

## Memorandum 2009-50

**Trial Court Restructuring: Rights and Responsibilities  
of the County as Compared to the Superior Court  
(Discussion of Issues)**

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This memorandum continues the Commission's trial court restructuring work on rights and responsibilities of the county as compared to the superior court.

The memorandum continues discussion of provisions left over from the 2001 Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring* (hereafter "2001 Tentative Recommendation"). A previous memorandum discussed six of those provisions. See Memorandum 2009-35, p. 5. Three more provisions (Gov't Code § 72004; Harb. & Nav. Code § 664; Veh. Code § 42008) are discussed below. The last provision left over from the 2001 Tentative Recommendation (Penal Code § 1463.22) will be discussed in a future memorandum.

Nichole Rapier, a second-year student at UC Davis School of Law, assisted with research in preparation of this memorandum. The staff is grateful for her assistance.

**GOVERNMENT CODE SECTION 72004: PROVISIONS APPLICABLE TO COURT OFFICERS  
AND DISPOSITION OF FEES COLLECTED BY THOSE OFFICERS**

Government Code Section 72004 pertains to court officers and the disposition of fees collected by such officers.

As enacted in 1953, Section 72004 read:

72004. Sections 24350 to 24356, inclusive, and Sections 29350 and 29351 apply to officers of municipal courts and to the disposition of fees collected by such officers.

1953 Cal. Stat. ch. 206, § 1. The provision remained in the code for many years without change.

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## Revisions Proposed in the 2001 Tentative Recommendation

The 2001 Tentative Recommendation proposed to repeal the article containing Section 72004, and to reenact a new Section 72004 that was essentially identical to the repealed one, except it substituted “superior courts” for “municipal courts”:

72004. Sections 24350 to 24356, inclusive, and Sections 29350 and 29351 apply to officers of superior courts and to the disposition of fees collected by those officers.

**Comment.** Section 72004 continues former Section 72004 with revisions to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

For provisions relating to restatements and continuations of existing law, see Section 2.

See 2001 Tentative Recommendation, pp. 320-22.

The tentative recommendation also included a note soliciting comment on the provision:

### **Note: Comment Requested**

The Commission is reviewing whether county treasury provisions such as the ones referenced in Government Code Section 72004 remain viable, given the enactment of the Trial Court Funding Act, the Trial Court Employment Protection and Governance Act, and other changes to the structure of the trial courts. See Gov’t Code §§ 77003 and Cal. R. Ct. 810 (“court operations” defined), 77009 (Trial Court Operations Fund), 77200 (state funding of trial court operations). These matters are also being examined by a Joint Court-County Working Group on Trial Court Funding. The Commission solicits comment on the proper treatment of Section 72004.

## Response to the 2001 Tentative Recommendation

The Commission did not receive any comments specifically directed to the repeal and reenactment of Section 72004. The Commission received a request from the Administrative Office of the Courts (“AOC”) and the California State Association of Counties to defer action on certain provisions concerning fee deposits into the county treasury. See Memorandum 2002-14, pp. 8-9. But neither Section 72004 nor the article containing it was specified in the request. See *id.* at 9.

The Commission therefore decided to proceed with the proposed repeal and reenactment of Section 72004. See *Statutes Made Obsolete by Trial Court*

*Restructuring: Part 1*, 32 Cal. L. Revision Comm'n Reports 1, 324 (2002) (hereafter "*TCR: Part 1*"). The proposal was enacted. See 2002 Cal. Stat. ch. 784, §§ 361, 362.

The Commission did not attempt to amend the county treasury provisions in Section 72004. A Joint Court-County Working Group on Trial Court Funding had been working to address the matter, and the Bureau of State Audits was conducting an audit of relevant revenue. See *TCR: Part 1*, 32 Cal. L. Revision Comm'n Reports at 23-24, 324. Those entities have completed their work. See California State Auditor, Bureau of State Audits, *Superior Courts: The Courts Are Moving Toward a More Unified Administration ...*, (Feb. 2002) 8, available at <<http://www.bsa.ca.gov/pdfs/reports/2001-117.pdf>>. It is therefore appropriate to return to the issue.

Section 72004 cross-references Government Code Sections 24350 to 24356, and Government Code Sections 29350 and 29351. The effect of Section 72004 on the collection and deposit of fees into the county treasury cannot be understood without examining the cross-referenced sections. An examination of those sections reveals that some of them need revision to reflect trial court restructuring.

Each of the cross-referenced sections is discussed below. After examining them, we turn back to Section 72004.

### **Section 24350. Collection of Fees "In All Cases"**

Section 24350 concerns the collection and deposit of fees into the county treasury. The section says:

24350. Each salaried officer of a county or judicial district shall charge and collect for the use of his or her county and pay into the county treasury on or before the fifth day of each month the fees allowed by law in all cases, except those or a percentage of them allowed him or her, and those which are a charge against the county. No salaried officer who collects fees pursuant to this section shall be required to accept coin in payment of those fees.

#### *Scope*

Before determining how to revise Section 24350, it is important to understand its scope. The section directs an officer to collect "the fees allowed by law *in all cases*." (Emphasis added.) It is not immediately clear what is meant by the phrase "in all cases."

One possibility is that the phrase simply encompasses all types of court cases. Another possibility is that "in all cases" is intended to be synonymous with "in

all circumstances.” Under that interpretation, Section 24350 would govern collection of fees beyond the court context, such as the fees for recording a deed or issuing a marriage license.

Which interpretation is correct? The staff was unable to find any case law on this point.

Examination of the statutory language initially suggests that Section 23450 extends beyond the court context, because it applies not only to an officer of a judicial district, but also to an “officer of a county.”

When the statute was enacted, however, the superior courts were funded and operated by the counties. Thus, the reference to an “officer of a county” could refer to an officer of the superior court, while the reference to an officer of a judicial district could refer to an officer of a municipal court or other inferior trial court that existed at the time. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 70 (1998) (stating that before unification, “judicial district” typically referred to a municipal court district).

Further, if the Legislature had intended for Section 24350 to apply to the fees allowed “in all circumstances,” it could have used that phrase, instead of referring to the fees allowed “in all cases.” The fact that the Legislature chose to refer to “cases” rather than “circumstances” suggests that the statute is intended to apply only to collection of fees in court cases.

Former Section 24350.5 bolsters that conclusion; it was adjacent to Section 24350 and it referred to advance payment of fees “in civil cases.” That was almost certainly a reference to court cases. If “cases” meant court cases in former Section 24350.5, then it is likely that “cases” has the same meaning in formerly adjacent Section 24350.

For those reasons, the remainder of this discussion proceeds on the assumption that Section 24350 applies only to collection of fees in court cases.

#### *Officer of a County or Judicial District*

Section 24350 governs collection of fees by an “officer of a county or judicial district.” As discussed above, this was apparently meant to refer to an officer of a superior court or an officer of a municipal court or other inferior court.

Now that the superior courts are funded by the state instead of the county, an officer of the superior court is no longer an officer of the county. Accordingly, **the reference to an “officer of a county” should be replaced with a reference to an “officer of the superior court.”**

Further, now that there no longer are municipal or other inferior courts, the reference to an officer of a judicial district is no longer appropriate. Municipal court officers became superior court officers. Thus, **the reference to an officer of a judicial district can be deleted.** It will be sufficient to refer to an officer of the superior court.

*Deposit of Fees into the County Treasury, for the Use of the County*

Section 24350 provides that fees collected by an officer for the use of the county shall be deposited into the county treasury, except for (1) fees allocated to the officer, as part of the officer's salary, and (2) fees that are a charge against the county. Due to the enactment of trial court restructuring reforms, a number of issues arise.

The first issue relates to the deposit of fees into the county treasury, for the use of the county. Assuming that the fees derive from a court case, it may no longer be appropriate to deposit them into the county treasury, due to the shift in funding trial court operations from the county to the state. Unless another statute directs otherwise (see, e.g., Gov't Code § 68085.1), **the fees probably should be deposited into the state fund primarily used to pay for such operations, the Trial Court Trust Fund.** See Gov't Code § 77009; *California Courts Review, A Decade of State Trial Court Funding* (Winter 2009), p. 28.

A second issue relates to an exception from the requirement to deposit fees into the treasury if the officer is permitted to keep the fees as salary. This exception dates back to the original enactment of the provision in 1947. See 1947 Cal. Stat. ch. 424, p. 1105, § 1. The staff suspects that no court officer currently has a salary arrangement that permits the officer to keep fees. Given the enactment of a statewide structure governing court employees (the Trial Court Employment Protection and Governance Act), it seems unlikely that such a salary arrangement exists. *Cf.* Gov't Code § 71623(a) (authorizing trial court to establish salary range for each employee classification). For purposes of preparing a tentative recommendation, **the staff recommends deleting the exception, but including a note specially soliciting comment on the issue.**

A third issue relates to an exception providing that the officer is not to collect fees owed by the county. When the county funded the trial courts, it made sense for the officer not to collect court fees owed by the county (only to deposit them back into the county treasury). Now that the county is no longer responsible for

funding trial courts, the exception is no longer appropriate. Accordingly, **the staff recommends deleting the exception.**

*Staff Recommendation*

The issues discussed above could be addressed by revising Section 24350 as follows:

~~24350. Each salaried officer of a county or judicial district superior court shall charge and collect for the use of his or her county and pay into the county treasury on or before the fifth day of each month the fees allowed by law in all cases, except those or a percentage of them allowed him or her, and those which are a charge against the county. Except as otherwise provided by law, the officer shall deposit those fees into the Trial Court Trust Fund on or before the fifth day of each month. No salaried officer who collects fees pursuant to this section shall be required to accept coin in payment of those fees.~~

**Comment.** Section 24350 is amended to reflect (1) the unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution, and (2) the enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655). See, e.g., Sections 77003 (“court operations” defined), 77200 (state funding of “court operations”).

However, Section 24350 is located in Title 3 of the Government Code, which is entitled “Government of Counties.” That is no longer an appropriate location for a provision that pertains only to the courts, because the courts are no longer county entities.

Section 24350 should therefore be repealed, and its substance should be relocated to Title 8 of the Government Code, which is entitled “The Organization and Government of Courts.” **For purposes of preparing a tentative recommendation, the staff suggests the following:**

**Gov’t Code § 24350 (repealed). Collection of fees**

SEC. \_\_. Section 24350 of the Government Code is repealed.

~~24350. Each salaried officer of a county or judicial district shall charge and collect for the use of his or her county and pay into the county treasury on or before the fifth day of each month the fees allowed by law in all cases, except those or a percentage of them allowed him or her, and those which are a charge against the county. No salaried officer who collects fees pursuant to this section shall be required to accept coin in payment of those fees.~~

**Comment.** Section 24350 is repealed and its substance is continued, with revisions, in Section 68083.

**Gov't Code § 68083 (added). Collection of fees**

SEC. \_\_. Section 68083 is added to the Government Code, to read:

68083. Each salaried officer of a superior court shall charge and collect the fees allowed by law in all cases. Except as otherwise provided by law, the officer shall deposit those fees into the Trial Court Trust Fund on or before the fifth day of each month. No salaried officer who collects fees pursuant to this section shall be required to accept coin in payment of those fees.

**Comment.** Section 68083 continues the substance of former Section 24350, with revisions to reflect (1) the unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution, and (2) the enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655). See, e.g., Sections 77003 (“court operations” defined), 77200 (state funding of “court operations”).

**Note: Comment Requested**

Section 24350 requires an officer to pay into the county treasury “the fees allowed by law in all cases, *except those or a percentage of them allowed by him or her ....*” (Emphasis added.) The Commission specially solicits comment on whether any court officer may continue to receive a percentage of the fees collected by the officer. Proposed Section 68083 assumes that no one is still subject to such an arrangement. The Commission seeks to confirm that assumption.

**Section 24351. Deposit and Withdrawal of Trust Money**

Section 24351 governs the deposit and withdrawal of trust money collected by an officer of a county or judicial district. The provision says:

24351. Unless otherwise specifically provided for by law, each officer of a county or judicial district shall on the certificate of the auditor immediately deposit in the county treasury all trust money coming into his possession officially. Trust money so deposited shall be withdrawn only on a warrant issued by the county auditor drawn upon an order of the court into which the money was paid, or upon requisition of the officer depositing the money where no court proceedings are had.

To summarize, Section 24351 requires an officer of a county or judicial district to deposit trust money into the county treasury. As discussed above, the reference to an officer of a county or judicial district may refer to an officer of a trial court. But Section 24351 does not appear to be limited to that context. It

refers not only to “the court into which the money was paid,” but also to depositing money “where no court proceedings are had.” Accordingly, the reference to an officer of a county appears to refer to an officer (1) in the capacity of a court officer and (2) in the capacity of a county officer, outside of the court context.

As part of the reform shifting court funding responsibility from the county to the state, Government Code Section 77009 was enacted. Section 77009(a) authorizes the Judicial Council to establish bank accounts and require courts to deposit money into those accounts. The provision specifically authorizes trust money to be deposited into the accounts. Gov’t Code § 77009(a)(2). Based on an informal phone conversation with AOC staff, we believe that the Judicial Council has established such accounts and requires trust money to be deposited into them. It thus appears that Section 77009, rather than Section 24351, governs trust money collected by the court. In addition, Section 68084 provides further guidance in specified circumstances.

For purposes of preparing a tentative recommendation, **the staff recommends revising Section 24351 to reflect that it no longer applies to trust money collected by the court**, but continues to apply to trust money collected by the county:

24351. Unless otherwise specifically provided for by law, each officer of a county ~~or judicial district~~ shall on the certificate of the auditor immediately deposit in the county treasury all trust money coming into ~~his~~ the officer’s possession officially. Trust money so deposited shall be withdrawn only on a warrant issued by the county auditor drawn ~~upon an order of the court into which the money was paid, or~~ upon requisition of the officer depositing the money ~~where no court proceedings are had.~~

**Comment.** Section 24351 is amended to reflect the enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655). For guidance regarding trust money deposited in court, see, e.g., Sections 68084 and 77009.

The section is also amended to make it gender-neutral.

### **Section 24351.5. Deposits to Local Child Support Agencies**

Section 24351.5 was enacted in 2004, a few years after the major trial court restructuring reforms were enacted. It therefore seems unlikely that it would need revision to reflect those reforms. Indeed, a quick examination of the provision, which governs deposits to local child support agencies, confirms that there is no need for revision:

24351.5. Upon implementation of the State Disbursement Unit pursuant to Section 17309 of the Family Code, and notwithstanding Section 24351, the local child support agency shall deposit support payments paid to that office to an account in a manner as specified by the Department of Child Support Services to permit the processing of child support payments within the timeframes set forth in federal law.

**The staff recommends that Section 24351.5 be left as is.**

### **Section 24352. Record of Fees, Compensation, and Fines Collected**

Section 24352 requires an officer who collects certain fees to keep records in accordance with guidelines set by the Controller. The provision says:

24352. Each officer authorized to receive fees pursuant to this title shall keep, in accordance with the guidelines of the Controller, a monthly record of all fees or compensation and fines of whatever nature, kind, or description, collected or chargeable. The record shall be open to public inspection during office hours.

It appears that some of the fees collected pursuant to the title (Sections 23000-33205) are court fees. See, e.g., Gov't Code § 24350. Other fees collected pursuant to the title are not court fees. See, e.g., Gov't Code § 26720 (authorizing sheriff to collect fees); see also Gov't Code § 24000(b) (sheriff is county officer).

Because the provision concerns an officer's collection of court fees as well as non-court fees, the provision is applicable to both an officer of the court and an officer of the county.

The provision requires the officer to keep records in accordance with the Controller's guidelines. However, in its restructuring reforms, the Legislature made a policy judgment that the Controller would share fiscal oversight of the courts with the Judicial Council. For example, the Judicial Council is charged with the responsibility, in consultation with the Controller, to set fiscal regulations for the courts:

*The Judicial Council, in consultation with the Controller, shall maintain appropriate regulations for recordkeeping and accounting by the courts. The Judicial Council shall seek to ensure, by these provisions, that (1) the fiscal affairs of the trial courts are managed efficiently, effectively, and responsibly, and (2) all moneys collected by the courts, including filing fees, fines, forfeitures, and penalties, and all revenues and expenditures relating to court operations are known. The Judicial Council may delegate their authority under this section, when appropriate, to the Administrative Director of the Courts.*

Gov't Code § 77206(a) (emphasis added); see also Sections 77206(c) (authorizing Controller and Judicial Council to audit courts), 77009(f) ("The Judicial Council, in consultation with the Controller's office, shall establish procedures to implement" section authorizing Judicial Council to establish court bank accounts).

To reflect the shared authority of the Judicial Council and the Controller to regulate fiscal matters of the court, Section 24352 could perhaps be revised along the following lines:

24352. ~~Each~~ (a) A county officer authorized to receive fees pursuant to this title shall keep, in accordance with the guidelines of the Controller, a monthly record of all fees or compensation and fines of whatever nature, kind, or description, collected or chargeable. The record shall be open to public inspection during office hours.

(b) A superior court officer authorized to receive fees pursuant to this title shall keep, in accordance with the guidelines of the Judicial Council, made in consultation with the Controller, a monthly record of all fees or compensation and fines of whatever nature, kind, or description, collected or chargeable. The record shall be open to public inspection during office hours.

**Comment.** Section 24352 is revised to reflect the enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655). See, e.g., Sections 77003 ("court operations" defined), 77200 (state funding of "court operations"); see also Sections 77009(f) (responsibilities of Judicial Council and Controller for fiscal affairs of trial courts), 77206 (same).

However, the staff does not recommend this approach. Section 24352 is located in Title 3 of the Government Code, which is entitled "Government of Counties." That would not be an appropriate location for the material shown in subdivision (b) above, because the courts are no longer county entities.

More importantly, the grant of authority to the Judicial Council, in consultation with the Controller, to regulate fiscal affairs of the court might supersede Section 24352, insofar as it applies to courts. The authority to regulate fiscal affairs of the courts seems to encompass authority to prescribe which fiscal reports a court officer must keep. Accordingly, perhaps Section 24352 should simply be amended such that it no longer applies to a court officer. For purposes of a tentative recommendation, the staff recommends that **Section 24352 be revised along the following lines:**

24352. ~~Each~~ A county officer authorized to receive fees pursuant to this title shall keep, in accordance with the guidelines of the Controller, a monthly record of all fees or compensation and fines of whatever nature, kind, or description, collected or chargeable. The record shall be open to public inspection during office hours.

**Comment.** Section 24352 is revised to reflect the enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655). See, e.g., Sections 77003 (“court operations” defined), 77200 (state funding of “court operations”); see also Sections 77009(f) (responsibilities of Judicial Council and Controller for fiscal affairs of trial courts), 77206 (same).

### **Section 24353. Collection of Money Payable into the County Treasury**

Section 24353 sets forth various requirements governing the collection of fees, fines, and forfeitures. It was amended in 2005 to read:

24353. Each officer of a county or of a superior court authorized to collect money shall pay into the county treasury all money collected by him or her, or under his or her control, that is payable into the treasury in a timely manner, and shall remit fee, fine, and forfeiture data within 35 days after the end of the month in which they are collected to the county auditor and treasurer in the form they require. No officer who collects money as described in this section shall be required to accept payment in coin. If the county auditor finds that an officer of the county or an officer of the court has failed to comply with the requirements for payment of moneys pursuant to this section or Section 68101, which directly results in the assessment of a financial penalty pursuant to Section 68085, the county department or superior court that failed to comply shall reimburse the county general fund in an amount equal to the actual penalty. With the approval of the treasurer as provided in Section 27080.1, each depositing officer may deposit directly into the treasurer’s active account all money payable into the county treasury. On and after January 1, 2006, this section does not apply to money collected under Chapter 5.8 (commencing with Section 70600) of Title 8 or fees and fines to which Section 68085.1 applies.

See 2005 Cal. Stat. ch. 75, § 48 (AB 145).

The section requires a county officer or a superior court officer to follow specified procedures in depositing money into the county treasury. By its terms, the section only applies to money that is payable to the county treasury.

Several provisions require a court to deposit money into the county treasury. See, e.g., Bus. & Prof. Code §§ 558 (50% of fines collected for violation of Sections 550-558 must be paid to county in which prosecution occurred), 1719 (25% of

forfeiture revenue collected by court for violation of Sections 1600-1976 must be paid to county where action tried), 2446 (fines and forfeitures of bail collected by court for violation of Sections 2000-2521 must be deposited into treasury of county in which court is located).

Therefore, it is appropriate for the specified procedures governing deposits into the county treasury to apply to a superior court officer. However, a superior court officer is no longer a county officer. For that reason, it might be appropriate to relocate the material in Section 24353 relating to a superior court officer. **That material could moved from Title 3 (“Government of Counties”) to Title 8 (“The Organization and Government of Courts”), as follows:**

**Gov’t Code § 24353 (amended). Collection of money payable into county treasury**

SEC. \_\_. Section 24353 of the Government Code is amended to read:

24353. Each officer of a county ~~or of a superior court~~ authorized to collect money shall pay into the county treasury all money collected by him or her, or under his or her control, that is payable into the treasury in a timely manner, and shall remit fee, fine, and forfeiture data within 35 days after the end of the month in which they are collected to the county auditor and treasurer in the form they require. No officer who collects money as described in this section shall be required to accept payment in coin. If the county auditor finds that an officer of the county ~~or an officer of the court~~ has failed to comply with the requirements for payment of moneys pursuant to this section or Section 68101, which directly results in the assessment of a financial penalty pursuant to Section 68085, the county department ~~or superior court~~ that failed to comply shall reimburse the county general fund in an amount equal to the actual penalty. With the approval of the treasurer as provided in Section 27080.1, each depositing officer may deposit directly into the treasurer’s active account all money payable into the county treasury. ~~On and after January 1, 2006, this section does not apply to money collected under Chapter 5.8 (commencing with Section 70600) of Title 8 or fees and fines to which Section 68085.1 applies.~~

**Comment.** Section 24353 is amended to reflect (1) enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655), and (2) enactment of the Trial Court Employment Protection and Governance Act, 2000 Cal. Stat. ch. 1010 (see Sections 71600-71675). The material relating to an officer of a superior court is relocated to Section 68083.5, because an officer of the superior court is no longer an officer of the county.

**Gov't Code § 68083.5 (added). Collection of money payable into county treasury**

SEC. \_\_. Section 68083.5 is added to the Government Code, to read:

68083.5. Each officer of a superior court authorized to collect money shall pay into the county treasury all money collected by that officer, or under the officer's control, that is payable into the treasury in a timely manner, and shall remit fee, fine, and forfeiture data within 35 days after the end of the month in which they are collected to the county auditor and treasurer in the form they require. No officer who collects money as described in this section shall be required to accept payment in coin. If the county auditor finds that an officer of the court has failed to comply with the requirements for payment of moneys pursuant to this section or Section 68101, which directly results in the assessment of a financial penalty pursuant to Section 68085, the superior court that failed to comply shall reimburse the county general fund in an amount equal to the actual penalty. With the approval of the treasurer as provided in Section 27080.1, each depositing officer may deposit directly into the treasurer's active account all money payable into the county treasury. On and after January 1, 2006, this section does not apply to money collected under Chapter 5.8 (commencing with Section 70600) of Title 8 or fees and fines to which Section 68085.1 applies.

**Comment.** Section 68083.5 continues material formerly located in Section 24353 relating to an officer of the superior court. That material is relocated from Title 3 ("Government of Counties") to this title ("The Organization and Government of Courts") because an officer of the superior court is no longer an officer of the county. See the Trial Court Employment Protection and Governance Act, 2000 Cal. Stat. ch. 1010 (codified as Sections 71600-71675).

**Section 24355.2. Mechanized Management Reporting System**

Section 24355.2 says:

24355.2. In counties using a mechanized management reporting system in reporting information for a uniform four-week period, the board of supervisors by ordinance may provide for the totaling of fees as required by Section 24352.

The provision does not appear to need revision to reflect trial court restructuring because, by its terms, it applies only to counties. But the provision does appear to need revision for other reasons.

The provision authorizes counties using certain reporting systems to "provide for the totaling of fees *as required by Section 24352.*" (Emphasis added).

But Section 24352 no longer requires fee totaling. Instead, the section requires monthly records to be kept in accordance with guidelines set by the Controller.

The extent to which Section 24355.2 should be revised, however, is unclear. Perhaps only the cross-reference to Section 24352 should be deleted, or perhaps Section 24355.2 itself should be deleted in its entirety.

When the Legislature removed the fee totaling requirement from Section 24352, it might have intended to leave intact the authorization in Section 24355.2 for the board of supervisors to require fee totaling in the manner specified in former Section 24352. See 1947 Cal. Stat. ch. 424, § 1, p. 1105 (“On the first day of each month, the officer shall add up each column in his book to the first day of the month, and set down the totals.”). If the Legislature had intended to leave intact the authorization to require fee totaling, it seems likely that it would have amended the cross-reference to Section 24352.

Another possibility is that when the Legislature removed the fee totaling requirement from Section 24352, it overlooked the cross-reference altogether. If so, the continued existence of the cross-reference would not reflect a determination to retain the fee totaling authorization in Section 24355.2.

Taking together the above, the extent to which Section 24355.2 is obsolete is unclear. Moreover, the obsolete material is unrelated to trial court restructuring. Accordingly, **the staff thinks it would be best to leave the section alone.**

### **Section 24356. Filing and Disposal of Forms by Auditor**

Section 24356 relates to the filing and disposal of certain forms by the auditor. The section says:

24356. The auditor shall file in his or her office the forms required by this chapter, and may dispose of them after five years in accordance with Section 26907.

The provision applies to the auditor, not to courts. Accordingly, **the provision does not seem to need revision to reflect trial court restructuring.**

### **Section 29350. Use of Fees To Pay Salaries**

Section 29350 has not been revised since its enactment in 1947. See 1947 Cal. Stat. ch. 424, p. 1225, § 1. The section requires all fees directed to be paid into the county treasury to be used to pay salaries:

29350. All fees directed to be paid into the county treasury shall be set apart as a separate salary fund, and shall be applied to the payment of salaries.

Presumably, the fees are used to pay salaries of county employees. Due to trial court restructuring, it may no longer be appropriate for all fees deposited into the county treasury — particularly fees deposited by courts — to be used to pay county employees.

Indeed, some fees deposited by a court into the county treasury are not to be used to pay county employee salaries. See, e.g., Gov't Code § 68085(b); Penal Code § 1463.007. These provisions override the mandate in Section 29350 by stating that they apply “[n]otwithstanding any other law.” *Id.*

That appears to be a satisfactory approach, so there seems to be no need to change Section 29350. **The staff would leave this provision as is.**

### **Section 29351. Insufficient Fees To Pay Salaries**

Section 29351 is closely related to Section 29350 (providing that fees deposited into the county treasury must be used to pay salaries). Section 29351 provides that if fees are insufficient to pay salaries, the county must raise the deficiency through taxes.

29351. If in the opinion of the auditor the fees to be collected are not sufficient to pay salaries, the board of supervisors at the time the tax levy is made shall estimate the deficiency and raise it by direct taxation in the same manner as other funds. The proceeds of the tax so levied shall be paid into the salary fund.

Like Section 29350, the provision presumably relates to salaries of county employees. Assuming that is correct, Section 29351 solely concerns the sufficiency of revenue to pay county employee salaries. Accordingly, **Section 29351 does not appear to need revision to reflect trial court restructuring.**

### **Impact of the Suggested Reforms on Section 72004**

Now that each cross-referenced provision in Section 72004 has been examined, Section 72004 should be evaluated for possible revisions to reflect trial court restructuring.

Section 72004 provides that its cross-referenced provisions (Sections 24350-24356, 29350, and 29351) apply to a superior court officer and to the disposition of fees collected by the officer.

Examination of the cross-referenced provisions, however, reveals that some of them would no longer be court-related or have never had any connection to courts (Sections 24351.5, 24355.2, 24356, 29350, and 29351). Others should be amended such that they are no longer court-related (Sections 24351 and 24352).

And the court-related material in the remaining provisions should be relocated and would expressly apply to a superior court officer and to the disposition of fees collected by the officer (Sections 24350 and 24353).

Accordingly, Section 72004 is no longer necessary. **For purposes of a tentative recommendation, the staff recommends proposing its repeal:**

**Gov't Code § 72004 (repealed). Provisions applicable to court officers and disposition of fees collected by those officers**

SEC. \_\_. Section 72004 of the Government Code is repealed.

~~72004. Sections 24350 to 24356, inclusive, and Sections 29350 and 29351 apply to officers of superior courts and to the disposition of fees collected by those officers.~~

**Comment.** Section 72004 is repealed because it is no longer necessary. Before trial court restructuring, it made certain provisions (Sections 24350-24356, 29350, and 29351) applicable to superior court officers and the disposition of fees by those officers. The substance of some of those provisions is no longer, or never has been, pertinent to courts. See Sections 24351, 24351.5, 24352, 24355.2, 24356, 29350, 29351. The pertinent material from the remaining provisions has been moved, and expressly applies to a superior court officer and the disposition of fees collected by the officer. See Section 68083 & Comment (continuing court-related material from Section 24350); Section 68083.5 & Comment (continuing court-related material from Section 24353).

HARBORS & NAVIGATION CODE SECTION 664:

ARREST, NOTICE TO APPEAR, AND BAIL

**Background**

Harbors and Navigation Code Section 664 is another provision left over from the 2001 Tentative Recommendation.

When circulated in the tentative recommendation, the Commission proposed amendments to reflect trial court unification. The Commission included a note specially soliciting comment on whether the county treasury provisions remain viable, given the trial court funding reforms. See 2001 Tentative Recommendation, p. 596. No comments were received on Section 664. Due to ongoing negotiations between the courts and counties relating to fee deposits, the Commission deferred further work on Section 664. See Memorandum 2006-9, p. 4.

However, Section 664 was amended in 2003. See 2003 Cal. Stat. ch. 449, § 22. Some of the amendments removed material made obsolete due to trial court

unification, mirroring proposed amendments in the Commission's tentative recommendation. *Compare id. with* 2001 Tentative Recommendation, p. 596. No amendments were made to the county treasury provisions of Section 664.

Accordingly, the section still needs to be examined to determine whether the county treasury provisions should be revised to reflect trial court funding reforms. This issue is discussed below.

### **Analysis**

Section 664 is part of a chapter governing the operation and equipment of vessels. Section 664 sets forth applicable procedures following the arrest of a person for violating one of the following: (1) a provision in the chapter (Sections 650-774.4), (2) a regulation adopted pursuant to the chapter, or (3) a local law relating to the operation and equipment of vessels.

The section provides:

664. (a) When any person is arrested for a violation of this chapter or any regulation adopted by the department pursuant to this chapter or any ordinance or local law relating to the operation and equipment of vessels, and that person is not immediately taken before a magistrate, the arresting officer shall prepare in duplicate a written notice to appear in court, containing the name and address of that person, the offense charged, and the time and place where and when that person shall appear in court.

(b) The time specified in the notice to appear must be at least five days after the arrest.

(c) The place specified in the notice to appear shall be any of the following:

(1) Before a superior court judge who is within the county in which the offense charged is alleged to have been committed and who is nearest and most accessible to the place where the arrest is made.

(2) Upon demand of the person arrested, before a superior court judge at the county seat of the county in which the offense is alleged to have been committed.

(3) Before an officer authorized by the county, city, or city and county, to receive a deposit of bail.

(4) Before a superior court judge within 50 miles by the nearest road to the place of the alleged offense and whose county contains any portion of the body of water upon which the offense charged is alleged to have been committed.

(d) The officer shall deliver one copy of the notice to appear to the arrested person and the arrested person in order to secure release must give a written promise so to appear in court by signing the duplicate notice which shall be retained by the officer.

Thereupon the arresting officer shall forthwith release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice with the magistrate specified therein. Thereupon the magistrate shall fix the amount of bail which in the magistrate's judgment, in accordance with the provisions of Section 1275 of the Penal Code, will be reasonable and sufficient for the appearance of the defendant and shall indorse upon the notice a statement signed by the defendant in the form set forth in Section 815a of the Penal Code. The defendant may, prior to the date upon which the defendant promised to appear in court, deposit with the magistrate the amount of bail thus set. Thereafter, at the time when the case is called for arraignment before the magistrate, *if the defendant shall not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may in the magistrate's discretion order that no further proceedings shall be had in the case.*

*Upon the making of any order that no further proceedings be had, all sums deposited as bail shall forthwith be paid into the county treasury for distribution pursuant to Section 1463 of the Penal Code.*

(f) No warrant shall issue on any charge for the arrest of a person who has given a written promise to appear in court, unless and until the person has violated that promise or has failed to deposit bail, to appear for arraignment, trial or judgment, or to comply with the terms and provisions of the judgment, as required by law.

(Emphasis added.)

Subdivision (e) sets forth procedures by which bail is set and deposited. It also provides that a deposit of bail, when forfeited, is to be paid into the county treasury, and distributed as provided by Penal Code Section 1463.

Section 1463 requires the forfeited bail to be distributed as specified in Penal Code Section 1463.001.

Section 1463.001 says:

1463.001. Except as otherwise provided in this section, *all fines and forfeitures imposed and collected for crimes other than parking offenses resulting from a filing in a court shall as soon as practicable after receipt thereof, be deposited with the county treasurer, and each month the total fines and forfeitures which have accumulated within the past month shall be distributed, as follows:*

(a) The state penalties, county penalties, special penalties, service charges, and penalty allocations shall be transferred to the proper funds as required by law.

(b) The base fines shall be distributed, as follows:

(1) Any base fines which are subject to specific distribution under any other section shall be distributed to the specified funds of the state or local agency.

(2) Base fines resulting from county arrest not included in paragraph (1), shall be transferred into the proper funds of the county.

(3) Base fines resulting from city arrests not included in paragraph (1), an amount equal to the applicable county percentages set forth in Section 1463.002, as modified by Section 1463.28, shall be transferred into the proper funds of the county. Until July 1, 1998, the remainder of base fines resulting from city arrests shall be divided between each city and county, with 50 percent deposited to the county's general fund, and 50 percent deposited to the treasury of the appropriate city, and thereafter the remainder of base fines resulting from city arrests shall be deposited to the treasury of the appropriate city.

(4) In a county that had an agreement as of March 22, 1977, that provides for city fines and forfeitures to accrue to the county in exchange for sales tax receipts, base fines resulting from city arrests not included in paragraph (1) shall be deposited into the proper funds of the county.

(c) Each county shall keep a record of its deposits to its treasury and its transmittal to each city treasury pursuant to this section.

(d) The distribution specified in subdivision (b) applies to all funds subject thereto distributed on or after July 1, 1992, regardless of whether the court has elected to allocate and distribute funds pursuant to Section 1464.8.

(e) Any amounts remitted to the county from amounts collected by the Franchise Tax Board upon referral by a county pursuant to Article 6 (commencing with Section 19280) of Chapter 5 of Part 10.2 of Division 2 of the Revenue and Taxation Code shall be allocated pursuant to this section.

(Emphasis added.)

Taking together all of the above, bail that is deposited pursuant to Section 664, which is then forfeited, is to be paid into the county treasury. From there, the forfeited bail is distributed according to the scheme set forth in Penal Code Section 1463.001. The scheme is a catch-all provision, directing distribution of criminal fines and forfeitures if no other provision does.

A Judicial Council task force is examining Penal Code Section 1463.001 as part of its evaluation of criminal fees, fines, forfeitures, penalties, and assessments. The task force is to recommend consolidating and simplifying criminal debts without redistributing funds in a way that would have a detrimental effect on any entity. See Penal Code § 1463.02(b). However, it is conceivable that the scheme in Section 1463.001 might be changed, with other provisions changed

congruently (to make up any difference created by the change). Thus, any revisions that might be necessary to reflect the shift in responsibility of trial court funding should be coordinated with the task force.

However, as explained below, no revisions to reflect the shift in responsibility of trial court funding appear necessary.

As part of trial court funding reform, the Legislature deliberately allocated certain fine and forfeiture revenue to the county. Under the Lockyer-Isenberg Trial Court Funding Act of 1997 (“Trial Court Funding Act” or “Act”), certain fine and forfeiture revenue that was previously paid to the state is instead paid to the county. The Act amended several provisions to redirect fine and forfeiture revenue from the state to the county. See, e.g., 1997 Cal. Stat. ch. 850, §§ 40 (amending Government Code Section 76000), 51 (amending Penal Code Section 1463.005), 53 (amending Penal Code Section 1463.009).

Importantly, the Act also amended the catch-all scheme in Section 1463.001 to redirect criminal fines and forfeitures to the county. See 1997 Cal. Stat. ch. 850, § 49.

The Legislature’s stated intent was for the redirected revenue to help counties pay remittances to the state. See 1997 Cal. Stat. ch. 850, § 3(f); see also *id.* at § 46 (enacting Gov’t Code Sections 77201(b)(2) and 77201.1(b)(2)). Although the Act requires the state to assume responsibility for trial court funding, it concomitantly requires counties to pay remittances to help fund the courts. The remittance amount is partly based on revenue earned from certain fines and forfeitures during the 1994-1995 fiscal year. See 1997 Cal. Stat. ch. 850, §§ 3(f), 46 (enacting Government Code Sections 77201(b), 77201.1(b)); see also Gov’t Code § 77203.1(b). (The remittance amount is also based on how much a county spent on courts in the 1994-1995 fiscal year. See *id.*)

All of the above supports a conclusion that the Act was a comprehensive deal concerning the allocation of fine and forfeiture revenue. Accordingly, **there is no need to change the allocation of forfeited bail that was deposited pursuant to Harbors and Navigation Code Section 664.**

There is, however, one final issue relating to Section 664 to consider.

### **Interest on Bail Deposit v. Bail Forfeiture**

As explained above, a bail deposit pursuant to Section 664 is paid into the county treasury upon forfeiture, then distributed pursuant to the catch-all scheme in Penal Code Section 1463.001. Under the scheme, the forfeited bail is

distributed to the county if the county made the arrest. (The forfeited bail is distributed equally between the county and city if the city made the arrest.) That may raise a consistency issue with a proposed amendment in the Commission's Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring: Part 5* (Aug. 2009).

In the tentative recommendation, the Commission has proposed amending Government Code Section 53647.5 to allow the judicial branch to decide whether interest earned on bail deposited with the court is allocated to the court. (Currently, the section provides that the board of supervisors may elect to allocate interest earned on the deposit to support the court. Because the county no longer funds the court and is no longer in charge of the court's budget, the Commission has tentatively proposed placing the decision with the judicial branch instead of with the county.)

If enacted, the proposed amendment to Section 53647.5 would likely result in a decision that interest earned on a bail deposit should be allocated to the court. But at the same time, if bail deposited pursuant to Section 664 is forfeited, the deposit is distributed to the county (and sometimes the city). See Penal Code § 1463.001. It might seem inconsistent for forfeited bail to go to the county, while interest earned on the bail deposit (before forfeiture) goes to the court.

However, when the bail deposit is held by the court, the interest is earned with the court's oversight. The deposit may even be held in a court bank account. See Penal Code § 1463.1 (authorizing court to deposit bail into court bank account with approval of Administrative Director of the Courts). Accordingly, it seems appropriate for the judicial branch to receive the interest on the bail deposit, even though the county receives the deposit if the bail is forfeited.

The staff therefore believes that the proposed amendment to Government Code Section 53647.5 would not be inconsistent with Harbors and Navigation Code Section 664. **No revisions relating to Section 664 appear necessary.**

#### VEHICLE CODE SECTION 42008

Vehicle Code Section 42008 authorizes a county to establish an amnesty program for unpaid penalties for certain Vehicle Code violations that predate April 1, 1991:

42008. (a) Any county may operate an amnesty program for delinquent fines and bail imposed for an infraction or misdemeanor

violation of the Vehicle Code, except parking violations of the Vehicle Code and violations of Section 23103, 23104, 23152, or 23153. The program shall be implemented by the courts in accordance with Judicial Council guidelines, and shall apply to infraction or misdemeanor violations of the Vehicle Code, except parking violations, upon which a fine or bail was delinquent on or before April 1, 1991.

(b) Under the amnesty program, any person owing a fine or bail due on or before April 1, 1991, that was imposed for an infraction or misdemeanor violation of the Vehicle Code, except violations of Section 23103, 23104, 23152, or 23153 or parking violations, may pay to the superior court the amount scheduled by the court, which shall be either (1) 70 percent of the total fine or bail or (2) the amount of one hundred dollars (\$100) for an infraction or five hundred dollars (\$500) for a misdemeanor. This amount shall be accepted by the court in full satisfaction of the delinquent fine or bail.

(c) No criminal action shall be brought against any person for a delinquent fine or bail paid under this amnesty program and no other additional penalties shall be assessed for the late payment of the fine or bail made under the amnesty program.

(d) Notwithstanding Section 1463 of the Penal Code, the total amount of funds collected by the courts pursuant to the amnesty program created by this section shall be deposited in the county treasury.

The court is to collect a designated amount in satisfaction of the unpaid penalty, and deposit the amount into the county treasury. See Veh. Code § 42008(d).

In its 2001 Tentative Recommendation, the Commission circulated revisions to Section 42008 to reflect trial court restructuring. The proposed revisions were enacted. See 2002 Cal. Stat. ch. 784 (S.B.1316), § 606 (deleting references to municipal court).

The Commission did not propose revisions to the county treasury provisions in Section 42008, but included a note specially soliciting comment on the issue, in light of the shift in funding responsibility from the county to the state. No comments specific to Section 42008 were received. But the Commission postponed consideration of the issue while stakeholders were negotiating the allocation of undesignated fees. See Memorandum 2006-9, p. 4.

On revisiting the issue, the county treasury provisions in Section 42008 do not require revision to reflect the shift of trial court funding from the county to the state. The allocation of revenue to the county treasury under Section 42008 was part of the package of reforms in the Trial Court Funding Act. The Act expressly

provides that revenue earned pursuant to Vehicle Code Section 42008 is intended to help counties pay remittances owed to the state under the Act. See 1997 Cal. Stat. ch. 850, § 3; see also 1997 Cal. Stat. ch. 850, §§ 3(f), 46 (enacting Gov't Code Sections 77201(b)(2) and 77201.1(b)(2)); Gov't Code § 77201.3(b)(2).

Because the Legislature determined that the allocation of revenue pursuant to Section 42008 to the county is appropriate, the staff **recommends that the section be left as is.**

#### NEXT STEP

The staff still needs to analyze one more provision left over from the 2001 Tentative Recommendation: Penal Code Section 1463.22. That provision is also being studied by the Judicial Council Task Force on Criminal and Traffic-Related Court-Ordered Debts. Because we want to coordinate the Commission's work with the efforts of that task force, we will analyze Section 1463.22 for a future meeting, not for the upcoming December meeting.

After we complete that analysis and the Commission considers it, the Commission may want to direct the staff to draft a tentative recommendation, to be circulated for comment. The new tentative recommendation would consist of all of the reforms the Commission has tentatively approved relating to the ten provisions listed at the beginning of Memorandum 2009-35, which were left over from the 2001 Tentative Recommendation because they raised issues relating to county rights and responsibilities for trial court operations. Alternatively, it may be preferable to delay preparation of such a tentative recommendation until after the staff has finished searching the codes for other provisions that present issues relating to rights and responsibilities with respect to trial court operations. The Commission should decide that point later.

In the meantime, the Commission and interested persons should review the reforms recommended in this memorandum, and decide whether they should be included when a tentative recommendation is eventually prepared.

Respectfully submitted,

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