

January 7, 2013

Honorable Tani Cantil-Sakauye, Chief Justice
and the Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-7303

Re: *People v. Unites States Fire Ins. Co.* (2012) 210 Cal.App.4th 1423
Case No. **S207545** (Fifth District Court of Appeal No. F063445)
Request for Depublication (Cal. Rules of Court, rule 8.1125(a))

To the Chief Justice and the Associate Justices of the California Supreme Court:

I. California State Association of Counties' Interest in Depublication

The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of County Counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that publication of the opinion in this case is a matter affecting all counties.

In particular, the Offices of the County Counsel in all or nearly all of the counties in this State serve as the prosecuting agency for opposing motions to exonerate bail where such motions are improperly made. The work of the County Counsel in bail bond forfeitures is an important part of ensuring that the goals of the bail system are met, and requires time and skill for which the Legislature has determined the County Counsel should be compensated. By requiring the bail forfeiture work to be performed without compensation, CSAC's member counties have a direct budgetary interest in depublication of this opinion.

II. The Opinion Would Disrupt the Bail Forfeiture System, and Should Therefore Be Depublished

As noted in the depublication requests already filed with this Court by the Counties of Fresno and Riverside, Penal Code section 1305.3 was added in 1993 to allow prosecuting agencies to recover costs for successfully opposing motions to

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vacate a bail forfeiture. That section was amended one year later, without any opposition in either house of the Legislature, to make clear that the Office of County Counsel is a prosecuting agency eligible to receiving operating costs. Yet, the Fifth Appellate District has concluded that “costs” do not include the attorney time required to oppose a motion to vacate a bail forfeiture.

CSAC joins in the arguments made by the depublication requests already filed by the Counties of Fresno and Riverside, and will not repeat those arguments here. Instead, CSAC notes that in most counties, the County Counsel is routinely compensated for its operating costs, as measured by the standard billing rate generated by the County Auditor/Controller, without controversy. In an era of layoffs, furloughs, and severe budget cuts, counties can scarcely afford to provide these legal services without an opportunity to recover their operating costs. The inability to receive costs for successfully opposing motions to vacate bail forfeitures would be a significant disincentive for County Counsels to vigorously review and oppose such motions on behalf of the public. As such, this opinion risks disrupting operation of the bail forfeiture system and should be depublished.

Further, the opinion fails to recognize that the only real “costs” borne by the County Counsel in opposing motions to vacate bail forfeitures are related to attorney and staff time. Counties do not pay filing fees (Gov. Code, § 6103), and the bail forfeiture hearings are handled on the law and motion calendar, which do not require jury fees, deposition costs, or other standard costs typically associated with litigation. As such, the opinion essentially renders Penal Code section 1305.3’s award of costs provision meaningless. Depublication would permit courts to continue to award costs consistent with the statute’s intent.

Finally, it is important to highlight that the County Counsel operating costs are taken directly from the forfeited bail bond. They are not required to be paid from the court’s budget, the surety, or the criminal defendant. The remainder of the forfeited bond funds are distributed as prescribed by statute. (Pen. Code, § 1463, et seq.) No party – not the surety, the court, or any of the entities entitled to receive the forfeited bond funds – filed a party or amicus brief in the Court of Appeal to oppose the Fresno County Counsel’s position that it is entitled to receive its costs for successfully opposing a surety’s motion to vacate forfeiture and the related appeal. Thus, the opinion’s depublication would not frustrate the arguments made by any party in the Court of Appeal.

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III. Conclusion

For all the foregoing reasons, CSAC respectfully joins the Counties of Fresno and Riverside in requesting that the opinion in this case be depublished.

Respectfully submitted,

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Proof of Service Attached