

Memorandum 93-64

Trial Court Unification: Compensation of Judges

Three provisions of the California Constitution affect judges' salaries — Article III, Section 4, and Article VI, Sections 5 and 19. All give the Legislature authority to set judges' salaries:

ARTICLE III

Sec. 4. (a) Except as provided in subdivision (b), salaries of elected state officers may not be reduced during their term of office. Laws that set these salaries are appropriations.

(b) Beginning on January 1, 1981, the base salary of a judge of a court of record shall equal the annual salary payable as of July 1, 1980, for that office had the judge been elected in 1978. The Legislature may prescribe increases in those salaries during a term of office, and it may terminate prospective increases in those salaries at any time during a term of office, but it shall not reduce the salary of a judge during a term of office below the highest level paid during that term of office. Laws setting the salaries of judges shall not constitute an obligation of contract pursuant to Section 9 of Article I or any other provision of law.

ARTICLE VI

Sec. 5. . . . The Legislature shall provide for the organization and prescribe the jurisdiction of municipal and justice courts. It shall prescribe for each municipal court and provide for each justice court the number, qualifications, and compensation of judges, officers, and employees. . . .

Sec. 19. The Legislature shall prescribe compensation for judges of courts of record.

A judge of a court of record may not receive the salary for the judicial office held by the judge while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision.

Senate Constitutional Amendment 3 (Lockyer) would repeal Section 5 of Article VI. Neither SCA 3 nor the Judicial Council report proposes to amend Article III, Section 4, or Article VI, Section 19.

There is an apparent inconsistency: Section 4 of Article III, added in 1972 and amended in 1980, appears to qualify the first sentence of Section 19 of Article VI, added in 1966. Both of these provisions were noted in *Olson v. Cory*, 27 Cal. 3d 532, 537-538, 609 P.2d 991, 164 Cal. Rptr. 217 (1980), but the court appeared untroubled by any conflict between them. Presumably Section 4 would control over the first sentence of Section 19, because Section 4 was enacted later than Section 19 and Section 4 is the more specific provision. The staff does not propose to address the conflict problem, if any, in the context of unification.

Judicial Salaries

A superior court judge receives \$99,297 a year and municipal and justice court judges receive \$90,680 a year according to the analysis of SCA 3 by the Assembly Judiciary Committee staff. See also Gov't Code §§ 68202-68203. The staffs of the Assembly and Senate Judiciary Committees anticipate one uniform salary schedule for all trial court judges. The Senate analysis assumes this will be done by compensating all judges at the current level for superior court judges, noting that this will result in increased costs to the state of about 5.3 million dollars a year.

The 1993 Judicial Council Report recommends equal pay for all trial judges, set by statute and effective immediately upon unification. This approach is supported by Judge Patrick McMahon of the Santa Barbara County Superior Court, who says all district judges should receive the same salary, and "supplemental benefits paid from local sources" should not exceed 7% of the judge's salary. The judges of the South Bay Municipal Court District in Torrance agree all judges should receive the same salary.

One judge writes that salary parity for municipal court judges is the "Achilles Heel" of the unification measure. The last unification measure was defeated by the voters because opponents characterized it as an attempt by municipal court judges to get a raise. He thinks that will be the main opposition this time.

Another judge writes that *Olson v. Cory, supra*, establishes a constitutional requirement that municipal court judges' salaries be increased to superior court salary levels. But the case did not so hold. The court held the 1976 amendments limiting the cost-of-living increase in Government Code Section 68203 could not be constitutionally applied to incumbent judges until the judge begins a new term of office. The court noted that since affected judges will begin new terms of office on a staggered timetable, "salary disparity among peer judges will result."

27 Cal. 3d at 544. The court found this constitutionally permissible because it is temporary — the salary of a judge protected by the constitutional ruling “will be decreased upon entering a new term.” The staff concludes there is nothing in *Olson v. Cory* requiring municipal court judges to have a salary increase to that of superior court judges immediately upon unification. (The case does preclude reduction of superior court judges’ salaries during present terms of office.)

As a matter of policy, the staff agrees that one salary schedule for all district court judges is appropriate. Subject to possible transitional rules, after unification all district court judges may be assigned to hear any matter in the trial courts. See Memorandum 93-58. The principle of equal pay for equal work compels the conclusion that there should be one salary schedule.

The 5.3 million dollar annual price tag could be avoided by setting salaries of district court judges at an average of superior and municipal court judges’ salaries. If salaries of superior court judges are not reduced during present terms of office, no serious constitutional issue would be presented. See *Olson v. Cory, supra*; *Crawford v. Payne*, 12 Cal. App. 2d 485, 55 P.2d 1240 (1936). But the staff does not believe unification should result in any decrease of judicial salaries. The most qualified superior court judges now make a financial sacrifice by continuing in public service rather than returning to the private sector. To reduce salaries of superior court judges would likely have a severely detrimental effect on judicial morale, and would make it harder to attract well-qualified candidates for judgeships. Accordingly the staff recommends that salaries of municipal and justice court judges be increased after unification to match the salaries of superior court judges.

A closer question is whether the salary increase for municipal court judges should be immediate upon unification, or should be phased in gradually. The political argument that the 5.3 million dollar annual cost of immediately increasing municipal court judges’ salaries may doom the ballot measure is some argument for a gradual phase-in. And perhaps our proposal not to apply the ten-year experience requirement to incumbent municipal and justice court judges for the first five years after unification (see Memorandum 93-61) justifies lower salaries for these judges during this period.

But a gradual phase-in also has problems. For example, a municipal court judge who is changed to a district court judge by unification will receive a lower salary than a judge who was being considered for appointment to the municipal court at the time of unification but who is appointed to the district court instead.

Or, a municipal court judge who is being considered for appointment as a superior court judge and becomes a district court judge by unification will lose the benefit of the immediate higher salary he or she would have gotten by the appointment.

The cleaner solution is to make the salary increase for municipal court judges immediate. A gradual phase-in will not eliminate the argument that unification will increase expenditures for judicial salaries. That argument should be met by showing that increased salary expenditures will be more than offset by savings resulting from more efficient court operations.

Judicial salaries are paid about 90% by the state and 10% by the county in the largest counties, and about 94% by the state and 6% by the county in the smallest counties. See Gov't Code § 68206. The Legislature intends eventually to have 100% state funding of trial courts. See Memorandum 93-57 (district court). So increased expenditures for judicial salaries under unification will come mostly, if not entirely, from the state. Unification does not require any change in the formula for allocating judicial salaries between the state and counties. However, conforming revisions to adjust the nomenclature of the courts will be needed to Government Code Sections 68071-68073, 68074.1, 68077, 68078, 68081, 68084-68086, 68090.8, 68093, 68096, 68098, 68112-68114.6, 68115, 68202, 68203, and 68206-68207.

The question of judges' retirement benefits is addressed in Memorandum 93-65.

Commissioners' Salaries

Court commissioners' salaries are fixed by statute on a county-by-county or court-by-court basis, and vary from 70% to 85% of the salary of a superior or municipal court judge. See Gov't Code §§ 70141.4-70142.13, 73681.1, 74908, 74949.1. In some counties, the superior court commissioner's salary is fixed by contract, or as recommended by the court, and approved by the board of supervisors. *Id.* §§ 70141.1, 70142.13. The California Court Commissioners Association wants statutory equalization of salaries of all commissioners at \$15,000 less than a district court judge's salary. The Judicial Council considered this but took no action.

In Memorandum 93-66, the staff concludes that commissioners' salaries should be reviewed when we do the statutory part of the unification study, noting that this goes beyond changes necessitated by trial court unification.

Staff Recommendation

The staff recommends all district court judges receive a salary equivalent to that of superior court judges. Although SCA 3 adds a self-repealing transitional provision to the California Constitution affecting, for example, terms of office of judges, the staff thinks the salary question should be addressed by a statute, adopted before the operative date for unification (July 1, 1995) to become operative on that date.

Respectfully submitted,

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