

Memorandum 93-58

Trial Court Unification: Judicial Council

Article VI, Section 6, of the California Constitution (Judicial Council) provides:

Sec. 6. The Judicial Council consists of the Chief Justice 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, each appointed by the Chief Justice for a 2-year term; 4 members of the State Bar appointed by its governing body for 2-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.

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

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.

Senate Constitutional Amendment 3 (Lockyer) would do no more to Section 6 than to provide for ten district court judges on the Judicial Council in place of the present total of ten superior, municipal, and justice court judges.

The Judicial Council Report recommends more extensive revisions:

(1) To replace the reference to superior, municipal, and justice court judges with a reference to district court judges.

(2) To provide for appointment of two non-voting court administrators and such other non-voting members as the Council determines.

(3) To increase the terms of the judicial members and State Bar members from two to three years.

(4) To limit the requirement that rules be "not inconsistent with statute" to rules of practice and procedure; rules for court administration would not be subject to this restriction.

(5) To make clear that the Judicial Council is the policy-making body for the courts, and that the Chief Justice is the chief executive officer for the courts and shall implement the rules promulgated by the Council.

The staff recommends only the first of these proposals, consistent with SCA 3. The staff does not recommend proposals two through five. The Legislature directed the Commission to study the proposed constitutional amendment "pertaining to the unification of the trial courts." In Memorandum 93-53, the staff recommends we limit our effort to remedying immediate problems created by unification and not address other possible reforms now. Proposals two through five are in this category.

Rules for Unified Courts

Article VI, Section 6, gives the Judicial Council authority to "adopt rules for court administration, practice and procedure, not inconsistent with statute." Government Code Section 68070 gives every court authority to "make rules for its own government and the government of its officers not inconsistent with law or with the rules adopted and prescribed by the Judicial Council." See also Prob. Code § 1001 (local probate rules). Thus court rules are subordinate to Judicial Council rules, and Judicial Council rules are subordinate to statutes. 2 B. Witkin, *California Procedure Courts* § 142, at 166 (3d ed. 1985).

The Judicial Council has adopted comprehensive rules for trial courts, primarily found in Title Two, California Rules of Court. Title Two contains superior court rules, civil law and motion rules, superior court sentencing rules, municipal court rules, justice court rules, and miscellaneous rules. Court unification will require the Judicial Council to consolidate the rules for superior, municipal, and justice courts. Under Article VI, Section 6, there should be no question that the Judicial Council has authority to consolidate rules, to make new

rules superseding inconsistent local court rules, and to do so before the operative date of the unification measure (July 1, 1995).

The Judicial Council has occupied most of the field of procedural rule-making, so rule-making by individual courts has lost much of its former importance. 2 B. Witkin, *supra*. Nonetheless, to the extent new Judicial Council rules do not occupy the field of procedural rule-making for unified courts, there should be no question that local courts will continue to have authority to adopt procedural rules under Government Code Section 68070. However, a transitional provision may be needed to clarify how local courts adopt transitional rules before the operative date of the unification measure, while superior, municipal, and justice courts are still separate.

Although Government Code Section 68070 authorizes local rules, it does not specify procedures for adopting them. But Code of Civil Procedure Section 575.1 does prescribe procedures for adopting superior court rules:

575.1. (a) The presiding judge of each superior court may prepare with the assistance of appropriate committees of the court, proposed local rules designed to expedite and facilitate the business of the court. The rules need not be limited to those actions on the civil active list, but may provide for the supervision and judicial management of actions from the date they are filed. Rules prepared pursuant to this section shall be submitted for consideration to the judges of the court and, upon approval by a majority of the judges, the judges shall have the proposed rules published and submitted to the local bar for consideration and recommendations.

(b) After a majority of the judges have officially adopted the rules, 61 copies shall be filed with the Judicial Council

A transitional provision drawn from Section 575.1 could be added to the Government Code as Section 68070.3:

68070.3. (a) The Judicial Council may provide by rule not inconsistent with statute for the orderly transition on July 1, 1995, of proceedings pending in superior, municipal, and justice courts to proceedings in district courts, and for actions and proceedings commenced in the district court on or after July 1, 1995.

(b) Before July 1, 1995, the presiding judge of the superior court of each county and city and county may prepare, with the assistance of appropriate committees of the court, local rules for the orderly transition on July 1, 1995, of proceedings pending in superior, municipal, and justice courts to proceedings in district

courts, and for actions and proceedings commenced in the district court on or after July 1, 1995. The rules shall be submitted for consideration to the judges of the superior court and municipal and justice courts in the county or city and county. Upon approval by a majority of all the judges, the presiding judge shall have the proposed transitional rules published and filed with the Judicial Council as required by Section 68071 of the Government Code. Rules adopted pursuant to this subdivision shall not be inconsistent with statute or with rules adopted and prescribed by the Judicial Council. Any rules adopted pursuant to this subdivision shall, on July 1, 1995, become rules of the district court.

(c) This section shall be operative only until January 1, 2000, and as of that date is repealed.

Comment. Section 68070.3 is new. Subdivision (a) is drawn from former Section 1491 of the Probate Code. Subdivision (b) is drawn from Section 575.1 of the Code of Civil Procedure.

Assignment of Judges

Court unification assumes a flexible system under which the presiding judge may assign judges according to workload and available resources. Assignment of municipal court judges to higher matters is discussed in Memorandum 93-61 (qualifications of judges). Assignment of superior court judges to lower matters is discussed here.

Several judges have indicated that to require superior court judges to handle smaller cases such as traffic or small claims would be demoralizing and might make it harder to recruit new judges. Others dispute this claim, however, and the staff does not give it much weight. It seems likely that more experienced and competent judges will be assigned to handle the more complex cases, and that outstanding judicial candidates will not be deterred by the possibility that less experienced or less competent judges may end up with traffic or small claims matters.

The reports on trial court unification recommended one of three schemes for judicial assignment:

(1) Judges should hear all matters without distinction. This was the conclusion of the 1971 report of Booz, Allen, and Hamilton, the 1975 report of the Municipal Court Judges' Association, and the 1981 report of the Judicial Council's Advisory Committee on Legislation Concerning Unification of Trial Courts. The Advisory Committee report rejected the idea that incumbent superior court judges should not be required to hear matters formerly within

municipal court jurisdiction as "contrary to one of the purposes of court unification." The Advisory Committee thought that if such a provision was politically necessary, it should be limited in duration, either to a fixed date or to the next reelection of the judge.

(2) Judges should have power to hear all matters, but lesser matters would generally be assigned to an "associate" judge or other subordinate judicial officer. This was the conclusion of Judge Dalsimer's 1977 study and of the 1972 report of the Select Committee on Trial Court Delay.

(3) Incumbent superior court judges would continue to hear only matters formerly within superior court jurisdiction. This was the conclusion of the 1975 Cobey Commission, which recommended a statute to say "Notwithstanding any other provision of law, no judge holding office as a superior court judge on [date] shall be required to hear any matter that was on that date within the subject matter jurisdiction of a municipal or justice court."

Is there a federal constitutional issue if incumbent superior court judges are required to handle matters formerly within municipal or justice court jurisdiction? Article VI, Section 6, permits the Chief Justice to provide for assignment of a judge to another court, but "only with the judge's consent if the court is of lower jurisdiction." The question is whether this provision gives an incumbent judge a vested right to object to such an assignment that cannot be taken away by unification.

There appears to be no federal constitutional impediment, based for example on the contract clause, preventing assignment of an incumbent superior court judge to cases formerly within municipal court jurisdiction. In *Commonwealth v. Gamble*, 62 Pa. 343 (1869), Mr. Gamble was elected as "president judge" of a new judicial district. Under the Pennsylvania constitution, Judge Gamble's tenure was to continue for ten years. A year later, the Pennsylvania legislature consolidated Judge Gamble's district with another district. The court held the consolidation unconstitutional under Pennsylvania's constitutional tenure provision, but negated application of the federal contract clause: "The tenure of the office does not rest on contract but on the [Pennsylvania] Constitution . . . and is not protected by the Constitution of the United States, which prohibits impairment of contracts." See also *Booth v. United States*, 291 U.S. 339, 351 (1933) (dictum: "Congress may lighten judicial duties" of federal judges); 46 Am. Jur. 2d *Judges* § 22 (1969).

Crawford v. Payne, 12 Cal. App. 2d 485, 55 P.2d 1240 (1936), held the Legislature could constitutionally reduce the salary of municipal court judges, based on a provision in the California Constitution that "compensation of the justices or judges of all courts of record, shall be fixed and the payment thereof prescribed by the legislature." Federal constitutional issues were not discussed. California cases under the federal contract clause have generally involved pension rights. See, e.g., Olson v. Cory, 27 Cal. 3d 532, 609 P.2d 991, 164 Cal. Rptr. 217 (1980). The staff has found no case in any jurisdiction saying a judge has a constitutional right to decline to hear cases involving smaller amounts or a lower penalty.

The staff thinks there should be no long-term restriction, constitutional or statutory, on assignment of judges. Any such restriction would prevent realizing the full benefit of trial court unification. However, a temporary restriction drawn from the Cobey Commission recommendation but expiring at the end of the judge's term of office might make unification more palatable to superior court judges. This could be added to the Government Code as Section 69511:

69511. (a) Notwithstanding any other provision of law, a district court judge holding office as a superior court judge on June 30, 1995, shall not be required, before expiration of the judge's current term of office, to hear any matter that was within the subject matter jurisdiction of a municipal or justice court on June 30, 1995.

(b) This section shall be operative only until January 8, 2001, and as of that date is repealed.

Comment. Section 69511 prevents a judge holding office as a superior court judge on June 30, 1995, from being required during the judge's term of office to hear matters that were then within the jurisdiction of a lower court. Terms of judges of superior courts are six years beginning the Monday after January 1 following their election. Cal. Const. Art. VI, § 16.

Staff Recommendation on Constitutional Revision

The staff recommends revising Article VI, Section 6, to read:

Sec. 6. The Judicial Council consists of the Chief Justice 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, and 10 judges of district courts,~~ each appointed by the Chief Justice for a 2-year term; 4 members of the State Bar appointed by its governing body for 2-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.

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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. Section 6 is amended to change the former references to judges of superior, municipal, and justice courts to a reference to judges of district courts. This reflects unification of the superior courts, municipal courts, and justice courts into a single level trial court system.

Unification of the trial courts enables the presiding judge to assign a district court judge to hear any case in the unified court. Assignment by the Chief Justice under the fifth paragraph of Section 6 is unnecessary and consent of the judge is not required, since the district court is a unified single-level trial court with original jurisdiction of all causes. See Section 10 (original jurisdiction).

Respectfully submitted,

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