

Memorandum 93-73

Trial Court Unification: Eight Person Jury in Civil Causes

At the last meeting, there was concern the staff draft in Memorandum 93-67 permitting the Legislature to provide for eight-person juries in any civil case, not just in municipal and justice court cases as under existing law, might bring strong opposition. Other approaches were suggested:

(1) Delete authority for eight-person juries from the constitution altogether. The Legislature has been very cautious in exercising its constitutional authority. In 1981, the Legislature authorized an experimental project using eight-person civil juries in municipal and justice courts in Los Angeles County. That project has expired. The project report found problems with eight-person juries. Although the conclusions may be suspect, there tended to be lower representation of African Americans and damage awards tended to be larger with eight-person juries. There was little difference in the time required for impaneling the jury, trial, and jury deliberations in eight- and twelve-person juries. There was some reduction in the cost for jurors, but not as much as would be expected. One may conclude that the advantages of eight-person juries over twelve-person juries are not significant.

(2) Limit authority for eight-person juries to cases appealable to the appellate division of the unified court, approximating existing law. The Judicial Council Report was similar, limiting eight-person juries to "Category Two" cases as defined by court rule.

(3) Permit eight-person juries where the amount in controversy does not exceed a specified amount, perhaps \$50,000. This approach is not without problems. For example, there may be a right to jury trial in an action for declaratory relief and in civil commitment proceedings, where a minimum dollar figure will not work. See 7 B. Witkin California Procedure *Trial* § 88, at 88, § 91, at 90 (3d ed. 1985).

There was no sentiment for the approach in the staff draft, but the Commission was unable to agree on what should replace it.

The staff recommends we try to preserve existing law. Alternative 2 above seems to be the best way to do this. The Commission has tentatively decided to

preserve the present appellate jurisdiction of the superior court. A transitional provision would make clear that, until otherwise provided, the appellate jurisdiction of the unified court is the same as the present appellate jurisdiction of the superior court. The advantage of tying the right to a twelve-person jury, appellate jurisdiction, and economic litigation procedures to present distinctions between superior and municipal/justice courts is that it tends to discourage tinkering with any one of these in isolation, a possibility which the Judicial Council views as dangerous.

The staff recommends amending Article I, Section 16, of the California Constitution as follows:

Sec. 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 civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes ~~in municipal or justice court~~ within the appellate jurisdiction of the superior 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.

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. Section 16 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a single trial level system of superior courts. The civil appellate jurisdiction of the superior court is prescribed by statute or Judicial Council rule not inconsistent with statute. Cal. Const. Art. VI, § 11. See also *id.* § 23 (transitional provision).

Respectfully submitted,

Robert J. Murphy
Staff Counsel