

Memorandum 93-65

Trial Court Unification: Retirement

Article VI, Section 20, of the California Constitution provides:

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

Neither Senate Constitutional Amendment 3 (Lockyer) nor the Judicial Council Report proposes to change this provision. The Judicial Council Report makes the following statutory recommendation:

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.

Retirement Pay

No revision to the constitutional provision above is necessitated by unification, although perhaps "of courts of record" could be deleted, since all judges are judges of courts of record. See Cal. Const. Art. VI, § 1. However, statutory revisions will be needed.

A judge's retirement pay is fixed as a percentage (depending on age and other factors) of the salary of "the judge holding the judicial office to which he or she was last elected or appointed." Gov't Code § 75076. If this provision is kept intact, and if unification results in the salary of municipal and justice court judges being increased to that of superior court judges (see Memorandum 93-64), presently-retired municipal and justice court judges will get an immediate increase in retirement pay of about 10%. The 91% cap recommended by the Judicial Council would prevent such an increase, and would continue the retirement pay of presently-retired municipal and justice court judges at present levels.

Two judges wrote to object that the proposed 91% cap is discriminatory and inequitable. But the staff thinks giving retired municipal and justice court judges an immediate 10% increase in retirement pay on unification would be an unjustified windfall, and might give ammunition to opponents of the ballot measure.

Retired municipal and justice court judges should get annual cost-of-living increases in retirement pay, the same as other retired public employees. One way to do this would be to fix the retirement pay of presently-retired municipal and justice court judges by applying the appropriate formula percentage to 91% of a district court judge's salary, as recommended by the Judicial Council. The retirement pay of a district court judge or of a presently-retired superior court judge would be fixed by applying the appropriate formula percentage to 100% of a district court judge's salary. This would approximately preserve the status quo, and would not result in any immediate increase in public expenditures for retirement pay. In any case, the matter should await statutory action and should not be part of the constitutional amendments.

Buy-in for Pre-1990 Justice Court Service

The Justice Courts Management Committee of the California Judges Association wrote that justice court judges are treated unequally for purposes of retirement. Under Government Code Section 75029, a judge who served as a justice court judge before 1990 when they did not participate in the judges' retirement system may get credit for that non-qualifying service by making a payment to the Judges' Retirement Fund. On January 1, 1990, justice courts became courts of record (Gov't Code § 71607), and incumbent justice court judges began to participate in the judges' retirement system. But the buy-in provision for pre-1990 justice court judges was limited to those judges serving on a higher court. *Id.* § 75029.1.

According to the Justice Courts Management Committee, the limitation was to enable the Public Employees' Retirement System, Judicial Council, and California Judges Association to work out the best means of absorbing justice court judges into the judges' retirement system, was intended to be temporary, and now affects 39 justice court judges.

Unification will convert justice court judges into district court judges. It seems hard to justify not allowing a buy-in to district court judges who are converted justice court judges, while allowing it to district court judges who are

converted superior or municipal court judges and have non-qualifying pre-1990 service as a justice court judge. In any event, this is a question of statutory, not constitutional, dimension, and may be deferred until we have the views of the Judicial Council.

Health Benefits

During a judge's active tenure, there appears to be no practical difference in health benefits for superior, municipal, and justice court judges. After retirement, however, superior court judges appear to be in a better position than municipal and justice court judges. This is because superior court judges are treated as state employees under the Public Employees' Medical and Hospital Care Act (Gov't Code §§ 227751-22883), while municipal and justice court judges are treated as employees of the county, which may provide or withhold such benefits (see, e.g., *id.* §§ 22754.1, 77208). Two judges wrote to express concern about this situation.

It is evident that new costs will be involved in bringing all municipal and justice court judges into the health benefits plan now available to superior court judges. With respect to municipal and justice court judges who become district court judges and retire after unification, these increased costs are an inevitable part of equalizing salaries and benefits for all trial judges. But with respect to already-retired municipal and justice court judges, there is a question whether they should be included in the health benefits plan available to retired superior court judges. The staff discussed this with representatives of the Judges' Retirement System. At present, they cannot estimate the amount of the new costs, but agree it would be substantial. Although there are questions of equity, the staff proposes to treat post-retirement health benefits the same way as retirement pay — namely, to preserve the status quo. This is not an issue that must necessarily be addressed as part of unification. The Legislature can consider it on its own merits at the appropriate time.

Respectfully submitted,

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