Study J-1070 October 12, 1993

Memorandum 93-61

Trial Court Unification: Qualifications of Judges

Article 6, Section 15 of the California Constitution sets minimum qualifications for trial judges. It currently provides:

> Sec. 15. A person is ineligible to be a judge of a court of record unless for 5 years immediately preceding selection to a municipal 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.

Unification of the trial courts would require amendment of this provision to refer to the unified court rather than the existing trial courts, and necessitate review of the eligibility requirements in a unified court. SCA 3 proposes to revise Section 15 as follows:

> Sec. 15. A person is ineligible to be a judge of a court of record unless for ~~5~~ 10 years immediately preceding selection to a ~~municipal or justice~~ district 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~~ district court service may be assigned by the Chief Justice to serve on any court.

In commenting on SCA 3, parties have raised the following issues regarding judicial qualifications:

1) Should a person be required to have ten years of experience as a judge or member of the Bar before serving as a district court judge? If so, should this requirement apply to current municipal and justice court judges, some of whom may lack the required experience?

2) Would SCA 3 result in degradation of the quality of justice by allowing former municipal and justice court judges to try cases that they are not qualified to handle? Would SCA 3 instead improve the quality of justice by permitting greater flexibility in assigning judges, such that judicial abilities would better match assigned caseloads?

3) Does SCA 3 encompass any residency requirement? Should district court judges be required to reside within their respective districts?

4) Is the last sentence of proposed SCA 3 necessary?

EXPERIENCE REQUIREMENT: 10 YEARS OR 5 YEARS?

Qualifications in a Unified Court

As presently drafted, SCA 3 requires a person to have been a member of the California Bar, or a judge of a California court of record, for ten years immediately preceding the person's selection as a district court judge. Apparently a combined 10 years of bar membership and judicial tenure would be sufficient to satisfy the eligibility requirement, although this is not clear from the text of the provision. The staff would clarify this issue in the Comment.

There is widespread support for requiring ten years of such experience, rather than five years. Since the concept of unification requires that for greatest efficiency any judge sitting on the unified court may be assigned to any matter, it is appropriate that all judges be required to satisfy the highest standards.

Requiring ten years of experience may, however, have a disproportionate impact on women and minorities. The staff is attempting to acquire data regarding the magnitude of this problem, and will supplement this memorandum once it has such data. Based on the information currently before it, however, the staff believes that the ten year requirement is appropriate.

The staff therefore agrees with the approach of SCA 3 on this issue, and would amend the first sentence of Section 15 to read:.

> 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 court the person has been a member of the State Bar or served as a judge of a court ~~of record~~ in this State.
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> **Comment.** The first sentence of Section 15 is amended to delete the reference to municipal and justice courts. The amendment reflects unification of the superior courts, municipal courts, and justice courts in a single level trial court system. See Section 4 (district court) and former Section 5 (municipal court and justice court).
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> The amendment increases the required experience for selection as a trial court judge from 5 years to 10 years. Formerly 10 years experience was required of superior court judges but not of municipal and justice court judges. All district court judges, as well

as district court of appeal and supreme court judges, are now subject to the 10 years experience requirement. It should be noted that the 10 years experience requirement may be satisfied by a combination of State Bar membership and service as a judge, so long as the combined experience immediately precedes selection to the court.

Sitting municipal and justice court judges who lack the requisite 10 years experience on July 1, 1995, the operative date of this amendment, are eligible to continue service under Section 23.

The references to courts of record are deleted as obsolete. All courts are now courts of record. Article 6, Section 1.

Transitional Issue

At present, the California Constitution requires only five years of experience for municipal and justice court judgeships. Thus, there may be municipal and justice court judges who lack the ten years of experience that SCA 3 would mandate. The staff is investigating how many (if any) judges actually fall into this category, but we understand there are relatively few. We will supplement this memorandum with the data when it becomes available.

At the time the five-year eligibility requirement was imposed on justice court judges, there were sitting non-attorney judges who were grandparented. Article 6, Section 15.5 of the Constitution provides:

> Sec. 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.
>
> This section shall be operative only until January 1, 1995, and as of that date is repealed.

It would be problematic to grandparent in non-attorney judges to serve on the unified trial court, which will be a court of general jurisdiction. According to Professor Kelso, however, there no longer are any non-attorney justice court judges. The grandparent provision is thus obsolete, and in any case is due to expire by its terms before the contemplated effective date of SCA 3 (July 1, 1995). Since the transitional provision repeals itself on January 1, 1995, it is unnecessary to clean this provision out of the Constitution in SCA 3.

This still leaves the sitting municipal court and justice court judges, all attorneys, some of whom may not satisfy the 10 year experience requirement. There are a number of possible approaches.

(1) Simply grandparent the sitting judges. There are relatively few of them who do not satisfy the 10 year requirement already, and by the time of the operative date of trial court unification there will be fewer still. We understand

that in making new appointments to the municipal court the Governor is voluntarily adhering to a 10 year policy. This is the approach of SCA 3 as drafted, and is also the position of the 1993 Judicial Council Report.

(2) An alternative approach would be to grandparent the present municipal and justice court judges lacking ten years of experience, but limit them from hearing any matters within existing superior court jurisdiction until they acquire the requisite experience, unless the parties to a case stipulate that the judge may hear the case notwithstanding the lack of experience, or unless the presiding judge determines that the judge is qualified for assignment to the particular case.

(3) Still another approach would be to apply the ten year requirement absolutely, thereby preventing present municipal and justice court judges from serving as district court judges until they acquire the requisite experience. This could be tempered by an early retirement option.

(4) One could grandparent the present municipal and justice court judges, but require appropriate judicial education before assignment to duties beyond their present jurisdiction.

Based on the information received thus far, the staff sees no reason not to grandparent sitting judges absolutely. The problem appears to be relatively small and the transitional period should be fairly brief, so that efficient operation of the unified court would not be affected. Any shortcomings of grandparented judges can be addressed by appropriate assignment to cases within their competence.

The transitional provision could be implemented either by a general transitional provision as suggested by SCA 3, or a special provision as suggested by the 1993 Judicial Council Report. The staff tentatively prefers the general provision approach of SCA 3, although we would draw upon language of both.

We would place the general transitional provision at the end of the judicial article of the constitution rather than at Section 15.5 or Section 16.5, as suggested in the other drafts. The part of the general provision relating to the qualification of judges would provide:

> Sec. 23. On the operative date of this section, each previously selected superior, municipal, and justice court judge immediately becomes a judge of the district court. The 10-year membership or service requirement of Section 15 does not apply to a previously selected municipal or justice court judge.
>
> This section is operative only until July 1, 2000, and as of that date is repealed.

Comment. Section 23 is added to implement the unification of the superior courts, municipal courts, and justice courts in a single level trial court system. See Section 4 (district court) and former Section 5 (municipal court and justice court). The operative date of this section is July 1, 1995. This section is transitional only and is repealed by its own terms on July 1, 2000.

The issue of terms of judges, and the impact of the transitional provision, is analyzed in Memorandum 93-62 (election of judges).

PROTECTING THE QUALITY OF JUSTICE

A major concern, in fact *the* major concern expressed by many persons regarding trial court unification is whether the quality of justice will decline due to elevation of unqualified municipal and justice court judges to district court judges with general jurisdiction. The 10-year limitation on assignment to general jurisdiction cases works a rough measure of quality, but experience alone does not guarantee it.

A related argument centers on the concept of specialization: the idea is that persons who specialize are more competent in their specialties than persons who do not specialize. Because trial court unification would broaden the already wide range of cases trial judges hear, the result may be reduced competence overall.

There are a number of responses to these concerns. Just as municipal and justice court judges are of variable quality, so too are superior court judges. Moreover, there is no clear measure of judicial quality. Each judge has both strengths and weaknesses. Trial court unification would afford presiding judges greater flexibility in assigning caseloads, such that they could better match judges' skills to their caseloads. In all probability, use of Code of Civil Procedure section 170.6 would further restrict the impact of inexperienced judges.

There is some sentiment that justice court judges are more likely than municipal court judges to be unqualified for handling cases now within the jurisdiction of the superior courts. Most of the over 600 current municipal court judges went through rigorous screening processes similar to those for superior court judges. In contrast, the approximately 50 justice court judges were selected by their boards of supervisors and were not as heavily screened.

One suggestion is to have the State Bar Commission on Judicial Nominee Evaluation assess the qualifications of current justice court judges in the same manner as it now evaluates superior court nominees. Justice court judges deemed "qualified" could be elevated to the district court. Other justice court

judges could be elevated to the district court with restrictions on their jurisdiction or could receive early retirement. Or an unqualified judge could be restricted to the judge's current jurisdiction (absent a stipulation of the parties), until such time as the State Bar Commission on Judicial Nominee Evaluation finds the judge to be "qualified."

To further ensure judicial quality, the same restriction could be imposed on municipal court judges. This latter step should not dramatically affect the rate of implementation of SCA 3, because most (but not all) municipal court judges have already been classified as "qualified."

Another means of safeguarding quality decisionmaking could be to put greater emphasis on educating judges for their new tasks. Judicial education could be expanded to improve the knowledge of judges at all levels.

These options could help alleviate concerns that municipal and justice courts are necessary as training grounds for future superior court judges. Although the "training ground" argument has its adherents, opponents point out that many superior court judges never served on lower courts. Additionally, in a unified trial court, a presiding judge could give new judges assignments appropriate to their respective experience levels, and move them onto more complex assignments when they showed they could handle such assignments, without having to wait for the fortuity of advancement from a municipal or justice court to the superior court. Further, "[i]f it may be assumed that the amount of the claim does not necessarily indicate the amount of skill required to resolve it, a unified trial court would actually create a *better* training ground because cases could be assigned on the basis of complexity and difficulty rather than on the basis of the amount in controversy which, in many cases, may be inconsequential to the merits of the action." Minteer, *Trial Court Consolidation in California*, 21 U.C.L.A. L. Rev. 1120 (1974) (emph. in orig.) Service as a temporary judge pursuant to stipulation of the parties (Cal. Const. art. 6, § 21) would provide another means of acquiring judicial experience prior to undertaking complex cases.

Yet another argument regarding judicial quality is that trial court unification will inhibit recruitment of judges, because some well-qualified persons may be reluctant to become trial judges once there is a possibility of being assigned to what is now municipal and justice court work. As discussed in Memorandum 93-55 (Trial Court Unification: General Issues) at page 4, however, there is no shortage of qualified candidates for the municipal court bench. Additionally, the

caseload of the municipal and justice courts does not differ as dramatically as one might think from that of the superior courts: Many superior court cases result in verdicts within the jurisdictional limits of the lower courts. Further, the work of the municipal and justice courts is in many respects as important or even more important than that of the superior courts, because more people come into contact with those courts. There is a perception, however, that because municipal and justice courts are "inferior" trial courts, they render a lower level of justice than the superior courts. Trial court unification would eliminate that problem, and might also eliminate the stigma of inferiority that currently attaches to the caseload of the municipal and justice courts. Thus, at this point it is unclear whether unification would in fact result in a potential recruitment problem of any serious magnitude.

Based on the materials reviewed thus far, the staff believes that concerns regarding judicial quality are not an insurmountable barrier to trial court unification. "'The objection that lower court judges are unqualified to serve on the superior court . . . is at most applicable, if at all, only on a one-time basis (at the time of the initial reorganization), is clearly of a transitory nature and may be simply resolved by proper administrative action . . . .'" Schepard, *Another Look: Trial Court Unification in California in the Post-Proposition 13 Era,* 11 Southwestern Univ. L. Rev. 1295, 1321 (1979), *quoting* Advisory Commission to the California Legislature's Joint Committee on the Structure of the Judiciary, To Meet Tomorrow: The Need for Change, at 27-28 (1975). Imposing jurisdictional restrictions on current municipal and justice court judges until they have ten years of experience and are regarded as "qualified" may help assure quality decisionmaking, as may enhanced emphasis on judicial education and experience as a temporary judge. With tools such as these available, the staff believes that elevation of municipal and justice court judges to the district court bench would not pose a serious threat to the quality of judicial decisionmaking in California.

The staff does not believe any constitutional amendments are necessary on this matter, except to the extent there may be a question of the authority of the Judicial Council to mandate judicial education. In order to avoid the authority issue, as well as to help allay concerns about the quality of municipal and justice court judges, the staff suggests that the Commission consider the possibility that there be added to the transitional provision a clause along the following lines:

Sec. 23. On the operative date of this section, each previously selected superior, municipal, and justice court judge immediately becomes a judge of the district court. The 10-year membership or service requirement of Section 15 does not apply to a previously selected municipal or justice court judge , *but the Judicial Council may prescribe appropriate education and training for any previously selected municipal or justice court judge* .

Comment. The provision for education and training addresses the limited issue of qualifications of municipal and justice court judges elevated to the district court by operation of this section. The provision is not limited to judges with less than 10 years experience. The provision is not intended to create any implication concerning the general authority of the Judicial Council, if any, to prescribe education and training for judges.

RESIDENCY REQUIREMENT

Currently, Government Code section 69502 purports to require each *superior* court judge to reside "within the county of the court for which he is elected or appointed." This requirement arguably is unconstitutional on the ground that Article 6, Section 15 of the California Constitution sets the exclusive qualifications for superior court judges and it does not include a residency requirement. *See, e.g.*, People v. Chessman, 52 Cal. 2d 467, 500 (1959); Wallace v. Superior Court, 141 Cal. App. 2d 771 (1956); People v. Bowen, 231 Cal. App. 3d 783 (1991). Most *municipal* court judges must, however, "be residents eligible to vote in the judicial *district* or city and county in which they are elected or appointed." Gov't Code § 71140 (emph. added); *see also* Cal. Const. Art. 6, § 5 (allowing the Legislature to prescribe qualifications of municipal and justice court judges); Gov't Code §§ 71140.2, 71140.3 (providing that in certain counties, municipal court judges need not live in their respective districts, so long as they live somewhere in their assigned county); Wall v. Municipal Court, 223 Cal. App. 3d 247, 249 n.2 (1990). There is some confusion as to how to apply the residency requirement for municipal court judges in a county having a unified district with separate divisions. *Justice* court judges do not have to live in any particular district; they need only reside in the county in which they serve. Gov't Code § 71701; Osborne v. LaFont, 60 Cal. App. 3d 875 (1976); B. Witkin, Cal. Proc., *Courts* § 9, p.20 (3d ed. 1985).

Several persons have inquired whether SCA 3 incorporates any residence requirement for district court judges. As set forth above, SCA 3's proposed

amendment of Article 6, Section 15 does not expressly include any residency requirement.

The Judicial Council maintains that there should be no such requirement for district court judges. 1993 Judicial Council Report at 40. Arguably, imposing a residency requirement may restrict the pool of available judicial talent, by precluding otherwise well-qualified persons from filling judicial vacancies outside their respective counties of residence.

On the other hand, imposing a residency requirement of some kind may help alleviate concerns that trial court unification will result in an unfortunate loss of local control. See Memorandum 93-55 (Trial Court Unification: General Issues) at pages 6-7 for a discussion of these concerns.

One means of balancing the competing concerns might be to require each district court judge to live in *or near* the county in which the judge serves. This may help maintain a broad pool of prospective judges while still retaining some degree of local influence.

Rather than attempt to specify any residence requirement in the Constitution, the staff believes that the Constitution should make clear that the Legislature is not precluded from enacting residence requirements for district court judges. We would add to Article 6, Section 15 (qualifications of judges) a provision to the effect that:

> The Legislature may prescribe residence requirements for district court judges.
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> **Comment.** The last sentence is added to Section 15 to clarify legislative authority to enact residence requirements for district court judges. This continues the effect of former Section 5 with respect to municipal and justice court judges (legislature shall prescribe for municipal courts and prescribe for justice courts the qualifications of judges). It overturns the doctrine of *People v. Chessman*, 52 Cal. 2d 467, 500 (1959), invalidating legislative attempts to impose residency requirements on superior court judges.

If this proposed amendment is enacted, the Legislature may wish to revisit existing statutes setting residency requirements for superior, municipal, and justice court judges, and replace them with reasonable requirements for district court judges.

It is also worth noting that the Legislature has existing authority to impose other qualifications on municipal and justice court judges, authority it does not

have for superior court judges. This authority would not be continued when Article 6, Section 5 is repealed and municipal and justice court judges become district court judges. This appears appropriate, since they would be on a par with superior court judges, for whom the Legislature may not prescribe additional qualifications. The staff suggests no constitutional amendment on this point, with the exception of the proposed residency provision.

LAST SENTENCE OF ARTICLE 6, SECTION 15

SCA 3 proposes to revise the last sentence of Article 6, Section 15 of the California Constitution to read: "A judge eligible for ~~municipal~~ district court service may be assigned by the Chief Justice to serve on any court."

However, Article 6, Section 6 of the California Constitution states in part that "[t]he 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." In light of this language in Section 6, it seems unnecessary to specify in Section 15 that the Chief Justice may assign a district court judge to any court; the staff would delete the last sentence of Section 15. The Judicial Council reached the same conclusion without explanation in its recent report on trial court unification. 1993 Judicial Council Report, at p.40.

> ~~A judge eligible for municipal court service may be assigned by the Chief Justice to serve on any court.~~
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> **Comment.** The former second sentence of Section 15, empowering the Chief Justice to assign municipal court judges to any court, is deleted as obsolete. Section 6 gives the Chief Justice authority to assign any judge to another court.

It should be noted that the language of Section 6 authorizing appointment to another court "but only with the judge's consent if the court is of lower jurisdiction" could create problems for assignment of former Superior Court judges in the unified court. This matter is discussed further in Memorandum 93-58 (Judicial Council).

Respectfully submitted,

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