

Memorandum 2001-13

**Statutes Made Obsolete by Trial Court Restructuring:
California Constitution**

“The California Law Revision Commission shall determine whether any provisions of law are obsolete as a result of the enactment of this chapter, the enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997 (Chapter 850 of the Statutes of 1997), or the implementation of trial court unification, and shall recommend to the Legislature any amendments to remove those obsolete provisions.” Gov’t Code § 71674.

This directive is not limited to statutory provisions. As long as we are engaged in this exercise, we probably ought to clean out the Constitution as well. Most of the cleanup is relatively routine, although a couple of questions are raised. The following draft assumes unification of the courts in the remaining nonunified county.

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

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

Comment. Section 1 is amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Section 5(e).

Cal. Const. Art. VI, § 5 (repealed). Municipal court

~~SEC. 5. (a) Each county shall be divided into municipal court districts as provided by statute, but a city may not be divided into more than one district. Each municipal court shall have one or more judges. Each municipal court district shall have no fewer than 40,000 residents; provided that each county shall have at least one municipal court district. The number of residents shall be determined as provided by statute.~~

~~(b) On the operative date of this subdivision, all existing justice courts shall become municipal courts, and the number, qualifications, and compensation of judges, officers, attaches, and employees shall continue until changed by the Legislature. Each judge of a part-time municipal court is deemed to have agreed to serve full time and shall be available for assignment by the Chief~~

~~Justice for the balance of time necessary to comprise a full-time workload.~~

~~(c) The Legislature shall provide for the organization and prescribe the jurisdiction of municipal courts. It shall prescribe for each municipal court the number, qualifications, and compensation of judges, officers, and employees.~~

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

~~(e) Notwithstanding subdivision (a), the municipal and superior courts shall be unified upon a majority vote of superior court judges and a majority vote of municipal court judges within the county. In those counties, there shall be only a superior court.~~

Comment. Section 5 is repealed to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to subdivision (e).

☛ **Staff Note.** This repeal would delete the requirement of subdivision (a) that each county be divided into municipal court districts as provided by statute. Statutes do provide the manner of creation of judicial districts, and these statutes have continuing relevance for legal publication purposes. See Gov't Code §§ 71042.5, 71042.6. These statutes would not be affected by repeal of Section 5.

Cal. Const. Art. VI, § 6 (amended). Judicial Council

SEC. 6. (a) The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, 3 judges of courts of appeal, 5 ~~10~~ judges of superior courts, ~~5~~ judges of municipal courts, 2 nonvoting court administrators, and such other nonvoting members as determined by the voting membership of the council, each appointed by the Chief Justice for a 3-year term pursuant to procedures established by the council; 4 members of the State Bar appointed by its governing body for 3-year terms; and one member of each house of the Legislature appointed as provided by the house. ~~Vacancies in the memberships on the Judicial Council otherwise designated for municipal court judges shall be filled by judges of the superior court in the case of appointments made when fewer than 10 counties have municipal courts.~~

(b) Council 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.

(c) The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions

delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.

(d) To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute. The rules adopted shall not be inconsistent with statute.

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

(f) Judges shall report to the council as the Chief Justice directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned.

Comment. Section 6 is amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Section 5(e).

Cal. Const. Art. VI, § 8 (amended). Commission on Judicial Performance

SEC. 8. (a) (1) The Commission on Judicial Performance consists of one judge of a court of appeal, ~~one judge of a superior court, and one judge of a municipal court~~ and 2 judges of superior 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, each appointed by the Governor; and 6 citizens who are not judges, retired judges, or members of the State Bar of California, 2 of whom shall be appointed by the Governor, 2 by the Senate Committee on Rules, and 2 by the Speaker of the Assembly.

(2) Except as provided in subdivisions (b) and (c), all terms are for 4 years. No member shall serve more than 2 4-year terms, or for more than a total of 10 years if appointed to fill a vacancy. A vacancy in the membership on the Commission on Judicial Performance otherwise designated for a municipal court judge shall be filled by a judge of the superior court in the case of an appointment made when fewer than 10 counties have municipal courts.

(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. ~~Appointing powers may appoint members who are already serving~~

~~on the commission prior to March 1, 1995, to a single 2-year term, but may not appoint them to an additional term thereafter.~~

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

(1) Two members appointed by the Supreme Court to a term commencing March 1, 1995, shall each serve a term of 2 years and may be reappointed to one full term.

(2) One attorney appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(3) One citizen member appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(4) One member appointed by the Senate Committee on Rules to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(5) One member appointed by the Speaker of the Assembly to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(6) All other members shall be appointed to full 4-year terms commencing March 1, 1995.

Comment. Subdivision (a) of Section 8 is amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Section 5(e). Subdivision (b) is amended to delete obsolete language.

Cal. Const. Art. VI, § 10 (amended). Original jurisdiction

SEC. 10. (a) The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.

(b) Superior courts have original jurisdiction in all other causes ~~except those given by statute to other trial courts.~~

(c) The court may make such comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the cause.

Comment. Section 10 is amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Section 5(e).

☛ **Staff Note.** There is an argument that it may be useful to retain legislative authority to give jurisdiction to other courts, such as a business court or a juvenile court. But these “courts” would really be divisions of the superior court, and not separate courts. Section 1 would require amendment if a separate court were to be created, with its own jurisdiction.

On the other hand, this provision might be read as a constitutional delegation of authority to the Legislature to create statutory courts. Would that run afoul of fundamental separation of powers principles?

It is clear that the Legislature may create administrative tribunals (quasi-judicial “courts”), and that power is independent of the constitutional delegation of authority to the Legislature to prescribe the original jurisdiction of inferior courts. Administrative adjudications remain subject to ultimate review by the judicial branch, however.

The staff is conducting further research on these matters.

Cal. Const. Art. VI, § 15 (amended). Qualifications of judges

~~SEC. 15. A person is ineligible to be a judge of a court of record unless for 5 years immediately preceding selection to a municipal court or 10 years immediately preceding selection to other courts, the person has been a member of the State Bar or served as a judge of a court of record in this State. A judge eligible for municipal court service may be assigned by the Chief Justice to serve on any court.~~

Comment. Section 15 is amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Section 5(e).

☛ **Staff Note.** All constitutional courts are now courts of record. Section 1. Trial court unification has eliminated the remaining nonrecord courts (justice courts).

Although it is tempting to clean out the largely unnecessary reference to courts of record here and elsewhere, the staff’s research indicates that these references may have some continuing, though marginal, utility. The references may help distinguish constitutional courts from administrative tribunals in some circumstances. In addition, where a statute refers to a court of another jurisdiction, the “of record” requirement may be important.

Of course, there are thousands of statutes in the codes that refer to the courts without adding the phrase “of record” or qualifying the reference in any way, without adverse effect.

A reference in the Constitution or codes to a court of record is largely redundant, but on the other hand it does no apparent harm. Any statutory cleanup would have to be done carefully so as to

preserve the effect of the “of record” requirement in those few cases where it is actually useful.

There are a dozen constitutional provisions and a hundred statutes referring to courts of record. The staff’s conclusion is that it is not worth the effort to undertake this task, particularly in light of the enormous volume of work already confronting us in this project.

Cal. Const. Art. VI, § 16 (amended). Election of judges

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

(b) ~~(1) In counties in which there is no municipal court, judges~~ Judges of superior courts shall be elected in their counties at general elections except as otherwise necessary to meet the requirements of federal law. In the latter case the Legislature, by two-thirds vote of the membership of each house thereof, with the advice of judges within the affected court, may provide for their election by the system prescribed in subdivision (d), or by any other arrangement. The Legislature may provide that an unopposed incumbent’s name not appear on the ballot.

~~(2) In counties in which there is one or more municipal court districts, judges of superior and municipal courts shall be elected in their counties or districts at general elections. The Legislature may provide that an unopposed incumbent’s name not appear on the ballot.~~

(c) Terms of judges of superior courts are 6 years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the second January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge’s term begins.

(d) ~~(1)~~ Within 30 days before August 16 preceding the expiration of the judge’s term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not

elected may not be appointed to that court but later may be nominated and elected.

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

(3) Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior courts.

Comment. Section 16 is amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Section 5(e).

Query. Can we now eliminate the Voting Rights Act language from subdivision (b), unification having been accomplished without challenge? Even though preclearance has been granted by the Department of Justice for unification in the Voting Rights Act preclearance counties, substantive challenges might still be brought in any county. The staff is researching this matter further.

A proposed constitutional amendment has been introduced in the current legislative session, to provide for retention elections, rather than contested elections. See ACA 1 (Nation). Interestingly, the proposed amendment would keep the Voting Rights Act language. When the Commission studied this matter, it concluded that retention elections “may be a useful alternative to contested elections” where necessary to comply with the Voting Rights Act. *Trial Court Unification: Constitutional Revision* (SCA 3), 24 Cal. L. Revision Comm’n Reports 1, 46-47 (1994).

Cal. Const. Art. VI, § 23 (repealed). Transitional provision

~~SEC. 23. (a) The purpose of the amendments to Sections 1, 4, 5, 6, 8, 10, 11, and 16, of this article, and the amendments to Section 16 of Article I, approved at the June 2, 1998, primary election is to permit the Legislature to provide for the abolition of the municipal courts and unify their operations within the superior courts. Notwithstanding Section 8 of Article IV, the implementation of, and orderly transition under, the provisions of the measure adding this section may include urgency statutes that create or abolish offices or change the salaries, terms, or duties of offices, or grant franchises or special privileges, or create vested rights or interests, where otherwise permitted under this Constitution.~~

~~(b) When the superior and municipal courts within a county are unified, the judgeships in each municipal court in that county are abolished and the previously selected municipal court judges shall~~

~~become judges of the superior court in that county. The term of office of a previously selected municipal court judge is not affected by taking office as a judge of the superior court. The 10-year membership or service requirement of Section 15 does not apply to a previously selected municipal court judge. Pursuant to Section 6, the Judicial Council may prescribe appropriate education and training for judges with regard to trial court unification.~~

~~(c) Except as provided by statute to the contrary, in any county in which the superior and municipal courts become unified, the following shall occur automatically in each preexisting superior and municipal court:~~

~~(1) Previously selected officers, employees, and other personnel who serve the court become the officers and employees of the superior court.~~

~~(2) Preexisting court locations are retained as superior court locations.~~

~~(3) Preexisting court records become records of the superior court.~~

~~(4) Pending actions, trials, proceedings, and other business of the court become pending in the superior court under the procedures previously applicable to the matters in the court in which the matters were pending.~~

~~(5) Matters of a type previously within the appellate jurisdiction of the superior court remain within the jurisdiction of the appellate division of the superior court.~~

~~(6) Matters of a type previously subject to rehearing by a superior court judge remain subject to rehearing by a superior court judge, other than the judge who originally heard the matter.~~

~~(7) Penal Code procedures that necessitate superior court review of, or action based on, a ruling or order by a municipal court judge shall be performed by a superior court judge other than the judge who originally made the ruling or order.~~

~~**Comment.** Section 23 is repealed to reflect completion of the process of unification of the municipal courts with the superior courts pursuant to Section 5(e).~~

~~**Query.** Are we sufficiently far along that this section can go (assuming unification of Kings County)?~~

~~The statutory transitional provisions for trial court unification parallel this section but are more complete. See Gov't Code §§ 70200-70219. The staff believes the statutes can stand on their own, if necessary, without this section. As long as the statutory transitional provisions are in place, even a saving clause would be unnecessary. We will address the transitional statutes individually in a separate memorandum.~~

An alternative would be simply to insert a repealer with a reasonable future date. “(d) This section is repealed effective January 1, 2005.”

We have not suggested amendment of Article VI, Section 11, relating to appellate jurisdiction of the courts. That section awkwardly addresses a transitional provision for unification relating to the appellate jurisdiction of the courts of appeal.

Cal. Const. Art. VI, § 11 (unchanged). Appellate jurisdiction

SEC. 11. (a) The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in other causes prescribed by statute. When appellate jurisdiction in civil causes is determined by the amount in controversy, the Legislature may change the appellate jurisdiction of the courts of appeal by changing the jurisdictional amount in controversy.

(b) Except as provided in subdivision (a), the appellate division of the superior court has appellate jurisdiction in causes prescribed by statute.

(c) The Legislature may permit courts exercising appellate jurisdiction to take evidence and make findings of fact when jury trial is waived or not a matter of right.

The provision is the result of a political compromise struck during the formulation of trial court unification. The staff believes it is premature to revisit the issue. Problems caused by the provision fixing jurisdiction based on the law in effect as of June 30, 1995. are being addressed, for the time being, by permitting transfer of an appeal filed in the wrong court. A Rule of Court to that effect is being developed by the Judicial Council.

Respectfully submitted,

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