Memorandum 93-56

Trial Court Unification: Judicial Power

Article 6, Section 1 of the California Constitution prescribes the structure of the state judicial system.

> Sec. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts. All courts are courts of record.

Unification of the trial courts requires amendment of this provision. SCA 3 would revise the section to provide that the judicial power is vested in the Supreme Court, courts of appeal, and *district courts*. The district courts would replace the existing superior, municipal, and justice courts. Each county has a district court under the SCA 3 scheme. Article 6, § 4.

TERMINOLOGY

A number of commentators on SCA 3 have raised the issue whether "district" court is the best name for the unified trial court. The State Courts Committee of the Los Angeles County Bar Association, for example, notes in a memorandum dated April 30, 1993, that:

> It was the consensus of the Committee that it would be better if the new unified courts were called something other than "District Courts." Calling the courts District Courts would be confusing since that is what our Courts of Appeal are called and what the first level federal courts are referred to as. It was suggested that another name be considered for the courts such as continuing to call the unified courts the "Superior Court of the State of California" or calling them "State Trial Courts."

Other names that have been suggested besides district court, superior court, and trial court include *circuit court* and *county court*. Each of these offers advantages and disadvantages.

To the extent the court's jurisdiction is not coterminous with the county, for example if multi-county judicial districts are permitted, or if a county is divided into several independent judicial districts, the *county court* appellation would be

somewhat misleading. Moreover, it throws us into the philosophical debate over whether the court is a court of the county or a court of the state, particularly as the state assumes greater responsibility for trial court funding. The concepts of multi-county districts and semi-county districts and of state versus county funding and control are discussed in Memorandum 93-57 (district court). At least *district court* is aligned with the judicial district that defines its jurisdiction, and is consistent with *district attorney* usage. The name raises no implication concerning local or state control.

The *superior court* option offers a number of obvious advantages. The term is already familiar and people would know that the trial court is being referred to. It would save substantial amounts of money in signage, forms, stationery, etc. And it would tremendously simplify the task of making conforming changes in the statutes. For example, statutory references to the superior court alone that would not otherwise require revision number in excess of 3,000. (Of course we could make a simple statutory statement that any reference to the superior, municipal, or justice court means the district court, although this is not completely satisfactory in the long run.)

One disadvantage of *superior court* is possible confusion about the jurisdiction of the court in light of the history of the term. The term carries additional historical baggage in its implication of the existence of a lower or inferior court.

Superior court would also imply that the superior court is swallowing up the municipal and justice courts, rather than that the three are merging into a new unified court. Although this consideration may appear superficial, it could be important in the formation of the attitudes of the persons, judicial and nonjudicial, who will be called upon to work to make a smooth transition or who are concerned about centralization and the loss of local courts. On the other hand, it could assuage the substantial general concern that exists about possible degradation of the quality of justice in a unified court system. *Superior court* could give the right image that the entire trial court system is being upgraded to superior court, or highest, trial court status.

On balance, the staff believes that, of the names suggested for the unified trial courts, *superior court* is "superior". Its use would cause no confusion, would convey the right image, would simplify transition, and perhaps most important, would save money.

The staff proposes revision of SCA 3 so that the Constitution is amended to read:

Cal. Const. Art. 6, § 1 (amended). Judicial power

SEC. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, *and* superior courts ~~, municipal courts, and justice courts~~ . All courts are courts of record.

Comment. Section 1 of Article 6 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a single level trial court system of superior courts. See Section 4 (superior court) and former Section 5 (municipal court and justice court).

IMPLEMENTING LEGISLATION

If the constitutional measure passes, we will propose followup legislation of a house-keeping nature to conform existing statutes that use old terminology.

Meanwhile, it could be useful to have in place interim legislation along the lines originally suggested in Senator Lockyer's SB 15, a companion bill to SCA 3. This type of bill would be a stop-gap measure to become operative at the same time as SCA 3, pending more carefully worked out legislation.

SB 15 would have provided:

SECTION 1. Section 69500 is added to the Government Code to read:

69500. All laws relating to the superior courts, and to the judges and other officers or attaches of those courts, in effect on July 1, 1995, shall apply to district courts[,] and to the judges and other officers or attaches of the district courts.

SEC. 2. Section 71001 of the Government Code is amended to read:

71001. ~~All laws relating to the municipal and justices' courts existing prior to November 7, 1950, and to the judges, marshals, constables, and other officers or attaches of the courts, not inconsistent with the Municipal and Justice Court Act of 1949, or the provisions of law succeeding that act, apply to the municipal and justice courts provided for in the Municipal and Justice Court Act of 1949, or the provisions of law succeeding that act, and to the judges, marshals, constables, and other officers or attaches of the courts until altered by the Legislature.~~

All laws relating to the municipal [and] justice courts, and to the judges and other officers or attaches of those courts[,] in effect on July 1, 1995, shall apply to district courts, and to the judges and other officers or attaches of the district courts.

However, if inconsistent provisions relating to superior, municipal, and justice courts are applicable to a district court, the provisions relating to superior courts shall prevail. If inconsistent provisions relating to

municipal and justice courts are both applicable to a district court, the provisions relating to municipal courts shall prevail.

SEC. 3. Sections 1 and 2 of this act shall become operative only if Senate Constitutional Amendment 3 is adopted by the voters at the June 1994, primary election, in which case they shall become operative on July 1, 1995.

While the staff does not necessarily recommend this specific language, we do think that the Commission should consider something along these lines. It would ensure that at least an interim measure is in place to cover the possibility that more detailed implementing legislation could get hung up in the legislative process.

However, care must be used in formulating this type of provision. It is a blunt instrument and could inadvertently impose rules we really would not want. For example, if superior court procedures were imposed on causes now conducted under Economic Litigation principles in the lower courts, the system could gridlock.

As we go through specific issues and note specific problems in the statutes, we should be sensitive to the possibility of interim legislation pending a more thorough statutory revision. The staff will suggest specific language along these lines before the Commission submits its report to the Legislature on the constitutional amendment.

Respectfully submitted,

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