

First Supplement to Memorandum 93-40

**Subject: New Topics and Priorities: Trial Court Unification**

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The Legislature has adopted Senate Concurrent Resolution No. 26 (Lockyer), which adds to the Commission's calendar of topics the study of a proposed constitutional amendment relating to unification of the trial courts:

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature approves for study by the Law Revision Commission the proposed amendment to the State Constitution contained in SCA 3 (Lockyer) of the 1993-94 Regular Session, pertaining to the unification of the trial courts, with recommendations to be forwarded to the Legislature by February 1, 1994, pertaining to the appropriate composition of the amendment, and further recommendation to be reported pertaining to statutory changes that may be necessitated by court unification.

Senate Constitutional Amendment No. 3 (Lockyer) is attached to this memorandum as an Exhibit. It would eliminate the existing trial court divisions of superior, municipal, and justice courts in favor of a single trial level court called the district court. Each county would have a district court.

The proposed constitutional amendment passed three Senate committees and the Senate floor unanimously. The proposal also passed three Assembly committees unanimously, and is poised for enactment in the Assembly on the consent calendar. It is contemplated that this measure will appear on the June 1994 ballot, and if adopted would become operative July 1, 1995.

The Legislature has also enacted as part of the 1993 budget package the following language:

The Legislature finds and declares that the efficiencies that would result from the enactment and adoption of Senate Constitutional Amendment 3 of the 1993-94 Regular Session would yield substantial savings to both counties and the state. 1993 Cal. Stat. ch. 70, § 10.

The proposed constitutional amendment has been under intense scrutiny, particularly by trial and appellate court judges and judges' associations, as well as by the Judicial Council and several of its committees. A number of problems

and issues have surfaced. They include such difficult matters as (1) how to deal with the inferior court—superior court appellate process, (2) how to deal with the impact of a single county-wide court on judicial election by district and the effect of the Voting Rights Act, (3) how to ensure criminal and civil procedural protections that currently differ depending on whether the trial is in the superior court or the municipal court, (4) how to handle personnel and salary issues. Needless to say, there are numerous other practical as well as legal problems involved in trial court unification.

The judges recommended that the Law Revision Commission review these matters before the language of the constitutional amendment is finalized, and review any implementing legislation if the amendment is adopted by the voters. Senator Lockyer has agreed to this process, and the resolution directs the Commission to submit its report on the constitutional amendment by February 1, 1994.

A substantial amount of work on this has already been done, and is available to the Commission. The Chairperson and Executive Secretary met in Sacramento on September 15 with representatives of the Judicial Council and Senator Lockyer's staff to receive copies of the available materials and to discuss the general parameters of the study, the scheduling and procedure the Commission will follow, and the types of resources and assistance that can be made available to the Commission. In addition to the voluminous correspondence on the proposal, we have a detailed and thorough report prepared by the Judicial Council's Presiding Judges and Court Administrators Committees, chaired by Judge Roger Warren of Sacramento with Professor Clark Kelso of McGeorge Law School acting as Reporter. We also will have available a transcript of testimony from an interim hearing on the matter scheduled for October 8 in connection with the State Bar convention.

The main problem faced by the Commission in completing this study is one of time. There will be a substantial amount of staff work but this is manageable. The fact that so much has been done already will give both the Commission and staff a running start, which we will need. But the Commission must find meeting time to review and hear arguments on the issues, review and hear arguments on any proposed revisions of SCA 3, and prepare its report to the Legislature.

We will need to substantially revamp our meeting schedule in order to complete the study. The Chairperson and Executive Secretary have discussed the matter and concluded that this study will occupy all, or almost all, the

Commission's time between now and February 1, and substantial amounts of the Commission's time thereafter. This means that other ongoing projects such as the Administrative Procedure Act must be put on hold and delayed.

The Commission will need to meet at least monthly between now and February 1. We may need to reserve extra time, perhaps for an occasional one-day meeting from time to time during that period if necessary. **Please bring your schedules to the September meeting and be prepared to block out the time necessary to complete this project.**

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

AMENDED IN ASSEMBLY JULY 16, 1993

AMENDED IN SENATE APRIL 13, 1993

**Senate Constitutional Amendment****No. 3****Introduced by Senator Lockyer***(Principal coauthors: Assembly Members Isenberg and Goldsmith)*

December 7, 1992

Senate Constitutional Amendment No. 3—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Sections 1, 4, 6, 8, 10, 11, 15, and 16 of, adding and repealing Section 16.5 of, and repealing Section 5 of, Article VI thereof, relating to District Courts.

## LEGISLATIVE COUNSEL'S DIGEST

SCA 3, as amended, Lockyer. District courts: creation.

The California Constitution currently provides for superior, municipal, and justice courts, provides for the establishment and jurisdiction thereof, and provides for the qualification and election of judges thereof.

This measure would eliminate the provisions for superior, municipal, and justice courts, and instead provide for district courts, their establishment and jurisdiction, and the qualification and election of judges thereof. The measure would become operative on July 1, 1995. The measure would also specify its purposes, and make related, conforming changes.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

1     *Resolved by the Senate, the Assembly concurring,* That  
2 the Legislature of the State of California at its 1993-94  
3 Regular Session commencing on the seventh day of  
4 December 1992, two-thirds of the members elected to  
5 each of the two houses of the Legislature voting therefor,  
6 hereby proposes to the people of the State of California  
7 that the Constitution of the State be amended as follows:

8     First—That Section 1 of Article VI is amended to read:

9     SEC. 1. The judicial power of this State is vested in  
10 the Supreme Court, courts of appeal, and district courts.  
11 All courts are courts of record.

12     Second—That Section 4 of Article VI is amended to  
13 read:

14     SEC. 4. In each county there is a district court of one  
15 or more judges. The Legislature shall prescribe the  
16 number of judges and provide for the officers and  
17 employees of each district court. ~~If the governing body~~  
18 ~~of each affected county concurs, the~~ *The* Legislature may  
19 provide that one or more judges serve more than one  
20 district court, or that two or more district courts may be  
21 organized into one or more circuits for regional resource  
22 sharing or administrative purposes.

23     ~~If the governing body of the county concurs, the~~

24     *The* Legislature may divide the district court into one  
25 or more branches.

26     The county clerk is ex officio clerk of the district court  
27 in the county.

28     Third—That Section 5 of Article VI is repealed.

29     Fourth—That Section 6 of Article VI is amended to  
30 read:

31     SEC. 6. The Judicial Council consists of the Chief  
32 Justice and one other judge of the Supreme Court, 3  
33 judges of courts of appeal, and 10 judges of district courts,  
34 each appointed by the Chief Justice for a 2-year term; 4  
35 members of the State Bar appointed by its governing  
36 body for 2-year terms; and one member of each house of  
37 the Legislature appointed as provided by the house.

38     Council membership terminates if a member ceases to  
39 hold the position that qualified the member for  
40 appointment. A vacancy shall be filled by the appointing

1 power for the remainder of the term.

2 The council may appoint an Administrative Director of  
3 the Courts, who serves at its pleasure and performs  
4 functions delegated by the council or the Chief Justice,  
5 other than adopting rules of court administration,  
6 practice and procedure.

7 To improve the administration of justice the council  
8 shall survey judicial business and make recommendations  
9 to the courts, make recommendations annually to the  
10 Governor and Legislature, adopt rules for court  
11 administration, practice and procedure, not inconsistent  
12 with statute, and perform other functions prescribed by  
13 statute.

14 The Chief Justice shall seek to expedite judicial  
15 business and to equalize the work of judges. The Chief  
16 Justice may provide for the assignment of any judge to  
17 another court but only with the judge's consent if the  
18 court is of lower jurisdiction. A retired judge who  
19 consents may be assigned to any court.

20 Judges shall report to the Judicial Council as the Chief  
21 Justice directs concerning the condition of judicial  
22 business in their courts. They shall cooperate with the  
23 council and hold court as assigned.

24 Fifth—That Section 8 of Article VI is amended to read:

25 SEC. 8. (a) The Commission on Judicial  
26 Performance consists of 2 judges of courts of appeal, and  
27 3 judges of district courts, each appointed by the  
28 Supreme Court; 2 members of the State Bar of California  
29 who have practiced law in this State for 10 years,  
30 appointed by its governing body; and 2 citizens who are  
31 not judges, retired judges, or members of the State Bar of  
32 California, appointed by the Governor and approved by  
33 the Senate, a majority of the membership concurring.  
34 Except as provided in subdivision (b), all terms are 4  
35 years. No member shall serve more than 2 4-year terms.

36 Commission membership terminates if a member  
37 ceases to hold the position that qualified the member for  
38 appointment. A vacancy shall be filled by the appointing  
39 power for the remainder of the term. A member whose  
40 term has expired may continue to serve until the vacancy

1 has been filled by the appointing power.

2 (b) To create staggered terms among the members of  
3 the Commission on Judicial Performance, the following  
4 members shall be appointed, as follows:

5 (1) The court of appeal member appointed to  
6 immediately succeed the term that expires on November  
7 8, 1988, shall serve a 2-year term.

8 (2) Of the State Bar members appointed to  
9 immediately succeed terms that expire on December 31,  
10 1988, one member shall serve for a 2-year term.

11 Sixth—That Section 10 of Article VI is amended to read:

12 SEC. 10. The Supreme Court, courts of appeal,  
13 district courts, and their judges have original jurisdiction  
14 in habeas corpus proceedings. Those courts also have  
15 original jurisdiction in proceedings for extraordinary  
16 relief in the nature of mandamus, certiorari, and  
17 prohibition.

18 District courts have original jurisdiction in all causes.

19 The court may make such comment on the evidence  
20 and the testimony and credibility of any witness as in its  
21 opinion is necessary for the proper determination of the  
22 cause.

23 Seventh—That Section 11 of Article VI is amended to  
24 read:

25 SEC. 11. The Supreme Court has appellate  
26 jurisdiction when judgment of death has been  
27 pronounced. With that exception courts of appeal have  
28 appellate jurisdiction when district courts have original  
29 jurisdiction and in other causes prescribed by statute.

30 An appellate division shall be created within each  
31 district court. The appellate division has appellate  
32 jurisdiction in causes prescribed by statute that arise  
33 within that district court.

34 The Legislature may permit appellate courts to take  
35 evidence and make findings of fact when jury trial is  
36 waived or not a matter of right.

37 Eighth—That Section 15 of Article VI is amended to  
38 read:

39 SEC. 15. A person is ineligible to be a judge of a court  
40 of record unless for 5 10 years immediately preceding

1 selection to a district court or 10 years immediately  
2 preceding selection to other courts, the person has been  
3 a member of the State Bar or served as a judge of a court  
4 of record in this State. A judge eligible for district court  
5 service may be assigned by the Chief Justice to serve on  
6 any court.

7 Ninth—That Section 16 of Article VI is amended to  
8 read:

9 SEC. 16. (a) Judges of the Supreme Court shall be  
10 elected at large and judges of courts of appeal shall be  
11 elected in their districts at general elections at the same  
12 time and places as the Governor. Their terms are 12 years  
13 beginning the Monday after January 1 following their  
14 election, except that a judge elected to an unexpired  
15 term serves the remainder of the term. In creating a new  
16 court of appeal district or division the Legislature shall  
17 provide that the first elective terms are 4, 8, and 12 years.

18 (b) Judges of other courts shall be elected in their  
19 districts or branches at general elections. The Legislature  
20 may provide that an unopposed incumbent's name not  
21 appear on the ballot.

22 (c) Terms of judges of district courts are 6 years  
23 beginning the Monday after January 1 following their  
24 election. A vacancy shall be filled by election to a full  
25 term at the next general election after the January 1  
26 following the vacancy, but the Governor shall appoint a  
27 person to fill the vacancy temporarily until the elected  
28 judge's term begins.

29 (d) Within 30 days before August 16 preceding the  
30 expiration of the judge's term, a judge of the Supreme  
31 Court or a court of appeal may file a declaration of  
32 candidacy to succeed to the office presently held by the  
33 judge. If the declaration is not filed, the Governor before  
34 September 16 shall nominate a candidate. At the next  
35 general election, only the candidate so declared or  
36 nominated may appear on the ballot, which shall present  
37 the question whether the candidate shall be elected. The  
38 candidate shall be elected upon receiving a majority of  
39 the votes on the question. A candidate not elected may  
40 not be appointed to that court but later may be



1 nominated and elected.

2 The Governor shall fill vacancies in those courts by  
3 appointment. An appointee holds office until the Monday  
4 after January 1 following the first general election at  
5 which the appointee had the right to become a candidate  
6 or until an elected judge qualifies. A nomination or  
7 appointment by the Governor is effective when  
8 confirmed by the Commission on Judicial Appointments.

9 Electors of a county, by majority of those voting and in  
10 a manner the Legislature shall provide, may make this  
11 system of selection applicable to judges of district courts.

12 Tenth—That Section 16.5 is added to Article VI to read:

13 SEC. 16.5. The purpose of the repeal of Section 5, and  
14 the amendments to Sections 1, 4, 6, 8, 10, 11, 15, and 16,  
15 of this article, adopted at the June 1994 primary election  
16 is to convert each superior, municipal, and justice court  
17 to a district court.

18 In each former superior, municipal, and justice court  
19 district, the previously selected judges, officers, and  
20 employees shall become the judges, officers, and  
21 employees of the district court; each preexisting superior,  
22 municipal, and justice court location shall be retained as  
23 a district court location; pending actions, trials,  
24 proceedings, and other business of the preexisting court  
25 shall become pending in the district court; and the  
26 records of the preexisting court shall become records of  
27 the district court.

28 The terms of office of the judges of the preexisting  
29 superior, municipal, and justice courts shall not be  
30 affected by their succession to office as district court  
31 judges.

32 This section shall be operative only until January 1,  
33 2000, and as of that date is repealed.

34 Eleventh—That this measure shall become operative  
35 on July 1, 1995.