 within the meaning of Section 7006 of Title 15 of the United States  
20 Code, the requirements of Section 7001 of Title 15 of the United  
21 States Code relating to consumer consent to an electronic record are  
22 satisfied.

23 **Comment.** Section 7110 is new. It combines the agreement  
24 requirement of the California Uniform Electronic Transactions Act  
25 (UETA) with the consumer protections of the federal Electronic  
26 Signatures in Global and National Commerce Act (E-Sign).

27 A consumer within the meaning of E-Sign is an individual who  
28 obtains products or services used primarily for personal, family, or  
29 household purposes.” 15 USC § 7006(1). The consumer consent  
30 requirements of E-Sign include (i) affirmative consent, (ii)  
31 disclosure, (iii) electronic access, (iv) software and hardware  
32 upgrades. See 15 USC § 7001(c)(1).

33 See also Section 7032 (“person” defined).

34 **Commencement**

35 The Commission approved a provision along the following lines for inclusion  
36 in the draft, defining commencement of a work of improvement. The staff should  
37 double check subdivision (a) to determine whether the case law requires

1 incorporation of materials in order for commencement to have occurred, or  
2 whether delivery of materials that ultimately are incorporated is sufficient.

3 **§ 7003. Commencement**

4 7003. A work of improvement “commences” when either of the  
5 following occurs:

6 (a) Material or supplies that are used or consumed in the work  
7 of improvement are delivered to the site.

8 (b) There is actual visible work of a permanent nature on the  
9 site.

10 **Comment.** Section 7003 is new. It codifies case law. See, e.g.,  
11 Walker v. Lytton Sav. & Loan Assn., 2 Cal. 3d 152, 159, 84 Cal. Rptr.  
12 521 (1970); Halbert's Lumber, Inc. v. Lucky Stores, Inc. 6 Cal. App.  
13 4th 1233, 1240-1241, 8 Cal. Rptr. 2d 298 (1992).

14 **Notice of Completion**

15 The Commission revised the proposed revision of the notice of completion  
16 statute to allow a notice of completion within 15 (rather than 10) days after  
17 completion. That would ease the burden on the owner to determine that actual  
18 completion has in fact occurred. The concept of allowing a notice of completion  
19 at any time after completion should not be included in the draft.

20 **Knowledge**

21 The Commission approved an addition to the statute of a definition of  
22 “knowledge” along the following lines:

23 **§ 7015. Know or knowledge**

24 7015. A person “knows” or “has knowledge” of information if  
25 the person knows or should know that information.

26 **Comment.** Section 7015 is new.

27 See also Section 7032 (“person” defined).

28 **Reputed Owner**

29 The Commission approved addition of a definition of “reputed owner” along  
30 the following lines.

31 **§ 7037. Reputed owner, direct contractor, or construction lender**

32 7037. (a) “Reputed owner” means a person that a claimant  
33 reasonably and in good faith believes is an owner.

34 (b) “Reputed direct contractor” means a person that a claimant  
35 reasonably and in good faith believes is a direct contractor.

1 (c) "Reputed construction lender" means a person that a  
2 claimant reasonably and in good faith believes is a construction  
3 lender.

4 **Comment.** Section 7037 is new. It codifies case law. See Kodiak  
5 Industries, Inc. v. Ellis, 185 Cal. App. 3d 75, 85, 229 Cal. Rptr. 418  
6 (1986). A reference in this part to a reputed owner, contractor, or  
7 lender, includes co-owners, contractors, or lenders. See Section 14  
8 (the singular includes the plural).

9 As the staff continues its review of ownership issues, the staff should  
10 consider whether there should be a guideline for identification of a reputed  
11 owner, e.g., as listed on the contract, building permit, or the like.

### 12 **Notice to Co-Owner**

13 The Commission approved the staff proposal to delete from the draft the  
14 provision that notice to one co-owner is deemed to be notice to all co-owners.  
15 Instead, the draft should require notice to the owner or reputed owner.

16 While the tentative recommendation is circulating for comment, the staff  
17 should continue to work on issues relating to notice to co-owners, including the  
18 possibility of explicitly requiring notice to all co-owners or reputed co-owners.

### 19 **Operative Date and Transitional Issues**

20 The Commission approved the concept of a one year deferral of the operative  
21 date. On the operative date, the new law should apply to existing contracts, to  
22 the extent practicable.

#### 23 **Transitional provision**

24 (a) This act is operative January 1, 2009.

25 (b) Except as otherwise provided in this section, this act applies  
26 to a contract for a work of improvement executed before, on, or  
27 after the operative date.

28 (c) The effectiveness of a notice given, or other action taken,  
29 before the operative date is governed by the applicable law in effect  
30 before the operative date and not by this act.

31 While the tentative recommendation is circulating for comment, the staff  
32 should develop a more detailed provision that identifies typical acts that would  
33 be excepted from retroactive operation, such as a notice given in compliance with  
34 the law in effect at the time it is given. The staff should present the more detailed  
35 transitional provision for Commission review at the time comments on the  
36 tentative recommendation are reviewed.

1 **Recordation of Lien**

2 The Commission approved the concept of generalizing throughout the  
3 mechanics lien law the principle that an instrument filed for record with the  
4 county recorder “shall be deemed duly recorded without acknowledgment.” A  
5 conforming revision should be made to Government Code Section 27287.

6 **Invalid Lien**

7 The Commission approved the principle that a claim of lien should be subject  
8 to a release order by the court if, “There is a final judgment in another  
9 proceeding that the petitioner is not indebted to the claimant for the demand on  
10 which the claim of lien is based.”

11 The Commission declined to adopt the “early test of validity” described in  
12 the memorandum due to the staff’s inability to develop an effective automatic  
13 discharge mechanism that would implement the proposed  
14 affidavit/counteraffidavit exchange between the parties.

15 **Payment Bond**

16 The tentative recommendation should solicit comment on the concept of  
17 requiring the owner to provide a copy of a payment bond to any claimant that  
18 gives a preliminary notice. The tentative recommendation should indicate that  
19 the consequence of failure to comply would be to toll the six month statute of  
20 limitations for enforcement of a recorded bond until a copy of the bond is  
21 provided. In the case of an unrecorded bond, the claimant would be unaware of  
22 its existence, and would simply pursue lien and stop notice remedies instead.

23 **Preliminary Notice in Public Works Contract**

24 The Commission declined to adopt the requirement that a first tier  
25 subcontractor under a public works contract should be required to give  
26 preliminary notice. The original contractor under a public works contract is  
27 required to list subcontractors, so preliminary notice by a first tier subcontractor  
28 is not as critical as it is for a private work of improvement.

29 The Commission declined to adopt the proposal to eliminate the 75/15 day  
30 post-completion notice on a payment bond. The same rule applies on a private  
31 work of improvement, and it is unlikely that the parties adversely affected would  
32 agree that this is an improvement in the law.

1 **Cessation of Labor in Public Works Contract**

2 The tentative recommendation should solicit comment on the rule that 30  
3 days cessation of labor is completion. Does this cause problems in practice, and  
4 should it be conformed to the 60 day rule applicable to a private work of  
5 improvement?

6 **Conforming Revisions**

7 The conforming revisions should be supplemented by any additional  
8 revisions the staff has discovered.

9 **STUDY H-855 – STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW**

10 The Commission considered Memorandum 2006-25 and its First and Second  
11 Supplements, discussing a staff draft on the clarification and simplification of  
12 CID law. The Commission approved the staff draft and the staff's  
13 recommendations, subject to the following decisions.

14 **General Notice**

15 The staff will consider whether proposed Civil Code Section 4045 is broad  
16 enough to include the posting of notice on an electronic kiosk.

17 **Executive Session**

18 The staff will examine the relationship between the general rules on a board  
19 meeting in executive session and special rules that may apply in connection with  
20 the collection of an assessment.

21 The staff will examine the application of Civil Code Section 47 to a statement  
22 made at a board meeting.

23 A note will be added to proposed Civil Code Section 4540 inviting public  
24 comment on whether a board should have discretion to meet in executive session  
25 when the person who is the subject of the meeting wishes the meeting to be  
26 open. The note will invite comment on whether there are values served by  
27 meeting in executive session other than protecting the privacy of the person who  
28 is the subject of the meeting (e.g., avoiding defamation, protecting complainant  
29 privacy, etc.).

30 **Member Motion at Board Meeting**

31 The Commission disapproved a suggestion that a member be authorized to  
32 make or second a motion at a board meeting.

1 **Inspection of Association Correspondence**

2 The Commission approved proposed Civil Code Section 4700(a)(13), with the  
3 following revisions:

4 (13) ~~Official-written~~ Written correspondence of the association,  
5 other than correspondence that relates to litigation, ~~the formation of~~  
6 ~~a contract with a third party~~, personnel matters, member discipline,  
7 an assessment dispute, or a request for a payment plan for overdue  
8 assessments.

9 The Comment to proposed Civil Code Section 4700 will be revised to make  
10 clear that: (1) the new provision does not affect the existing rule that privileged  
11 communications are not subject to inspection and (2) the provision has no effect  
12 on discovery in a civil or criminal case.

13 **Record Retention**

14 The Commission approved inclusion of proposed Civil Code Section 4780 in  
15 the staff draft.

16 **Civil Action to Enforce Statute**

17 The term “member” will be used in proposed Civil Code Section 5130 in place  
18 of the term “interested person.”

STUDY J-103 – ORAL ARGUMENT IN CIVIL PROCEDURE

19 The Commission considered Memorandum 2006-15 and the attached staff  
20 draft of a report to the Legislature on oral argument in civil procedure. The  
21 report indicates that current practice in the courts appears to be satisfactory, and  
22 that proposed legislation on the matter would create more problems than it  
23 resolves. The Commission approved the report for submission to the Legislature  
24 as drafted.

STUDY J-111 – STATUTE OF LIMITATIONS FOR LEGAL MALPRACTICE

25 The Commission considered Memorandum 2006-17 and its First and Second  
26 Supplements, relating to the statute of limitations for legal malpractice. The  
27 Commission decided to discontinue work on this topic. In case future  
28 developments make it worthwhile to recommence work, the topic should remain  
29 on the Commission’s calendar of topics authorized for study.



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

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

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

22 2020.510. (a) A deposition subpoena that commands the  
23 attendance and the testimony of the deponent, as well as the  
24 production of business records, documents, and tangible things,  
25 shall:

26 (1) Comply with the requirements of Section 2020.310.

27 (2) Designate the business records, documents, and tangible  
28 things to be produced either by specifically describing each  
29 individual item or by reasonably particularizing each category of  
30 item.

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

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

35 (c) Where, as described in Section 1985.3, the person to whom  
36 the deposition subpoena is directed is a witness, and the business  
37 records described in the deposition subpoena are personal records  
38 pertaining to a consumer, the service of the deposition subpoena  
39 shall be accompanied either by a copy of the proof of service of the  
40 notice to the consumer described in subdivision (e) of Section  
41 1985.3, or by the consumer's written authorization to release  
42 personal records described in paragraph (2) of subdivision (c) of  
43 Section 1985.3.

44 (d) Where, as described in Section 1985.6, the person to whom  
45 the deposition subpoena is directed is a witness, and the business  
46 records described in the deposition subpoena are employment  
47 records pertaining to an employee, the service of the deposition

1 subpoena shall be accompanied either by a copy of the proof of  
2 service of the notice to the employee described in subdivision (e) of  
3 Section 1985.6, or by the employee's written authorization to  
4 release personal records described in paragraph (2) of subdivision  
5 (c) of Section 1985.6.

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

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

11 2025.240. (a) The party who prepares a notice of deposition shall  
12 give the notice to every other party who has appeared in the action.  
13 The deposition notice, or the accompanying proof of service, shall  
14 list all the parties or attorneys for parties on whom it is served.

15 (b) Where, as defined in subdivision (a) of Section 1985.3 or  
16 1985.6, the party giving notice of the deposition is a subpoenaing  
17 party, and the deponent is a witness commanded by a deposition  
18 subpoena to produce personal records of a consumer or  
19 employment records of an employee, the subpoenaing party shall  
20 serve on that consumer or employee all of the following:

21 (1) A notice of the deposition.

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

24 (3) A copy of the deposition subpoena.

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

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

32 Corresponding revisions should be made in the preliminary part (narrative  
33 portion) of the draft.

34 **Forcible Entry and Forcible Detainer**

35 The Commission decided that the special provisions governing discovery in  
36 an unlawful detainer case should also apply to a proceeding for forcible entry or  
37 forcible detainer. The amendments shown in the draft (Code Civ. Proc. §§  
38 2025.270, 2030.020, 2030.260, 2031.020, 2031.030, 2031.260, 2033.020, 2033.250)  
39 should be revised to refer to "a proceeding under Chapter 4 (commencing with  
40 Section 1159) of Title 3 of Part 3," instead of "an unlawful detainer action."

41 Corresponding revisions should be made in the preliminary part.



1 intent of the provision. To achieve that objective, the Commission tentatively  
2 approved the following reforms:

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

4 904.1. (a) An appeal, other than in a limited civil case, is to the  
5 court of appeal. An appeal, other than in a limited civil case, may  
6 be taken from any of the following:

7 (1) From a judgment, except (A) an interlocutory judgment,  
8 other than as provided in paragraphs (8), (9), and (11), or (B) a  
9 judgment of contempt that is made final and conclusive by Section  
10 1222, ~~or (C) a judgment granting or denying a petition for issuance~~  
11 ~~of a writ of mandamus or prohibition directed to a municipal court~~  
12 ~~or the superior court in a county in which there is no municipal~~  
13 ~~court or the judge or judges thereof that relates to a matter pending~~  
14 ~~in the municipal or superior court. However, an appellate court~~  
15 ~~may, in its discretion, review a judgment granting or denying a~~  
16 ~~petition for issuance of a writ of mandamus or prohibition, or a~~  
17 ~~judgment or order for the payment of monetary sanctions, upon~~  
18 ~~petition for an extraordinary writ.~~

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

21 (3) From an order granting a motion to quash service of  
22 summons or granting a motion to stay or dismiss the action on the  
23 ground of inconvenient forum.

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

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

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

30 (7) From an order appointing a receiver.

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

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

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

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

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

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

1 (b) Sanction orders or judgments of five thousand dollars  
2 (\$5,000) or less against a party or an attorney for a party may be  
3 reviewed on an appeal by that party after entry of final judgment in  
4 the main action, or, at the discretion of the court of appeal, may be  
5 reviewed upon petition for an extraordinary writ.

6 **Comment.** Subdivision (a) of Section 904.1 is amended to reflect  
7 unification of the municipal and superior courts pursuant to Article  
8 VI, Section 5(e), of the California Constitution. Former Section  
9 904.1(a)(1)(C) is continued in Section 904.3, with revisions to reflect  
10 unification.

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

13 904.2. An appeal of a ruling by a superior court judge or other  
14 judicial officer in a limited civil case is to the appellate division of  
15 the superior court. An appeal of a ruling by a superior court judge  
16 or other judicial officer in a limited civil case may be taken from  
17 any of the following:

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

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

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

25 (d) From an order granting a motion to quash service of  
26 summons or granting a motion to stay or dismiss the action on the  
27 ground of inconvenient forum.

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

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

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

34 (h) From an order appointing a receiver.

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

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

42 904.3. An appeal may not be taken from a judgment of the  
43 appellate division of a superior court granting or denying a petition  
44 for issuance of a writ of mandamus or prohibition directed to the  
45 superior court, or a judge thereof, in a limited civil case or a

1 misdemeanor or infraction case. An appellate court may, in its  
2 discretion, upon petition for extraordinary writ, review the  
3 judgment.

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

8 Before 1982, if a litigant disagreed with a prejudgment ruling of  
9 a municipal or justice court, the litigant could seek an extraordinary  
10 writ from the superior court. A judgment on the writ petition could  
11 be appealed to the appropriate court of appeal. See *Gilbert v.*  
12 *Municipal Court*, 73 Cal. App. 3d 723, 140 Cal. Rptr. 897 (1977);  
13 *Burrus v. Municipal Court*, 36 Cal. App. 3d 233, 111 Cal. Rptr. 539  
14 (1973).

15 In 1982, the Legislature amended Section 904.1 to preclude an  
16 appeal from a superior court judgment on a petition for a writ of  
17 mandamus or prohibition directed to a municipal or justice court.  
18 See 1982 Cal. Stat. ch. 1198, § 63.2. The language added in 1982,  
19 with some modifications, later became former Section  
20 904.1(a)(1)(C). The provision was applicable not just in a civil case,  
21 but also when a party to a misdemeanor case sought a petition for a  
22 writ of mandamus or prohibition. See *Baluyut v. Superior Court*, 12  
23 Cal. 4th 826, 829 n.3, 911 P.2d 1, 50 Cal. Rptr. 2d 101 (1996); *Serna v.*  
24 *Superior Court*, 40 Cal. 3d 239, 245-46 & n.2, 707 P.2d 793, 219 Cal.  
25 Rptr. 420 (1985); see also *Bermudez v. Municipal Court*, 1 Cal. 4th  
26 855, 863, 823 P.2d 1210, 4 Cal. Rptr. 2d 609 (1992).

27 In a unified court system, civil cases that used to be adjudicated  
28 in the municipal and justice courts are classified as limited civil  
29 cases and adjudicated in the superior court. See Section 85 &  
30 Comment; *Trial Court Unification: Revision of Codes*, 28 Cal. L.  
31 Revision Comm'n Reports 51, 64-65 (1998). Misdemeanor and  
32 infraction cases are also adjudicated in superior court. Cal. Const.  
33 art. VI, § 10; see also Penal Code § 19.7 (jurisdiction of infraction). If  
34 a litigant disagrees with a prejudgment ruling in a limited civil case  
35 or a misdemeanor or infraction case, the litigant can seek an  
36 extraordinary writ from the appellate division of the superior court.  
37 See Cal. Const. art. VI, § 10; see also Sections 1068(b), 1085(b),  
38 1103(b) & Comments.

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

47 The clause in former Section 904.1(a)(1)(C) permitting an  
48 appellate court to review a sanction order upon petition for an

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

7 The tentative recommendation should include a Note soliciting comment on  
8 whether it is appropriate that proposed Section 904.3 refers to a writ petition in a  
9 misdemeanor or infraction case, as well as a writ petition in a limited civil case.  
10 The Note should also seek comment on the possibility of splitting the substance  
11 of proposed Section 904.3 into two provisions: one in the Code of Civil Procedure  
12 that pertains to a writ petition in a limited civil case, and one in the Penal Code  
13 that pertains to a writ petition in a misdemeanor or infraction case.

14 *Obsolete Cross-References to Former Code of Civil Procedure Section 904.3*

15 The Commission tentatively approved the following amendments to  
16 eliminate obsolete cross-references to former Code of Civil Procedure Section  
17 904.3:

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

19 399. (a) When an order is made transferring an action or  
20 proceeding under any of the provisions of this title, the clerk shall,  
21 after expiration of the time within which a petition for writ of  
22 mandate could have been filed pursuant to Section 400, or if ~~such a~~  
23 writ petition is filed after judgment denying the writ becomes final,  
24 and upon payment of the costs and fees, transmit the pleadings and  
25 papers therein (or if the pleadings be oral a transcript of the same)  
26 to the clerk of the court to which the same is transferred. When the  
27 transfer is sought on any ground specified in subdivisions ~~2, 3, 4~~  
28 ~~and 5~~ (b), (c), (d), and (e) of Section 397, the costs and fees thereof,  
29 and of filing the papers in the court to which the transfer is  
30 ordered, shall be paid at the time the notice of motion is filed, by  
31 the party making the motion for the transfer. When the transfer is  
32 sought solely, or is ordered, because the action or proceeding was  
33 commenced in a court other than that designated as proper by this  
34 title, ~~such those~~ costs and fees (including any expenses and  
35 attorney's fees awarded defendant pursuant to Section 396b) shall  
36 be paid by the plaintiff before ~~such the~~ transfer is made; and ~~if, in~~  
37 ~~any such case,~~ if the defendant has paid ~~such those~~ costs and fees at  
38 the time of filing ~~his or her~~ a notice of motion, the same shall be  
39 repaid to the defendant, upon the making of ~~such the transfer~~  
40 order. If ~~such those~~ costs and fees have not been so paid by the  
41 plaintiff within five days after service of notice of ~~such the transfer~~  
42 order, then any other party interested therein, whether named in

1 the complaint as a party or not, may pay ~~such~~ those costs and fees,  
2 and the clerk shall thereupon transmit the papers and pleadings  
3 therein as if ~~such~~ those costs and fees had been originally paid by  
4 the plaintiff, and the same shall be a proper item of costs of the  
5 party so paying the same, recoverable by ~~such~~ that party in the  
6 event ~~he or she~~ that party prevails in the action; otherwise, the  
7 same shall be offset against and deducted from the amount, if any,  
8 awarded the plaintiff in the event the plaintiff prevails against ~~such~~  
9 that party in ~~such~~ the action. The cause of action shall not be further  
10 prosecuted in any court until ~~such~~ those costs and fees are paid. If  
11 ~~such~~ those costs and fees are not paid within 30 days after service  
12 of notice of ~~such~~ the transfer order, or if a copy of a petition for writ  
13 of mandate pursuant to Section 400 is filed in the trial court, or if an  
14 appeal is taken pursuant to Section 904.2 ~~or 904.3~~, then within 30  
15 days after notice of finality of the order of transfer, the court on a  
16 duly noticed motion by any party may dismiss the action without  
17 prejudice to the cause on the condition that no other action on the  
18 cause may be commenced in another court prior to satisfaction of  
19 the court's order for costs and fees. When a petition for writ of  
20 mandate or appeal does not result in a stay of proceedings, the time  
21 for payment of ~~such~~ those costs shall be 60 days after service of the  
22 notice of the order.

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

31 (c) The court to which an action or proceeding is transferred  
32 under this title shall have and exercise over the same the like  
33 jurisdiction as if it had been originally commenced therein, all prior  
34 proceedings being saved, and ~~such~~ the court may require ~~such~~  
35 amended, additional, or supplemental pleadings, and the giving of  
36 ~~such~~ notice, as may be necessary for the proper presentation and  
37 determination of the action or proceeding in ~~such~~ the court.  
38

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

44 Section 399 is also amended to correct the cross-references to  
45 subdivisions of Section 397. Former subdivisions (2)-(5) were  
46 relabeled as subdivisions (b)-(e). See 1992 Cal. Stat. ch. 163, § 19.  
47 Section 399 is revised to reflect that change.

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

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

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

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

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

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

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

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

29 (6)(A) If a motion to transfer pursuant to Section 396b is denied  
30 and the defendant fails to respond to the complaint within the time  
31 allowed by the court pursuant to subdivision (e) of Section 396b or  
32 within the time provided in subparagraph (C).

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

38 (C) If the order granting or denying a motion to transfer  
39 pursuant to Section 396a or 396b is the subject of an appeal  
40 pursuant to Section 904.2 ~~or 904.3~~ in which a stay is granted or of a  
41 mandate proceeding pursuant to Section 400, the court having  
42 jurisdiction over the trial, upon application or on its own motion  
43 after ~~such~~ the appeal or mandate proceeding becomes final or upon  
44 earlier termination of a stay, shall allow the defendant a reasonable  
45 time to respond to the complaint. Notice of the order allowing the  
46 defendant further time to respond to the complaint shall be

1 promptly served by the party who obtained ~~such~~ the order or by  
2 the clerk if the order is made on the court's own motion.

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

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

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

14 **Comment.** Subdivision (a)(6)(C) of Section 586 is amended to  
15 delete an obsolete cross-reference to former Section 904.3, relating  
16 to appeals from justice courts. The justice courts no longer exist and  
17 former Section 904.3 was repealed. See 1994 Cal. Stat. res. ch. 113  
18 (SCA 7) (Prop. 191, approved Nov. 8, 1994); 1976 Cal. Stat. ch. 1288,  
19 § 13.

20 Section 586 is further amended to make stylistic revisions.

21 Code of Civil Procedure Section 904 also contains an obsolete cross-reference  
22 to former Code of Civil Procedure Section 904.3. The Commission's tentative  
23 recommendation on *Technical and Minor Substantive Statutory Corrections* (April  
24 2006) proposes to amend Section 904.3 to delete that cross-reference. The  
25 amendment will require adjustment if a new Section 904.3 is added as proposed  
26 in this study. The staff is to coordinate the two proposals as needed.

#### 27 *Writ Jurisdiction in a Small Claims Case*

28 The Commission tentatively approved the following reforms relating to writ  
29 jurisdiction in a small claims case:

#### 30 **Code Civ. Proc. § 1068 (amended). Courts authorized to grant writ 31 of review**

32 1068. (a) A writ of review may be granted by any court when an  
33 inferior tribunal, board, or officer, exercising judicial functions, has  
34 exceeded the jurisdiction of ~~such~~ that tribunal, board, or officer,  
35 and there is no appeal, nor, in the judgment of the court, any plain,  
36 speedy, and adequate remedy.

37 (b) The appellate division of the superior court may grant a writ  
38 of review directed to the superior court in a limited civil case  
39 subject to its appellate jurisdiction or in a misdemeanor or  
40 infraction case subject to its appellate jurisdiction. Where the  
41 appellate division grants a writ of review directed to the superior

1 court, the superior court is an inferior tribunal for purposes of this  
2 chapter.

3 **Comment.** Subdivision (b) of Section 1068 is amended to more  
4 closely track the language of Article VI, Section 10, of the California  
5 Constitution. This is not a substantive change.

6 The amendment helps clarify the treatment of a small claims  
7 case. An appeal from a judgment in a small claims case is not  
8 within the jurisdiction of the appellate division. Rather, such an  
9 appeal consists of a new hearing before a judicial officer other than  
10 the judicial officer who heard the action in the small claims  
11 division. See Section 116.770(a). Because the appellate division  
12 lacks jurisdiction of a small claims appeal, the appellate division  
13 also lacks authority to review a judgment or a prejudgment ruling  
14 in a small claims case by way of extraordinary writ. See Cal. Const.  
15 art. VI, § 10. For further guidance on seeking a writ of review in a  
16 small claims case, see Section 1068.5.

17 Section 1068 is also amended to make a stylistic revision.

18 **Code Civ. Proc. § 1068.5 (added). Writ of review in small claims**  
19 **case**

20 1068.5. (a) A writ of review directed to a superior court with  
21 respect to a judgment or a prejudgment ruling of the small claims  
22 division may be granted by an appellate court or by a judicial  
23 officer of the superior court, other than the judicial officer who  
24 heard the case in the small claims division. Where a judicial officer  
25 of a superior court grants a writ of review directed to the superior  
26 court, the superior court is an inferior tribunal for purposes of this  
27 chapter.

28 (b) A writ of review directed to the superior court with respect  
29 to a postjudgment enforcement order in a small claims case may be  
30 granted by an appellate court or by the appellate division of the  
31 superior court.

32 **Comment.** Section 1068.5 is added to clarify the proper  
33 treatment of a writ petition relating to a small claims case.

34 Subdivision (a) makes clear that if a writ of review is sought in  
35 superior court with respect to a judgment or prejudgment ruling of  
36 the small claims division, the writ proceeding is to be heard by a  
37 judicial officer of the superior court other than the one who heard  
38 the case in the small claims division. This parallels the treatment of  
39 a small claims appeal. See Section 116.770 (small claims appeal is to  
40 be heard by judicial officer of superior court other than officer who  
41 heard case in small claims division); see also Section 1068 Comment  
42 (200x) (appellate division lacks writ jurisdiction of judgment or  
43 prejudgment ruling in small claims case); *City & County of San*  
44 *Francisco v. Small Claims Court for the Northern Judicial District of*  
45 *San Mateo County*, 141 Cal. App. 3d 470, 470, 481, 190 Cal. Rptr.  
46 340 (1983) (affirming decision of superior court judge on writ  
47 petition relating to small claims case, thus implicitly deciding that

1 superior court judge had writ jurisdiction); *Gardiana v. Small*  
2 Claims Court for the San Leandro Hayward Judicial District of  
3 Alameda County, 59 Cal. App. 3d 412, 412, 425, 130 Cal. Rptr. 675  
4 (1976) (same).

5 Subdivision (b) codifies *General Electric Capital Auto Financial*  
6 *Services, Inc. v. Appellate Division of the Superior Court of Los Angeles*  
7 *County*, 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). A small  
8 claims case is a limited civil case. *Id.* at 138. Where a statute or rule  
9 applicable to a small claims case conflicts with a statute or rule  
10 applicable to a limited civil case, the statute or rule applicable to a  
11 small claims case governs. Section 87.

12 A special statute governs a small claims appeal (Section  
13 116.770), so the general rule giving the appellate division  
14 jurisdiction of an appeal in a limited civil case (Section 904.2) is  
15 inapplicable. But there is no special statute governing appeal of a  
16 postjudgment enforcement order in a small claims case.  
17 Consequently, the situation is governed by the general rule giving  
18 the appellate division jurisdiction of an appeal in a limited civil  
19 case. *General Electric Capital*, 88 Cal. App. 4th at 138, 144.

20 Because the appellate division has appellate jurisdiction of a  
21 postjudgment enforcement order in a small claims case, the  
22 appellate division also has extraordinary writ jurisdiction of a  
23 postjudgment enforcement order in a small claims case. *Id.* at 145;  
24 see Cal. Const. art. VI, § 10. Subdivision (b) thus states the rule of  
25 Section 1068(b) as applied in the specific context of a postjudgment  
26 enforcement order in a small claims case.

27 **Code Civ. Proc. § 1085 (amended). Courts authorized to grant writ**  
28 **of mandate**

29 1085. (a) A writ of mandate may be issued by any court to any  
30 inferior tribunal, corporation, board, or person, to compel the  
31 performance of an act which the law specially enjoins, as a duty  
32 resulting from an office, trust, or station, or to compel the  
33 admission of a party to the use and enjoyment of a right or office to  
34 which the party is entitled, and from which the party is unlawfully  
35 precluded by ~~such~~ that inferior tribunal, corporation, board, or  
36 person.

37 (b) The appellate division of the superior court may grant a writ  
38 of mandate directed to the superior court in a limited civil case  
39 subject to its appellate jurisdiction or in a misdemeanor or  
40 infraction case subject to its appellate jurisdiction. Where the  
41 appellate division grants a writ of ~~review~~ mandate directed to the  
42 superior court, the superior court is an inferior tribunal for  
43 purposes of this chapter.

44 **Comment.** The first sentence of subdivision (b) of Section 1085  
45 is amended to more closely track the language of Article VI, Section  
46 10, of the California Constitution. This is not a substantive change.

1           The amendment helps clarify the treatment of a small claims  
2 case. An appeal from a judgment in a small claims case is not  
3 within the jurisdiction of the appellate division. Rather, such an  
4 appeal consists of a new hearing before a judicial officer other than  
5 the judicial officer who heard the action in the small claims  
6 division. See Section 116.770(a). Because the appellate division  
7 lacks jurisdiction of a small claims appeal, the appellate division  
8 also lacks authority to review a judgment or a prejudgment ruling  
9 in a small claims case by way of extraordinary writ. See Cal. Const.  
10 art. VI, § 10. For further guidance on seeking a writ of mandate in a  
11 small claims case, see Section 1085.3.

12           The second sentence of subdivision (b) is amended to refer to a  
13 writ of mandate instead of a writ of review.

14           Section 1085 is also amended to make a stylistic revision.

15           **Code Civ. Proc. § 1085.3 (added). Writ of mandate in small claims**  
16           **case**

17           1085.3. (a) A writ of mandate directed to a superior court with  
18 respect to a judgment or prejudgment ruling of the small claims  
19 division may be granted by an appellate court or by a judicial  
20 officer of the superior court, other than the judicial officer who  
21 heard the case in the small claims division. Where a judicial officer  
22 of a superior court grants a writ of mandate directed to the superior  
23 court, the superior court is an inferior tribunal for purposes of this  
24 chapter.

25           (b) A writ of mandate directed to the superior court with respect  
26 to a postjudgment enforcement order in a small claims case may be  
27 granted by an appellate court or by the appellate division of the  
28 superior court.

29           **Comment.** Section 1085.3 is added to clarify the proper  
30 treatment of a writ petition relating to a small claims case.

31           Subdivision (a) makes clear that if a writ of mandate is sought in  
32 superior court with respect to a judgment or prejudgment ruling of  
33 the small claims division, the writ proceeding is to be heard by a  
34 judicial officer of the superior court other than the one who heard  
35 the case in the small claims division. This parallels the treatment of  
36 a small claims appeal. See Section 116.770 (small claims appeal is to  
37 be heard by judicial officer of superior court other than officer who  
38 heard case in small claims division); see also Section 1085 Comment  
39 (200x) (appellate division lacks writ jurisdiction of judgment or  
40 prejudgment ruling in small claims case); *City & County of San*  
41 *Francisco v. Small Claims Court for the Northern Judicial District of*  
42 *San Mateo County*, 141 Cal. App. 3d 470, 470, 481, 190 Cal. Rptr.  
43 340 (1983) (affirming decision of superior court judge on writ  
44 petition relating to small claims case, thus implicitly deciding that  
45 superior court judge had writ jurisdiction); *Gardiana v. Small*  
46 *Claims Court for the San Leandro Hayward Judicial District of*

1 Alameda County, 59 Cal. App. 3d 412, 412, 425, 130 Cal. Rptr. 675  
2 (1976) (same).

3 Subdivision (b) codifies *General Electric Capital Auto Financial*  
4 *Services, Inc. v. Appellate Division of the Superior Court of Los Angeles*  
5 *County*, 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). A small  
6 claims case is a limited civil case. *Id.* at 138. Where a statute or rule  
7 applicable to a small claims case conflicts with a statute or rule  
8 applicable to a limited civil case, the statute or rule applicable to a  
9 small claims case governs. Section 87.

10 A special statute governs a small claims appeal (Section  
11 116.770), so the general rule giving the appellate division  
12 jurisdiction of an appeal in a limited civil case (Section 904.2) is  
13 inapplicable. But there is no special statute governing appeal of a  
14 postjudgment enforcement order in a small claims case.  
15 Consequently, the situation is governed by the general rule giving  
16 the appellate division jurisdiction of an appeal in a limited civil  
17 case. *General Electric Capital*, 88 Cal. App. 4th at 138, 144.

18 Because the appellate division has appellate jurisdiction of a  
19 postjudgment enforcement order in a small claims case, the  
20 appellate division also has extraordinary writ jurisdiction of a  
21 postjudgment enforcement order in a small claims case. *Id.* at 145;  
22 see Cal. Const. art. VI, § 10. Subdivision (b) thus states the rule of  
23 Section 1085(b) as applied in the specific context of a postjudgment  
24 enforcement order in a small claims case.

25 **Code Civ. Proc. § 1103 (amended). Courts authorized to grant writ**  
26 **of prohibition**

27 1103. (a) A writ of prohibition may be issued by any court to an  
28 inferior tribunal or to a corporation, board, or person, in all cases  
29 where there is not a plain, speedy, and adequate remedy in the  
30 ordinary course of law. It is issued upon the verified petition of the  
31 person beneficially interested.

32 (b) The appellate division of the superior court may grant a writ  
33 of prohibition directed to the superior court in a limited civil case  
34 subject to its appellate jurisdiction or in a misdemeanor or  
35 infraction case subject to its appellate jurisdiction. Where the  
36 appellate division grants a writ of ~~review~~ prohibition directed to  
37 the superior court, the superior court is an inferior tribunal for  
38 purposes of this chapter.

39 **Comment.** The first sentence of subdivision (b) of Section 1103  
40 is amended to more closely track the language of Article VI, Section  
41 10, of the California Constitution. This is not a substantive change.

42 The amendment helps clarify the treatment of a small claims  
43 case. An appeal from a judgment in a small claims case is not  
44 within the jurisdiction of the appellate division. Rather, such an  
45 appeal consists of a new hearing before a judicial officer other than  
46 the judicial officer who heard the action in the small claims  
47 division. See Section 116.770(a). Because the appellate division

1 lacks jurisdiction of a small claims appeal, the appellate division  
2 also lacks authority to review a judgment or a prejudgment ruling  
3 in a small claims case by way of extraordinary writ. See Cal. Const.  
4 art. VI, § 10. For further guidance on seeking a writ of prohibition  
5 in a small claims case, see Section 1103.5.

6 The second sentence of subdivision (b) is amended to refer to a  
7 writ of prohibition instead of a writ of review.

8 **Code Civ. Proc. § 1103.5 (added). Writ of prohibition in small**  
9 **claims case**

10 1103.5. (a) A writ of prohibition directed to a superior court  
11 with respect to a judgment or a prejudgment ruling of the small  
12 claims division may be granted by an appellate court or by a  
13 judicial officer of the superior court, other than the judicial officer  
14 who heard the case in the small claims division. Where a judicial  
15 officer of a superior court grants a writ of prohibition directed to  
16 the superior court, the superior court is an inferior tribunal for  
17 purposes of this chapter.

18 (b) A writ of prohibition directed to the superior court with  
19 respect to a postjudgment enforcement order in a small claims case  
20 may be granted by an appellate court or by the appellate division of  
21 the superior court.

22 **Comment.** Section 1103.5 is added to clarify the proper  
23 treatment of a writ petition relating to a small claims case.

24 Subdivision (a) makes clear that if a writ of prohibition is sought  
25 in superior court with respect to a judgment or prejudgment ruling  
26 of the small claims division, the writ proceeding is to be heard by a  
27 judicial officer of the superior court other than the one who heard  
28 the case in the small claims division. This parallels the treatment of  
29 a small claims appeal. See Section 116.770 (small claims appeal is to  
30 be heard by judicial officer of superior court other than officer who  
31 heard case in small claims division); see also Section 1085 Comment  
32 (200x) (appellate division lacks writ jurisdiction of judgment or  
33 prejudgment ruling in small claims case); *City & County of San*  
34 *Francisco v. Small Claims Court for the Northern Judicial District of*  
35 *San Mateo County*, 141 Cal. App. 3d 470, 470, 481, 190 Cal. Rptr.  
36 340 (1983) (affirming decision of superior court judge on writ  
37 petition relating to small claims case, thus implicitly deciding that  
38 superior court judge had writ jurisdiction); *Gardiana v. Small*  
39 *Claims Court for the San Leandro Hayward Judicial District of*  
40 *Alameda County*, 59 Cal. App. 3d 412, 412, 425, 130 Cal. Rptr. 675  
41 (1976) (same).

42 Subdivision (b) codifies *General Electric Capital Auto Financial*  
43 *Services, Inc. v. Appellate Division of the Superior Court of Los Angeles*  
44 *County*, 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). A small  
45 claims case is a limited civil case. *Id.* at 138. Where a statute or rule  
46 applicable to a small claims case conflicts with a statute or rule

1 applicable to a limited civil case, the statute or rule applicable to a  
2 small claims case governs. Section 87.

3 A special statute governs a small claims appeal (Section  
4 116.770), so the general rule giving the appellate division  
5 jurisdiction of an appeal in a limited civil case (Section 904.2) is  
6 inapplicable. But there is no special statute governing appeal of a  
7 postjudgment enforcement order in a small claims case.  
8 Consequently, the situation is governed by the general rule giving  
9 the appellate division jurisdiction of an appeal in a limited civil  
10 case. *General Electric Capital*, 88 Cal. App. 4th at 138, 144.

11 Because the appellate division has appellate jurisdiction of a  
12 postjudgment enforcement order in a small claims case, the  
13 appellate division also has extraordinary writ jurisdiction of a  
14 postjudgment enforcement order in a small claims case. *Id.* at 145;  
15 see Cal. Const. art. VI, § 10. Subdivision (b) thus states the rule of  
16 Section 1103(b) as applied in the specific context of a postjudgment  
17 enforcement order in a small claims case.

#### 18 *Proper Tribunal for Seeking a Writ of Certiorari to Review a Contempt Order*

19 The Commission discussed the proper tribunal for a petition for a writ of  
20 certiorari challenging a contempt order under Code of Civil Procedure Section  
21 1209 *et seq.* relating to a limited civil case or a misdemeanor or infraction case.  
22 The Commission considered John Hamilton Scott's concern that courts might  
23 interpret the constitutional provision governing extraordinary writ jurisdiction of  
24 the appellate division (Cal. Const. art. VI, § 10) to preclude the appellate division  
25 from exercising jurisdiction over such a petition. See First Supplement to  
26 Memorandum 2006-21, pp. 8-9 & Exhibit p. 4-5.

27 The Commission concluded that such an interpretation is unlikely because (1)  
28 it would have resulted in disparity of treatment of similarly situated litigants as  
29 unification proceeded on a county-by-county basis, and (2) it would amount to  
30 an expansion of the jurisdiction of the courts of appeal. Consequently, the  
31 Commission saw no need to propose a statute clarifying that the appellate  
32 division has jurisdiction of a petition for a writ of certiorari challenging a  
33 contempt order under Code of Civil Procedure Section 1209 *et seq.* relating to a  
34 limited civil case or a misdemeanor or infraction case.

#### 35 **Miscellaneous Issues**

36 The Commission considered Memorandum 2006-22 and its First Supplement,  
37 relating to concurrent jurisdiction and court appearances by two-way electronic  
38 audiovideo communication. The Commission made the following preliminary  
39 decisions, to be incorporated into a draft of a tentative recommendation:

1 *Court Appearances By Two-Way Electronic Audiovideo Communication*

2 Penal Code Section 977 should be amended along the following lines:

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

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

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

16 (b)(1) In all cases in which a felony is charged, the accused shall  
17 be present at the arraignment, at the time of plea, during the  
18 preliminary hearing, during those portions of the trial when  
19 evidence is taken before the trier of fact, and at the time of the  
20 imposition of sentence. The accused shall be personally present at  
21 all other proceedings unless he or she shall, with leave of court,  
22 execute in open court, a written waiver of his or her right to be  
23 personally present, as provided by paragraph (2). If the accused  
24 agrees, the initial court appearance, arraignment, and plea may be  
25 by video, as provided by subdivision (c).

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

32 "WAIVER OF DEFENDANT'S PERSONAL PRESENCE"

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

1 (c) The court may permit the initial court appearance and  
2 arraignment ~~in municipal or superior court~~ of defendants held in  
3 any state, county, or local facility within the county on felony or  
4 misdemeanor charges, except for those defendants who were  
5 indicted by a grand jury, to be conducted by two-way electronic  
6 audiovideo communication between the defendant and the  
7 courtroom in lieu of the physical presence of the defendant in the  
8 courtroom. If the defendant is represented by counsel, the attorney  
9 shall be present with the defendant at the initial court appearance  
10 and arraignment, and may enter a plea during the arraignment.  
11 However, if the defendant is represented by counsel at an ~~initial~~  
12 ~~hearing in superior court~~ arraignment on an information in a felony  
13 case, and if the defendant does not plead guilty or nolo contendere  
14 to any charge, the attorney shall be present with the defendant or if  
15 the attorney is not present with the defendant, the attorney shall be  
16 present in court during the hearing. The defendant shall have the  
17 right to make his or her plea while physically present in the  
18 courtroom if he or she so requests. If the defendant decides not to  
19 exercise the right to be physically present in the courtroom, he or  
20 she shall execute a written waiver of that right. A judge may order  
21 a defendant's personal appearance in court for the initial court  
22 appearance and arraignment. In a misdemeanor case, a judge may,  
23 pursuant to this subdivision, accept a plea of guilty or no contest  
24 from a defendant who is not physically in the courtroom. In a  
25 felony case, a judge may, pursuant to this subdivision, accept a plea  
26 of guilty or no contest from a defendant who is not physically in  
27 the courtroom if the parties stipulate thereto.

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

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

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

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

42 Before unification, a felony defendant was either (1) indicted  
43 and arraigned on the indictment in superior court or (2) arraigned  
44 on a complaint before a magistrate in municipal court and, if held  
45 to answer at a preliminary hearing, later arraigned on an  
46 information in superior court. Because subdivision (c) is expressly  
47 inapplicable to an indicted defendant, the reference to "an initial  
48 hearing in superior court in a felony case" in the third sentence was

1 sufficient to indicate that the sentence pertained to an arraignment  
2 on an information, not an arraignment on a felony complaint.

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

12 This amendment will require adjustment if Assembly Bill 2174 (Villines) is  
13 enacted and amends Penal Code Section 977.

14 Penal Code Section 977.2 should be amended along the following lines:

15 **Penal Code § 977.2. Appearance and arraignment by two-way**  
16 **electronic audiovideo communication**

17 977.2. (a) Notwithstanding Section 977 or any other law, in any  
18 case in which the defendant is charged with a misdemeanor or a  
19 felony and is currently incarcerated in the state prison, the  
20 Department of Corrections may arrange for all court appearances  
21 in superior court, except for the preliminary hearing, trial,  
22 judgment and sentencing, and motions to suppress, to be  
23 conducted by two-way electronic audiovideo communication  
24 between the defendant and the courtroom in lieu of the physical  
25 presence of the defendant in the courtroom. Nothing in this section  
26 shall be interpreted to eliminate the authority of the court to issue  
27 an order requiring the defendant to be physically present in the  
28 courtroom in those cases where the court finds circumstances that  
29 require the physical presence of the defendant in the courtroom.  
30 For those court appearances that the department determines to  
31 conduct by two-way electronic audiovideo communication, the  
32 department shall arrange for two-way electronic audiovideo  
33 communication between the superior court and any state prison  
34 facility located in the county. The department shall provide  
35 properly maintained equipment and adequately trained staff at the  
36 prison as well as appropriate training for court staff to ensure that  
37 consistently effective two-way communication is provided between  
38 the prison facility and the courtroom for all appearances that the  
39 department determines to conduct by two-way electronic  
40 audiovideo communication.

41 (b) If the defendant is represented by counsel, the attorney shall  
42 be present with the defendant at the initial court appearance and  
43 arraignment, and may enter a plea during the arraignment.  
44 However, if the defendant is represented by counsel at an ~~initial~~  
45 ~~hearing in superior court arraignment on an information or~~  
46 ~~indictment~~ in a felony case, and if the defendant does not plead

1 guilty or nolo contendere to any charge, the attorney shall be  
2 present with the defendant or if the attorney is not present with the  
3 defendant, the attorney shall be present in court during the  
4 hearing.

5 (c) In lieu of the physical presence of the defendant's counsel at  
6 the institution with the defendant, the court and the department  
7 shall establish a confidential telephone and facsimile transmission  
8 line between the court and the institution for communication  
9 between the defendant's counsel in court and the defendant at the  
10 institution. In this case, counsel for the defendant shall not be  
11 required to be physically present at the institution during any court  
12 appearance that is conducted via electronic audiovideo  
13 communication. Nothing in this section shall be construed to  
14 prohibit the physical presence of the defense counsel with the  
15 defendant at the state prison.

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

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

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

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

#### 41 *Concurrent Jurisdiction*

42 In its previous work on trial court unification, the Commission consistently  
43 adhered to the principle of maintaining the pre-unification status quo while  
44 adjusting statutes as necessary to reflect unification. The Commission discussed  
45 whether to apply that approach with regard to Business and Professions Code

1 Section 12606 and similar statutes, which might be viewed as deviations from the  
2 general rule that a municipal court could not issue a permanent injunction. A  
3 possibility would be to revise those provisions to track the post-unification  
4 equivalent of that general rule, rather than preserving the pre-unification status  
5 quo. See Memorandum 2006-22, pp. 20-23. The Commission rejected that  
6 approach and decided to stick with the principle of maintaining the pre-  
7 unification status quo while adjusting statutes as necessary to reflect unification.

8 Consistent with that principle, Business and Professions Code Section 6455  
9 should be amended along the following lines:

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

12 6455. (a) Any consumer injured by a violation of this chapter  
13 may file a complaint and seek redress in ~~any municipal or~~ superior  
14 court for injunctive relief, restitution, and damages. Attorney's fees  
15 shall be awarded in this action to the prevailing plaintiff.

16 (b) Any person who violates the provisions of Section 6451 or  
17 6452 is guilty of an infraction for the first violation, which is  
18 punishable upon conviction by a fine of up to two thousand five  
19 hundred dollars (\$2,500) as to each consumer with respect to whom  
20 a violation occurs, and is guilty of a misdemeanor for the second  
21 and each subsequent violation, which is punishable upon  
22 conviction by a fine of two thousand five hundred dollars (\$2,500)  
23 as to each consumer with respect to whom a violation occurs, or  
24 imprisonment in a county jail for not more than one year, or by  
25 both that fine and imprisonment. Any person convicted of a  
26 violation of this section shall be ordered by the court to pay  
27 restitution to the victim pursuant to Section 1202.4 of the Penal  
28 Code.

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

35 Business and Professions Code Section 12606 should be amended along the  
36 following lines:

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

39 12606. (a) No container wherein commodities are packed shall  
40 have a false bottom, false sidewalls, false lid or covering, or be

1 otherwise so constructed or filled, wholly or partially, as to  
2 facilitate the perpetration of deception or fraud.

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

11 (1) Protection of the contents of the package.

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

14 (3) Unavoidable product settling during shipping and handling.

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

22 (5) The fact that the product consists of a commodity that is  
23 packaged in a decorative or representational container where the  
24 container is part of the presentation of the product and has value  
25 that is both significant in proportion to the value of the product and  
26 independent of its function to hold the product, such as a gift  
27 combined with a container that is intended for further use after the  
28 product is consumed, or durable commemorative or promotional  
29 packages.

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

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

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

47 (9) The presence of any head space within an immediate  
48 product container necessary to facilitate the mixing, adding,

1 shaking, or dispensing of liquids or powders by consumers prior to  
2 use.

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

9 (11) The exterior packaging or immediate product container is a  
10 kit that consists of a system, or multiple components, designed to  
11 produce a particular result that is not dependent upon the quantity  
12 of the contents, if the purpose of the kit is clearly and  
13 conspicuously disclosed on the exterior packaging.

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

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

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

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

34 (c) Any sealer may seize a container that facilitates the  
35 perpetration of deception or fraud and the contents of the  
36 container. By order of the ~~municipal~~ or superior court of the ~~city~~ or  
37 county within which a violation of this section occurs, the  
38 containers seized shall be condemned and destroyed or released  
39 upon ~~such~~ conditions as the court may impose to insure against  
40 their use in violation of this chapter. The contents of any  
41 condemned container shall be returned to the owner thereof if the  
42 owner furnishes proper facilities for the return. A proceeding  
43 under this section is a limited civil case if the value of the property  
44 in controversy is less than or equal to the maximum amount in  
45 controversy for a limited civil case under Section 85 of the Code of  
46 Civil Procedure.

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

4           As amended, subdivision (c) makes clear that if the value of  
5 seized containers is less than or equal to the maximum amount in  
6 controversy for a limited civil case, a proceeding under this section  
7 is a limited civil case even though permanent injunctive relief  
8 generally is not allowed in a limited civil case (Code Civ. Proc. §§  
9 85, 580). This preserves the pre-unification status quo, under which  
10 a municipal court had authority to order condemnation of  
11 containers under this section in specified circumstances.

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

13           Business and Professions Code Section 12606.2 should be amended along the  
14 following lines:

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

17           12606.2. (a) This section applies to food containers subject to  
18 Section 403 (d) of the Federal Food, Drug and Cosmetic Act (21  
19 U.S.C. Sec. 343 (d)), and Section 100.100 of Title 21 of the Code of  
20 Federal Regulations. Section 12606 does not apply to food  
21 containers subject to this section.

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

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

31           (1) Protection of the contents of the package.

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

34           (3) Unavoidable product settling during shipping and handling.

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

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

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

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

14 (d) If the requirements of this section do not impose the same  
15 requirements as are imposed by Section 403(d) of the Federal Food,  
16 Drug and Cosmetic Act (21 U.S.C. Sec. ~~343(d), 343(d))~~, or any  
17 regulation promulgated pursuant thereto, then this section is not  
18 operative to the extent that it is not identical to the federal  
19 requirements, and for this purpose those federal requirements are  
20 incorporated into this section and shall apply as if they were set  
21 forth in this section.

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

34 **Comment.** Subdivision (e) of Section 12606.2 is amended to  
35 reflect unification of the municipal and superior courts pursuant to  
36 Article VI, Section 5(e), of the California Constitution.

37 As amended, subdivision (e) makes clear that if the value of  
38 seized containers is less than or equal to the maximum amount in  
39 controversy for a limited civil case, a proceeding under this section  
40 is a limited civil case even though permanent injunctive relief  
41 generally is not allowed in a limited civil case (Code Civ. Proc. §§  
42 85, 580). This preserves the pre-unification status quo, under which  
43 a municipal court had authority to order condemnation of  
44 containers under this section in specified circumstances.

45 Section 12606.2 is also amended to correct a spelling error in  
46 subdivision (c)(6) and a typographical mistake in subdivision (d).

1 This amendment will require adjustment if Senate Bill 1852 (Committee on  
2 Judiciary) is enacted and amends Business and Professions Code Section 12606.2.

3 Code of Civil Procedure Section 580 should be amended along the following  
4 lines:

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

6 580. (a) The relief granted to the plaintiff, if there is no answer,  
7 cannot exceed that ~~which he or she shall have~~ demanded in ~~his or~~  
8 ~~her~~ the complaint, in the statement required by Section 425.11, or in  
9 the statement provided for by Section ~~425.115; but in~~ 425.115. In  
10 any other case, the court may grant the plaintiff any relief  
11 consistent with the case made by the complaint and embraced  
12 within the issue. The court may impose liability, regardless of  
13 whether the theory upon which liability is sought to be imposed  
14 involves legal or equitable principles.

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

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

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

22 (3) A determination of title to real property.

23 (4) Enforcement of an order under the Family Code.

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

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

32 Section 580 is also amended to make stylistic revisions.

33 This amendment will require adjustment if Assembly Bill 2126 (Lieu & Leno) is  
34 enacted and amends Code of Civil Procedure Section 580.

35 Food and Agricultural Code Section 25564 should be amended along the  
36 following lines:

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

39 25564. If the lot of poultry meat which is held is perishable or  
40 subject to rapid deterioration, the enforcing officer may file a  
41 verified petition in ~~any superior or municipal court of the state~~ to  
42 destroy ~~such~~ the lot or otherwise abate the nuisance. The petition  
43 shall show the condition of the lot, that the lot is situated within the

1 county, that the lot is held, and that notice of noncompliance has  
2 been served pursuant to this chapter. The court may thereupon  
3 order that ~~such~~ the lot be forthwith destroyed or the nuisance  
4 otherwise abated as set forth in ~~such~~ the order. A proceeding under  
5 this section is a limited civil case if the value of the property in  
6 controversy is less than or equal to the maximum amount in  
7 controversy for a limited civil case under Section 85 of the Code of  
8 Civil Procedure.

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

12 As amended, the provision makes clear that if the value of  
13 poultry meat is less than or equal to the maximum amount in  
14 controversy for a limited civil case, a proceeding under this section  
15 is a limited civil case even though permanent injunctive relief  
16 generally is not allowed in a limited civil case (Code Civ. Proc. §§  
17 85, 580). This preserves the pre-unification status quo, under which  
18 a municipal court had authority to order destruction of poultry  
19 meat under this section in specified circumstances.

20 Section 25564 is also amended to make stylistic revisions.

21 Food and Agricultural Code Section 29733 should be amended along the  
22 following lines:

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

25 29733. If a packer or owner of honey, or the agent of either, after  
26 notification to the packer, owner, or agent that the honey and its  
27 containers are a public nuisance, refuses, or fails within a  
28 reasonable time, to recondition or remark the honey so as to  
29 comply with all requirements of this chapter, the honey and its  
30 containers:

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

32 (b) By order of the ~~municipal or~~ superior court of the county ~~or~~  
33 ~~city~~ within which the honey and its containers may be, shall be  
34 condemned and destroyed, or released upon ~~such~~ conditions as the  
35 court, in its discretion, may impose to insure that it will not be  
36 packed, delivered for shipment, shipped, transported, or sold in  
37 violation of this chapter. A proceeding under this section is a  
38 limited civil case if the value of the property in controversy is less  
39 than or equal to the maximum amount in controversy for a limited  
40 civil case under Section 85 of the Code of Civil Procedure.

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

44 As amended, the provision makes clear that if the value of  
45 honey product is less than or equal to the maximum amount in

1 controversy for a limited civil case, a proceeding under this section  
2 is a limited civil case even though permanent injunctive relief  
3 generally is not allowed in a limited civil case (Code Civ. Proc. §§  
4 85, 580). This preserves the pre-unification status quo, under which  
5 a municipal court had authority to order destruction of honey  
6 product under this section in specified circumstances.

7 Section 29733 is also amended to make stylistic revisions.

8 Food and Agricultural Code Section 43039 should be amended along the  
9 following lines:

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

12 43039. If the lot which is held is perishable or subject to rapid  
13 deterioration, the enforcing officer may file a verified petition in  
14 ~~any superior or municipal court of the state~~ to destroy the lot or  
15 otherwise abate the nuisance. The petition shall show the condition  
16 of the lot, that the lot is situated within the county, that the lot is  
17 held, and that notice of noncompliance has been served as  
18 provided in this article. The court may thereupon order that the lot  
19 be forthwith destroyed or the nuisance otherwise abated as set  
20 forth in the order. A proceeding under this section is a limited civil  
21 case if the value of the property in controversy is less than or equal  
22 to the maximum amount in controversy for a limited civil case  
23 under Section 85 of the Code of Civil Procedure.

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

27 As amended, the provision makes clear that if the value of food  
28 product is less than or equal to the maximum amount in  
29 controversy for a limited civil case, a proceeding under this section  
30 is a limited civil case even though permanent injunctive relief  
31 generally is not allowed in a limited civil case (Code Civ. Proc. §§  
32 85, 580). This preserves the pre-unification status quo, under which  
33 a municipal court had authority to order destruction of food  
34 product under this section in specified circumstances.

35 Food and Agricultural Code Section 59289 should be amended along the  
36 following lines:

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

39 59289. (a) The enforcing officer may file a verified petition in  
40 ~~any superior or municipal court of this state~~ requesting permission  
41 to divert ~~such~~ the lot to any other available lawful use or to destroy  
42 the lot. The verified petition shall show all of the following:

43 (a) (1) The condition of the lot.

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

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

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

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

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

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

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

17           As amended, the provision makes clear that if the value of the  
18 lot in question is less than or equal to the maximum amount in  
19 controversy for a limited civil case, a proceeding under this section  
20 is a limited civil case even though permanent injunctive relief  
21 generally is not allowed in a limited civil case (Code Civ. Proc. §§  
22 85, 580). This preserves the pre-unification status quo, under which  
23 a municipal court had authority to order destruction of a lot under  
24 this section in specified circumstances.

25           Section 59289 is also amended to make stylistic revisions.

26           Government Code Section 12965 should be amended along the following  
27 lines:

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

30           12965. (a) In the case of failure to eliminate an unlawful practice  
31 under this part through conference, conciliation, or persuasion, or  
32 in advance thereof if circumstances warrant, the director in his or  
33 her discretion may cause to be issued in the name of the  
34 department a written accusation. The accusation shall contain the  
35 name of the person, employer, labor organization, or employment  
36 agency accused, which shall be known as the respondent, shall set  
37 forth the nature of the charges, shall be served upon the respondent  
38 together with a copy of the verified complaint, as amended, and  
39 shall require the respondent to answer the charges at a hearing.

40           For any complaint treated by the director as a group or class  
41 complaint for purposes of investigation, conciliation, and  
42 accusation pursuant to Section 12961, an accusation shall be issued,  
43 if at all, within two years after the filing of the complaint. For any  
44 complaint alleging a violation of Section 51.7 of the Civil Code, an  
45 accusation shall be issued, if at all, within two years after the filing  
46 of the complaint. For all other complaints, an accusation shall be

1 issued, if at all, within one year after the filing of a complaint. If the  
2 director determines, pursuant to Section 12961, that a complaint  
3 investigated as a group or class complaint under Section 12961 is to  
4 be treated as a group or class complaint for purposes of conciliation  
5 and accusation as well, that determination shall be made and shall  
6 be communicated in writing within one year after the filing of the  
7 complaint to each person, employer, labor organization,  
8 employment agency, or public entity alleged in the complaint to  
9 have committed an unlawful practice.

10 (b) If an accusation is not issued within 150 days after the filing  
11 of a complaint, or if the department earlier determines that no  
12 accusation will issue, the department shall promptly notify, in  
13 writing, the person claiming to be aggrieved that the department  
14 shall issue, on his or her request, the right-to-sue notice. This notice  
15 shall indicate that the person claiming to be aggrieved may bring a  
16 civil action under this part against the person, employer, labor  
17 organization, or employment agency named in the verified  
18 complaint within one year from the date of that notice. If the person  
19 claiming to be aggrieved does not request a right-to-sue notice, the  
20 department shall issue the notice upon completion of its  
21 investigation, and not later than one year after the filing of the  
22 complaint. A city, county, or district attorney in a location having  
23 an enforcement unit established on or before March 1, 1991,  
24 pursuant to a local ordinance enacted for the purpose of  
25 prosecuting HIV/AIDS discrimination claims, acting on behalf of  
26 any person claiming to be aggrieved due to HIV/AIDS  
27 discrimination, may also bring a civil action under this part against  
28 the person, employer, labor organization, or employment agency  
29 named in the notice. The superior ~~and municipal~~ courts of the State  
30 of California shall have jurisdiction of those actions, and the  
31 aggrieved person may file in ~~any~~ of these courts. An action may be  
32 brought in any county in the state in which the unlawful practice is  
33 alleged to have been committed, in the county in which the records  
34 relevant to the practice are maintained and administered, or in the  
35 county in which the aggrieved person would have worked or  
36 would have had access to the public accommodation but for the  
37 alleged unlawful practice, but if the defendant is not found within  
38 any of these counties, an action may be brought within the county  
39 of the defendant's residence or principal office. A copy of any  
40 complaint filed pursuant to this part shall be served on the  
41 principal offices of the department and of the commission. The  
42 remedy for failure to send a copy of a complaint is an order to do  
43 so. Those actions may not be filed as class actions or may not be  
44 maintained as class actions by the person or persons claiming to be  
45 aggrieved where those persons have filed a civil class action in the  
46 federal courts alleging a comparable claim of employment  
47 discrimination against the same defendant or defendants. In actions  
48 brought under this section, the court, in its discretion, may award  
49 to the prevailing party reasonable attorney's fees and costs,

1 including expert witness fees, except where the action is filed by a  
2 public agency or a public official, acting in an official capacity.

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

15 (2) No later than 30 days after the completion of service of the  
16 notice of election pursuant to paragraph (1), the department shall  
17 dismiss the accusation and shall, either itself or, at its election,  
18 through the Attorney General, file in the appropriate court an  
19 action in its own name on behalf of the person claiming to be  
20 aggrieved as the real party in interest. In this action, the person  
21 claiming to be aggrieved shall be the real party in interest and shall  
22 have the right to participate as a party and be represented by his or  
23 her own counsel. Complaints filed pursuant to this section shall be  
24 filed in the appropriate superior court in any county in which  
25 unlawful practices are alleged to have been committed, in the  
26 county in which records relevant to the alleged unlawful practices  
27 are maintained and administered, or in the county in which the  
28 person claiming to be aggrieved would have worked or would  
29 have had access to public accommodation, but for the alleged  
30 unlawful practices. If the defendant is not found in any of these  
31 counties, the action may be brought within the county of the  
32 defendant's residence or principal office. Those actions shall be  
33 assigned to the court's delay reduction program, or otherwise  
34 given priority for disposition by the court in which the action is  
35 filed.

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

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

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

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

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

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

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

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

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

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

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

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

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

47 **Comment.** Subdivision (b) of Section 12965 is amended to  
48 reflect unification of the municipal and superior courts pursuant to

1 Article VI, Section 5(e), of the California Constitution. For the  
2 jurisdictional classification of an action under this section, see Code  
3 of Civil Procedure Sections 85 (limited civil cases) and 580 (relief  
4 awardable).

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

11 Government Code Section 12980 should be amended along the following  
12 lines:

13 **Gov’t Code § 12980. Complaint, accusation, and civil action for**  
14 **housing discrimination**

15 12980. This article governs the procedure for the prevention and  
16 elimination of discrimination in housing made unlawful pursuant  
17 to Article 2 (commencing with Section 12955) of Chapter 6.

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

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

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

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

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

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

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

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

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

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

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

16 (3) A summary of witness statements.

17 (4) Answers to interrogatories.

18 (5) A summary description of other pertinent records.

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

21 (h) If an accusation is not issued within 100 days after the filing  
22 of a complaint, or if the department earlier determines that no  
23 accusation will issue, the department shall promptly notify the  
24 person claiming to be aggrieved. This notice shall, in any event, be  
25 issued no more than 30 days after the date of the determination or  
26 30 days after the date of the expiration of the 100-day period,  
27 whichever date first occurs. The notice shall indicate that the  
28 person claiming to be aggrieved may bring a civil action under this  
29 part against the person named in the verified complaint within the  
30 time period specified in Section 12989.1. The notice shall also  
31 indicate, unless the department has determined that no accusation  
32 will be issued, that the person claiming to be aggrieved has the  
33 option of continuing to seek redress for the alleged discrimination  
34 through the procedures of the department if he or she does not  
35 desire to file a civil action. The superior ~~and municipal~~ courts of the  
36 State of California shall have jurisdiction of these actions, and the  
37 aggrieved person may file in ~~any of~~ these courts. The action may be  
38 brought in any county in the state in which the violation is alleged  
39 to have been committed, or in the county in which the records  
40 relevant to the alleged violation are maintained and administered,  
41 but if the defendant is not found within that county, the action may  
42 be brought within the county of the defendant's residence or  
43 principal office. A copy of any complaint filed pursuant to this part  
44 shall be served on the principal offices of the department and of the  
45 commission. The remedy for failure to send a copy of a complaint is  
46 an order to do so. In a civil action brought under this section, the  
47 court, in its discretion, may award to the prevailing party  
48 reasonable attorneys' fees.

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

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

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

#### STUDY L-3032 – BENEFICIARY DEEDS

16 The Commission considered Memorandum 2006-19, together with material  
17 distributed at the meeting (attached to the First Supplement to Memorandum  
18 2006-19), relating to beneficiary deeds. The Commission directed the staff to  
19 prepare a draft tentative recommendation for consideration by the Commission  
20 proposing adoption in California of a transfer on death deed (TOD deed) statute.  
21 The content of the draft should be as outlined in Memorandum 2006-19, subject  
22 to the following changes.

#### 23 **Terminology**

24 The instrument should be denominated a “revocable” transfer on death deed.  
25 That will help reinforce the concept that the deed is revocable.

#### 26 **Property Subject to TOD Deed**

27 The Commission requested the staff to investigate possible application of the  
28 statute to an interest such as an occupancy license in federal lands. The matter  
29 should be made clear in the draft tentative recommendation.

#### 30 **Recordation**

31 The draft should incorporate a provision to the effect that a recordation  
32 requirement under the statute is satisfied by delivery of the deed to the  
33 recorder’s office for recordation. This might be done by reference to or  
34 duplication of the Civil Code recording standard.

1 **Interest Transferred**

2 The draft should provide that the deed in effect quitclaims the transferor's  
3 interest to the named beneficiary, but the draft should solicit comment on the  
4 concept of allowing the deed to fractionate the transfer between a life estate and  
5 remainder interest.

6 **Effect of Transfer of Joint Tenancy Property**

7 The statutory form of deed should inform the transferor that the effect of the  
8 deed will be to sever any joint tenancy interest the transferor has in the property  
9 when the transferor dies and transfer the transferor's interest to the named  
10 beneficiary rather than to the joint tenant.

11 **Contest of TOD Deed**

12 The statute should be clear that the transferor's conservator may be able to test  
13 the validity of a TOD deed under the Probate Code Section 2580 substituted  
14 judgment procedure.

15 **Omitted Spouse or Child**

16 Omitted spouse and child protections applicable to a will or trust should not  
17 apply to a TOD deed. However, the Commission requested that the staff raise the  
18 possibility of applying omitted spouse and child protections to nonprobate  
19 transfers globally, when the Commission reviews new topics and priorities this  
20 fall.

21 **Rights of Creditors**

22 The Commission directed the staff to prepare a draft concerning the liability  
23 of a beneficiary to creditors of a TOD transferor that incorporates the small estate  
24 affidavit provisions or adapts them for inclusion in the TOD deed statute. The  
25 Commission also requested that the staff raise the possibility of applying creditor  
26 remedies to nonprobate transfers globally, when the Commission reviews new  
27 topics and priorities this fall.

28 **Priorities As Between Creditors of Transferor and Creditors of Beneficiary**

29 The staff should review the proposed draft language on priorities of creditors  
30 in light of the Commission's decision on application of the small estate affidavit  
31 procedure liability scheme.

1 **Rights of Third Party Transferee**

2 The Commission requested that the California Land Title Association review  
3 the BFP protection in the draft to ensure that it is effective to allow insurable  
4 transfer of title under a TOD deed.

5 **Statutory Forms**

6 The Commission directed the staff to attempt to make the statutory forms  
7 more user-friendly (e.g., use “you” rather than “the transferor”), and to consult  
8 with experienced forms makers, if possible.

9

APPROVED AS SUBMITTED

\_\_\_\_\_  
Date

APPROVED AS CORRECTED  
(for corrections, see Minutes of next meeting)

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Executive Secretary