

Memorandum 93-68

Trial Court Unification: Miscellaneous Provisions

There are several conforming revisions required in the state Constitution for trial court unification that do not present policy issues. These should be included with the basic unification measure. The proposed conforming revisions are set out below.

Const. Art. 5, § 13 (amended). Powers of Attorney General

Sec. 13. Subject to the powers and duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced. The Attorney General shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as to the Attorney General may seem advisable. Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of which the ~~superior district~~ court shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney. When required by the public interest or directed by the Governor, the Attorney General shall assist any district attorney in the discharge of the duties of that office.

Comment. Section 13 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a single trial level court. See Section 4 (district court) and former Section 5 (municipal court and justice court).

Note. If the name selected for the unified court is "superior court", this revision will be unnecessary.

Const. Art. 6, § 5 (repealed). Municipal and justice courts

~~Sec. 5. (a) Each county shall be divided into municipal court and justice court districts as provided by statute, but a city may not be divided into more than one district. Each municipal and justice court shall have one or more judges.~~

~~There shall be a municipal court in each district of more than 40,000 residents and a justice court in each district of 40,000~~

~~residents or less. The number of residents shall be ascertained as provided by statute.~~

~~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.~~

~~(b) Notwithstanding the provisions of subdivision (a), any city in San Diego County may be divided into more than one municipal court or justice court district if the Legislature determines that unusual geographic conditions warrant such division.~~

~~Comment. Section 5 is omitted to reflect unification of the superior courts, municipal courts, and justice courts in a single trial level court. See Section 4 (district court).~~

~~Initially, the previously selected judges, officers, and employees of the municipal and justice courts become district court personnel, and preexisting municipal and justice court locations are retained as district court locations. Section 23.~~

~~The Legislature may provide for branches in the unified court. Section 4. The original jurisdiction of the unified court extends to all causes. Section 10. The Legislature prescribes the number of judges. Section 4. The qualifications of judges are governed by Section 15. The Legislature prescribes the compensation of judges. Section 19. The number, qualifications, and compensation of court officers and employees is determined by the Judicial Council. Section 6.~~

Const. Art. 6, § 8. Commission on Judicial Performance

~~Sec. 8. (a) The Commission on Judicial Performance consists of 2 judges of courts of appeal, 2 judges of superior courts, and one judge of a municipal court and 3 judges of district courts, each appointed by the Supreme Court; 2 members of the State Bar of California who have practiced law in this State for 10 years, appointed by its governing body; and 2 citizens who are not judges, retired judges, or members of the State Bar of California, appointed by the Governor and approved by the Senate, a majority of the membership concurring. ~~Except as provided in subdivision (b), all~~ All terms are 4 years. No member shall serve more than 2 4-year terms.~~

~~(b) Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing power.~~

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

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

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

Comment. Subdivision (a) of Section 8 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a single trial level court. See Section 4 (district court) and former Section 5 (municipal court and justice court).

Former subdivision (b) is deleted. It was a transitional provision that is no longer necessary.

Note. The 1993 Judicial Council Report proposes repeal of subdivision (b), noting that it was a transition provision added as a result of Proposition 92 to insure staggered terms. They suggest the provision serves no present function in the Constitution and should be deleted as surplusage at the earliest possible opportunity.

Const. Art. 6, § 17 (amended). Limitations on judges

A judge ~~of a court of record~~ may not practice law and during the term for which the judge was selected is ineligible for public employment or public office other than judicial employment or judicial office, except a judge ~~of a court of record~~ may accept a part-time teaching position that is outside the normal hours of ~~his or her~~ the judicial position and that does not interfere with the regular performance of ~~his or her~~ the judicial duties while holding office. A judge of a ~~trial court of record~~ district court may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. Acceptance of the public office is a resignation from the office of judge.

A judicial officer may not receive fines or fees for personal use.

A judicial officer may not earn retirement service credit from a public teaching position while holding judicial office.

Comment. Section 17 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a single trial level court. See Section 4 (district court) and former Section 5 (municipal court and justice court).

Section 17 is also amended to delete the references to courts of record. All courts are courts of record. Section 1.

The other changes in Section 17 are technical.

Note. The 1993 Judicial Council Report proposes to amend this section, although the staff thinks the need for the amendment is marginal. The section works without the amendment, and we'd be inclined in the interest of minimizing change to leave it alone.

Const. Art. 10A, § 6 (amended). Procedure in certain water-related actions

Sec. 6. (a) The venue of any of the following actions or proceedings brought in a ~~superior~~ district court shall be Sacramento County:

(1) An action or proceeding to attack, review, set aside, void, or annul any provision of the statute enacted by Senate Bill No. 200 of the 1979-80 Regular Session of the Legislature.

(2) An action or proceeding to attack, review, set aside, void, or annul the determination made by the Director of Water Resources and the Director of Fish and Game pursuant to subdivision (a) of Section 11255 of the Water Code.

(3) An action or proceeding which would have the effect of attacking, reviewing, preventing, or substantially delaying the construction, operation, or maintenance of the peripheral canal unit described in subdivision (a) of Section 11255 of the Water Code.

(4) An action or proceeding to require the State Water Resources Development System to comply with subdivision (b) of Section 11460 of the Water Code.

(5) An action or proceeding to require the Department of Water Resources or its successor agency to comply with the permanent agreement specified in subdivision (a) of Section 11256 of the Water Code.

(6) An action or proceeding to require the Department of Water Resources or its successor agency to comply with the provisions of the contracts entered into pursuant to Section 11456 of the Water Code.

(b) An action or proceeding described in paragraph (1) of subdivision (a) shall be commenced within one year after the effective date of the statute enacted by Senate Bill No. 200 of the 1979-80 Regular Session of the Legislature. Any other action or proceeding described in subdivision (a) shall be commenced within one year after the cause of action arises unless a shorter period is otherwise provided by statute.

(c) The ~~superior~~ district court or a court of appeals shall give preference to the actions or proceedings described in this section over all civil actions or proceedings pending in the court. The ~~superior~~ district court shall commence hearing any such action or proceeding within six months after the commencement of the action or proceeding, provided that any such hearing may be delayed by joint stipulation of the parties or at the discretion of the court for good cause shown. The provisions of this section shall supersede any provisions of law requiring courts to give preference to other civil actions or proceedings. The provisions of this subdivision may be enforced by mandamus.

(d) The Supreme Court shall, upon the request of any party, transfer to itself, before a decision in the court of appeal, any appeal or petition for extraordinary relief from an action or proceeding described in this section, unless the Supreme Court determines that the action or proceeding is unlikely to substantially affect (1) the construction, operation, or maintenance of the peripheral canal unit described in subdivision (a) of Section 11255 of the Water Code, (2) compliance with subdivision (b) of Section 11460 of the Water Code, (3) compliance with the permanent agreement specified in Section 11256 of the Water Code, or (4) compliance with the provisions of the contracts entered into pursuant to Section 11456 of the Water Code. The request for transfer shall receive preference on the Supreme Court's calendar. If the action or proceeding is transferred to the Supreme Court, the Supreme Court shall commence to hear the matter within six months of the transfer unless the parties by joint stipulation request additional time or the court, for good cause shown, grants additional time.

(e) The remedy prescribed by the court for an action or proceeding described in paragraph (4), (5), or (6) of subdivision (a) shall include, but need not be limited to, compliance with subdivision (b) of Section 11460 of the Water Code, the permanent agreement specified in Section 11256 of the Water Code, or the provisions of the contracts entered into pursuant to Section 11456 of the Water Code.

(f) The Board of Supervisors of the County of Sacramento may apply to the State Board of Control for actual costs imposed by the requirements of this section upon the county, and the State Board of Control shall pay such actual costs.

(g) Notwithstanding the provisions of this section, nothing in this Article shall be construed as prohibiting the Supreme Court from exercising the transfer authority contained in Article VI, Section 12 of the Constitution.

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

Note. If the name selected for the unified court is "superior court", this revision will be unnecessary.

The staff has not made a substantive review of this provision to determine whether all of it is still good law.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary