Memorandum 93-63

Trial Court Unification: Transitional Provisions

SCA 3 contemplates that the trial court unification proposition will be on the June 1994 ballot and, if adopted, become operative July 1, 1995. SCA 3 includes an omnibus transitional provision:

> Sec. 16.5. The purpose of the repeal of Section 5, and the amendments to Sections 1, 4, 6, 8, 10, 11, 15, and 16, of this article, adopted at the June 1994 primary election is to convert each superior, municipal, and justice court to a district court.
>
> In each former superior, municipal, and justice court district, the previously selected judges, officers, and employees shall become the judges, officers, and employees of the district court; each preexisting superior, municipal, and justice court location shall be retained as a district court location; pending actions, trials, proceedings, and other business of the preexisting court shall become pending in the district court; and the records of the preexisting court shall become records of the district court.
>
> The terms of office of the judges of the preexisting superior, municipal, and justice courts shall not be affected by their succession to office as district court judges.
>
> This section shall be operative only until January 1, 2000, and as of that date is repealed.

Transitional aspects of specific issues are addressed in other memoranda. It had been our original intention to pull all of the transitional matters together in this memorandum, but that now appears premature. We will wait to prepare a complete draft of the transitional provision, or provisions, until all the specific issues have been resolved, including location and the duration of the transitional provisions.

This memorandum deals with transitional matters not addressed in the other memoranda, including the operative date of unification, coordination of implementation activities, treatment of pending proceedings, and severability.

OPERATIVE DATE

In its current form, SCA 3 provides a one-year deferral of its operative date. Assuming it is adopted by the voters in June 1994, unification would take place

on July 1, 1995. Past unification studies have suggested deferral periods ranging from one year to three years to allow proper preparation for unification.

There are two primary considerations in determination of the operative date—(1) the time needed to take care of the practical details of forms, personnel, assignments, facilities, and the like, and (2) the time required for necessary statutory revisions, for example to address Economic Litigation issues, criminal review procedures, venue questions, etc. To some extent these considerations overlap, since under California's existing scheme of legislative control of details of judicial operations and personnel, many of the practical issues are controlled by statutes that may require amendment.

Practical Details

The County Clerks Association suggests that a longer implementation period than one year might be considered—"Everyone involved in California's judicial system will want to ensure that court unification proceeds in an orderly manner and that the final product is a good one."

The 1993 Judicial Council Report considers this matter at some length and concludes that a one-year deferral is sufficient.

> A variety of effective date and transition periods were considered, ranging from a six-month transition period to a two-year period. The general purpose of a transition period is to give local judicial officials time to make preparations for unification. Some counties, especially those counties which have vigorous trial court coordination plans, will be ready to unify almost immediately. Other counties may require more time. Ultimately, it was determined that a single effective date was the only practical solution. Having some counties unify before other counties would create state-wide confusion among the bench, the bar and the public. July 1, 1995, was chosen because it coincides with the courts' budget cycle. Assuming the constitutional amendments are approved in the June 1994 election, trial courts will have over one year to prepare for unification. It was agreed that one year should be adequate time for court administrators to make all necessary preparations. July 1994 was ruled out both because not all trial courts would be ready so quickly and because the necessary implementing legislation will likely not be enacted until later in the 1994-95 legislative session.

The staff is inclined to rely on the Judicial Council analysis of the practical aspects and their conclusion that one year is sufficient. They have plenty of

experience with trial court coordination activities, and this conclusion was reached by a joint committee of presiding judges and court administrators.

Statutory Revisions

The necessary statutory revisions will be quite substantial—a much larger project than review of the constitutional framework. All the detail of court organization, procedures, operations, personnel, compensation, and the like, is in the statutes. In addition, essentially all of the fundamental unification issues discussed in other memoranda—jurisdiction, venue, branches, sessions, fees, civil and criminal procedures, appeals, etc.—require statutory resolution. Each of these issues is intensely political, and there is likely to be some difficulty achieving an acceptable resolution with all the competing interests.

There is also the matter of conforming revisions to change terminology of superior, municipal, and justice courts in several thousand statutes. This is a ministerial task, however, that can be done in later cleanup legislation. A general conversion provision can be enacted as a temporary fix, along the lines of SB 15 discussed in Memorandum 93-56 (judicial power).

While the task is large, we will be helped by the fact that all the interest groups will be under time pressure to come to a reasonable accommodation on the issues. We will also be helped by the fact that a substantial amount of background work on trial court unification has been done, and most of the major problem areas have been identified and drafts of various approaches prepared.

We would need to begin the statutory review immediately in anticipation of passage of SCA 3 at the June 1994 election in order to obtain enactment of implementing legislation by July 1, 1995.

Our major concern is the sufficiency of Commission resources for this project. Both Commission meeting time and staffing are limited as a result of budget reductions over the past several years. We are seeking to address this problem.

Assuming we obtain the needed resources, the staff thinks statutory implementation by the July 1, 1995, operative date is feasible.

COORDINATION OF IMPLEMENTATION ACTIVITIES

The most difficult implementation problems concern practical personnel issues.

In Memorandum 93-57 (district court) we suggest a process to settle personnel questions in advance of the operative date of unification. The

presiding judges and court administrators in each county, along with representatives of the Administrative Office of the Courts, county representatives, and employee representatives, would confer concerning the personnel needs of the unified court, any necessary personnel reduction or relocation plans, proposed salary, benefits, and retirement plan arrangements, and other personnel matters. These persons would have authority to act for the unified court, pending the operative date of unification, in making assignments, giving notices, and the like that will be effective on the operative date of unification. We requested input on this proposal, and it may evolve into something useful.

An alternative approach suggested in some unification proposals would be to structure personnel decisions in the unified court through a statutorily prescribed phase-in. All permanent court employees would be carried over into the unified court with their compensation unchanged for the first year. After the first year, employee classification and pay rate schedules developed by the Judicial Council would become effective. After five years, each court administrator would be empowered to eliminate supernumerary positions.

A different approach found in some of the unification plans is simply to leave personnel issues to the Judicial Council to handle by whatever procedure appears most appropriate to it. The Council would be charged with preparation of a plan for the orderly transition of the existing trial court system to a unified trial court system, including adoption of rules of administration, establishment of standards for classified positions, qualifications, selection, compensation, promotion, discipline, dismissal, and retirement of all officers and employees.

PENDING PROCEEDINGS

What happens to proceedings pending in the superior, municipal, and justice courts when unification occurs? SCA 3 covers this in the transitional provision by a clause that "pending actions, trials, proceedings, and other business of the preexisting court shall become pending in the district court". The staff believes this deals with the issue satisfactorily.

SEVERABILITY

It is possible that an amendment of the state Constitution to implement trial court unification could be held to violate the federal Constitution. Specific instances we have identified in other memoranda include (1) violation of the

Supremacy Clause via the Voting Rights Act; (2) violation of the Contract Clause by assignment of sitting superior court judges to causes formerly within the municipal and justice court jurisdiction; and (3) violation of the Contract Clause for changes in compensation or vested retirement benefits.

Our intention would be to allow trial court unification to proceed even though due to constitutional limitations we may be unable to achieve countywide election of judges, unlimited assignability of district court judges, or uniformity of salary and retirement benefits.

We therefore should add a severability clause to the measure.

> If any provision of this measure or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

Respectfully submitted,

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Executive Secretary