Study J-1000 October 5, 1993

Memorandum 93-54

**Trial Court Unification: Judicial Council Report**

Attached is the Judicial Council's report on SCA 3, *Trial Court Unification: Propoposed Constitutional Amendments and Commentary as Amended and Adopted by the Judicial Council* (Warren & Kelso 1993). This report was developed during 1993 through a joint effort of the Judicial Council's standing advisory committees of presiding judges and court administrators. The joint committee was chaired by Judge Roger K. Warren, presiding judge of the Sacramento Superior and Municipal Courts. The committee had the assistance of Professor Clark Kelso of McGeorge School of Law, who acted as reporter.

The report developed by the joint committee has been amended and adopted by the Judicial Council. It is referred to in these memoranda as the 1993 Judicial Council Report.

The report builds on earlier court unification studies and on input from the judiciary concerning SCA 3. The staff has been through much of the literature on trial court unification in California and believes the 1993 Judicial Council Report pulls together the main issues in a compact and useful manner.

The Commission should familiarize itself with the report. We will be referring to it extensively throughout our study of SCA 3 and trial court unification. We hope to have Judge Warren and Professor Kelso at as many of our meetings as possible to give the Commission the benefit of their knowledge of the issues and their insight into the deliberations of the joint committee.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

# Trial Court Unification: Proposed Constitutional Amendments and Commentary as Amended and Adopted by the Judicial Council

Presiding Judges and Court Administrators
Standing Advisory Committees

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# Part 1.
# Proceedings of the Joint Committees

Senator Bill Lockyer introduced Senate Constitutional Amendment 3 on December 7, 1992. SCA 3 "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." (SCA 3, Legislative Counsel's Digest)

Senator Lockyer invited the Judicial Council to comment on SCA 3. In February 1993, the Judicial Council Policy Coordination Committee referred the issue of trial court unification to the Trial Court Presiding Judges Standing Advisory Committee and the Court Administrators Standing Advisory Committee. Those two committees agreed in April to establish a joint Sub-Committee. The membership of these committees is provided in attachment 1. In creating the Joint Sub-Committee, the committees envisioned a process that would:

> (1) be inclusive in gathering input from a variety of courts (large and small; municipal, justice and superior; urban and rural), other Judicial Council committees, court administrators, and bar representatives;
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> (2) identify issues that need to be addressed to formulate a trial court unification proposal;
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> (3) seek to reach consensus as to how each of those issues should most appropriately be addressed; and
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> (4) reduce that consensus to specific proposed constitutional amendments.

At the April Court Management Conference, a brainstorming session on SCA 3 identified the following twenty-six issues for further consideration:

1. Boundaries of court districts and electoral districts
2. Provision for mandating adequate funding
3. Judicial qualification of 5 or 10 years
4. Grandparent provision
5. Selection/retention of judges
6. Appeal process (including 995, small claims de novo)
7. Phase-in process
8. Allocation of judicial resources to courts and branches
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26. Who will be responsible for facilities?

By letter of April 26, 1993, to all Presiding Judges and Executive Officers of the Superior, Municipal, and Justice Courts, Chief Justice Lucas circulated this list of issues and invited further comments and suggestions.

The Joint Sub-Committee established a Steering Committee to guide the review process. In May and June, the Steering Committee held a series of meetings, including meetings with chairs of other committees, a meeting with several voting rights experts, and a special meeting on the appellate process. The Joint Sub-Committee met on June 9 to seek consensus on the policy issues raised by trial court unification. The Steering Committee also retained the services of the Reporter to assist in preparation of this report.

A draft of this report was submitted to the Presiding Judges and Court Administrators Standing Advisory Committees for their consideration on July 15-16, 1993. At that time, the draft report, as amended, was jointly adopted by the two committees. The two committees also determined that the draft report, as amended and adopted, should be distributed as soon as possible to all trial judges and court administrators, and other interested persons, for comment.

The two committees met again jointly on August 20, 1993, to consider further action on the draft report in light of the comments received. After reviewing each of the general recommendations in light of the comments received, the Joint Committee voted as follows: (1) to adopt this final Report and forward it to the Judicial Council for its consideration, (2) to recommend that the Judicial Council support amendments to SCA 3 consistent with this Report, (3) to recommend that the Judicial Council support referral of SCA 3 (as well as proposed implementing legislation) to the Law Revision Commission for its review and comment, and (4) to recommend that the Judicial Council support SCA 3 if it is amended consistent with this Report.

The proposed constitutional amendments and commentary in part 3 of this document are

primarily the work product of the Trial Court Presiding Judges and Court Administrators Standing Advisory Committees. The Appellate Standing Advisory Committee, with the Honorable Marvin R. Baxter, Associate Justice of the Supreme Court of California, serving as Chair, and the Appellate Courts Committee of the California Judges Association, with the Honorable Norman L. Epstein, Associate Justice of the Court of Appeal for the Second Appellate District, serving as Chair, were ultimately responsible for drafting Sections 10 and 11 dealing with original and appellate jurisdiction, respectively.

At its meeting on September 23, the Judicial Council decided to adopt the amendments recommended by the Presiding Judges and Court Administrators Committees with only a single modification (regarding composition of the Judicial Council), to seek legislative action to so amend SCA 3, and to refer the proposed constitutional amendments to the Law Revision Commission for review and comment.

The Council has taken no position on the broader issue of whether to support trial court unification. The decision in September was limited to a recommendation that SCA 3 be amended by the Legislature prior to passage. It is anticipated the Council will not take a position on the merits of trial court unification until, at the earliest, its meeting on November 30, 1993. This is the last meeting at which the Council would be able to take a position on SCA 3 before Legislative action, which is anticipated in early 1994, in time to put the issue before the voters on the June 1994 ballot.

# Part 2.
# General Recommendations

This part contains, in list form, the recommendations adopted jointly by the Presiding Judges and Court Administrators Standing Advisory Committees on August 20, 1993, and approved, as amended, by the Judicial Council on September 23. Specific proposed constitutional amendments to implement the constitutional recommendations and commentary in support appear in part 3. Some of the recommendations below do not require constitutional amendment and would be implemented, if at all, through legislation or rules of court. Work has already begun on drafting implementing legislation. It is anticipated that the implementing legislation will be reviewed by appropriate committees of the Judicial Council and by the Law Revision Commission.

Constitutional Recommendations

1. The superior, municipal and justice courts shall be merged into one trial level court, called the district court, whose electoral district and jurisdictional boundaries shall be the same as the county within which the district court is located. (Cal. Const., Art. VI, § 1)

2. There shall be one type of trial level judge, called a district court judge. As of the effective date of the amendments, all existing superior, municipal and justice court judges shall become district court judges and shall serve out the balance of their current terms as district court judges. (Effective Date provision)

3. To qualify for service as a district court judge, a person shall have been a member of the State Bar for 10 years prior to selection, except that sitting municipal and justice court judges shall be exempt from the requirement. (Cal. Const., Art. VI, §§ 15 & 15.5)

4. Terms of district court judges shall be 6 years. The Governor shall fill vacancies by appointment until the elected judge's term begins. A vacancy shall be filled by election to a full term at the next general election after the third January 1 following the vacancy. (Cal. Const., Art. VI, § 16(c))

5. The district court shall select an executive officer to serve as clerk of the court. (See removal of language regarding county clerk in Cal. Const., Art. VI, § 4)

6. The court of appeal shall have appellate jurisdiction over Category One causes, and the district court shall have appellate jurisdiction over Category Two causes. The categorization of causes shall be determined by special Rule of Court promulgated by the Judicial Council and approved by a majority of the justices of the Supreme Court. Initially, this Rule of Court shall categorize all causes presently within the jurisdiction of the municipal and justice courts as Category Two causes, and all other causes shall be categorized as Category One causes. (Cal. Const., Art. VI, § 11)

7. Extraordinary writs to review Category One causes shall be heard by the court of appeal, and extraordinary writs to review Category Two causes shall be heard by the district court. (Cal. Const., Art. VI, § 10)

8. In Category One civil causes, the jury shall consist of 12 persons or a lesser number agreed on by the parties. In Category Two civil causes, the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties. (Cal. Const., Art. I, § 16)

9. The Judicial Council shall be the policy-making body for the courts and shall have power to promulgate rules of court administration whether or not such rules are consistent with statute. The Chief Justice shall be the chief executive officer for the courts and shall implement the rules promulgated by the Judicial Council. The Council shall consist of the Chief Justice, who shall be the presiding officer, one other justice of the Supreme Court, 3 justices of courts of appeal, 10 judges of district courts, 2 non-voting court administrators, and such other non-voting members as determined by 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 1 member from each house of the Legislature appointed as provided by the Legislature. (Cal. Const., Art. VI, § 6)

10. The proposed constitutional amendments shall become effective on July 1, 1995. (Effective Date provision)

Statutory Recommendations

11. District court judge salaries shall be set by statute, and all district court judges shall receive the same salary. As of the effective date of the amendments, the salary shall be equal to the salary for superior court judges.

12. The retirement rights and benefits of sitting and retired judges shall not be diminished by reason of unification. A municipal court judge who has retired prior to unification should receive retirement benefits based on 91% of the salary of a sitting district court judge (which represents the present salary differential between superior court judges and municipal and justice court judges). The details of the retirement plan need further study by the Judicial Council.

13. No judgeships shall be eliminated as a result of unification. Any reallocation of judicial resources between districts shall be accomplished in accord with recommendations by the Judicial Council in light of the results of the pending judicial needs study and the need for flexibility in the use of assigned judges.

14. The district court shall have the authority to establish the location of court facilities.

Rule of Court Recommendations

15. By rules of court, a judge shall be allowed to continue to hear matters for which he or she was elected or appointed until the end of the judge's term or five years after the effective date of the amendments, whichever is longer.

16. All district court judges who preside in districts which have an insufficient caseload to fully support the number of available judicial officers shall be subject to assignment to other courts.

17. Venue and vicinage within the district shall be determined by local court rule.

# Part 3.
# Proposed Amendments to the California Constitution and Commentary

This part contains specific proposed amendments to the California Constitution to achieve trial court unification. The Judicial Article of the Constitution, Article VI, is reproduced in full with suggested amendments. Three other sections in the Constitution (not in Article VI) refer to superior, municipal or justice courts, and amendments for those three sections are also proposed. In the provisions below, existing language is printed in regular typeface, additions are printed in *italics*, and deletions are marked by ~~strikeouts~~.

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**Effective Date**

***These amendments shall take effect on July 1, 1995. On that date, every superior, municipal and justice court judge shall immediately become a district court judge and shall serve out the remaining time of his or her term.***

Comment

a. A variety of effective date and transition periods were considered, ranging from a six-month transition period to a two-year period in which individual districts could certify readiness to unify at any time within the two-year period. The general purpose of a transition period is to give local judicial officials time to make preparations for unification. Some counties, especially those counties which have vigorous trial court coordination plans, will be ready to unify almost immediately. Other counties may require more time. Ultimately, it was determined that a single effective date was the only practical solution. Having some counties unify before other counties would create state-wide confusion among the bench, the bar and the public. July 1, 1995, was chosen because it coincides with the courts' budget cycle. Assuming the constitutional amendments are approved in the June 1994 election, trial courts will have over one year to prepare for unification. It was agreed that one year should be adequate time for court administrators to make all necessary preparations. July 1994 was ruled out both because not all trial courts would be ready so quickly and because the necessary implementing legislation will likely not be enacted until later in the 1994-95 legislative session.

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**California Constitution**
**Article I**
**Declaration of Rights**

**Section 16. Trial by jury is an inviolate right and shall be secured to all, but in a**

**civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.**

**In *Category One* civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In *Category Two* civil causes ~~in municipal or justice court~~ the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court. *All causes shall be assigned to Category One or Category Two as provided in Article VI, Section 11.***

**In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a misdemeanor is charged, the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court.**

Comment

a. *Right to a Jury*. The first paragraph of this section expresses the constitutional right to a jury in criminal and civil actions. The proposed amendments to this section are not intended in any way to affect the interpretation of the first paragraph.

b. *Size of Jury*. Presently, the Constitution expresses a clear preference for a 12-person jury in all cases. A 12-person jury is mandated in felony cases, and a smaller jury is permitted in misdemeanor and all civil cases only with the consent of the parties. The Legislature is authorized to provide for an 8-person jury only in civil causes within the jurisdiction of municipal and justice courts.

As amended, this section will continue the preference for a 12-person jury. A 12-person jury will still be mandated in all felony cases, and a smaller jury will be permitted in misdemeanor actions only with the consent of the parties. In order to retain the existing flexibility in determining the size of the civil jury, the Legislature is authorized to provide for a smaller jury by statute in Category Two civil cases. The categorization of causes is provided for in Article VI, Section 11. As of the effective date of these amendments, all causes within the jurisdiction of the municipal and justice courts will be declared Category Two causes, and all causes within the jurisdiction of the superior courts will be declared Category One causes. As a consequence, this amendment will result in no change to the constitutionally provided size of the civil jury.

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## Article V
## The Executive Branch

**Section 13. Subject to the powers and duties of the Governor, the Attorney General**

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

Comment

a. This amendment slightly increases the Attorney General's responsibility and power in situations where the Attorney General is of the opinion that the "law of the State is not being adequately enforced." Presently, the Attorney General's power and responsibility to prosecute violations of law as a district attorney extends only to those criminal violations within the jurisdiction of the superior court. This limitation excludes misdemeanors, which fall within the jurisdiction of the municipal and justice courts. The amendment will bring misdemeanors within the scope of the Attorney General's power and responsibility. There is no reason in principle why the Attorney General should not be responsible to see that all of the criminal laws are properly being enforced.

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## Article VI
## The Judicial Branch

### The Judicial Power

**Section 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, ~~superior courts, municipal courts, and justice courts~~ *and district courts*. All courts are courts of record.**

Comment

a. *The Core Function of the Judicial Branch and the Importance of the Trial Courts.* "The primary purpose of the public judiciary is 'to afford a forum for the settlement of litigable matters between disputing parties.'" (Neary v. Regents of University of California (1992) 3 Cal.4th 273) In 1991-92, well over 16 million disputes were filed in California's courts. Over ninety percent (15.2 million) of those cases were filed in the 90 municipal and 53 justice courts,

staffed by around 660 of California's 1,553 authorized judgeships. Another million cases were filed in the 58 superior courts (which have around 790 judges).

Disputes are initially decided (and in the vast majority of cases, finally decided) by the trial courts, which makes the work of the trial courts of paramount importance to the public and to the judiciary. For most Californians, their only direct contact with the Judicial Branch occurs at the trial court level. Although one traffic infraction may appear to the courts little different from the 6 million other traffic infractions processed during the year, from the defendant's perspective, that one traffic infraction may be an important case and may be that person's only contact during the year with the Judicial Branch.

The trial courts are responsible for giving each case the process and attention it is due and for rendering a correct decision on the merits. Public confidence in the judicial system requires nothing less. The ultimate goal must be to make the justice system accessible and responsive to all persons, whether the case involves $500 or $50,000, and whether the criminal penalty is a $100 fine or many years in prison. Trial courts must have the flexibility to respond appropriately to each case, allocating the right amount of judicial resources to render correct decisions. Judicial resources are a scarce commodity and must be efficiently allocated. If too little is allocated to particular cases, there is a higher risk of an incorrect decision. And, if too much is allocated to particular cases, other cases are likely to be squeezed by the system.

Trial court organization plays a significant role in how judicial resources are allocated, in how disputes are resolved, and in how the public perceives the justice system. Under our current system, misdemeanors, traffic infractions, small civil disputes, small claims cases, and preliminary hearings in felony proceedings are diverted to the municipal and justice courts for processing, and all other cases fall within the jurisdiction of the superior courts. This system, which has worked tolerably well for over forty years, is showing signs of strain.

Filings in the superior court have risen 39% from 1982-83 figures. (California Judicial Council, 1993 Annual Report, Volume II, p. 44) Over the same period, the total number of superior court judges has increased only 22%. (Id., p. 45) Increased filings do not accurately measure increased workload since different cases demand different amounts of judicial time, and there has been a significant increase in case complexity, especially in civil cases filed in the superior court. Nevertheless, the increase in filings can give a rough sense of the difficulties being faced by our trial level courts in recent years. The gap between the percent increase in filings and increase in judges has been partially filled by adding more subordinate judicial officers. There has been a 44% increase in the number of commissioners and referees. (Id.) But even with this increase, there has been only a 25% increase in the total number of judicial positions. (Id., p. 44) To close the gap further, courts have been forced to assign retired judges and municipal court judges to superior court service. (Id., p. 98) These efforts resulted in a 36% increase in the total number of judicial position equivalents over the past decade, which is close to, but still below, the 39% increase in the number of filings. (Id., p. 44)

The municipal and justice courts are also feeling the strain, partly as a result of cross-

assignments of these judges to the superior court. During the last decade, excluding parking, there was a 12% increase in filings in the municipal and justice courts. (Id., pp. 86 & 90) Authorized judgeships increased 21% during this period, and adding in commissioners and referees, the municipal and justice courts experienced a 34% increase in judicial position equivalents. (Id., p. 84) Yet much of this additional personpower was directed to the superior courts through judicial assignments. In 1991-92, municipal and justice court judges spent 2,780 judicial days sitting on assignment in superior courts. (Id., p. 98) Moreover, superior and municipal court coordination programs have further blurred the jurisdictional responsibilities of superior and municipal court judges.

Notwithstanding the filing increases, no new judgeships have been authorized since 1987 creating an atmosphere of crisis within the Judicial Branch. To deal with the rising tide, courts have turned to alternative dispute resolution programs, trial court coordination, traffic court reforms, and trial court delay reduction efforts. Yet these programs are not enough. As Chief Justice Lucas has noted, "One of the fundamental principles upheld by a responsive justice system is that the public court system must have adequate resources to perform its constitutional role. By resources, I do not mean only financial support. I include the authority to handle the affairs of the judicial system, to set a course for the future, and to meet needs in an environment where fiscal resources are unlikely to match increases in demand."

Simply put, trial court unification, as proposed in this report, will maximize judicial control over the single most important component of the judicial system -- the trial courts. Eliminating the artificial jurisdictional boundary between superior courts and municipal and justice courts will make it possible for presiding judges more easily to handle the daily affairs of the trial courts, for the Judicial Council more readily to set a course for the future of the trial courts, and for all judges in California to contribute to the operational efficiencies necessary to meet the increasing demand.

b. *The Fundamental Principles of Modern Court Organization.* The modern organization of the courts has been studied by some of the leading legal figures of the century. Roscoe Pound, long-time dean of the Harvard Law School, made court reorganization one of the centerpieces of his distinguished career, beginning with his famous 1906 address to the American Bar Association (The Causes of Popular Dissatisfaction with the Administration of Justice, reprinted in 46 J. Amer. Judicature Soc. 55 (1962)) and culminating in the publication of his influential book on the subject, Organization of Courts (1940). Chief Justice Arthur T. Vanderbilt, of the Supreme Court of New Jersey, was another early leader in the reorganization movement. See, e.g., Arthur T. Vanderbilt, Minimum Standards of Judicial Administration (1949). His works, along with the efforts particularly of Chief Judge John J. Parker of the United States Court of Appeals for the Fourth Circuit, led to the 1937 adoption of standards of judicial administration by the Judicial Administration Division of the American Bar Association.

Roscoe Pound identified four general principles to guide court reorganization efforts: unification, flexibility, conservation of judicial power, and responsibility. He explained these principles as follows:

> "Unification is called for in order to concentrate the machinery of justice upon its tasks, flexibility in order to enable it to meet speedily and efficiently the continually varying demands made upon it, responsibility in order that some one may always be held and clearly stand out as the official to be held if the judicial organization is not functioning the most efficiently that the law and the nature of its tasks permit. Conservation of judicial power is a sine qua non of efficiency under the circumstances of the time." Organization of Courts, supra, pp. 275-76.

Pound's principles remain the guiding beacon of reorganization efforts. The 1990 Standards of Judicial Administration promulgated by the Judicial Administration Division of the American Bar Association provides in its very first section as follows, essentially reaffirming Pound's observations:

> "The organization of a court system should serve the courts' basic task of determining cases justly, promptly, effectively, and efficiently. To this end, the organizational structure should promote judicial accountability, authority over all judicial operations, clear delineation between judicial and nonjudicial responsibilities, and common management systems to that the delivery of services may be administered uniformly throughout the jurisdiction." ABA Standards of Judicial Administration, § 1.00.

In explaining SCA 3, Senator Lockyer drew upon these same principles. He has noted that the historical need for multiple levels of widely-dispersed local trial courts was "predicated upon distance being a burden and judicial wisdom a sparse commodity to be reserved for complicated cases. [¶] As fashioned for an agrarian and low-mobility society, the system made sense. It may now be archaic. It is certainly costly, in its duplication of administrative offices and its inefficiency in distributing judicial talents. Its jurisdictional lines have been blurred by upward adjustments in the monetary limits of the municipal court, by the emergence of crimes as 'wobblers' and the process of plea bargaining the charge of an offense, and in widespread cross-assignment of judges for caseload efficiency. Location is of less importance with current technology available, and with the urban concentration of people to be served. And the superior and municipal judicial cadres are perhaps now less differentiated by their inherent experience and skills than by the happenstance of the appointment process and the positions available."

Thus, in recommending unification of California's three trial-level courts into one district court, the Judicial Council breaks no new ground. To the contrary, unification is the next logical step in more than a century of efforts to simplify and rationalize trial court jurisdiction in California, and California's Commission on the Future of the Courts has assumed in its deliberations that by the year 2020, California's trial courts will have unified. The fact that unification is also likely to result in significant efficiencies, with concomitant budgetary implications, makes it all the more attractive.

c. *The History of Court Organization in California.* Following the prevailing practice of the times, the 1849 California Constitution created and authorized a multiplicity of trial courts

(Constitution of 1849, Art. VI, § 1): district courts; county courts; probate courts; justice of the peace courts; courts of session; municipal courts; and tribunals for conciliation.

The constitutional convention of 1878 saw the first proposal to unify all trial level courts into a single trial court. That proposal was rejected, however, in favor of a more modest consolidation of county and district courts into superior courts. (Constitution of 1879, Art. VI, § 1) The 1879 Constitution retained justice courts and provided for the legislative establishment of other inferior courts. (Id.)

The other inferior courts were not long in coming. Small claims courts were established in 1921. Justice courts were divided into Class A and Class B courts. Municipal courts were similarly divided into two branches. Local government created police and city courts. By 1949, there were 767 court systems with jurisdiction inferior to the superior court and eight different types of inferior courts.

This patchwork of courts with overlapping jurisdictions and limited coordination was replaced in 1950 when the voters approved a constitutional amendment, Proposition 3, recommended by the Judicial Council. The 1950 amendment, which provides the basis for our current trial court system, authorized only superior, municipal and justice courts. Each county had a superior court. Municipal courts were created in districts with a population of more than 40,000, and justice courts were created in districts with a population of 40,000 or less.

The 1950 reorganization eliminated the power vested in the cities and counties to create new types of inferior courts, and the Legislature was given the responsibility to prescribe the jurisdiction of municipal and justice courts. The Legislature was also given the responsibility to prescribe the number, qualifications and compensation of judges, officers, and employees of the municipal court. With respect to justice courts, the Legislature had only to "provide" for the number, qualifications and compensation of judges, officers, and employees, and the Legislature delegated that task to the counties.

The implementing legislation provided, among other things, that municipal courts had jurisdiction of misdemeanors (Penal Code § 1462) and civil cases in which the amount in controversy was $3,000 or less (C.C.P. § 89). Justice courts had jurisdiction over criminal cases involving failure to provide for a minor child (Penal Code § 1425) and civil cases involving $500 or less (C.C.P. § 112).

Passage of the implementing legislation was secured only by compromising with local government on a number of issues. Among the most significant compromises:

1. Retention of part-time judicial position and lay judges in rural areas;

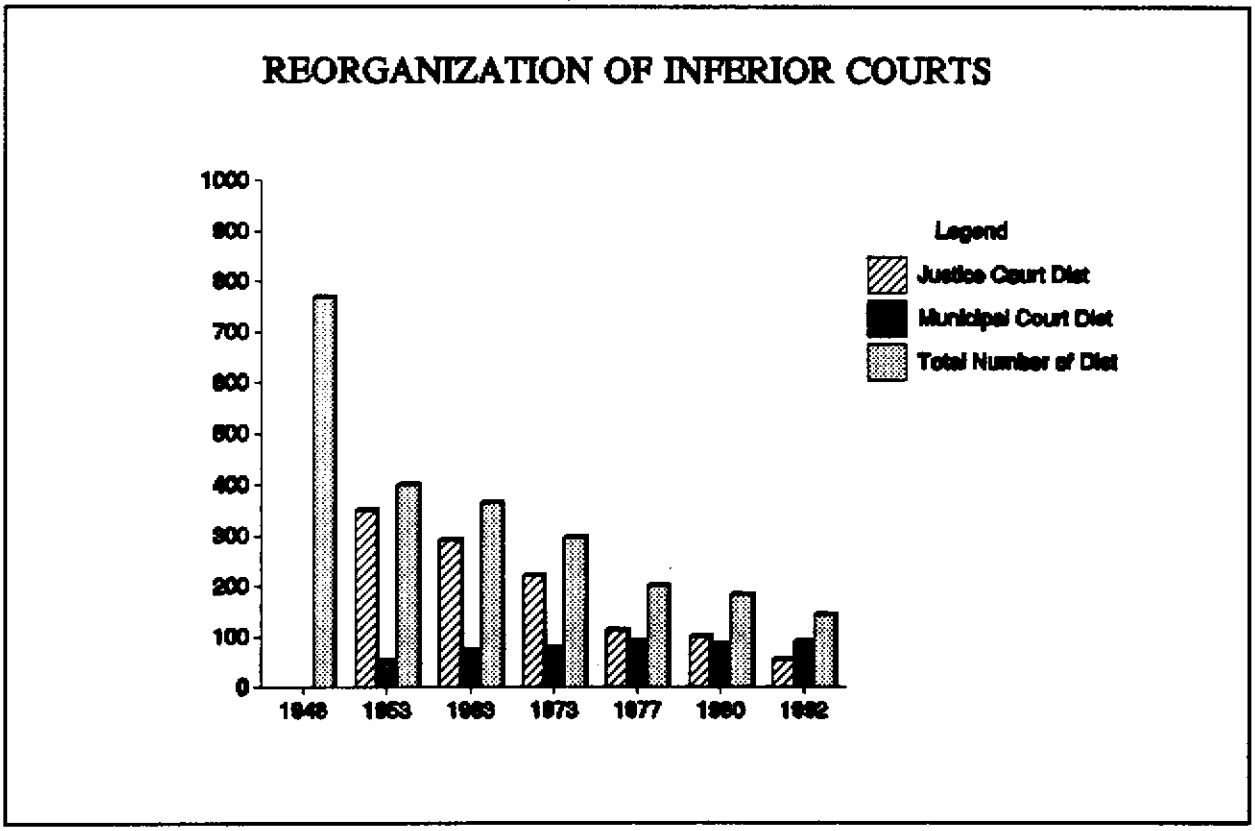
2. County boards of supervisors were given discretion to set the number and boundaries of the lower court districts within the county, subject only to constitutional requirements regarding the size of the district and a requirement

that no district boundary could divide a city (a requirement ultimately amended to exclude San Diego County);

3. Creation of a legislatively-based revenue distribution system which gave cities a substantial share of court revenue; and

4. County governments, which accepted the burden of court financing, were given the authority for judicial districting decisions, retained local control over justice court staffing, and shared in a portion of court revenue.

As can be seen in the graph below, there has been a steady reduction in the total number of municipal and justice court districts in California from the high point of 767 in 1948. The 1950 amendment reduced the number to 400, and consolidations (often because of increasing population within a district) have reduced the number to 143 in 1992, with 10 additional justice courts anticipating consolidation by January 1994.




Along with a reduction in the number of lower trial courts, there has been a rationalization of their jurisdiction, and the practical distinctions between municipal and justice courts all but vanished in the 1970's. In Gordon v. Justice Court (1974) 12 Cal.3d 323, the court held that due process requires a justice court judge to be an attorney (rather than a lay person) in criminal cases where the defendant faces the possibility of a jail sentence. As a result

of this holding, the Legislature enacted provisions which eliminated lay judges from the justice courts. (1974 Cal. Stats. ch. 1493) And in 1976, the Legislature eliminated the differences in jurisdiction exercised by justice and municipal courts. (1976 Stat. ch. 1288) Both courts now exercise identical jurisdiction. (C.C.P. § 83) The State also began participating in payment of compensation for justice court judges, and justice court judges' salaries were equalized with municipal court judge salaries.

d. *Recent Unification Proposals for California.* After the 1950 constitutional amendment, interest in trial court unification subsided and did not revive until the 1970's, when Assemblyman James A. Hayes, in 1970, introduced legislation to create a unified trial level court. (ACA 64/AB 2397) As a result of this renewed interest, in April of 1970 the Judicial Council commissioned Booz, Allen & Hamilton, a nationally-recognized management consulting firm, to study the feasibility of creating a unified trial court. The study concluded that "[a] single-level trial court with one type of judge is ultimately the most desirable form of trial court organization." Booz, Allen & Hamilton, California Unified Trial Court Feasibility Study, p. v (1971) (hereinafter Feasibility Study). The study proposed a three-stage process for achieving total unification:

> 1. Enact statutory and rule changes to consolidate municipal and justice courts into one inferior court, and create a unified administrative structure for the superior and inferior courts;
>
> 2. Enact constitutional, legislative and rule changes to unify superior and inferior courts with provision, as necessary, for two levels of judges within that court; and
>
> 3. Enact legislative and rule changes to create a single trial-level court with one type of judge.

(Feasibility Study, pp. 68-73)

Trial court unification was strongly endorsed and supported in the 1975 Report of the Advisory Commission to the Joint Committee on the Structure of the Judiciary--To Meet Tomorrow: The Need for Change (hereinafter Cobey Report). The Advisory Commission, with Justice James A. Cobey as its chairperson, recommended "that the superior, municipal and justice courts of each county of this state be merged into a single trial court." (Cobey Report, Letter of Transmittal, p. 1) In support of its recommendation, the Advisory Commission noted that unification would have the following beneficial effects, among others: Offer the maximum flexibility in the assignment of judges to cases, and vice versa; Provide greater opportunity for judges to specialize in certain types of cases; Offer the maximum flexibility in the use of nonjudicial personnel of the courts; Eliminate unnecessary duplication in administrative functions; Allow better use of facilities; Better serve the people regularly using the courts; and, provide better service to the public generaly. (Cobey Report, pp. 10-18)

In the years following the Feasibility Study and the Cobey Report, court unification amendments were regularly proposed in the Legislature, but none was enacted.

| | |
|---|---|
| 1971: | ACA 45/AB 1400 (Hayes) (unify all trial courts) |
| | SCA 37/SB 619 (Cologne) (unify superior and municipal courts) |
| 1972: | ACA 20/ABs 159 and 160 (Hayes) (unify all trial courts) |
| | SCA 15/SBs 296 & 297 (Judicial Council) (unify municipal and justice courts) |
| | SCA 41/SB 852 (Select Committee on Trial Court Delay) (unify all trial courts) |
| | SCA 57/SB 1152 (Amer. Board of Trial Advocates) (unify municipal and justice courts) |
| 1973: | ACA 71/AB 1900 (Fenton) (unify all trial courts at local option) |
| | ACA 74/AB 2072 (Kapiloff) (unify all trial courts) |
| 1975: | AB 1414/AB 2304 (Miller) (unify municipal and justice courts) |
| | ACA 60 (Fenton) (unify all trial courts at local option) |
| 1976: | SCA 48/SB 1500 (Song) (unify all trial courts) |
| 1977: | SCA 52/SB 1313 (Song) (unify all trial courts with phase-in) |
| 1981: | ACA 36/Proposition 10 (unify all trial courts at local option) |

The only proposal to make it out of the Legislature, Proposition 10 (1981), which authorized counties to unify superior, municipal and justice courts, failed at the polls.

e. *Administrative Unification Efforts*. Recognizing in 1971 there was resistance to court unification, the Booz, Allen & Hamilton study also recommended a number of interim alternatives to unification that did not require legislative action or constitutional amendments. These alternatives focused largely upon administrative coordination:

> 1. Unifying only the administrative functions of the lower and Superior Court levels through the use of a centralized judicial management structure.
>
> 2. Unifying some or all of the activities and resources which support the judicial services of these courts, such as [bailiff services], common jury pools, court reporters, court clerks, data processing systems, financial management, secretarial and other support functions.
>
> 3. Unifying the types of judges and subordinate judicial officers who render judicial services as well as their jurisdictional levels, in terms of types of cases.
>
> 4. [Combining] two or more of the three unification approaches outlined above.

(Feasibility Study, pp. 49-50)

These interim measures proved more successful in the legislative process. The

Legislature authorized multi-district bailiff services provided by the county sheriff or by a marshal with county-wide jurisdiction. (See, e.g., Gov't Code § 72640) Municipal court reporters, deputy clerks and deputy marshals were permitted to serve in superior courts. (Gov't Code § 68546) Municipal court jurors were drawn from panels selected and qualified by the superior court jury commissioner. (C.C.P. § 203.1) Official reporters of the superior court were assigned to act pro tempore as official reporters of the municipal or justice courts. (Gov't Code § 69957)

In 1980, the Judicial Council released its Final Report of the Court Administration Consolidation Project. Building upon the 1970's legislative successes, the Final Report recommended "that each court administrator be urged to examine the operations of his court together with those of adjacent court districts in light of the information contained in the report to determine whether or not there is an opportunity to reduce costs and improve services by means of the consolidation of one or more administrative services." Final Report, p. 31.

Throughout the 1980's, trial courts around the state began experimenting with administrative consolidation and coordination. The successes achieved by the ad hoc experiments culminated with passage of the Trial Court Realignment and Efficiency Act of 1991. (1991 Cal. Stat. ch. 90) Among other things, the Act mandated "trial court coordination plan[s] designed to achieve maximum utilization of judicial and other court resources and statewide cost reductions in court operations of at least 3 percent in the 1992-93 fiscal year, a further 2 percent in the 1993-94 fiscal year, and a further 2 percent in the 1994-95 fiscal year." (Gov't Code § 68112(a)) The Act contained an illustrative list of coordination activities:

> (1) The use of blanket cross-assignments allowing judges to hear civil, criminal, or other types of cases within the jurisdiction of another court.
>
> (2) The coordinated or joint use of subordinate judicial officers to hear or try matters.
>
> (3) The coordinated, joint use, sharing or merger of court support staff among trial courts within a county or across counties. In an county with a population of less than 100,000 the coordination plan need not involve merger of superior and justice court staffs if the court can reasonably demonstrate that the maintenance of separate administrative staffs would be more cost effective and provide better service.
>
> (4) The assignment of civil, criminal, or other types of cases for hearing or trial, regardless of jurisdictional boundaries, to any available judicial officer.
>
> (5) The assignment of any type of case to a judge for all purposes commencing with the filing of the case and regardless of jurisdictional boundaries.
>
> (6) The establishment of separate calendars or divisions to hear a particular type of case.

(7) In rural counties, the use of all court facilities for hearings and trials of all types of cases and to accept for filing documents in any case before any court in the county participating in the coordination plan.

(8) The coordinated or joint use of alternative dispute resolution programs such as arbitration.

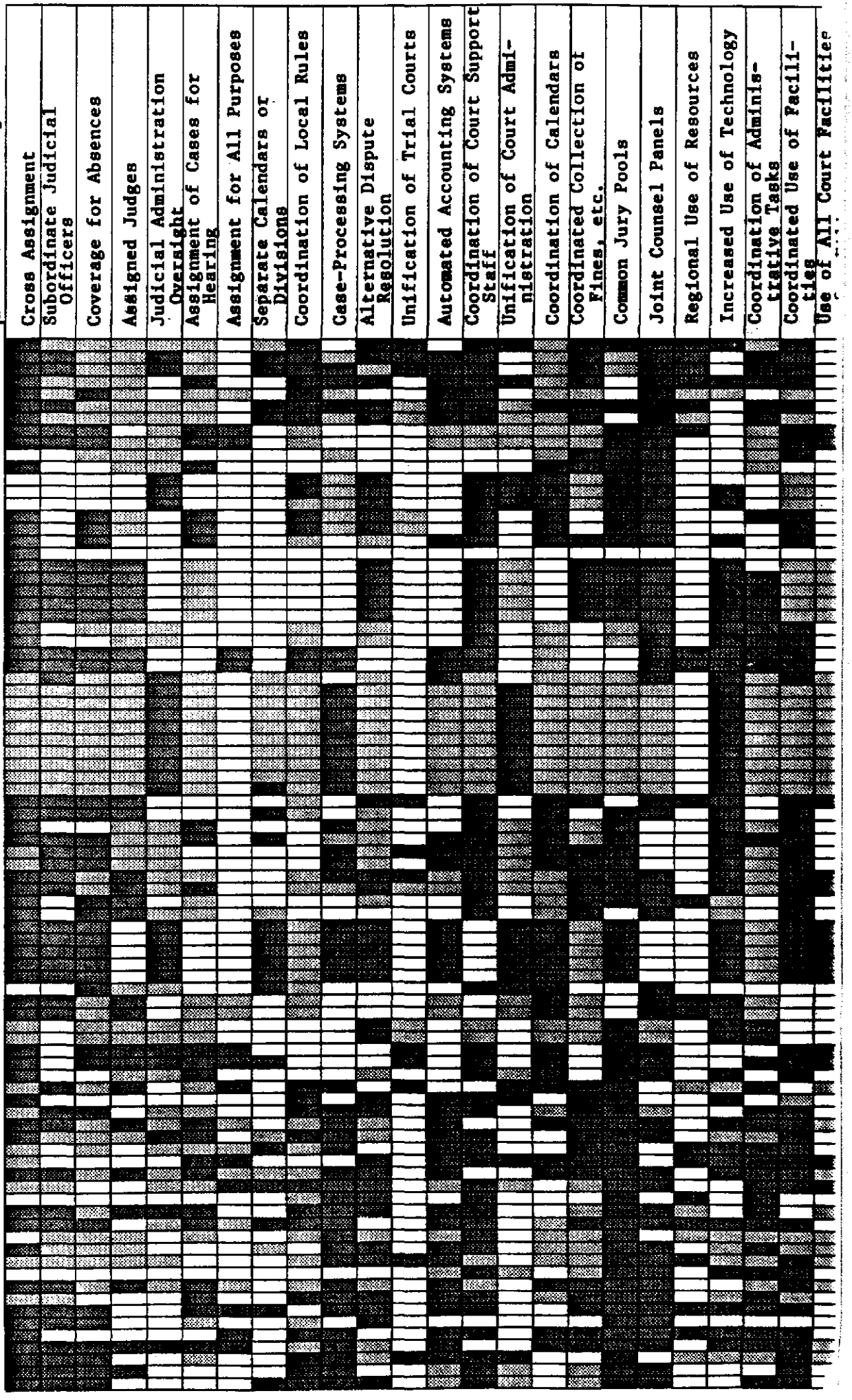
(9) The unification of the trial courts within a county to the maximum extent permitted by the Constitution.

(Gov't Code § 68112(b))

All trial level courts submitted coordination plans, and as the tables on the next several pages graphically demonstrate, significant aspects of trial court administrative and judicial functions have already been effectively consolidated as a result of the coordination plans. For example, ninety-three percent of the trial courts now report cross-assignment of judges as necessary to handle the work flow. Eighty-nine percent now coordinate the use of support staff. Eighty percent coordinate case calendars. Seventy-eight percent share common jury pools.

COORDINATION PLANS BY ELEMENT

= Prior Participation
= New Participation
= No Participation

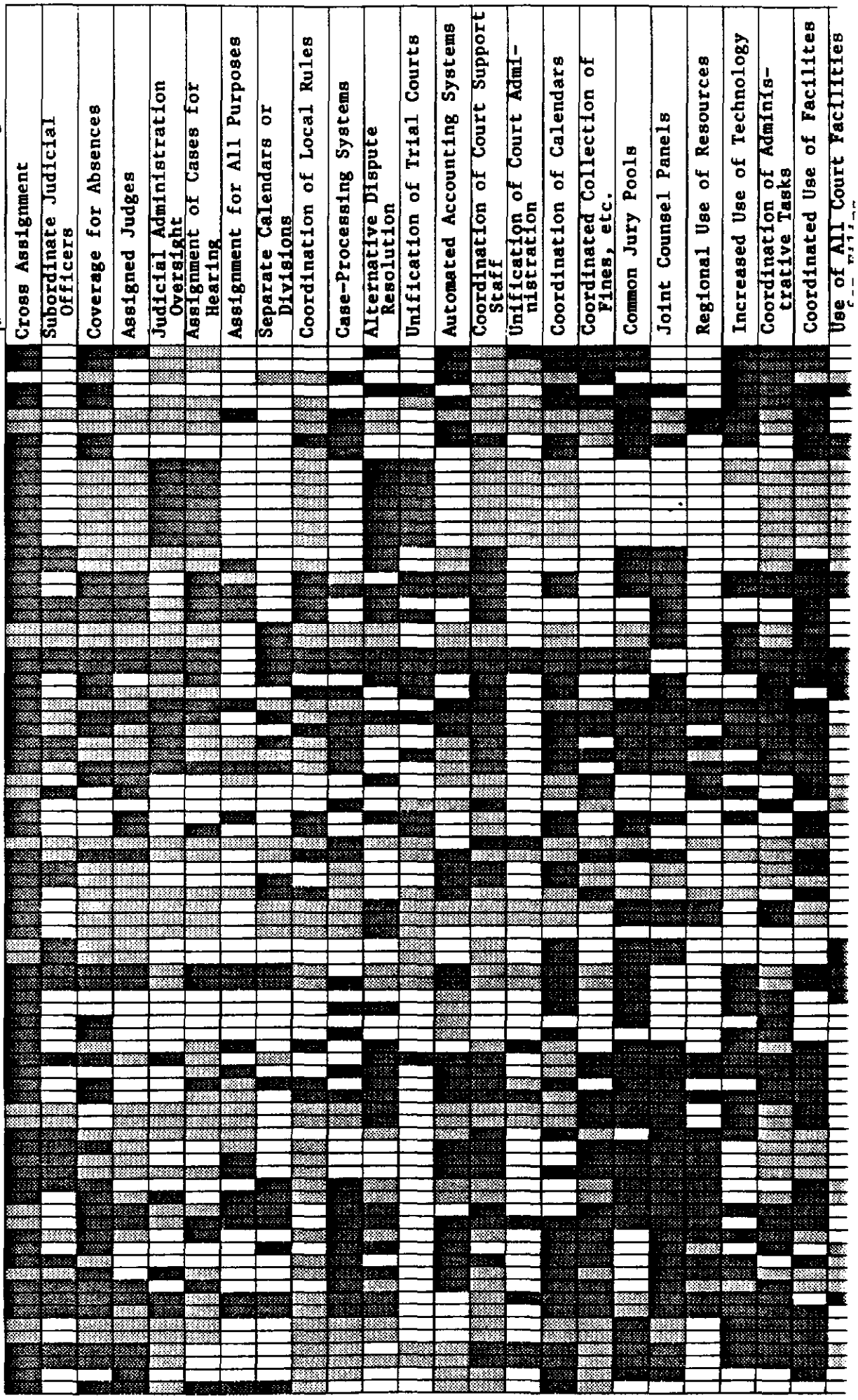



| County | County-wide Judicial Positions |
|---|---|
| Alameda | 81 |
| Alpine | 2 |
| Amador | 2 |
| Butte | 8 |
| Calaveras | 2 |
| Colusa | 2 |
| Contra Costa | 38 |
| Del Norte | 2 |
| El Dorado | 7 |
| Fresno | 42 |
| Glenn | 2 |
| Humboldt | 7 |
| Imperial | 7 |
| Inyo | 2 |
| Kern | 35 |
| Kings | 7 |
| Lake | 4 |
| Lassen | 2 |
| Los Angeles | 553 |

COORDINATION PLANS BY ELEMENT

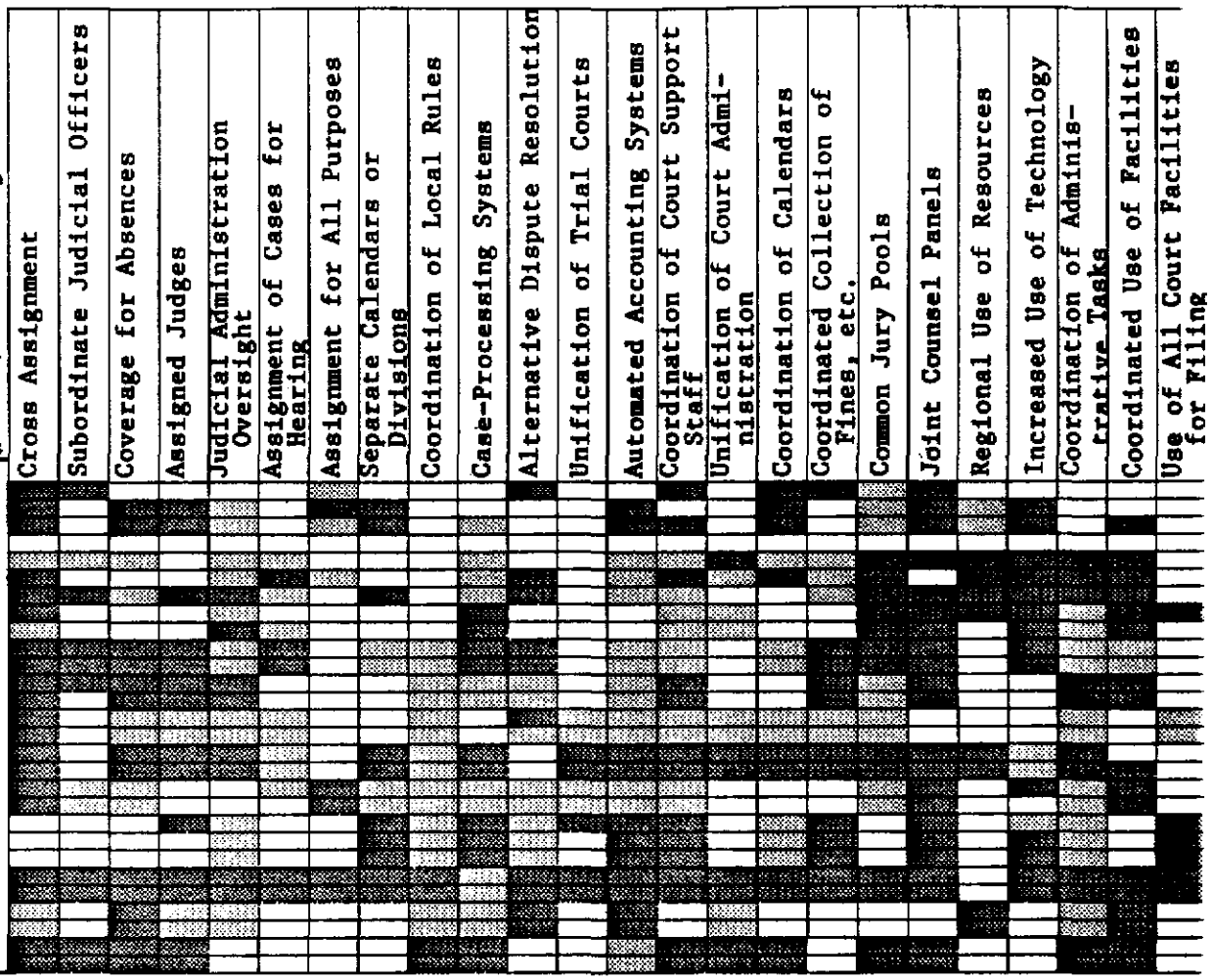
= Prior Participation
= New Participation
= No Participation

| County | County-wide Judicial Positions |
|---|---|
| Madera | 7 |
| Marin | 14 |
| Mariposa | 2 |
| Mendocino | 10 |
| Merced | 9 |
| Modoc | 2 |
| Mono | 2 |
| Monterey | 19 |
| Napa | 7 |
| Nevada | 6 |
| Orange | 131 |
| Placer | 10 |
| Plumas | 2 |
| Riverside | 61 |
| Sacramento | 58 |
| San Benito | 2 |
| San Bernardino | 67 |
| San Diego | 146 |
| San Francisco | 63 |
| San Joaquin | 27 |
| San Luis Obispo | 12 |
| San Mateo | 32 |
| Santa Barbara | 22 |
| Santa Clara | 88 |
| Santa Cruz | 13 |
| Shasta | 9 |
| Sierra | 2 |



COORDINATION PLANS BY ELEMENT

■ = Prior Participation
▒ = New Participation
□ = No Participation




| County | County-wide Judicial Positions |
|---|---|
| Siskiyou | 4 |
| Solano | 19 |
| Sonoma | 19 |
| Stanislaus | 20 |
| Sutter | 5 |
| Tehama | 4 |
| Trinity | 2 |
| Tulare | 18 |
| Tuolumne | 4 |
| Ventura | 30 |
| Yolo | 9 |
| Yuba | 5 |
| Total | 1767 |

**SUMMARY**

| | Cross Assignment | Subordinate Judicial Officers | Coverage for Absences | Assigned Judges | Judicial Administration Oversight | Assignment of Cases for Hearing | Assignment for All Purposes | Separate Calendars or Divisions | Coordination of Local Rules | Case-Processing Systems | Alternative Dispute Resolution | Unification of Trial Courts | Automated Accounting Systems | Coordination of Court Support Staff | Unification of Court Administration | Coordination of Calendars | Coordinated Collection of Fines, etc. | Common Jury Pools | Joint Counsel Panels | Regional Use of Resources | Increased Use of Technology | Coordination of Administrative Tasks | Coordinated Use of Facilities | Use of All Court Facilities for Filing |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total Courts | 196 | 196 | 196 | 196 | 196 | 196 | 196 | 196 | 196 | 196 | 196 | 196 | 196 | 196 | 196 | 196 | 196 | 196 | 196 | 196 | 196 | 196 | 196 | 196 |
| New + Prior Participation | 183 | 111 | 163 | 141 | 130 | 129 | 60 | 78 | 142 | 132 | 137 | 65 | 138 | 175 | 92 | 156 | 137 | 153 | 150 | 67 | 127 | 159 | 163 | 84 |
| New Participation | 41 | 35 | 72 | 79 | 77 | 76 | 23 | 29 | 97 | 44 | 52 | 29 | 60 | 73 | 51 | 71 | 61 | 29 | 23 | 14 | 18 | 74 | 44 | 49 |
| Prior Participation | 142 | 76 | 91 | 62 | 53 | 53 | 37 | 49 | 45 | 88 | 85 | 36 | 78 | 102 | 41 | 85 | 76 | 124 | 127 | 53 | 109 | 85 | 119 | 35 |
| % of New & Prior to Total | 93% | 57% | 83% | 72% | 66% | 66% | 31% | 40% | 72% | 67% | 70% | 33% | 70% | 89% | 47% | 80% | 70% | 78% | 77% | 34% | 65% | 81% | 83% | 43% |
| % of New to Total | 21% | 18% | 37% | 40% | 39% | 39% | 12% | 15% | 49% | 22% | 27% | 15% | 31% | 37% | 26% | 36% | 31% | 15% | 12% | 7% | 9% | 38% | 22% | 25% |
| % of Prior to Total | 72% | 39% | 46% | 32% | 27% | 27% | 19% | 25% | 23% | 45% | 43% | 18% | 40% | 52% | 21% | 43% | 39% | 63% | 65% | 27% | 56% | 43% | 61% | 18% |

Administrative coordination and cross-assignment of judges are only temporary fixes, however. In the long run, it is not efficient to have one court executive reporting to two different courts. There must be a single source of direction and control from the court to a single executive officer. Long-term administrative coordination is thus not practical without unifying the policy-making function, and the policy-making function cannot be fully unified unless all affected judges have equal access to policy-making and are treated with equal dignity. Likewise, effective utilization of judicial resources ultimately requires unified judicial management of those resources. Court unification addresses these longer term structural issues.

f. *Fiscal Implications*. Unification will undoubtedly have fiscal implications, some positive and some negative. The Legislature is already on record with a "find[ing] and declar[ation] 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 cost savings to both counties and the State." (SB 86, § 10)

It is difficult to calculate precisely what the overall fiscal impact will be, because the justice system is in a constant state of flux, and assigning particular expenditures or savings to trial court unification can be a somewhat arbitrary process. For example, should savings associated with improved administrative coordination in the 1980's be included as a savings associated with unification? On the one hand, administrative consolidation is one of the main aspects of trial court unification. On the other hand, administrative coordination can be achieved -- and is already being achieved to a substantial extent -- without trial court unification, although as noted above, long-term administrative coordination is not fully successful absent unification of the courts.

Putting aside these questions, certain long-term costs and savings are readily foreseeable. For example, all district court judges will be paid the same salary, and the salary will be set at the amount presently paid to superior court judges. The salary for a municipal and justice court judge is $90,680. The salary for a superior court judge is $99,297. Elevating the 660 municipal and justice court judges to the salary level of a superior court judge will result in an annual increase in judicial salaries of approximately $5.7 million (660 times ($99,297-$90,680)). In addition, sitting municipal and justice court judges who become judges of the district court will be entitled to retirement benefits based upon district judge salaries. The standing committees have insufficient information to estimate this future cost.

Based on the experience of those counties which have coordinated the provision of judicial services most fully, these particular increases will be offset by the costs avoided through reducing the need for additional judgeships. Counties that have already consolidated their superior and municipal court benches report significantly more efficient use of available judicial resources which directly translates into a reduced need to create more judgeships. For example, Presiding Judge Roger K. Warren of the consolidated Sacramento Superior and Municipal Courts reports that in the first six months during which the trial courts have been consolidated in Sacramento, the increased flexibility made possible through an extensive program of cross-assignment and consolidation of the assignment function under the direction of a single presiding

judge has resulted in an estimated 5% increase in available judicial resources (which is roughly equivalent to 3 judges in Sacramento County). If the 15 municipal court judges in Sacramento were paid the same as superior court judges, the total annual increase in judicial salaries would be approximately $129,000, compared to the $300,000 in increased salaries which would result from adding 3 judges to the Sacramento bench.

Sacramento's experience is similar to that in other counties that have consolidated. In Yolo county, equalizing the four municipal court judges' salaries will cost around $35,000; but with consolidation, the county reports a $25,000 annual savings in the reduced use of assigned judges and indicates that consolidation has eliminated the need for two additional judgeships (which equals an annual cost avoided of around $200,000 in salary alone). San Bernardino reports that from January 1, 1993 to May 31, 1993, the 27 judicial positions assigned to the court handled a weighted caseload of 40.7 judicial positions and that civil cases were tried with virtually no delay (although weighted caseload statistics are generally subject to criticism, the absence of delay on San Bernardino's civil calendar plainly indicates that consolidation has had a real impact).

Moreover, eliminating the need for additional judgeships saves more than simply the salary of the judicial positions. When the associated costs are included, it is extremely expensive to add and maintain a new judgeship. Building a new courtroom can cost up to $500,000 in the first year with maintenance costs of $25,000 or more annually. Providing staff for the judgeship, including court reporting, court security, and interpreter services as necessary, further adds to the costs. A recent study by the Los Angeles Superior Court which attempted to include all of the costs of operating a courtroom (including the cost to the county of hiring additional prosecutors and other staff) reports that the average cost per year of operating one criminal courtroom is $1,878,750. Using this figure, if trial court unification frees up as few as 3 full-time equivalent judges statewide, it will have offset the additional spending required to compensate municipal and justice court judges at the higher superior court judge rate.

At this point it is not known for sure whether the experiences in the counties which already have consolidated will be repeated in all counties after unification. Predicting how many additional full-time equivalent judgeships will be avoided by trial court unification is difficult. If Sacramento's experience were to be repeated statewide, unification would result in an additional 73 full-time equivalent judges being added to the system with an associated annual cost avoidance in salary alone of around $7,000,000. When the overall cost of operating an additional courtroom is considered, the total cost avoided annually could range anywhere from $70,000,000 to well over $100,000,000.

Counties which have consolidated also report expenditure reductions in addition to cost avoidance. For example, the coordination of case processing systems and creation of integrated case management systems, such as criminal departments that manage the entire criminal caseload without transfer to a different court or location, result in time savings for all participants. The consolidation of administration and support staff and services results in the identification of duplicative positions which may be targeted for elimination or transfer to new or understaffed

programs. The consolidated provision of interpreter services, court reporting, including audio and video recording, juror services, and indigent defense panels provide further responsible savings to the courts. Yolo County reports that in the period 1991/92 - 1993/94, it experienced an actual reduction of expenditures of approximately 14% in its budget. Ventura County reported actual budget savings in the four years it has been consolidated as follows: 1989/90 - 11.0% ($1,419,550); 1990/91 - 12.7% ($1,804,600); 1991/92 - 5.0% ($778,600); and 1992/93 - 3.5% ($755,800).

In sum, the information presently available to the standing committees is insufficient to allow precise calculation of the overall fiscal impact of trial court unification. If the experience of counties that have most fully consolidated is repeated statewide, unification will result in significant statewide fiscal savings. In order to more precisely calculate the overall fiscal impact, we recommend that the Judicial Council engage the consulting services of a national expert such as the National Center for State Courts.

g. *Unification in Other Jurisdictions.* California will not be the first jurisdiction to follow the ABA's recommendation for a single-level trial court. Unified trial courts exist in one form or another in the District of Columbia, Idaho, Illinois, Iowa, Massachusetts, Minnesota, and South Dakota, among other states. (National Center for State Courts, State Court Caseload Statistics: Annual Report 1991; Victor E. Flango & David Rottman, Defining the Dimensions of Court Unification, 16 Justice System Journal, no. 1 at 65 (1993)) Of these unified systems, it appears that only Minnesota, which began consolidating its courts in 1982, has completely followed the ABA's recommendation that states create a single trial court with a single type of trial court judge. The more typical form of unification has been to create a single trial court with two or more types of judges or to consolidate administratively while retaining separate divisions within the trial court.

The experience in Minnesota has been favorable. The first district to consolidate in Minnesota reported "'dramatic improvements in trial calendar currency.'" (Carl Baar, Trial Court Unification in Practice, 76 Judicature No. 4, p. 168, 181 (Dec.-Jan. 1993). Ten years later, Judge Charles A. Porter Jr. of the Minnesota District Court Fourth Judicial District, a former opponent of unification, reported that "'It's working great. . . . One of the reasons our system operates as efficiently as it does . . . is because most of the judges have done most of the assignments,' be they criminal, civil, probate or juvenile court cases." (Barbara Rabinovitz, "Unification Applauded in Other States," Massachusetts Lawyers Weekly, p. 3 (March 23, 1992))

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**The Supreme Court**

**Section 2. The Supreme Court consists of the Chief Justice of California and 6 associate justices. The Chief Justice may convene the court at any time. Concurrence of 4 judges present at the argument is necessary for a judgment.**

**An acting Chief Justice shall perform all functions of the Chief Justice when the Chief Justice is absent or unable to act. The Chief Justice or, if the Chief Justice fails to do so, the court shall select an associate justice as acting Chief Justice.**

Comment

a. No proposed change. Trial court unification will have no foreseeable impact upon the number or type of cases reaching the Supreme Court. Trial court unification therefore affords no reason to amend Section 2.

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## The Court of Appeal

**Section 3. The Legislature shall divide the State into districts each containing a court of appeal with one or more divisions. Each division consists of a presiding justice and 2 or more associate justices. It has the power of a court of appeal and shall conduct itself as a 3-judge court. Concurrence of 2 judges present at the argument is necessary for a judgment.**

**An acting presiding justice shall perform all functions of the presiding justice when the presiding justice is absent or unable to act. The presiding justice or, if the presiding justice fails to do so, the Chief Justice shall select an associate justice of that division as acting presiding justice.**

Comment

a. No proposed change. As a result of changes to Section 11, infra, trial court unification should have no impact upon the number or type of cases reaching the courts of appeal.

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## The District Court

**Section 4. In each county there is a ~~superior~~ *district* court of one or more judges. The Legislature shall prescribe the number of judges ~~and provide for the officers and employees of each superior court~~ *of each district court*. ~~If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court.~~**

**~~The county clerk is ex officio clerk of the superior court in the county.~~**

Comment

a. *District Court Jurisdictional Boundaries and Multiple Court Facilities.* A trial court's territorial jurisdiction should generally depend upon (1) the distribution of population centers; (2) geographic features; and (3) political boundaries. At present, each superior court's territorial jurisdiction follows county lines, and, by statute, counties are further divided into municipal and justice court districts. Many county lines in California properly reflect population distribution and geographic features. But many other county lines poorly account for widely dispersed populations and different geographies, and in these counties, different jurisdictional lines for the trial court may be justified. Notwithstanding this fact, it was agreed that the unified trial courts should follow county lines for the following reasons: (1) Ever since 1879, county lines have been used as the jurisdictional boundary for California's trial court of general jurisdiction; (2) County lines are a familiar governmental unit for members of the public who must deal with the courts and vote in elections; (3) Superior court administrative structures are based upon county lines, and any change in the territorial jurisdiction would require a fresh analysis of the administrative needs of every trial court; (4) Public agencies that frequently interact with trial courts (e.g., prosecutors, public defenders, corrections, and law enforcement agencies) are organized on a county basis; and (5) Continued county funding of some court operations makes county lines the most natural division between district courts.

In those districts where population distribution and geography require the use of multiple court facilities, the district court should itself establish the proper location for those additional facilities pursuant to standards promulgated by the Judicial Council. However, all court facilities within a county should be part of the district court.

In some areas, a district court encompassing more than a single county may appear more cost effective. There was, however, little support expressed for multi-county districts, in part for the reasons expressed above for adoption of a county boundary. In addition, the desired administrative flexibility can be achieved by multi-district coordination activities (including cross-assignments of judges).

A proposal to divide Los Angeles County into more than one district was also considered and rejected, in part, again, for the reasons identified above for preferring a county boundary. In addition, the presiding judges and court administrators from Los Angeles who served on the two standing committees felt that the citizens of Los Angeles would be better served by one court district than by multiple districts. Moreover, the fact that Los Angeles County will be served by one district court does not mean judicial services will be centralized; to the contrary, there was general recognition of the need to maintain existing facilities and to decentralize the provision of judicial services as necessary to serve the public and to achieve maximum efficiencies.

b. *Rejection of Divisions Within the District Court.* A number of the states which have unified their trial courts have retained, in one form or another, two divisions of the unified trial court. These divisions correspond roughly to the present allocation of jurisdiction to superior

and municipal courts.

It is expected that legislation implementing unification in California will continue to recognize substantial differences in the procedures used to resolve different types of cases. Initially, implementing legislation would codify most of the existing differences. (See, e.g., Section 11, infra)

Some judges have proposed that the best way to unify the trial courts without incidentally (and unintentionally) affecting the existing differences between superior court and municipal/justice court procedures is to specify in the Constitution that "The district courts shall have two divisions," and further to provide that, "On the effective date of this amendment all causes within the original jurisdiction of the superior courts are within the original jurisdiction of division one of the district courts and all causes within the jurisdiction of the municipal and justice courts are within the jurisdiction of division two of the district courts." All judges would be judges of the district court and would sit by assignment in division one or division two. This constitutional proposal would not lock in place forever the existing jurisdictional and procedural distinctions between the superior and municipal/justice courts (because the Legislature could subsequently reallocate jurisdiction between divisions 1 and 2), and would provide a relatively smooth transition.

However, after thoughtful consideration and discussion, this proposal received little support. First, the whole purpose of trial court unification is to create one trial court, not to perpetuate an artificial division between trial level courts. Although creating constitutional divisions within a unified district court would not create the same degree of separation that now exists between superior and municipal/justice courts (in particular, there would be unified administrative control), requiring constitutionally separate divisions within a supposedly unified court creates an awkward and confused constitutional structure: The trial courts would be unified, but only to a degree.

Second, the differentiation of procedures applicable to different types of cases is more directly and appropriately addressed as an issue of case management rather than of court jurisdiction. Certainly, effective case management requires that different types of cases be subject to different trial court procedures. But a variety of trial court procedural requirements can be maintained without creating separate jurisdictional divisions of the trial court.

Third, the creation of divisions or departments within the district court is a matter more properly dealt with by the judiciary itself through state-wide or local rules of court or by the Legislature through statutes. (see, e.g., C.C.P. §§ 116.110-116.950 (Small Claims Court); C.C.P. §§ 1730-1772 (Family Conciliation Court); Wel. & Inst. Code § 200 et seq. (Juvenile Court)). There appears to be no principled reason for creating Divisions One and Two by constitutional provision, but creating Small Claims Court, Family Conciliation Court and Juvenile Court by statutory provisions.

Fourth, public policy and sound judicial administration demand that all judges at all levels

of the judiciary be responsibile for insuring that the justice system serves the needs of the public. Every judge should have a stake in the system and feel a responsibility for its operation. Yet a judicial system that divides itself into separate jurisdictional compartments is likely to divide itself into more narrowly focused interest groups. It is clear, for example, that many of the interests of the municipal court (where the greatest number of ordinary cases for the average Californian are handled) do not correspond exactly to the interests of the superior court. Unification of the superior, municipal and justice courts into a single trial level court will make all district court judges equally responsible for making the system work and reduce the potential conflicts between those three separate courts.

Some have expressed serious concerns that unification will necessarily lead to an increased and improper reliance upon commissioners to handle cases that formerly were within the jurisdiction of the municipal court, thereby creating an "underground" or second-tier judiciary notwithstanding unification. If this happens, it will not be because unification has created that opportunity. Indeed, over the last decade, courts around the State have increasingly relied upon commissioners and other non-judges to preside over trials. Small claims disputes are routinely handled by non-judges and parking violations are now processed administratively. Some have proposed that traffic infractions should also be processed administratively. There are legitimate questions about whether this shifting of judicial business away from judges robs the public of its constitutionally guaranteed right of access to courts for resolution of disputes.

Unification presents an opportunity to bring this topic to the surface. As just noted, in a unified trial court, all trial court judges will be responsible for insuring that their court serves the needs of the public. Each unified district court should study its use of commissioners and other non-judges to perform judicial work. Ultimately, whether the public's interests will continue to be served by a unified trial court will depend very largely upon the exercise of sound judgment by the judges of each court.

c. *Court Employees.* In a state-wide system of courts, good management principles require that courts have authority to provide for their own employees within the limits of resources provided to the courts. It is for this reason that the proposed amendments delete language specifically authorizing the Legislature to provide for court employees and language providing that the county clerk is the clerk ex officio of the superior court. With respect to the provision for officers and employees of the superior court, the current language blurs the separation between the judicial branch and legislative branch. Subject to budget constraints and legislative oversight, courts should have the power to decide what positions are necessary and to select their own employees. With respect to the county clerk, the existing provision blurs the separation between the judicial branch and executive branch. The district court should have power to select its own chief executive officer.

d. *Multi-District Judges.* Section 4 presently provides that the governing body of a county may agree to permit one or more judges to serve more than one superior court. This authority is not presently utilized and is unnecessary in light of the Chief Justice's more flexible authority to make judicial assignments as needed to address changing workloads.

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~~**The Municipal and Justice Courts**~~

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

~~**There shall be a municipal court in each district of more than 40,000 residents and a justice court in each district of 40,000 residents or less. The number of residents shall be ascertained as provided by statute.**~~

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

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

Comment

a. Municipal and justice courts will be merged into the district court, and Section 5 should thus be repealed.

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**The Judicial Council**

**Section 6. The Judicial Council consists of the Chief Justice, *who shall be the presiding officer,* and one other judge of the Supreme Court, 3 judges of courts of appeal, ~~5 judges of superior courts, 3 judges of municipal courts, and 2 judges of justice courts~~ *10 judges of district courts, 2 non-voting court administrators, and such other non-voting members as determined by the Council,* each appointed by the Chief Justice for a ~~2~~ 3-year term *pursuant to procedures established by the Council*; 4 members of the State Bar appointed by its governing body for ~~2~~ 3-year terms; and one member of each house of the Legislature appointed as provided by the house.**

**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.**

**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.**

***The Judicial Council is the policy-making body for the courts.*** **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, *adopt rules for* practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute.**

***The Chief Justice shall be the chief executive officer for the courts and shall implement the rules promulgated by the Judicial Council.*** **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.**

**Judges shall report to the Judicial 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

a. *Composition of Council.* Superior, municipal and justice courts make up 10 seats on the Judicial Council presently. After trial court unification, those seats will be filled by district court judges.

The Judicial Council is the policy-making body for the Judicial Branch. The separation of powers principle, as well as the principle that judges should be in control of administrative and policy matters concerning the governance of the judiciary raise concerns about inclusion on the Judicial Council of non-judges. For example, the ABA's Standards for Judicial Administration expressly provide that administrative rules should be promulgated by a body that includes only judges, noting that non-judges may, at times, have interests that conflict with those of the court system. ABA Standards for Judicial Administrative, § 1.32, commentary.

Ultimately, however, it was decided the real, practical benefits of inclusion outweighed the more speculative, theoretical risks of inclusion. The representatives from the State Bar and the Legislature bring an important perspective to Council deliberations that otherwise might be absent. Most Council deliberations do not involve the promulgation of administrative rules, and separation of powers concerns are therefore somewhat diminished. Moreover, no one on the Council can recall an issue where the votes cast by non-judges have been outcome determinative.

The proposed amendment incorporates the long-standing practice of inviting two court administrators to sit with the Council in a non-voting capacity and authorizes the Council to invite other persons to sit with the Council in a non-voting capacity.

b. *Three-Year Terms.* Although the Constitution provides for 2-year terms for most

members of the Judicial Council, the actual practice for many years was to make 4-year appointments (2 consecutive 2-year terms). The present practice is to make 3-year appointments. The Constitution should be changed to reflect this practice.

c. *Administrative Rules.* As presently drafted, Section 6 provides the Judicial Council with power to "adopt rules for court administration, practice and procedure, not inconsistent with statute." As a result of this language, rules for court administration are made subject to legislative control. The proposed amendment, which inserts the phrase "adopt rules for" prior to the words "practice and procedure" and deletes the comma between "practice and procedure" and "not inconsistent with statute," is intended to have the effect of giving the Judicial Council the power to adopt rules of court administration that are not subject to legislative override. Only rules of "practice and procedure" would be subject to the requirement that they be "not inconsistent with statute."

Courts possess the inherent power as a co-equal branch of government to make rules governing their own internal operations. ABA Standards Relating to Court Organization, §§ 1.31-1.32. This inherent power should be reflected in the Constitution. Making internal rules of administration subject to legislative control interferes with the achievement of operational efficiencies and undermines judicial accountability.

Administrative rules relate to subjects such as court calendars, assignment of judges, responsibilities of court personnel, internal administrative procedures, and financing administration. As a general matter, administrative rules are addressed primarily to judges and other court officials and are designed to govern how categories of cases shall be processed. ABA Standards Relating to Court Organization, § 1.11(c), commentary, p. 13. Rules of practice and procedure, by contrast, are addressed primarily to the litigants and are designed to govern how individual cases shall be presented to the court.

d. *The Role of the Council and the Chief Justice.* One of the core principles of court organization is that someone or somebody "clearly stand out as the official to be held if the judicial organization is not functioning the most efficiently that the law and the nature of its tasks permit." Pound, Organization of Courts, p. 276. In California, the Judicial Council is the body which stands out as the policy-maker for California's courts, and the Chief Justice, as the presiding officer of the Judicial Council, stands out as the person responsible for executing the policies declared by the Council. The 1926 ballot argument in support of the constitutional provision creating the judicial council provided that "the Chief Justice will fill the position that a general superintendent fills in an ordinary business. He [sic] will be the real, as well as the nominal, head of the judiciary of the State." The proposed amendments here are intended to reflect and emphasize the Chief Justice's existing responsibilities.

**Commission on Judicial Appointments**

**Section 7. The Commission on Judicial Appointments consists of the Chief Justice, the Attorney General, and the presiding justice of the court of appeal of the affected district or, if there are 2 or more presiding justices, the one who has presided longest or, when a nomination or appointment to the Supreme Court is to be considered, the presiding justice who has presided longest on any court of appeal.**

Comment

a. No proposed change. Trial court unification has no impact upon appointments at the Supreme Court or court of appeal level, and there is therefore no reason to amend this section.

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**Commission on Judicial Performance**

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

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

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

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

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

Comment

a. *Number of District Court Judges on Commission.* Presently, this section provides for 2 superior court judges and 1 municipal court judge to serve on the Commission. As a result

of unification, the section should be amended to provide for 3 district court judges on the Commission.

b. *Deletion of Subsection (b).* Subsection (b) was a transition provision added as a result of Proposition 92 to insure staggered terms. The provision serves no present function in the Constitution and should be deleted as surplusage at the earliest possible opportunity.

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**The State Bar of California**

**Section 9. The State Bar of California is a public corporation. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bat except while holding office as a judge of a court of record.**

Comments

a. No proposed change.

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**Original Jurisdiction**

**Section 10. The Supreme Court, courts of appeal, ~~superior~~ *district* courts, and their judges have original jurisdiction in habeas corpus proceedings. ~~These courts~~ *The Supreme Court and courts of appeal* also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. *The district courts and their judges have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari and prohibition, except review of court proceedings in Category One causes.***

**~~Superior~~ *District* courts have original jurisdiction in all *other* causes ~~except those given by statute to other trial courts~~. *All causes shall be assigned to Category One or Category Two as provided in Section 11.***

**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.**

Comments

a. The district court will be California's trial court of general jurisdiction. Trial court unification does not require any substantive changes to the Constitution in jurisdiction over habeas corpus proceedings. With respect to proceedings for extraordinary relief, the Supreme

Court and courts of appeal shall have jurisdiction to issue writs to review Category One cases, and the district court itself shall have jurisdiction to issue writs to review Category Two cases. As explained in the comments to Section 11, infra, Category One cases will initially correspond to cases within the jurisdiction of the superior courts, and Category Two cases will initially correspond to cases within the jurisdiction of the municipal and justice courts. It may be appropriate to lodge the district court's jurisdiction to issue writs in Category Two cases in its appellate department (see comment to § 11 below).

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**Appellate Jurisdiction**

**Section 11.** ***(a)*** **The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal** ***and district courts*** **have appellate jurisdiction ~~when superior courts have original jurisdiction and in other causes prescribed by statute~~** ***as provided in this section.***

***(b) All causes in the district courts are within Category One or Category Two. Assignment of classes of causes to either of these categories shall be made pursuant to rules adopted by the Judicial Council which shall become effective when approved by a majority of the Supreme Court. Any cause not assigned to Category Two shall be deemed to be assigned to Category One.***

***(c) Courts of appeal have appellate jurisdiction in Category One causes, cases in which one or more causes within Category One is joined in the same proceeding with one or more causes within Category Two, and in other causes prescribed by statute.***

***(d)*** **~~Superior~~** ***District*** **courts have appellate jurisdiction in** ***Category Two*** **causes ~~prescribed by statute~~ that arise ~~in municipal and justice courts~~** ***within*** **their ~~counties~~** ***territorial jurisdictions.***

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

Comment

a. *Historical Development of Appellate Jurisdiction in California.* States are not required by the Due Process or Equal Protection Clauses of the United States Constitution to provide litigants with a right of appeal. (McKane v. Durston (1894) 153 U.S. 684; Evitts v. Lucey (1985) 469 U.S. 387, 393 (citing McKane).) Nor, apart from this section, does the California Constitution guarantee litigants a right of appeal.

Historically, the drafters of California's Constitution endeavored specifically to list categories of cases in which appeals would be permitted. For example, the California

Constitution of 1849 provided the Supreme Court with appellate jurisdiction "in all cases when the matter in dispute exceeds two hundred dollars, when the legality of any tax, toll, or impost or municipal fine is in question, and in all criminal cases amounting to felony on questions of law alone. . . ." (Art. VI, § 4) Appellate jurisdiction was expanded by amendments in 1862 to include "all cases in equity" and matters involving real property, or in which the amount in controversy exceeded three hundred dollars. The list of cases falling within the Supreme Court's appellate jurisdiction was further expanded in the Constitution of 1879 to encompass the following:

> "The Supreme Court shall have appellate jurisdiction in all cases in equity, except such as arise in Justices' Courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars; also, in cases of forcible entry and detainer, and in proceedings in insolvency, and in actions to prevent or abate a nuisance, and in all such probate matters as may be provided by law; also, in all criminal cases prosecuted by indictment, or information in a Court of Record on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition and habeas corpus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction." (Constitution of 1879, art. VI, § 4)

The Supreme Court interpreted Section 4 as a self-executing conferral of appellate power. As such, "[t]he Legislature . . . can pass no act impairing the exercise of this appellate power." (Haight v. Gay (1857) 8 Cal. 297, 300.)

The long list of actions in Section 4 over which appellate jurisdiction could be asserted created some anomalies. Although the list of actions in Section 4 might appear to be inclusive, it did not cover all final trial court judgments. It did not, for example, cover a judgment of contempt, and since no statute provided for appeals from a judgment of contempt (indeed, C.C.P. § 1222 provided that "[t]he judgment and orders of the court or judge made in cases of contempt are final and conclusive"), there was no right to appeal a judgment of contempt. (Tyler v. Connolly (1884) 65 Cal. 28, 30).

The 1904 amendments, which created the district courts of appeal, did nothing to simplify matters. The Supreme Court's jurisdiction was narrowed by limiting its appellate criminal jurisdiction to capital cases, raising the amount in controversy in legal actions to $2,000, and removing from its appellate jurisdiction forcible entry and detainer, insolvency and nuisance cases. As a result of those amendments, Section 4 provided as follows:

> "The Supreme Court shall have appellate jurisdiction on appeal from the superior courts in all cases in equity, except such as arise in Justices' Courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand,

> exclusive of interest, or the value of the property in controversy, amounts to two thousand dollars; also, on questions of law alone, in all criminal cases where judgment of death has been rendered. The Court shall also have power to issue writs of mandamus, certiorari, prohibition and habeas corpus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction." (Constitution of 1879, as amended 1904, art. VI, § 4)

The court of appeal's appellate jurisdiction was equally detailed:

> "The District Courts of Appeal shall have appellate jurisdiction on appeal from the Superior Courts in all cases at law in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars, and does not amount to two thousand dollars; also, in all cases of forcible and unlawful entry and detainer (except such as arise in Justices' Courts), in proceedings in insolvency, and in actions to prevent or abate a nuisance; in proceedings of mandamus, certiorari, and prohibition, usurpation of office, contesting elections and eminent domain, and in such other special proceedings as may be provided by law (excepting cases in which appellate jurisdiction is given to the Supreme Court); also, on question of law alone, in all criminal cases prosecuted by indictment or information in a court of record, excepting criminal cases where judgment of death has been rendered. The said courts shall also have appellate jurisdiction in all cases, matters, and proceedings pending before the Supreme Court which shall be ordered by the Supreme Court to be transferred to a District Court of Appeal for hearing and decision." (Constitution of 1879, art. 6, § 4, as amended in 1904.)

These detailed lists, although again probably meant to be inclusive, created a risk of legislative tampering with appellate jurisdiction. In In re Sutter-Butte By-Pass Assessment (1923) 190 Cal. 532, the Supreme Court was forced to confront such an effort. The Legislature authorized certain drainage bonds to be retired by assessments on the property benefited, and provided for a three-judge superior court trial to validate a proposed assessment. The statute expressly precluded an appeal from the superior court's validation judgment. The Supreme Court accepted an appeal from a validation judgment notwithstanding the statutory limitation, reasoning that the case fell within its express appellate jurisdiction over cases "involving the validity of any tax or assessment," jurisdiction which the Legislature could not impair. (190 Cal. at 539).

b. *Appellate Jurisdiction under the 1966 Revision.* The 1966 constitutional revision of these provisions reflected the modern view that a constitution, as a statement of "organic law," should not be cluttered with unnecessary detail. As a result of that revision, Section 11 now provides in relevant part as follows:

> "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 and in other causes prescribed by statute.

"Superior Courts have appellate jurisdiction in causes prescribed by statute that arise in municipal and justice courts in their counties."

The simplicity in drafting achieved by the 1966 revision reflects a simplicity of thought and principle: every litigant should have one opportunity for an appeal. Thus, appeals from cases arising in the municipal and justice courts (misdemeanors, traffic offenses, civil cases under $25,000, and small claims) are heard by the Superior Court, as provided by statute. Cases which arise originally in the superior court are heard by the Court of Appeal, except for capital cases which are appealable directly to the Supreme Court because of their importance.

c. *The Appellate Department of the Superior Court.* In order to process appeals from municipal and justice courts, appellate departments were created for each superior court. The appellate departments now processes more appeals than does the Court of Appeal. In 1991-92, the appellate departments disposed of 23,595 appeals, while the Court of Appeal disposed of 22,415 appeals. 1993 Annual Report, pp. 27 & 59.

Municipal and justice courts have original trial jurisdiction in criminal misdemeanor and infraction cases, in civil cases with a value of $25,000 or less, and in small claims cases not exceeding $5,000. (C.C.P. §§ 86, 86.1, 116.110-116.950) Criminal misdemeanor and infraction cases, and civil cases with a value of $25,000 or less are appealed to the appellate department. (C.C.P. § 904.2) Appeals in small claims cases are heard by the superior court holding a trial de novo. (C.C.P. § 116.770(a))

Although the total number of appeals taken to the appellate department may seem substantial (28,061 new filings in 1991-92), when the numbers are compared to the total volume of cases processed by the municipal and justice courts, a different picture is painted. In 1991-92, only 3.7% of civil dispositions were appealed (23,626 cases), and only 0.032% of criminal dispositions were appealed (4,435 cases). 1993 Annual Report, p. 59.

d. *Trial Court Unification and the Appellate Department.* Unification of superior, municipal and justice courts into one district court creates a problem when it comes to handling appeals in those cases that formerly were within the jurisdiction of the municipal and justice courts. If all of those cases, which formerly were appealed to the superior court, were made appealable to the court of appeal, the court of appeal's docket would double in size, significant judicial resources would have to be added to the court of appeal to handle the new cases, and parties to the appeal would experience additional costs and delays. To forestall this transfer of workload and increase in appellate cost and delay from occurring, the proposed amendments contemplate the retention of an appellate department of the district court to which those cases would be appealed (with subsequent review by the court of appeal pursuant to certification or transfer order, which is the current practice).

However, appellate jurisdiction is not simply a matter of caseloads and case management. The guiding principle for over a century in California has been that appeals are heard by judges independent from those who heard the original cause. Moreover, more is at stake here than abstract principle. Public confidence in the judiciary requires such independence on the part of reviewing courts.

Principle and public confidence can be preserved through adoption by the Judicial Council of rules that guarantee the independence of the appellate department and the quality and independence of judges serving in the appellate department. These rules should set forth relevant factors to be used by the Chief Justice in making appointments to the appellate department. The factors would include criteria such as length of service as a district judge, reputation within the district, and degree of separateness of the appellate department's workload from the judges regular assignments (e.g., a district court judge who routinely handles large numbers of misdemeanors should ordinarily not serve in the appellate department). In addition, appointments to the appellate department should be for a minimum term of two or three years.

e. *Category One and Category Two Causes*. At present, decisions by the superior court are ordinarily appealable to the court of appeal, and decisions by the municipal and justice courts are ordinarily appealable to the appellate department of the superior court. By statutorily defining the jurisdiction of the trial courts, the Legislature incidentally affects whether appeals are heard by the court of appeal or the appellate department. As a practical matter, however, the Legislature exercises little control over appellate jurisdiction since the reassignment of a class of cases from the original jurisdiction of the superior court to the original jurisdiction of the municipal and justice courts has such significant implications entirely apart from which court has appellate jurisdiction.

After unification, it will no longer be possible to use the assignment of causes to a particular trial court as the basis for determining which appellate court has jurisdiction. Whether appeals should be heard by the court of appeal or the appellate department is largely a matter of judicial policy and administration, and for that reason, the proposed amendment authorizes the Judicial Council, with the approval of a majority of the justices of the Supreme Court, to classify cases within Category One or Category Two.

There is ample precedent for giving the Judicial Council and Supreme Court rule-making power over appellate jurisdiction. For example, in New York, which has an "appellate term" similar to California's appellate department, the "appellate division of the supreme court" (which is the counterpart of California's court of appeal) has rule-making power to direct appeals otherwise within its jurisdiction to be heard and decided by the appellate term. N.Y. Const., Art. 6, § 8(d). Under 28 U.S.C. § 2072(c), the United States Supreme Court is given power to determine by rule what district court decisions are "final for the purposes of appeal." The Illinois Supreme Court has power to "provide by rule for direct appeal" in cases other than capital cases (which, as in California, are appealed directly to the state supreme court as a matter of right). Ill. Const., Art. 6, § 4(b). The Illinois court may also "provide by rule for appeals to the Appellate Court from other than final judgments of Circuit Courts." Ill. Const., Art. 6,

§ 6.

The classification of causes will affect not only which court has appellate jurisdiction, but also which court has jurisdiction to issue extraordinary writs (see Section 10, supra), and whether the Legislature may provide for an 8-person jury in civil cases (see Art. I, § 16, supra). It is anticipated the initial rules of appellate jurisdiction will classify all causes within the jurisdiction of the municipal and justice courts as Category Two causes, thereby preserving the status quo. In addition, it is anticipated that implementing legislation will preserve other differences in the way Category One and Category Two cases are now processed in the superior and municipal/justice courts (e.g., the limited discovery and motion provisions of the Economic Litigation Program, C.C.P. § 90, would continue to apply to Category Two cases).

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**Appellate Transfer Power**

**Section 12. (a) The Supreme Court may, before decision, transfer to itself a cause in a court of appeal. It may, before decision, transfer a cause from itself to a court of appeal or from one court of appeal or division to another. The court to which a cause is transferred has jurisdiction.**

**(b) The Supreme Court may review the decision of a court of appeal in any cause.**

**(c) The Judicial Council shall provide, by rules of court, for the time and procedure for transfer and for review, including, among other things, provisions for the time and procedure for transfer with instructions, for review of all or part of a decision, and for remand as improvidently granted.**

**(d) This section shall not apply to an appeal involving a judgment of death.**

Comment

a. No substantive change necessary.

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**Harmless Error**

**Section 13. No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of t he entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.**

Comment

a. No proposed change.

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**Appellate Opinions**

**Section 14. The Legislature shall provide for the prompt publication of such opinions of the Supreme Court and courts of appeal as the Supreme Court deems appropriate, and those opinions shall be available for publication by any person.**

**Decisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated.**

Comment

a. No proposed change.

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**Qualifications for Judges**

**Section 15. A person is ineligible to be a judge of a court of record unless for ~~5 years immediately preceding selection to a municipal or justice 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

a. *The 10-Year Requirement.* Because all district court judges will have jurisdiction to hear all types of cases, it was agreed that upon unification, the 5-year rule which applied to municipal and justice courts should be abandoned in favor of a uniform 10-year rule for all judicial appointments.

b. *Residence.* No residency requirement currently exists for superior court judges. In People v. Chessman (1959) 52 Cal.2d 467, 500, the Supreme Court held that the constitutional qualifications for judges are exclusive, and legislative attempts to add qualifications are unconstitutional. The proposed amendments contain no residence requirement for judges of the district court. The only qualifications are those contained in this section.

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**Exemption from Service Requirement for Sitting Judges**

**Section 15.5. ~~The 5-year membership or service requirement of Section 15 does not apply to justice court judges who held office on January 1, 1988.~~ *The 10-year service requirement of Section 15 does not apply to municipal and justice court judges who held office on July 1, 1995.***

**This section shall be operative only until July 1, ~~1995~~ *2000*, and as of that date is repealed.**

Comment

a. Some recently appointed judges on the municipal and justice courts may not presently satisfy the 10-year rule, and it was agreed that these judges should to be exempted from the new requirement. Section 15.5 is repealed by its own terms after five years.

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**Judicial Elections**

**Section 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) Judges of ~~other~~ *district* 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~~ *district* 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 *third* 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) 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.**

**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.**

**Electors of a ~~county~~ *district court*, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of ~~superior~~ *district* courts.**

Comment

a. *County-Wide Electoral Districts*. Ever since 1879, judges elected to California's trial court of general jurisdiction have run in county-wide elections. The proposed amendments to this section continue that long-standing historical practice.

Proposals to create electoral sub-districts within the district court's overall territorial jurisdiction (which, pursuant to Section 4, supra, is county-wide) present severe problems. First, electoral sub-districts may foster a public expectation that judges "represent" the sub-district and that such judges would be expected to side with sub-district interests in litigation. That expectation is inconsistent with the Rule of Law and the Code of Judicial Conduct, which require judicial independence and impartiality. Second, one of the primary advantages of unification is increased flexibility in judicial assignments. The creation of sub-districts would likely create an expectation that a judge elected from a sub-district would serve primarily within that district, impairing flexibility in judicial assignments.

b. *Voting Rights Act Compliance*. Trial court unification presents complex issues under the Voting Rights Act of 1965. (42 U.S.C. § 1973, et seq.) The Act contains two major provisions regarding discrimination in voting practices. Section 2 of the Act prohibits any election procedures that "resul[t] in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color. . . ." (42 U.S.C. § 1973(a)) Section 5 of the Act requires covered jurisdictions to submit any changes in voting procedures to preclearance (either judicial or administrative). (42 U.S.C. § 1973c) Both of these sections apply to judicial elections. (Chisom v. Roemer (1991) 111 S. Ct. 2354 (Section 2 case); Clark v. Roemer (1991) 111 S. Ct. 2096 (Section 5 case))

Presently, superior court electoral and jurisdictional lines follow county lines. Municipal and justice court electoral and jurisdictional lines are drawn more narrowly to reflect the geographic areas and populations they serve. After unification, district court jurisdictional and electoral lines will follow county lines. Judicial independence and integrity are best served by a district-wide electoral scheme under which judges are elected by all qualified electors in the district. Depending on past voting patterns and other circumstances, and future interpretations

of the applicability of the Voting Rights Act to judicial elections, however, district-wide elections may present issues under the Voting Rights Act in some communities. For example, if municipal court judges who presently sit in a predominately minority district are required to run in county-wide elections after unification, a claim of vote dilution may be presented. See, e.g., Rogers v. Lodge (1982) 458 U.S. 613 (at-large system). Moreover, four counties in California, Monterey, King, Merced and Yuba, are subject to Section 5's pre-clearance requirements. On the other hand, a race-conscious effort to draw electoral lines may itself run afoul of the Equal Protection Clause of the Fourteenth Amendment. See Shaw v. Reno (1993) 113 S. Ct. 2816.

In these circumstances, the most appropriate action is to enact an electoral scheme that makes the most sense in terms of constitutional structure and the relationship of an independent judiciary to electors. The most natural boundaries for district courts -- based upon history and the public's common understanding -- are the existing boundaries between counties.

c. *Filling Vacancies.* As presently drafted, Section 16(c) authorizes the Governor temporarily to fill a vacant superior court seat by appointment, and that appointee is then subject to the next general election after January 1 following the vacancy. In some cases, this means a judge is subject to election only a few months after the appointment, which usually is too short a time in which to become known to the bar and the public. The fact that an appointed judge would have to stand for election so quickly has been an impediment to attracting the best qualified candidates to serve as trial court judges.

As a result of the changes to subsection (c), an appointed judge would be given one-half of a term (3 years) before having to run for election. This should give an appointed judge enough time to establish his or her own reputation on the bench, and the 3-year appointive period will make service on the bench a more attractive possibility to members of the bar.

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## Other Judicial Activities

**Section 17. A judge of a court of record may not practice law and during the term for which the judge was selected is ineligible for public employment or public office other than judicial employment or judicial office, except a judge of a court of record may accept a part-time teaching position that is outside the normal hours of his or her judicial position and that does not interfere with the regular performance of his or her judicial duties while holding office. A judge of a ~~trial court of record~~ *district court* may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. Acceptance of the public office is a resignation from the office of judge.**

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

**A judicial officer may not earn retirement service credit from a public teaching**

**position while holding judicial office.**

Comment

a. No substantive change required. The phrase "trial court of record" referred to superior, municipal and justice courts, which were the only trial courts of record. After unification, the "trial court of record" is the district court. See Section 1, supra.

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**Judicial Disqualification and Removal**

**Section 18. (a) A judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging the judge in the United States with a crime punishable as a felony under California or federal law, or (2) a recommendation to the Supreme Court by the Commission on Judicial Performance for removal or retirement of the judge.**

**(b) On recommendation of the Commission on Judicial Performance or on its own motion, the Supreme Court may suspend a judge from office without salary when in the United States the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law. If the conviction is reversed suspension terminates, and the judge shall be paid the salary for the judicial office held by the judge for the period of suspension. If the judge is suspended and the conviction becomes final the Supreme Court shall remove the judge from office.**

**(c) On recommendation of the Commission on Judicial Performance the Supreme Court may (1) retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of the judge's current term that constitutes wilful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission on Judicial Performance may privately admonish a judge found to have engaged in an improper action or dereliction of duty, subject to review in the Supreme Court in the manner provided for review of causes decided by a court of appeal.**

**(d) A judge retired by the Supreme Court shall be considered to have retired voluntarily. A judge removed by the Supreme Court is ineligible for judicial office and pending further order of the court is suspended from practicing law in this State.**

**(e) A recommendation of the Commission on Judicial Performance for the censure, removal or retirement of a judge of the Supreme Court shall be determined by a tribunal**

**of 7 court of appeal judges selected by lot.**

**(f) If, after conducting a preliminary investigation, the Commission on Judicial Performance by vote determines that formal proceedings should be instituted:**

**(1) The judge or judges charged may require that formal hearings be public, unless the Commission on Judicial Performance by vote finds good cause for confidential hearings.**

**(2) The Commission on Judicial Performance may, without further review in the Supreme Court, issue a public reproval with the consent of the judge for conduct warranting discipline. The public reproval shall include an enumeration of any and all formal charges brought against the judge which have not been dismissed by the commission.**

**(3) The Commission on Judicial Performance may in the pursuit of public confidence and the interests of justice, issue press statements or releases or, in the event charges involve moral turpitude, dishonesty, or corruption, open hearings to the public.**

**(g) The Commission on Judicial Performance may issue explanatory statements at any investigatory stage when the subject matter is generally known to the public.**

**(h) The Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings.**

Comment

a. No proposed change.

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**Compensation**

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

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

Comment

a. No proposed change.

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**Retirement**

**Section 20. The Legislature shall provide for retirement, with reasonable allowance, of judges of courts of record for age or disability.**

Comment

a. No proposed change.

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**Temporary Judges**

**Section 21. On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause.**

Comment

a. No proposed change.

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**Commissioners**

**Section 22. The Legislature may provide for the appointment by ~~trial courts of record~~ *district courts* of officers such as commissioners to perform subordinate judicial duties.**

Comment

a. No substantive change. Upon unification, district courts will be the only trial courts of record. See Section 1, supra.

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**Article X A**
**Water Resources Development**

**Section 6.**

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

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

**Legislature.**

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

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

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

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

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

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

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

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

**(e) The remedy prescribed by the court for an action or proceeding described in paragraph (4), (5), or (6) of subdivision 9a) shall include, but need not be limited to, compliance with subdivision (b) of Section 11460 of the Water Code, the permanent agreement specified in Section 11256 of the Water Code, or the provisions of the contracts entered into pursuant to Section 11456 of the Water Code.**

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

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

Comment

a. No substantive change. References to the "superior" court must be changed to the "district" court.

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Attachment 1

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HON. HERBERT DONALDSON
San Francisco Municipal Court

HON. JOHN STEPHEN GRAHAM
Marin Municipal Court

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Los Angeles Superior Court

HON. DONNA M. PETRE
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Third Appellate District

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