

Memorandum 93-53

Trial Court Unification: Introduction (SCA 3)

REFERRAL OF STUDY TO LAW REVISION COMMISSION

The Legislature has directed the California Law Revision Commission to study the proposed amendment to the California Constitution contained in SCA 3 (Lockyer) of the 1993-94 Regular Session, concerning unification of the trial courts. The referral is made in SCR 26, which was adopted unanimously by the Legislature as 1993 Res. Ch. 96.

The text of the referral is:

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature approves for study by the Law Revision Commission the proposed amendment to the State Constitution contained in SCA 3 (Lockyer) of the 1993-94 Regular Session, pertaining to the unification of the trial courts, with recommendations to be forwarded to the Legislature by February 1, 1994, pertaining to the appropriate composition of the amendment, and further recommendation to be reported pertaining to statutory changes that may be necessitated by court unification.

Several features of the resolution should be emphasized:

(1) The scope of this study is limited to making recommendations concerning implementation of trial court unification. **The Commission has not been authorized to report to the Legislature concerning the wisdom or desirability of trial court unification.** There is a short fuse on this study and we will save valuable time by not allowing ourselves to get sidetracked by discussions and arguments concerning the public policy behind trial court unification. We should limit ourselves to remedying problems that would be created by unification.

(2) The immediate focus of the study is the constitutional language that is necessary to achieve trial court consolidation. Conforming statutory revisions will also need to be made, but do not need to be completed by the February 1 deadline for recommendations concerning constitutional language. If during deliberations it becomes clear that a particular issue should be handled by legislation rather than by constitutional language, and that immediate resolution

of, or legislation on, the issue is not necessary, further consideration of the issue should be deferred. Many of the most intractable problems in this study will prove to be statutory rather than constitutional.

SCA 3 (LOCKYER)

Senate Constitutional Amendment No. 3 (Lockyer) is attached to this memorandum as an Exhibit. It would eliminate the existing trial court system of superior, municipal, and justice courts in favor of a single trial level court called the district court. Each county would have a district court, although mechanisms are provided for coordination among small counties and branch operations in large counties. As a transitional matter, each existing trial court would become a district court and the officers and employees of each court would become officers and employees of the district court.

The proposed constitutional amendment passed three Senate committees and the Senate floor unanimously. The proposal also passed three Assembly committees unanimously, and is poised for enactment in the Assembly on the consent calendar. It is contemplated that this measure will appear on the June 1994 ballot, and if adopted would become operative July 1, 1995.

The Legislature has also enacted as part of the 1993 budget package the following language:

The Legislature finds and declares that the efficiencies that would result from the enactment and adoption of Senate Constitutional Amendment 3 of the 1993-94 Regular Session would yield substantial savings to both counties and the state. 1993 Cal. Stat. ch. 70, § 10.

METHODOLOGY OF STUDY

The Commission will follow its standard process on this study. Policy issues will be identified, possible solutions and their pros and cons discussed, initial decisions on the issues made, implementing language drafted and refined, tentative recommendations circulated for comment, comments considered and revisions made, and final recommendations submitted to the Legislature. Because of the short time for submission of recommendations to the Legislature on the constitutional amendment, some of these steps may have to be telescoped, and the times allowed for comment shortened.

All Commission work is done at public meetings. The Commission has scheduled monthly meetings between October and January to be devoted almost exclusively to this study. The Commission will adopt a meeting schedule beyond January 1994 when it is in a better position to gauge the timing of the necessary work.

The strength of Commission recommendations is due in great measure to the involvement of many concerned and interested persons and organizations from different perspectives. Because almost the entire body of input we have to date on SCA 3 is from the judicial branch, the Commission also will be seeking participation from others who are involved in or affected by the trial court system.

The Commission has been pledged the continuing involvement and resources of the Judicial Council for this study. Among other contributions of the Judicial Council will be reproduction and distribution of Commission materials to persons identified by the Commission. Judicial Council personnel will be available to respond to Commissioner and staff inquiries concerning court operations, statistics, etc., as will be Professor Clark Kelso, consultant and reporter on the 1993 Judicial Council Report on trial court unification.

BACKGROUND INFORMATION

There is a wealth of information available on trial court reorganization, consolidation, and unification, both in California and in other jurisdictions. These materials are far too voluminous to reproduce, and contain much information that either is marginal for our present purposes or has been rendered obsolete by subsequent changes in the court system. On the other hand they also contain much useful information. One of our tasks is to cull the materials and summarize relevant portions concerning issues under consideration.

The studies and reports listed below are among the materials available to the Commission's staff. They have been provided primarily by Judicial Council personnel and by Senator Lockyer's office. Of these, the 1993 Judicial Council Report on trial court unification will be most useful to us, and will be circulated to persons involved in the study.

Items that appear to have some relevance for our immediate purposes include, in chronological order:

California Unified Trial Court Feasibility Study (Booz, Allen & Hamilton 1971)

Trial Court Consolidation in California (Minteer 1974)
 Report and Recommendations for a Reorganization of the Justice Courts
 (Judicial Council of California 1975)
 To Meet Tomorrow: The Need for Change (Advisory Commission to the Joint
 Committee on the Structure of the Judiciary 1975)
 Court Reorganization Study (Los Angeles County 1978)
 Another Look: Trial Court Unification In California in the Post-Proposition 13
 Era (Schepard 1979)
 California Court Reorganization Legislation: 1971 Through 1979 (Los Angeles
 County Municipal Courts 1979)
 Report (Advisory Committee on Legislation Concerning Unification of Trial
 Courts 1981)
 Outline and Checklist on Trial Court Unification Legislation (Administrative
 Office of the Courts 1981)
 Analysis of Proposed Court Unification Legislation (Stiglitz 1981)
 Size of Judicial Divisions Within a Unified Court (Birdlebough 1981)
 Interim Hearings on Trial Court Unification (Senate Committee on Judiciary
 1981)
 Analyses of SCA 3 (Various Legislative Committees 1993)
 Correspondence to Senator Lockyer and to Judicial Council Concerning SCA
 3 (Numerous Authors 1993)
 Trial Court Unification: Proposed Constitutional Amendments and
 Commentary as Amended and Adopted by the Judicial Council
 (Warren & Kelso 1993)

General background materials of less immediate use to us include, in
 chronological order:

California Courts in Historical Perspective (Blume 1970)
 California Lower Court Study (Booz, Allen & Hamilton 1971)
 The California Effort at Trial Court Reorganization 1970-1972 (Marsden 1972)
 Study to Establish Criteria for Branch Court Operations (Arthur Young 1974)
 Trial Court Unification in the United States (Judicial Council of California
 1976)
 Court Unification (Yates 1977)
 Court Administration Consolidation Project (Judicial Council of California
 1980)
 San Diego County Municipal Court Experiment Evaluation Report (Criminal
 Justice Evaluation Unit ND)
 Analysis of Court Consolidation (Ventura County Municipal Court ND)
 Los Angeles County Municipal Court Consolidation (Arthur Young 1981)
 Court Unification and Court Performance: A Preliminary Assessment (Tarr
 1981)
 The Significance of Judicial Structure: The Effect of Unification on Trial Court
 Operations (National Institute of Justice 1984)

Structuring Justice: The Implications of Court Unification Reforms (National Institute of Justice 1984)

A North Dakota Consensus for Trial Court Unification and Reduction in the Number of Judgeships Over the Decade (North Dakota Consensus Council 1991)

Trial Court Unification in Practice (Baar 1993)

GENERAL PRINCIPLES IN FORMULATING RECOMMENDATIONS CONCERNING SCA 3

The staff would like to suggest for Commission consideration a number of guiding principles to govern the Commission's basic approach to this study. The need for these principles has become evident to the staff even at the inception of this study.

First, our effort must be not merely to offer solutions to problems presented by trial court unification, but to offer solutions that will find favor with the voters. We will not have done our job if our report to the Legislature on the constitutional amendments to implement trial court unification would make the proposition unacceptable to the voters. This is a significant concern, since the last time trial court unification appeared on the ballot in California (1982), it was defeated.

Second, we must resist the temptation to wander too far from the immediate task to implement trial court unification. Many of the unification proposals deal with other reforms of the judicial process as well. They seek ways, in addition to trial court unification, to address the same underlying problem of judicial overload. We should consider proposals, for example, to raise filing fees or limit appeals, only as solutions to specific problems caused by trial court unification such as transitional costs or Court of Appeals overload. If we stray off into judicial reform generally we will consume our limited time and resources and will gratuitously generate opposition to the proposals from persons adversely affected.

Finally, to the extent we can deal with issues by statute rather than in the Constitution, we should. The Constitution should set out only the basic structure of the judicial system and the details should be left to implementing legislation. Our specific concerns on this point are practical as well as architectonic.

The election debate over the constitutional amendment could focus on minor aspects of the unification proposal that prove to be controversial, instead of on

the overall merits of unification. To the extent we can avoid this situation by deferring minor issues to implementing legislation, we should do so.

On the other hand, it may become apparent that a particular problem will be the focus of election debate, and it will be unsatisfactory to respond that the matter will be dealt with later by the Legislature. In that case it will be necessary either to add to the Constitution language addressing the problem or to have implementing legislation in place in advance of the election.

Some of the most difficult matters we will face will be transitional personnel problems. They could bog down the entire project so long as trial court unification remains merely a concept. Once the concept becomes reality and there is a finite period, e.g. a year, to enact implementing legislation, affected persons will be under the gun to reach a workable solution and we will be in a far better position to forge a practical compromise on the matter.

For these reasons, the staff stresses the importance of dealing primarily with constitutional issues at this time and deferring decision on matters that can be dealt with by legislation.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

AMENDED IN ASSEMBLY JULY 16, 1993

AMENDED IN SENATE APRIL 13, 1993

Senate Constitutional Amendment

No. 3

Introduced by Senator Lockyer
(Principal coauthors: Assembly Members Isenberg and Goldsmith)

December 7, 1992

Senate Constitutional Amendment No. 3—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Sections 1, 4, 6, 8, 10, 11, 15, and 16 of, adding and repealing Section 16.5 of, and repealing Section 5 of, Article VI thereof, relating to District Courts.

LEGISLATIVE COUNSEL'S DIGEST

SCA 3, as amended, Lockyer. District courts: creation.

The California Constitution currently provides for superior, municipal, and justice courts, provides for the establishment and jurisdiction thereof, and provides for the qualification and election of judges thereof.

This measure would eliminate the provisions for superior, municipal, and justice courts, and instead provide for district courts, their establishment and jurisdiction, and the qualification and election of judges thereof. The measure would become operative on July 1, 1995. The measure would also specify its purposes, and make related, conforming changes.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

1 *Resolved by the Senate, the Assembly concurring,* That
2 the Legislature of the State of California at its 1993-94
3 Regular Session commencing on the seventh day of
4 December 1992, two-thirds of the members elected to
5 each of the two houses of the Legislature voting therefor,
6 hereby proposes to the people of the State of California
7 that the Constitution of the State be amended as follows:

8 First—That Section 1 of Article VI is amended to read:

9 SEC. 1. The judicial power of this State is vested in
10 the Supreme Court, courts of appeal, and district courts.
11 All courts are courts of record.

12 Second—That Section 4 of Article VI is amended to
13 read:

14 SEC. 4. In each county there is a district court of one
15 or more judges. The Legislature shall prescribe the
16 number of judges and provide for the officers and
17 employees of each district court. ~~If the governing body~~
18 ~~of each affected county concurs, the~~ The Legislature may
19 provide that one or more judges serve more than one
20 district court, or that two or more district courts may be
21 organized into one or more circuits for regional resource
22 sharing or administrative purposes.

23 ~~If the governing body of the county concurs, the~~

24 The Legislature may divide the district court into one
25 or more branches.

26 The county clerk is ex officio clerk of the district court
27 in the county.

28 Third—That Section 5 of Article VI is repealed.

29 Fourth—That Section 6 of Article VI is amended to
30 read:

31 SEC. 6. The Judicial Council consists of the Chief
32 Justice and one other judge of the Supreme Court, 3
33 judges of courts of appeal, and 10 judges of district courts,
34 each appointed by the Chief Justice for a 2-year term; 4
35 members of the State Bar appointed by its governing
36 body for 2-year terms; and one member of each house of
37 the Legislature appointed as provided by the house.

38 Council membership terminates if a member ceases to
39 hold the position that qualified the member for
40 appointment. A vacancy shall be filled by the appointing

1 power for the remainder of the term.

2 The council may appoint an Administrative Director of
3 the Courts, who serves at its pleasure and performs
4 functions delegated by the council or the Chief Justice,
5 other than adopting rules of court administration,
6 practice and procedure.

7 To improve the administration of justice the council
8 shall survey judicial business and make recommendations
9 to the courts, make recommendations annually to the
10 Governor and Legislature, adopt rules for court
11 administration, practice and procedure, not inconsistent
12 with statute, and perform other functions prescribed by
13 statute.

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

20 Judges shall report to the Judicial Council as the Chief
21 Justice directs concerning the condition of judicial
22 business in their courts. They shall cooperate with the
23 council and hold court as assigned.

24 Fifth—That Section 8 of Article VI is amended to read:

25 SEC. 8. (a) The Commission on Judicial
26 Performance consists of 2 judges of courts of appeal, and
27 3 judges of district courts, each appointed by the
28 Supreme Court; 2 members of the State Bar of California
29 who have practiced law in this State for 10 years,
30 appointed by its governing body; and 2 citizens who are
31 not judges, retired judges, or members of the State Bar of
32 California, appointed by the Governor and approved by
33 the Senate, a majority of the membership concurring.
34 Except as provided in subdivision (b), all terms are 4
35 years. No member shall serve more than 2 4-year terms.

36 Commission membership terminates if a member
37 ceases to hold the position that qualified the member for
38 appointment. A vacancy shall be filled by the appointing
39 power for the remainder of the term. A member whose
40 term has expired may continue to serve until the vacancy

1 has been filled by the appointing power.

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

5 (1) The court of appeal member appointed to
6 immediately succeed the term that expires on November
7 8, 1988, shall serve a 2-year term.

8 (2) Of the State Bar members appointed to
9 immediately succeed terms that expire on December 31,
10 1988, one member shall serve for a 2-year term.

11 Sixth—That Section 10 of Article VI is amended to read:

12 SEC. 10. The Supreme Court, courts of appeal,
13 district courts, and their judges have original jurisdiction
14 in habeas corpus proceedings. Those courts also have
15 original jurisdiction in proceedings for extraordinary
16 relief in the nature of mandamus, certiorari, and
17 prohibition.

18 District courts have original jurisdiction in all causes.

19 The court may make such comment on the evidence
20 and the testimony and credibility of any witness as in its
21 opinion is necessary for the proper determination of the
22 cause.

23 Seventh—That Section 11 of Article VI is amended to
24 read:

25 SEC. 11. The Supreme Court has appellate
26 jurisdiction when judgment of death has been
27 pronounced. With that exception courts of appeal have
28 appellate jurisdiction when district courts have original
29 jurisdiction and in other causes prescribed by statute.

30 An appellate division shall be created within each
31 district court. The appellate division has appellate
32 jurisdiction in causes prescribed by statute that arise
33 within that district court.

34 The Legislature may permit appellate courts to take
35 evidence and make findings of fact when jury trial is
36 waived or not a matter of right.

37 Eighth—That Section 15 of Article VI is amended to
38 read:

39 SEC. 15. A person is ineligible to be a judge of a court
40 of record unless for 5 10 years immediately preceding

1 selection to a district court or 10 years immediately
2 preceding selection to other courts, the person has been
3 a member of the State Bar or served as a judge of a court
4 of record in this State. A judge eligible for district court
5 service may be assigned by the Chief Justice to serve on
6 any court.

7 Ninth—That Section 16 of Article VI is amended to
8 read:

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

18 (b) Judges of other courts shall be elected in their
19 districts or branches at general elections. The Legislature
20 may provide that an unopposed incumbent's name not
21 appear on the ballot.

22 (c) Terms of judges of district courts are 6 years
23 beginning the Monday after January 1 following their
24 election. A vacancy shall be filled by election to a full
25 term at the next general election after the January 1
26 following the vacancy, but the Governor shall appoint a
27 person to fill the vacancy temporarily until the elected
28 judge's term begins.

29 (d) Within 30 days before August 16 preceding the
30 expiration of the judge's term, a judge of the Supreme
31 Court or a court of appeal may file a declaration of
32 candidacy to succeed to the office presently held by the
33 judge. If the declaration is not filed, the Governor before
34 September 16 shall nominate a candidate. At the next
35 general election, only the candidate so declared or
36 nominated may appear on the ballot, which shall present
37 the question whether the candidate shall be elected. The
38 candidate shall be elected upon receiving a majority of
39 the votes on the question. A candidate not elected may
40 not be appointed to that court but later may be

1 nominated and elected.

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

9 Electors of a county, by majority of those voting and in
10 a manner the Legislature shall provide, may make this
11 system of selection applicable to judges of district courts.

12 Tenth—That Section 16.5 is added to Article VI to read:

13 SEC. 16.5. The purpose of the repeal of Section 5, and
14 the amendments to Sections 1, 4, 6, 8, 10, 11, 15, and 16,
15 of this article, adopted at the June 1994 primary election
16 is to convert each superior, municipal, and justice court
17 to a district court.

18 In each former superior, municipal, and justice court
19 district, the previously selected judges, officers, and
20 employees shall become the judges, officers, and
21 employees of the district court; each preexisting superior,
22 municipal, and justice court location shall be retained as
23 a district court location; pending actions, trials,
24 proceedings, and other business of the preexisting court
25 shall become pending in the district court; and the
26 records of the preexisting court shall become records of
27 the district court.

28 The terms of office of the judges of the preexisting
29 superior, municipal, and justice courts shall not be
30 affected by their succession to office as district court
31 judges.

32 This section shall be operative only until January 1,
33 2000, and as of that date is repealed.

34 Eleventh—That this measure shall become operative
35 on July 1, 1995.