Study J-1000 November 5, 1993

Memorandum 93-76

Trial Court Unification: Draft of Tentative Recommendtion

Attached to this memorandum is a staff draft of the tentative recommendation on trial court unification. This draft should be read in light of the other memoranda scheduled for consideration at the November 1993 meeting, which raise issues concerning various matters in the draft tentative recommendation.

Our objective at the November meeting is to approve a tentative recommendation to circulate for comment immediately after the November meeting.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

#J-1000

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft

TENTATIVE RECOMMENDATION

Trial Court Unification

November 1993

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **December 7, 1993.**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

This report makes recommendations relating to the appropriate composition of the amendment to the State Constitution contained in SCA 3 (Lockyer) of the 1993-94 Regular Session, pertaining to the unification of the trial courts, together with initial statutory changes necessitated by court unification. The report is made pursuant to 1993 Cal. Stat. Res. ch. 96. A subsequent report or reports will make recommendations relating to the substantial statutory changes necessitated by trial court unification, if adopted by the voters.

The Commission finds the structure of SCA 3 basically sound. The Commission recommends the following significant changes, which are discussed in this report. Draft constitutional and statutory language is set out in appendices to this report.

(1) The name of the unified trial court should be the superior court rather than the district court. (Cal. Const. Art. VI, § 1)

(2) Division of the unified trial court into branches and circuits should be a matter for determination by each court with the concurrence of the Legislature, county board of supervisors, or other funding authority. (Cal. Const. Art. VI, § 4)

(3) Writ jurisdiction within the unified trial court to judges of the court should be located in the appellate division of the court. (Cal. Const. Art. VI, § 10)

(4) Jurisdiction of the appellate division of the unified trial court should include misdemeanors and civil causes determined by statute or Judicial Council rule not inconsistent with statute. As an initial matter, the current statutory appeal and review structure should be maintained. The Judicial Council should adopt rules to foster the independence of the appellate division. (Cal. Const. Art. VI, §§ 11, 16.5)

(5) Authority of the Legislature to prescribe an eight person jury in civil causes in municipal and justice courts should be extended to any appropriate causes in the unified trial court. (Cal. Const. Art. I, § 16)

(6) Small claims procedures and economic litigation procedures now used in the municipal and justice courts should be preserved in the unified trial court. (Statute)

(7) Election of unified trial court judges should be countywide, but the county board of supervisors should have authority to vary this arrangement to the extent necessary to remedy Voting Rights Act violations. The Attorney General

should seek immediate preclearance of this system under the Voting Rights Act for the four counties in which preclearance is required. (Cal. Const. Art. VI, § 16)

(8) Determination of unified trial court officers and employees should be a matter for determination by the court, subject to control by funding authorities. (Cal. Const. Art. VI, § 4)

(9) As a transitional matter, statewide and local court rules should be adopted in advance of the operative date of trial court unification, including provision for appropriate education for municipal and justice court judges elevated to the unified trial court. A process should be adopted for making advance organizational and personnel decisions in each court; the Law Revision Commission will make a supplementary recommendation with specific language on this point following receipt of a study by the Judicial Management Institute. An interim measure should be enacted to cover operations and administration pending more detailed statutory implementation. (Cal. Const. Art. VI, § 16.5; Statute)

(10) A severability clause should be added to SCA 3. (Uncodified)

TENTATIVE RECOMMENDATION

TRIAL COURT UNIFICATION

OUTLINE

BACKGROUND

Referral of Study to Law Revision Commission

The Legislature has directed the California Law Revision Commission to study the proposed amendment to the California Constitution contained in Senate Constitutional Amendment No. 3 (Lockyer) of the 1993-94 Regular Session,[1] concerning unification of the trial courts:

> Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature approves for study by the Law Revision Commission the proposed amendment to the State Constitution contained in SCA 3 (Lockyer) of the 1993-94 Regular Session, pertaining to the unification of the trial courts, with recommendations to be forwarded to the Legislature by February 1, 1994, pertaining to the appropriate composition of the amendment, and further recommendation to be reported pertaining to statutory changes that may be necessitated by court unification.[2]

The scope of this study is limited to recommendations concerning implementation of trial court unification. The Commission has not been authorized to report to the Legislature concerning the wisdom or desirability of trial court unification.

The immediate focus of the study is the constitutional language that is necessary to achieve trial court unification. Conforming statutory revisions will also be required, but need not be made immediately except to the extent necessary to enable pre-operative date implementation activities.

SCA 3 (Lockyer)

SCA 3 (Lockyer) is set out in Appendix 1. It would eliminate the existing trial court system of superior, municipal, and justice courts in favor of a single trial level court called the district court. Each county would have a district court, although mechanisms are provided for coordination among small counties and branch operations in large counties. As a transitional matter, each existing trial court would become a district court and the officers and employees of each court would become officers and employees of the district court.

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[1] Cited in this recommendation as SCA 3.
[2] 1993 Cal. Stat. Res. Ch. 96.

The Legislature has also enacted as part of the 1993 budget package the following language:

> The Legislature finds and declares 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 savings to both counties and the state.[3]

Methodology of Study

The Commission has followed its standard process on this study. Policy issues have been identified, possible solutions and their pros and cons discussed, initial decisions on the issues made, implementing language drafted and refined, and tentative recommendations circulated for comment. Comments will be considered and revisions made, and final recommendations submitted to the Legislature.

All Commission work is done at public meetings. The Commission has scheduled monthly meetings between October 1993 and January 1994 to be devoted almost exclusively to the trial court unification study. The Commission will adopt a meeting schedule beyond January 1994 for the statutory revision portion of the work.

The Commission has sought participation from various persons and organizations involved in or affected by the trial court system, not limited to the judicial branch. The Commission has had available the continuing involvement and resources of the Judicial Council for this study.

Available Resources

There is a wealth of information available on trial court reorganization, consolidation, and unification, both in California and in other jurisdictions. These materials contain much useful information, and the Commission has made extensive use of them. Among the key resources consulted were the following studies and reports:

> California Unified Trial Court Feasibility Study (Booz, Allen & Hamilton 1971)
> To Meet Tomorrow: The Need for Change (Advisory Commission to the Joint Committee on the Structure of the Judiciary 1975)

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[3]1993 Cal. Stat. ch. 70, § 10.

California Trial Court Reorganization Proposals 1970-1990, Parallel Column Analysis (State Bar of California ND)
Standards Relating to Court Organization (American Bar Association 1990)
Impediments to Coordination as Listed in Individual Coordination Plans (Judicial Council of California 1992)
Bibliography of Literature on Trial Court Unification (National Center for State Courts 1993)
Correspondence to Senator Lockyer and to Judicial Council Concerning SCA 3 (Numerous Authors 1993)
Memoranda on SCA 3 (Various State and Local Bar Association Committees 1993)
Analyses of SCA 3 (Various Legislative Committees 1993)
Trial Court Unification: Proposed Constitutional Amendments and Commentary as Amended and Adopted by the Judicial Council (Warren & Kelso 1993)

Particularly useful was the last of these items, the 1993 Judicial Council Report, *Trial Court Unification: Proposed Constitutional Amendments and Commentary as Amended and Adopted by the Judicial Council* (Warren & Kelso 1993).[4] 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 was amended and adopted by the Judicial Council.

The report builds on earlier court unification studies and on input from the judiciary concerning SCA 3. The Commission believes the 1993 Judicial Council Report pulls together the main issues on trial court unification in a compact and useful manner, and has given the report careful consideration.

Interim Hearing

The Senate and Assembly Committees on Judiciary held a joint interim hearing on trial court unification under SCA 3 on October 8, 1983, in San Diego in conjunction with the 1993 State Bar convention. The hearing was well-attended, both by Judiciary Committee members and by witnesses and other interested persons. There was a variety of support and opposition to SCA 3 expressed at the

[4]Cited in this recommendation as 1993 Judicial Council Report.

hearing, engendering a lively discussion and interchange among witnesses and committee members.

Among the specific issues of greatest concern at the hearing, apart from general support for or opposition to the concept of unification, were electoral subdistricting and the impact of the Voting Rights Act on judicial elections, the effect of unification on criminal review procedures and rights of defendants, the possible loss of local and accessible justice, and possible increased use of non-judge hearing officers.

Overarching these specific concerns were several key questions:

(1) Should the constitutional amendment spell out the implementing details of unification, or should it merely establish the principle of unification and leave the details to later statute or court rule? A number of legislators expressed the view that the Constitution should be a general document, and that the only practical way to achieve court reform is to establish the general principle first and deal with the details later. A number of witnesses at the hearing were not content to leave this matter to later resolution: the details are everything and should be spelled out in advance.

(2) Should many matters of court organization and administration be left to the judicial branch or should they be subject to legislative control? There was some concern expressed at the hearing that trial court unification should not serve as a vehicle by which the judicial branch increases its authority at the expense of the legislative branch.

(3) Should any of the details of court organization and procedure that are left to the judicial branch be under the control of the individual courts or subject to the control of the Judicial Council? There was some concern evident about centralization and bureaucratization of judicial operations at the expense of local control.

The Law Revision Commission has borne these concerns in mind as it has formulated its recommendations to the Legislature on trial court unification.

GENERAL PRINCIPLES IN FORMULATING RECOMMENDATIONS CONCERNING SCA 3

The Commission has adhered to a number of guiding principles in its basic approach to this study.

The Commission has avoided consideration of the advantages and disadvantages of trial court unification. The Commission is familiar with the

debate over the wisdom of unification, and has taken the arguments pro and con into consideration in formulating its recommendations on SCA 3. But the Commission makes no recommendation concerning the merits of the concept. Its recommendations are limited to implementation of the concept.

The effort is not merely to offer solutions to problems presented by trial court unification, but to offer solutions that will be politically acceptable. The Commission deems that it will not have done its job if its report to the Legislature on the constitutional amendments to implement trial court unification would make the proposition unacceptable to the voters.

The Commission has restricted its recommendations to those immediately required to implement trial court unification. Many of the former unification proposals seek ways, in addition to trial court unification, to address the underlying problem of judicial overload. The Commission has felt that it is necessary to limit its consideration to solutions to specific problems caused by trial court unification.

The trial court unification recommendations should not serve as an occasion to revise jury trial, appeal, or other fundamental procedural rights of litigants. The recommendations seek to implement the structure and organization of trial court unification as a matter of court administration, without impacting existing rights.

To the extent issues can be dealt with by statute rather than in the Constitution, the Commission recommends this. The Constitution should set out only the basic structure of the judicial system and the details should be left to implementing legislation. This will help focus the election debate over the constitutional amendment on the overall merits of unification rather than on incidental details. It will also enable deferral of the difficult transitional personnel problems that could otherwise bog down the entire project. Once the concept of unification is established, there will be an incentive for all affected persons and groups to reach workable solutions and forge practical compromises on the issues.

The present recommendation deals with the appropriate composition of the constitutional amendment for trial court unification. A subsequent report or reports will deal with statutory changes that may be necessitated by trial court unification, if adopted by the voters.

SINGLE TRIAL LEVEL COURT

SCA 3 would replace the existing scheme of superior, municipal, and justice courts, with a single trial level court system of district courts. The Commission has considered whether the name "district court" is the best name choice for the unified court, in light of the possible confusion with the federal district courts and the state district courts of appeal. Among the other names considered were "county court", "trial court", "unified court", and "circuit court". Each of these possibilities has advantages and disadvantages.

The Commission ultimately concluded that the preferable name choice is "superior court". This choice has the disadvantages of possible confusion about the jurisdiction of the court in light of the history of the term, its implication of the existence of a lower or inferior court, and its implication that the superior court is swallowing up the municipal and justice courts, rather than that the three are merging into a new unified court. However, the term has a number of important advantages that outweigh all other considerations:

(1) The term is already familiar and people will know that the state trial court is being referred to.

(2) Use of the term will save substantial amounts of money in signage, forms, stationery, etc.

(3) Use of the term will tremendously simplify the task of making conforming changes in the Constitution and statutes. For example, there are more than 3,000 statutory references to the superior court that would not otherwise require revision because of unification.[5]

(4) Use of the term could assuage the substantial concern that exists about possible degradation of the quality of justice in a unified court system, and imply that the entire trial court system is being upgraded to superior court, or highest, trial court status.

On balance, the Commission believes that the name "superior court" should be retained for the unified trial level court. The name would cause no confusion, would convey the right image, would simplify transition, and perhaps most important, would save money.

[5]A simple statutory statement could be made that any reference to the superior court means the district court. However, this is not a completely satisfactory solution in the long run.

COUNTY STRUCTURE

The trial court structure under existing law is based on a county organizational scheme. In each county there is a superior court[6] and one or more municipal or justice courts[7] based on population. SCA 3 would continue the county-based structure in the unified trial court.

Other structures have been proposed, including division of the state into several very large trial court districts, and division into many small districts, on the theory that a trial court's territorial jurisdiction should generally depend on distribution of population centers, geographic features, and political boundaries.

The Commission believes that the structure of the unified trial court should generally be based on the county, for the reasons elaborated in the 1993 Judicial Council Report:

(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.

(5) Continued county funding of some court operations makes county lines the most natural division between unified courts.

There is widespread agreement with the county-based trial court structure. It is the historical pattern, it is generally workable, it doesn't require a massive reorganization task, and it conforms with current concepts of proper trial court structure.[8]

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[6]Cal. Const. Art. VI, § 4.
[7]Cal. Const. Art. VI, § 5.
[8]See, e.g., ABA Standards Relating to Court Organization § 1.12(c) (trial courts geographic structure).

GEOGRAPHIC DISTRICTS

Branch Operations

Remote parts of physically large counties may currently be served by branch superior courts or by municipal or justice courts. Unification should not affect this, since the existing courts would become part of the unified court system. SCA 3 provides as a transitional matter that, "each preexisting superior, municipal, and justice court location shall be retained as a district court location." This appears to be the simplest and most direct way to deal with the matter, and the Commission recommends it.

The Legislature may provide for municipal and justice court organization,[9] and the Legislature by statute largely delegates decisions concerning the court structure to the counties. The Constitution is silent as to superior court locations and branches, making this is a matter for decision by the court. Nonetheless, statutes purport to control superior court districts and sessions.

SCA 3 would resolve this issue in the unified court by providing that the Legislature may divide the unified court into one or more branches. The Commission believes that ultimately the matter of placement of branch courts and operation of sessions is a matter of court management so as to provide the best and most convenient service to the court users consistent with available funding. Since trial court operations are in part county funded and in part state funded, both the counties and the state should be participants in the decision-making process. The Commission recommends that ultimate authority to determine trial court structure be left to the individual courts, subject to concurrence of the Legislature, county supervisors, or other funding authority.

Los Angeles County

Many commentators on court unification have made the point that Los Angeles County is so large in population and the number of judges serving it is so great that a unified trial court for that county would be unmanageable. The suggestion is that in Los Angeles County the unified court should not be countywide but should be divided into several independent districts.

There are a number of obvious problems with creating separate court districts within the county. Who will determine where the lines should be drawn, and on what criteria? Will the boundary lines be clear to persons having to use the

[9]Cal. Const. Art. VI, § 5.

courts? The Commission sees no real advantage to creating independent judicial districts as opposed to branches within a large county, and therefore concurs with the approach of SCA 3 to provide for branches rather than independent districts.

Again, this should be a matter for court determination within the restraints of available funding. The counties and state should be participants with the courts in determining the branch court structure. The Constitution should permit establishment of branches within the unified court, subject to ultimate monetary veto.

Circuits

SCA 3 deals with the question of achieving efficiency in the unified court in small rural counties: "The Legislature may provide that one or more judges serve more than one district court, or that two or more district courts may be organized into one or more circuits for regional resource sharing or administrative purposes."

This provision offers the opportunity for countywide districts to join into circuits served by the same judges, but would appear to require that each county remain a separate district. An argument could be made that several small counties should be allowed to unify their courts for greatest efficiency.

Problems with this approach are that it will make the courts inconvenient and inaccessible for many persons, and make the judicial officers too remote from their electoral constituency. There appears to be little support for multi-county districts, and administrative flexibility can be achieved by multi-district coordination activities (including cross-assignment of judges).

The Commission believes that authority to create multi-county districts is not needed. The arguments that favor making the unified court coterminous with the county are not overridden by the possibility that efficiency could be improved by creating multi-county districts. Unification itself should make each small county court system more efficient than it is now.

The approach of SCA 3 to enable administrative consolidation among counties is appropriate. Again, this should ultimately be a matter for determination by the affected courts, in consultation with the county and state funding authorities.

ORIGINAL JURISDICTION

Subject Matter Divisions

Unification of trial courts will result in the unified court having original jurisdiction of all causes. The broad range of issues presented to the unified court judges may as a practical matter necessitate some specialization within the courts. Creation of specialized departments within the trial court is not a matter of constitutional dimension. The Legislature may require special trial court divisions by statute, and the judicial branch may provide for them by court rule.[10]

Writ Jurisdiction

Under existing law the superior court has original jurisdiction, along with the appellate courts, in proceedings for extraordinary relief in the nature of habeas corpus, mandamus, certiorari, and prohibition.[11] This includes authority to issue extraordinary writs to the municipal and justice courts. This scheme requires revision in a unified court since it is not appropriate to have trial court judges of equal dignity in the same court issuing writs against each other.

It would be possible to leave extraordinary writs in the nature of review of trial court proceedings to the appellate courts. The Commission understands that there are approximately 1,000 writs issued annually from the superior courts to the municipal and justice courts. These are primarily for bail (habeas corpus), discovery, and speedy trial matters.

The Commission has concluded that the workload of the courts of appeal is so great that it would be inadvisable to shift the trial court writ review function completely to the appellate level. The unified trial courts should have appellate divisions,[12] and it would be proper and make sense to leave an internal writ review capacity in the appellate divisions.

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[10]See Cal. Const. Art. VI, § 6 (Judicial Council rules for practice and procedure "not inconsistent with statute"). See also 1993 Judicial Council Report at 27: "[T]he 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] by constitutional provision, but creating Small Claims Court, Family Conciliation Court and Juvenile Court by statutory provisions."

[11]Cal. Const. Art. VI, § 10.

[12]See discussion immediately below.

APPELLATE JURISDICTION

Under existing law, appeals from municipal and justice court judgments are to the superior court, and appeals from superior court judgments are to the courts of appeal.[13] Unification will require modification of this system, since the superior, municipal, and justice courts will become one.

The appellate departments of the superior courts annually dispose of approximately 6,000 appeals from the municipal and justice courts, exclusive of small claims appeals. The courts of appeal dispose of about 22,000 appeals from the superior courts annually. If the number of appeals from trial court judgments in a unified court roughly equal the combined number of existing superior court, municipal court, and justice court appeals, the court of appeals workload would increase by roughly 25%.

All Appeals to the Courts of Appeal With Adjustment for Workload

All appeals could be made to the district courts of appeal. In this event, measures would be necessary to deal with the expected increased workload of the courts of appeal. Suggestions to handle the increased workload of the court of appeal under this proposal include:

(1) Increase the size of the court of appeal.

(2) Allow disposition of cases without a written opinion.

(3) Make acceptance of the appeal discretionary with the court of appeal.

(4) Limit appealability of small claims matters.

(5) Limit appealability of traffic matters.

(6) Eliminate Penal Code Section 995 and 1538.5 review.

The Commission believes as a matter of policy that trial court unification should not be the occasion for making substantial changes in fundamental concepts of justice and reviewability. The right of review under existing law ought not to be impaired as a result of the structural demands of unification. Written opinions are fundamental to the development of a sound body of interpretive law. Increasing the size of the courts of appeal and eliminating the possibility of local review is ill-advised. Review should not be too remote or formal, but should be available locally, immediately, and inexpensively, as it is now. Trial court unification should not be accomplished at the expense of the fairness that has been built into the California judicial system in its evolution over the years.

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[13]Cal. Const. Art. VI, § 11.

Upper and Lower Divisions Within District Court

A number of commentators on SCA 3 have argued for separate trial divisions within the unified court. There would be an upper division and a lower division within the court, with jurisdictions the same as those of the superior court and municipal and justice courts. Thus the status quo could easily be preserved for the current appeals system (as well as other superior court/municipal court distinctions such as the Economic Litigation procedures).

The advocates of this proposal argue that under this scheme the trial courts would in fact be unified. All judges would be equal, but might be assigned to either the upper division or lower division (and presumably could be rotated between them). The proposal would ensure preservation of the existing constitutional scheme of appeals from the higher jurisdiction trial courts to the courts of appeal.

The Commission agrees with the 1993 Judicial Council Report critique of this proposal. First, the 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 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 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 should be addressed as an issue of case management and not of court jurisdiction. 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 unified court is a matter more properly dealt with by the judiciary itself through statewide or local rules of court or by the Legislature through statutes.[14] There appears to be no principled reason for creating divisions by constitutional provision, but creating Small Claims Court, Family Conciliation Court and Juvenile Court by statutory provisions.

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[14]*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).

Fourth, public policy and sound judicial administration demand that all judges at all levels of the judiciary be responsible 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, A judicial system that divides itself into separate jurisdictional compartments is likely to divide itself into more narrowly focused interest groups. 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 require that all unified court judges be equally responsible for making the system work and will reduce the potential conflicts between those three separate courts.

Appeals Between Courts

Appeals from matters formerly within the jurisdiction of the municipal and justice courts might be made to the trial court in an adjoining county, rather than internally within the unified court. The purpose of this proposal is to avoid the problem inherent in having peer review among colleagues of equal standing who share collegiality.

The Commission does not recommend this. It still involves a judge or panel of judges overruling the decision of a judge of equal rank. It also inconveniences the parties, since part of the concept of an appellate division within the unified court is to provide easy accessibility of review to the people served by the court. And undoubtedly it would create management problems, particularly where the workload and staffing of adjoining districts differ substantially.

Appellate Jurisdiction in Unified Court

One approach to the issue of appeals from causes currently within the jurisdiction of the municipal and justice courts is to provide for appellate jurisdiction within the unified court. This is suggested in the 1993 Judicial Council Report, which notes that there is sufficient authority to create an appellate department in the unified court by court rule, as is done now in the superior court.

The primary concern with appellate jurisdiction within the unified court is the problem of peer review and conflict of interest. A judge should not be in a position of having to reverse a judge of equal rank. There may be a collegiality or

deference on the court that will destroy the independent judgment necessary for a fair review.

There are a number of ways this problem can be addressed within the context of the unified court. One way is that provided in SCA 3—creation of a constitutional appellate division in the unified court. trial court. Although it is apparent that creation of an appellate division can be done by court rule, the Commission believes SCA 3 is correct in its constitutional establishment of an appellate division. The existing superior court appellate department works because the appellate department exercises review over lower court cases, not over other superior court cases. In other to ensure proper functioning of an appellate department staffed by judges of the same jurisdiction as the judges being reviewed, a constitutional hierarchy is desirable. This will avoid the dilemma of judges of equal rank claiming the constitutional right to reverse (and possibly re-reverse) each other.

Another way to insure independence within the trial court setting is to mandate the Judicial Council to adopt rules that will foster independence. The rules should set forth relevant factors to be used by the Chief Justice in making appointments to the appellate department, including criteria such as length of service as a judge, reputation within the district, and degree of separateness of the appellate department's workload from the judge's regular assignments (e.g., a unified court judge who routinely handles large numbers of misdemeanors should ordinarily not serve in the appellate department). In addition, appointments to the appellate department could be for a minimum term of two or three years, and review may be by three judges en banc rather than a single judge, including judges from other counties if necessary.

Definition of Appellate Jurisdiction

SCA 3 does not specify which causes would go to the appellate division and which would go to the court of appeal.[15] Implementing legislation might, but is not required to, provide for lower court appeals for the same causes that are now within the jurisdiction of the municipal and justice courts.

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[15]A technical defect in SCA 3 is that while it permits the Legislature to define the jurisdiction of the district court's appellate division, it does not withdraw jurisdiction in those matters from the district court of appeal, with the result that appellate jurisdiction would be concurrent. Any litigant might claim to a have a right of appeal to the district court of appeal notwithstanding apparent statutory jurisdiction of the district court appellate division. That defect should be cured if the SCA 3 approach is pursued.

The 1993 Judicial Council Report would remove authority to define appellate jurisdiction from the Legislature and vest it in the Judicial Council, with approval of the Supreme Court. The report indicates that while the Legislature indirectly controls appellate jurisdiction now by defining the jurisdiction of the municipal and justice courts, this is really incidental. "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."[16]

Removal of decisions concerning appellate jurisdiction from the legislative branch and vesting them in an administrative agency within the judicial branch would signal a major shift in constitutional policy. The Commission has not seen any documentation or demonstration of a need for this change, and is not prepared to recommend it in the context of trial court unification.

Recommendation

The Commission recommends creation of a constitutional appellate division in the unified court. The criminal jurisdiction of the appellate division should include misdemeanor appeals, parallel to the current criminal appellate jurisdiction of the superior courts. The civil jurisdiction of the appellate division should be defined by the Legislature or by court rule not inconsistent with statute. As a transitional matter the trial court appellate division would handle appeals and review proceedings for causes where the current statutes rely upon a structure of superior court oversight of municipal and justice court actions. This would include appeals of matters within the municipal and justice court jurisdiction, small claims appeals, and criminal review proceedings. This can be accomplished without an overly extensive redrafting of existing statutes.

JUDGES

Existing Superior, Municipal, and Justice Court Judges

SCA 3 provides that existing superior, municipal, and justice court judges will become the initial judges of the unified trial court. Their terms of office would

[16]1993 Judicial Council Report at 38.

not be affected by their succession to office as unified court judges.[17] The Commission believes this is a sensible approach. Issues of qualifications, assignment, and compensation—both transitional and permanent—must be addressed.

Qualifications of Judges

Municipal and justice court judges must have 5 years of experience as attorneys or judges and superior court judges must have 10 years of experience.[18] In the past justice court judges were not required to be attorneys, but that requirement was changed in 1975. There are no longer any non-attorney justice court judges serving, and by July 1, 1995 (the operative date of SCA 3), there will be no judge of any court with less than 10 years of experience as a judge or attorney.

SCA 3 would require unified court judges to have 10 years of experience. This requirement is appropriate, and would conform to existing circumstances in the trial courts. A savings clause should be added to the constitutional amendment to cover the possibility that a judge having less than 10 years experience may be elected between now and the operative date of SCA 3.[19] Any shortcomings of such a judge can be addressed by appropriate assignment to causes within the judge's competence.

A major concern regarding trial court unification is whether the quality of justice will decline due to elevation of municipal and justice court judges (whose jurisdiction and experience is limited) to become unified court judges with general jurisdiction. The 10-years experience requirement works a rough measure of quality, but experience alone does not guarantee it.

There is also concern about loss of the lower courts as training grounds for future superior court judges. However, approximately half of California's current superior court judges have never seen experience in municipal or justice court, being appointed or elected directly to the superior court bench.

It is likely that municipal court judges are generally more qualified than justice court judges to handle cases now within the jurisdiction of the superior

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[17]The transitional provision provided in SCA 3 by its terms it is repealed five years after it becomes operative. This could cause a problem for a judge in the sixth and final year of a holdover term. This could be corrected by extending the repealer an additional year.

[18]Cal. Const. Art. VI, § 15.

[19]No action is necessary with respect to California Constitution Article VI, Section 15.5. That provision grandparents former non-attorney justice court judges and expires by its own terms on January 1, 1995, before the operative date of SCA 3.

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.

However, experience in the municipal or justice court does not differ dramatically from that in the superior court. Many superior court cases result in verdicts within the jurisdictional limits of the lower courts. The work of the municipal and justice courts is in many respects as important as, or more important than, that of the superior courts, because more people come into contact with the municipal and justice courts. Trial court unification would eliminate the perception that because municipal and justice courts are "inferior" trial courts, they render a lower level of justice than the superior courts.

Just as municipal and justice court judges are of variable quality, so too are superior court judges. 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. Peremptory challenges are available in an appropriate case to diminish the impact of a less qualified judge.[20]

A further means of safeguarding quality decisionmaking is greater emphasis on educating judges to perform their tasks. The constitutional amendment should make clear the authority of the Judicial Council to mandate appropriate judicial education for judges in the unified court.

With these means of control available, the Commission believes that elevating municipal and justice court judges to the unified court bench, as contemplated in SCA 3, would not pose a serious threat to the quality of judicial decisionmaking in California.

Assignment of Judges

Trial court unification assumes a flexible system under which the presiding judge may assign judges according to workload and available resources. A practical concern is that some incumbent superior court judges may resist handling smaller cases such as traffic or small claims, and this could also make it harder to recruit new judges.

It is likely in the unified court that more experienced and competent judges will be assigned to handle more complex cases, and that outstanding judicial

[20]Code Civ. Proc. § 170.6.

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 Commission does not recommend any temporary or permanent constitutional or statutory immunization for incumbent superior court judges from hearing cases currently within the municipal and justice court jurisdiction. Any such restriction would prevent the unified trial courts from realizing the full benefit of unification. The question of assignments is a matter that should be determined within the judicial branch, based on experience, qualifications, temperament, and other appropriate factors in the interest of sound and efficient administration of justice.

It should be noted that 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." This provision should not provide a basis for an incumbent superior court judge to resist assignment by the presiding judge to a cause in the unified court that was formerly within the municipal and justice court jurisdiction.[21]

Residency Requirements

Existing law purports to require each superior court judge to reside "within the county of the court for which he is elected or appointed."[22] This requirement is arguably improper since the California Constitution sets the exclusive qualifications for superior court judges[23] and does not include a residency requirement.[24]

The Constitution does allow the Legislature to prescribe qualifications for municipal and justice court judges.[25] Most municipal court judges must "be residents eligible to vote in the judicial district or city and county in which they

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[21]Arguments might be based on the state or federal prohibitions of bills of attainder, ex post facto laws, or laws impairing the obligation of contracts. Such arguments have not been successful. Cf. McComb v. Commission on Judicial Performance, 19 Cal. 3d Spec. Trib. Supp. 1 (1977); Crawford v. Payne, 12 Cal. App. 2d 485, 55 P.2d 1240 (1936); Commonwealth v. Gamble, 62 Pa. 343 (1869); Booth v. United States, 291 U.S. 339, 351 (1933) ; 46 Am. Jur. 2d *Judges* § 22 (1969). 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).

[22]Gov't Code § 69502.

[23]Cal. Const. Art. VI, § 15.

[24]*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).

[25]Cal. Const. Art. VI, § 5.

are elected or appointed."[26] 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.[27]

SCA 3, consistent with the existing constitutional treatment of superior court judges, does not include authority for the Legislature to impose additional qualifications such as residency requirements for judges in the unified trial court. This is also consistent with the constitutional treatment of appellate judges, and with separation of powers concepts.[28] The Commission recommends no departure from SCA 3 on this point.

Compensation of Judges

The Legislature has authority to set compensation for judges,[29] subject to limitation on salary reductions during a judge's term of office.[30] Currently the compensation of a superior court judge is $99,297 per year and the compensation of a municipal or justice court judge is $90,680 per year.[31]

Unification of trial courts implies equalization of trial judge salaries. However, this is a statutory, not a constitutional matter, and the Commission therefore proposes no specific language at this time. This should be part of the statutory implementation of trial court unification.

Retirement allowances of judges are also subject to legislative control[32] and are linked to judicial salaries.[33] Changes in judicial salaries as a result of unification may require adjustment in retirement allowances.[34] Retirement

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[26]Gov't Code § 71140; 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).

[27]Gov't Code § 71701; Osborne v. LaFont, 60 Cal. App. 3d 875 (1976); B. Witkin, Cal. Proc., *Courts* § 9, p.20 (3d ed. 1985).

[28]Imposition of 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.

[29]Cal. Const. Art. VI, §§ 5, 19.

[30]Cal. Const. Art. III, § 4(b); Olson v. Cory, 27 Cal. 3d 532, 537-38, 609 P. 2d 991, 164 Cal. Rptr. 217 (1980).

[31]Gov't Code §§ 68202-68203.

[32]Cal. Const. Art. VI, § 20.

[33]Gov't Code § 75076.

[34]The 1993 Judicial Council Report, for example, recommends that a municipal court judge who has retired prior to unification should receive retirement benefits based on 91% of the salary of a sitting superior court judge (which represents the present salary differential between superior court judges and municipal and justice court judges).

allowances under unification should be addressed as part of the statutory revision and not as part of the constitutional amendment.

SELECTION OF JUDGES

Term of Office

SCA 3 would provide a 6-year term of office for unified court judges. This is consistent with the 6-year term applicable to superior court judges under the Constitution[35] and to municipal and justice court judges by statute.[36] It would make the term of office a constitutional matter for all judges. The Commission believes this treatment is appropriate.

Election Following Appointment

When a judge is appointed to fill a vacant superior court office, the judge must stand for election to a full term at the next general election after January 1 following the vacancy.[37] The situation with municipal and justice court judges is governed by statute and is more complex. As a general rule those judges must stand for election at the general election next preceding expiration of the term to which they are appointed to fill a vacancy.[38]

With trial court unification a single procedure must be adopted. It has been suggested that a middle ground would be appropriate, requiring election three years after appointment to fill a vacancy. This would represent a compromise between the immediate election of superior court judges and delayed election of municipal and justice court judges. In addition, it would not thrust a person who accepts a unified court judicial appointment into an immediate countywide election campaign. An election only a few months after appointment "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."[39]

The Commission does not believe that it is necessary to defer judicial elections. Good candidates are found now for the superior court under the existing scheme. It is difficult for a candidate for judicial office to challenge an

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[35]Cal. Const. Art. VI, § 16(c).
[36]Gov't Code Section 71145.
[37]Cal. Const. Art. VI, § 16(c).
[38]Gov't Code §§ 71141, 71180, 71183.
[39]1993 Judicial Council Report.

incumbent as it is, and a deferred election would accentuate this situation. The Commission recommends that the judicial election scheme applicable to superior court judges should apply in the unified court.

Electoral Districts

Under SCA 3 the unified court is a countywide court, with the possibility of branches. A countywide court implies a countywide election for each judge. Superior court judges are elected countywide, but municipal and justice court judges are elected by district.[40] The Commission understands that in 20 counties the municipal court has been consolidated into one district, where countywide elections occur. But in counties currently divided into separate municipal districts, the control of local voters over the judges would be diminished.

Countywide election not only raises the cost of financing and conducting a campaign for some judges, it also suggests challenges based on the Voting Rights Act.[41] Countywide elections raise concern that heavily populated areas of a county may control judicial elections at the expense of more rural areas, and that remote voters may control selection of judges. The campaign financing required for countywide races could lessen judicial independence and make the offices more highly politicized than they are now. Local judicial elections are problematic for most voters who know little about the candidates; to make the unified court elections countywide could worsen the problem.

But the option of smaller electoral districts within the county has serious drawbacks of its own. Superior court judges who currently serve and run countywide would need to be assigned a district. The jurisdiction of the trial court judges will be countywide; it makes little sense to elect a judge in an electoral district if the judge may never see a case arising in that district. To require assignment of a unified court judge to the electoral district from which the judge is elected would destroy a key element of a unified trial court system.

Since 1879 judges elected to California's trial court of general jurisdiction have run in countywide elections. Electoral districting within the county may encourage an inappropriate public expectation that judges "represent" the district and that the judges would be expected to side with district interests in litigation, compromising judicial independence and impartiality.

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[40]Cal. Const. Art. VI, § 16(b).
[41]See discussion below.

The Commission agrees with the conclusion of the 1993 Judicial Council Report that 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 the unified trial courts—based on history and the public's common understanding—are the existing boundaries between counties.

Voting Rights Act

The ability to adopt the most workable election scheme for a unified trial is impacted by the Voting Rights Act of 1965.[42] The Act contains two major provisions regarding discrimination in voting practices. Section 2 of the Act prohibits election procedures that "resul[t] in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color...".[43] Section 5 of the Act requires covered jurisdictions to submit any changes in voting procedures to preclearance (either judicial or administrative).[44] Both of these sections apply to judicial elections.[45]

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, unified court jurisdictional and electoral lines will follow county lines. Judicial independence and integrity are best served by a districtwide 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, countywide elections may present issues under the Voting Rights Act in some communities. For example, if a municipal court judge who presently sits in a predominantly minority district is required to run in a countywide election after unification, a claim of vote dilution may be presented.[46] Moreover, four counties in California—Monterey, King, Merced and Yuba—are subject to Section 5's pre-

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[42] 42 U.S.C. § 1973, *et seq.*.
[43] 42 U.S.C. § 1973(a).
[44] 42 U.S.C. § 1973c.
[45] *Houston Lawyer's Association v. Attorney General*, 111 S. Ct. 2376 (1991); *Chisom v. Roemer* (1991) 111 S. Ct. 2354 (Section 2 case); *Clark v. Roemer* (1991) 111 S. Ct. 2096 (Section 5 case).
[46] *See, e.g., Rogers v. Lodge* (1982) 458 U.S. 613 (at-large system).

clearance requirements. A race-conscious effort to draw electoral lines may itself run afoul of the Equal Protection Clause of the Fourteenth Amendment.[47]

The Commission notes that the Voting Rights Act problem is not merely academic. Monterey County in 1993 had its proposal to consolidate municipal court elections countywide challenged by minority voters and held invalid for failure to comply with the Voting Rights Act preclearance requirements. Most informed observers have concluded that challenges to electoral changes under a unified court are certain.

Whether challenges against a reasonable judicial election system would be successful is unclear. There are federal appellate cases going opposite directions on the issue of a change of electoral districts from municipal to countywide.[48] Experts believe the matter ultimately will be settled by the United States Supreme Court, but it is not certain how soon that will occur. The Commission has reviewed a number of possible approaches to judicial elections in a unified court in light of the uncertainty caused by the Voting Rights Act.

Countywide Electoral Districts. The Judicial Council makes a strong case that countywide elections are essential to a unified court, and any Voting Rights Act violations found in a particular county should be dealt with individually in a way unique to that county. They note the arguments favoring countywide election under the Act and that its application in each case will be highly factual and intensely local.

Retention Elections. It has been argued that retention elections would not be subject to challenge under the Voting Rights Act. This assertion is based on the fact that the existing cases applying the Act to judicial elections involve contested elections. However, the Commission's research gives it little confidence in this conclusion. Gubernatorial appointment processes, and even merit selection systems, are currently under challenge.[49] Moreover, the Commission does not believe that trial court unification should serve as the occasion for a fundamental change of this sort in the nature of judicial elections. The existing constitutional provision allows the electors of a county, by majority of those voting and in a manner the Legislature provides, to adopt retention elections.[50] The Legislature

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[47] See *Shaw v. Reno* (1993) 113 S. Ct. 2816.

[48] *Lulac v. Clements*, 1993 WL 319087 (5th Cir., en banc, August 23, 1993); *Nipper v. Childs*, 1993 WL 326663 (11th Cir., Sept. 15, 1993).

[49] See Smith & Gamel, Judicial Election and Selection Procedures Challenged Under Voting Rights Act, 76 Judicature 154 (1992).

[50] Cal. Const. Art. VI, § 16 (last ¶).

has not provided procedures, nor has any county has adopted retention elections.

Cumulative Voting. One way to preserve the advantages of countywide elections and the protection of minority voting rights would be by a semi-proportional vote system, such as cumulative voting. All candidates would run at large, but each voter would be able to cumulate votes for a single candidate or a few candidates. This system is familiar in corporate director elections. It has also been used in political elections in some jurisdictions including Illinois, and has been employed in some elections in Southern counties as a remedy under the Voting Rights Act. Drawbacks include: (1) Semi-proportional voting allows any small but organized block, not necessarily a protected racial minority but more likely a splinter faction with a political agenda, to win a seat. (2) It tends to favor elite and organized groups over the general voting public, and intensifies political activity. (3) It is most useful in a context of electing one member to a deliberative board where the elected official can influence the collective decision, not for trial judgeships where the elected official generally acts alone. (4) It is likely there would be practical problems—mechanized ballot tallying problems, disqualification of ballots casting more than the allotted number of votes, etc.

Preclearance of Unification Plan. Any changes in voting rights must be precleared in the four counties where preclearance is required, or be subject to challenge. However, preclearance does not settle any issues in a subsequent Voting Rights Act challenge. In order to minimize problems, the unification plan should be submitted for preclearance in the four required counties.

Keep Existing Electoral Districts. Another alternative would be to make absolutely no change in judicial election voting rights. Thus, elections for the seats of current superior court judges would continue to be countywide after unification, and elections for the seats of current municipal and justice court judges would continue to be by existing electoral district after unification. In any given election, then, a person wishing to run for a unified court judgeship would choose to run either for a countywide seat or for a district seat, either of which would have countywide jurisdiction. Any changes in numbers of judgeships—either increases or decreases—would be at the countywide level rather than the district level. This would not cure the problems of statewide authority but only local accountability, semblance of bias and favoritism, and politicization of trial bench.

Electoral Districts Within County. Three possible configurations of smaller than countywide electoral districts that could satisfy the Voting Rights Act have been suggested.

(1) Multiple unified courts within counties. Instead of having one unified court serving the entire county, a large county such as Los Angeles could be divided into several independent judicial districts, each having its own court system. Judicial elections within each unified court district would be district-wide. The district lines would be drawn in such a way as to avoid dilution of minority voter influence. Dividing a county into more than one unified judicial district creates other concerns such as funding, facilities, etc., in addition to the difficulties of drawing boundaries based on minority voting patterns.

(2) Election by branch. It is contemplated that there will be branch courts established where the circumstances of the particular county warrants it. Judicial elections could be by branch rather than countywide. Branch boundaries could be established with voting rights considerations in mind, rather than convenience, venue, and judicial business considerations, but this would tend to defeat the purpose of establishing branches.

(3) Election by electoral district for countywide service. The court could be a countywide court, with each judge standing for election in a specified voting district in the county before a limited constituency. This, and similar options, raise the practical question of how the boundaries will be drawn and who will draw them. It is clear that drawing appropriate electoral boundaries would be a very difficult and painstaking task, and would be the subject of a Voting Rights Act challenge in any case, just as surely as a countywide election system would be. Additionally, these options create the serious problems noted by the Judicial Council where a judge is elected locally to serve on a countywide court:

> Electoral sub-districting would result in some district judges being exclusively accountable to certain residents of the district and other judges of the same court being exclusively accountable to an entirely different constituency. Electoral sub-districting thus creates the semblance of bias and favoritism towards the interest of a narrow constituency rather than the fact and appearance of judicial fairness based upon electoral accountability to the broadest range of people within the court's jurisdiction. Electoral sub-districting threatens to politicize the trial bench and undermine judicial impartiality. Judges should be accountable to all those within the court's jurisdiction, not just some.

> Electoral sub-districts would likely result in a public expectation not only that the trial judge would primarily serve the interests of those within the sub-district but also that the judge would be assigned to any court facility located within the sub-district and to cases arising within the sub-district. Tying judicial assignment to electoral sub-district would impair the very flexibility in judicial assignment which is a primary benefit of trial court unification.[51]

The Commission believes that judges who serve countywide ought to be subject to a countywide constituency. Ideally, we would wait until the Supreme Court gives definitive direction as to whether countywide judicial elections that correspond with countywide jurisdiction of the court are permissible, but the timing of this is uncertain.

The objective of the Voting Rights Act—to ensure full participation in the political life of the community by historically precluded minorities—is one we should strive to implement. But the Act itself is of little value in this respect for judicial elections, since the vast majority of judgeships are filled initially by appointment rather than election. Once appointed, it is extraordinarily rare for the incumbent to be unseated in a judicial election.

The Commission concludes that court unification should provide for countywide elections generally, subject to individual county challenges and federal court solutions on a county by county basis. This plan makes the most logical sense for a unified court, and a good argument can be made that it eventually will be upheld under the Voting Rights Act. The plan should be submitted for preclearance in those counties subject to preclearance, but any preclearance failures should be worked out with the federal authorities on a county by county basis, as should any ultimate Voting Rights Act failure in individual counties.

PRACTICE AND PROCEDURE

Court Rules

The Judicial Council has authority to "adopt rules for court administration, practice and procedure, not inconsistent with statute."[52] By statute, every court has 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

[51]Warren, Electoral Districting Under the Judicial Council's SCA 3 Proposals (1993).
[52]Cal. Const. Art. VI, § 6.

Judicial Council."[53] Thus court rules are subordinate to Judicial Council rules, and Judicial Council rules are subordinate to statutes.[54]

The Judicial Council has adopted comprehensive rules for trial courts, found in the California Rules of Court. The Rules of Court contain 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 the Constitution 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.[55]

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.[56] 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.

Nonetheless, transitional provisions will be helpful to clarify how the Judicial Council and local courts adopt transitional rules before the operative date of the unification measure, while superior, municipal, and justice courts are still separate.

Economic Litigation

The expedited process followed in municipal and justice courts under the Economic Litigation Act[57] will need to be preserved in the unified court or the caseload will become unmanageable. This is a matter for statutory implementation, rather than constitutional structure. A transitional provision should be in place when court unification becomes operative.

Criminal Procedure

The dual system of municipal or justice court preliminary decision and superior court review for some criminal procedures should be preserved in the

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[53]Gov't Code § 68070. See also Prob. Code § 1001 (local probate rules).
[54]2 B. Witkin, California Procedure *Courts* § 142, at 166 (3d ed. 1985).
[55]Cal. Const. Art. VI, § 6.
[56]2 B. Witkin, *supra*.
[57]Code Civ. Proc. §§ 90-100.

unification of the courts. This can be done by having the appellate division of the trial court assume the review function.

Judicial Arbitration

Existing statutes governing judicial arbitration vary with the size and jurisdiction of the court.[58] These statutes should be reviewed with the general statutory revision necessitated by unification.

Filing Fees

The elaborate statutory filing fee scheme must be revised before unification becomes operative. This is a matter for the general statutory revision.

Venue

Venue provisions for municipal and justice courts distinguish among districts within the county. The venue distinctions should be reviewed in the statutory revision implementing trial court unification. To the extent venue provisions are retained, it may help maintain the "local justice" character currently associated with the municipal and justice courts. It may be useful to provide that venue within the unified court district is determined by local court rule.

Sessions

The days and hours of business are statutory and differ for the different courts and for different types of jurisdiction, particularly criminal jurisdiction. These provisions must be reviewed and revised before unification becomes operative.

Forms

Forms will require unification in the unified court. The Judicial Council has adequate authority in this regard, and no transitional provisions appear necessary in order to enable promulgation of new forms for publication in advance of unification.

Records

Record storage and retention in the unified court is a logistical problem. Statutes need to be conformed. SCA 3 provides appropriately that "the records of the preexisting court[s] shall become records of the district court".

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[58]Code Civ. Proc. §§ 1141.10-1141.32.

TRIAL BY JURY

Jury Size

The California Constitution permits the Legislature to provide for an eight-person jury in civil cases in "municipal or justice court".[59] The Legislature has been cautious in exercising this authority. In 1981, the Legislature authorized an experimental project using eight-person civil juries in municipal and justice courts in Los Angeles County, but that project has expired.[60] There are no other statutes authorizing eight-person juries, except by agreement of the parties.[61]

The legislative authority to provide an eight-person jury in municipal and justice court civil causes should be preserved in the unified court. The Legislature under the existing constitutional scheme has complete authority to provide for an eight-person jury trial in any civil cause, since it has complete authority to prescribe the jurisdiction of the municipal and justice courts.[62] The existing constitutional scheme would be preserved by giving the Legislature authority to provide for an eight-person jury in any civil cause in the unified court.

Vicinage

Trial court unification under SCA 3 would merge the municipal and justice courts in a superior court of countywide jurisdiction. Would this impair the federal constitutional right of a criminal defendant to be tried by jurors selected from the district where the offense occurred—the "vicinage" right?[63] If the selection area is not larger than countywide, there appears to be no violation of federal vicinage rights.[64]

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[59]Cal. Const. Art. I, § 16. There is no federal constitutional right to jury trial in civil cases in state courts. County of El Dorado v. Schneider, 191 Cal. App. 3d 1263, 1271, 237 Cal. Rptr. 51 (1987); California Civil Procedure During Trial § 7.2, at 134 (Cal. Cont. Ed. Bar Supp., June, 1993).

[60] Code Civ. Proc. § 221.

[61] Code Civ. Proc. § 220.

[62]Cal. Const. Art. I, § 5.

[63]See, e.g., 5 B. Witkin, California Criminal Law *Trial* § 2643, at 3171 (2d ed. 1989). See also Code Civ. Proc. §§ 191-192, 197; Pen. Code § 1046 (jurors in civil and criminal cases must be selected from the "population of the area served by the court").

[64] In the controlling case, the California Supreme Court held that under the U. S. Constitution "vicinage is defined as the *county* in which the crime was committed." Hernandez v. Municipal Court, 49 Cal. 3d 713, 717, 781 P.2d 547, 263 Cal. Rptr. 513 (1989). The court rejected defendant's contention that vicinage should be construed narrowly to require jurors to be selected from the judicial district where the crime occurred. Thus the federal vicinage right will not prevent selecting jurors on a county-wide basis.

In *Hernandez*, the offense occurred in Watts, eight miles south of the downtown courthouse of the Municipal Court for the Los Angeles Judicial District. The case was sent for trial to the San Fernando branch court in the same municipal court district. The jury was selected from within 20

It has been said that the vicinage right belongs to the community as well as to the accused. Trial of local criminal matters in the community, particularly shocking crimes, provides a substitute for natural human reactions of outrage, protest, and vengeful self-help.[65] This policy is not undermined by a countywide jury selection area, particularly given the wide area now served by newspaper, radio, and television.[66]

Some statutes localize jury selection to avoid having jurors travel long distances.[67] If branch courts are established, jurors should be drawn from the area served by the branch court, rather than from the whole county. If rural courts are organized in multi-county circuits, jurors in criminal cases should be drawn from the county in which the offense was committed to avoid federal vicinage issues.[68] These are matters for statutory, rather than constitutional revision, which the Commission will propose in follow-up recommendations.[69]

Jury Commissioners

There is one jury commissioner in each county, appointed by a majority of the superior court judges in that county, and if the county has a superior court administrator or executive officer, that person serves as ex officio jury commissioner.[70] The jury commissioner serves for all superior, municipal, and justice courts in the county.[71]

A majority of the judges of the municipal and justice courts in the county may appoint the clerk or administrator of those courts to select their jurors.[72] The

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miles of the San Fernando courthouse, effectively excluding jurors from the area of the crime. The court said "there is no violation of the vicinage requirement when a criminal defendant is tried in Los Angeles County by a jury drawn from Los Angeles County." The court concluded that "in California the boundaries of the vicinage are coterminous with the boundaries of the county."

[65]People v. Guzman, 45 Cal. 3d 915, 936-37, 755 P.2d 917, 248 Cal. Rptr. 467 (1988).

[66]Moreover, local outrage may compel a change of venue to assure a fair trial. The community right to have criminal cases tried locally is outweighed by the right of the accused to a fair trial.

[67]See, e.g., Code Civ. Proc. § 199.2. See also *id.* §§ 198.5, 199, 199.3, 199.5.

[68] If multi-county circuits are created, Sections 191 and 197 of the Code of Civil Procedure should be revised to require selection of jurors from an area not larger than the county where the offense occurred, and to permit smaller areas to be provided by court rule. A court might uphold a selection area larger than the county, but limiting the selection area to the county would avoid the constitutional issue.

[69]Statutes now authorize local court rules for selecting jurors. See, e.g., Code Civ. Proc. §§ 198, 199, 199.2, 199.3, 199.5, 200. There is no compelling reason to divest local courts of authority to make rules for jury selection not inconsistent with statute or Judicial Council rules.

[70]Code Civ. Proc. § 195(a).

[71]Code Civ. Proc. §§ 194(b), 195 (a).

[72]Code Civ. Proc. § 195(a).

statewide trend is to have one jury commissioner for all courts in the county, and the provision for municipal and justice court judges to appoint their own jury commissioner is falling into disuse.

Trial court unification will not require significant revision of this scheme. The trend toward consolidating the jury commissioner function should be codified as part of trial court unification statutory revision.

COURT OFFICERS

Presiding Judge

The presiding judge plays a critical rule in the unified trial court since the presiding judge is expected to cure the most serious problems of unification—dealing with the varied levels of competence of judicial personnel from three different trial court levels and assigning them to cases appropriate to their abilities.

The presiding judge is chosen by the other judges of the court. At unification, the various judges may not be sufficiently familiar with each other's qualifications to have a sufficient basis for selection. The Commission recommends as a transitional matter that the presiding judge of the superior court should continue as presiding judge of the unified court until the judges of the unified court determine otherwise.

Subordinate Judicial Officers

Combining existing trial court operations will necessitate combining functions of superior court and municipal court subordinate judicial officers such as commissioners and referees.[73] This involves primarily statutory changes to create one set of qualifications, one manner of selection, one set of responsibilities, and one salary schedule in each unified court. This will be the subject of a follow-up Commission recommendation if trial court unification is adopted by the voters. As an interim matter, subordinate judicial officers of the existing trial courts should become subordinate judicial officers of the unified court.

[73]See Cal. Const. Art. VI, § 22 (Legislature may provide for appointment by trial courts of officers such as commissioners to perform subordinate judicial duties).

Court Administrator

Most trial court unification proposals require that the unified court appoint a court administrator to help manage operations. Judges are not ordinarily trained administrators, and the presiding judge should have this type of assistance in a larger unified court with more extensive operations, more employees, and greater problems.

This is not part of SCA 3. Existing statutes require appointment of a court administrator in Los Angles County, and there is adequate authority for a court to employ a court administrator in other counties. Since the need for a court administrator will vary with the size of the court, the Commission recommends against mandating this.

Where there are existing court administrators in the superior court and municipal courts within the county, the unified court will need to select among them. The transitional provisions should make clear the authority to make this decision in advance of the operative date of SCA 3, so that the unified court administrator will be in a position to coordinate necessary transitional activities.

Court Clerk

The California Constitution provides that "The county clerk is ex officio clerk of the superior court in the county."[74] But the municipal and justice courts by statute may appoint their own clerks.[75] These provisions must be reconciled in the unified court.

Despite the constitutional provision that the county clerk is the clerk of the superior court, legislation provides that where a superior court has an executive or administrative officer, the officer has the authority of a clerk of the superior court.[76] The superior court also may delegate powers and duties of the county clerk to an executive or administrative officer under this provision. A number of courts have done this, and legal challenges by county clerks have been unsuccessful.[77]

The constitutional provision that the county clerk is clerk of the superior court is an anachronism and should be deleted. This matter should be handled by statute as are the other nonjudicial positions in the court system. In some counties, particularly the smaller ones, it may be desirable or necessary to

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[74]Cal. Const. Art. VI, § 4.
[75]Gov't Code § 71181 (municipal and justice court appointment of clerk).
[76]Gov't Code § 69898.
[77]See, e.g., Zumwalt v. Superior Court, 49 Cal. 3d 167 (1989)

authorize the county clerk to act as superior court clerk or to combine the positions, but the situation varies from county to county.

Government Code Section 69898 authorizes the superior court to appoint an administrative officer to act as court clerk, and also authorizes the court to appoint the county clerk to this position. This provision should be made applicable to the unified court. A conforming change should make clear that, absent appointment of another person by the court, the county clerk is the clerk of the unified court.

In transition the Commission would arbitrarily make the superior court clerk the unified court clerk absent other action by the unified court.

Sheriff, Marshal, or Constable

The sheriff is a county officer who has nonjudicial as well as judicial functions. The sheriff provides superior court services such as service of process and notices, execution and return of enforcement writs, acting as crier and calling witnesses, and attending court and obeying lawful court orders and directions.

With respect to proceedings in the municipal or justice court, the marshal or constable of the court has all the powers and duties imposed by law upon the sheriff with respect to proceedings in the superior court.

Bailiffing functions need to be unified in the unified court. Existing court unification studies diverge, some assigning the job to the sheriff and merging the other two officers, others assigning it to the marshal exclusively, and others doing a combination. There is some sense that the court should be served by a court officer rather than a county officer, and many proposals would convert the marshal to a court rather than a county officer to serve the bailiffing functions. Subject to budget constraints and legislative oversight, separation of powers doctrine suggests that courts should have the power to select their own officers.

The sheriffs, marshals, and constables are peace officers, with concomitant rights and responsibilities, including arrest and deadly weapon authority, as well as writ enforcement power. Those officers serve both court and noncourt functions.

It is proper to consolidate the bailiffing functions in one office (e.g. marshal), but it may be more appropriate that the officer be a county officer than a court officer. Personnel consolidation issues in the offices should be dealt with by means of the process proposed below for resolving general court employee issues.

Court Reporter

All trial courts are currently courts of record,[78] so unification should not result in any increased costs for official court reports. As a transitional matter, the existing trial court reporters should be made court reporters in the unified court.

Interpreters and Translators

Interpreters and translators are court officers that appear to present no particular issues relating to trial court unification. The existing trial court interpreters and translators should be assigned to the unified court.

COURT EMPLOYEES

In addition to the judges, subordinate judicial officers, and nonjudicial officers of the courts, there are numerous court employees of each existing trial court that will be affected by unification. One of the major benefits of unification is thought to be a reduction in the need for court personnel as a result of consolidation of functions. It is likely that the appropriate reductions may be achieved through attrition rather than layoffs. The decision-making structure for court personnel management issues, including job assignments, compensation, and benefits must be addressed at an appropriate stage and in an appropriate forum in the court unification process.

Control of Court Personnel

The Legislature is required to *provide for* the officers and employees of each superior court.[79] The Legislature also must *prescribe* for each municipal court and *provide for* each justice court the number, qualifications, and compensation of judges, officers, and employees.[80]

These provisions have been construed to require the Legislature to prescribe for the municipal courts by statute, and to provide for the superior and justice courts either directly by statute or indirectly by delegation. Pursuant to this authority, existing statutes, at great length and in excruciating detail, prescribe the number of positions, classification, salary ranges, and benefits of court personnel of all kinds in some courts, and delegate authority to the county board of supervisors or the court in others.

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[78]Cal. Const. Art. VI, § 1.
[79]Cal. Const. Art. VI, § 4.
[80]Cal. Const. Art. VI, § 5.

The employees appointed pursuant to this personnel system are in the peculiar position of being considered court employees for some purposes and county employees for other purposes, while half the funding for their positions is provided by the state and half by the counties (in part out of revenues generated by the courts).

Unification proposals in the past have differed on the proper personnel system for the unified court. Many would make trial court employees state employees on the state pay scale. This would have the benefit of achieving uniformity in pay, benefits, and other terms of employment. It also would recognize the movement toward state funding of trial court operations.

Other proposals would keep the court employees part of the county personnel system. This would preserve the existing awkward arrangement where the employee serves the court employer but is ultimately answerable to the county.

It is proper that funding entities determine appropriations for the support of the courts, but separation of powers considerations demand that the judicial branch of government make its own staffing decisions within the confines of budget appropriations. The Legislature does not determine the Governor's staff, and the Governor does not dictate the number of employees the Legislature may hire. The same policy considerations apply equally to the courts.

Many unification proposals conclude that the judicial branch should provide for nonjudicial employee classifications, qualifications, selection, compensation, pay rate schedules, promotion, discipline, dismissal, and retirement. This system would be administered by the individual courts, with the Administrative Office of the Courts setting standards.

The Commission is convinced that nonjudicial personnel matters are properly within the control of the judicial branch, and the Legislature should not be required to micro-manage at this level. The California Constitution gives administrative authority to the Judicial Council "not inconsistent with statute".[81] This is sufficient to allow judicial control of personnel matters, while reserving to the Legislature ultimate authority to prescribe personnel details by statute if necessary.

Unification of the courts requires unification of personnel, which in turn demands unification of the various personnel approaches that now exist. The

[81]Cal. Const., Art. VI, § 6.

Commission recommends that this matter be left to the judicial branch, subject to ultimate legislative authority to act if necessary.

Transitional Process

The transitional issues concerning personnel will be the most time consuming and difficult in the whole unification process. There are innumerable practical problems.

Should existing county employees give up seniority rights, retirement plans, accrued benefits, etc. in order to become judicial branch employees? How will layoff decisions be made if the unified court system requires fewer combined employees than the individual trial courts? Note that civil service seniority provisions may be difficult to apply from one court to the next. The best solution may be a phased-in reduction, with attrition resolving the problem.

Will unification require relocation of some employees to other courts within the unified court district? How will it be determined who gets relocated? What about relocation expense reimbursement?

How are differences in pay, benefits, retirement plans, etc. to be resolved? The ultimate goal should be to get all persons who are in the same class on the same pay scale and with the same benefits. Will this mean a pay cut for some employees? If so, can it be phased in? Will it mean a pay raise for other employees? Can that be phased in?

Are there any collective bargaining agreements or memoranda of understanding applicable in a particular court that limit the ability to resolve any of these problems logically?

Resolution of these issues will take intensive work by affected presiding judges, court administrators, and others who may be involved in personnel administration in the unified court.

A mechanism should be established for resolving the issues. SCA 3 provides that the previously selected employees in each former superior, municipal and justice court district become the employees of the unified court. This is appropriate as far as it goes.

The Commission recommends that a process be established to settle personnel questions in advance of the operative date of unification. The Commission tentatively suggests that a committee be established in each county consisting of presiding judges and other appropriate persons (e.g., court administrators, representatives of the Administrative Office of the Courts, county

representatives, and employee representatives). The committee would meet and confer concerning the personnel needs of the unified court, any necessary personnel reduction or relocation plans, proposed salary, benefits, and retirement plan arrangements, and other personnel matters. The committee would have authority to act for the unified court, pending the operative date of unification, in making assignments, giving notices, and the like that will be effective on the operative date of unification.

The Commission does not propose a specific structure or specific language at this time. The Commission understands that the Judicial Council has commissioned a study by the Judicial Management Institute on effective implementation of coordination activities, to be delivered about February 1, 1994, the date this recommendation is due. The study should provide useful ideas for development of a specific implementation process.

The Commission will make a supplementary proposal on this matter after receipt of the Judicial Council study. A spot bill should be available to receive the implementing legislation, for enactment as an urgency measure to take effect on passage of SCA 3. Meanwhile, the Commission solicits suggestions on the transition process from interested persons.

FACILITIES

The existing facilities of the superior, municipal, and justice courts should become the initial facilities of the unified court. SCA 3 provides for this in an appropriate transitional provision.

It is possible that in unified trial court operations the current courthouse locations will not yield the most efficient allocation of judicial resources. This should be a question of shared responsibility of the counties, the State, and the judiciary. However, the matter is currently subject to local control, and it appears appropriate at this point in the evolution of the trial courts to continue to leave the matter to local control. This also will help address the concern that trial court unification will destroy the local people's court aspect of the lower courts.

TRANSITIONAL MATTERS

Operative Date

SCA 3 contemplates that trial court unification will be on the June 1994 ballot and, if adopted, become operative July 1, 1995. The one-year deferral of the operative date is intended to allow proper preparation for unification.

There are two primary considerations in determining the adequacy of the operative date—(1) the time needed to take care of the practical details of forms, personnel, assignments, facilities, and the like, and (2) the time required for necessary statutory revisions, for example to address Economic Litigation issues, criminal review procedures, venue questions, etc. To some extent these considerations overlap, since under California's existing scheme of legislative control of details of judicial operations and personnel, many of the practical issues are controlled by statutes that may require amendment.

With respect to the practical details of implementation, the 1993 Judicial Council Report concludes that a one-year deferral is sufficient.

> A variety of effective date and transition periods were considered, ranging from a six-month transition period to a 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.[82]

The Commission believes the Judicial Council's conclusion on this matter may be relied upon. Its report was developed by a joint committee of presiding judges and court administrators, and the Council has recent experience with trial court coordination activities.

The necessary statutory revisions will be quite substantial. All the detail of court organization, procedures, operations, personnel, compensation, and the like, is in the statutes. In addition, essentially all of the fundamental unification issues—jurisdiction, venue, branches, sessions, fees, civil and criminal

[82] 1993 Judicial Council Report at 7.

procedures, appeals, etc.—require statutory resolution. Each of these issues is intensely political, and there is likely to be some difficulty achieving an acceptable resolution with all the competing interests.

There is also the matter of conforming revisions to change terminology of superior, municipal, and justice courts in several thousand statutes. This is a ministerial task, however, that can be done in later cleanup legislation. A general conversion provision can be enacted as a temporary fix.

While the task is large, the process will be helped by the fact that all the interest groups will be under time pressure to come to a reasonable accommodation on the issues. In addition, a substantial amount of background work on trial court unification has been done, and most of the major problem areas have been identified and drafts of various approaches prepared in prior studies.

The statutory review will need to begin immediately in anticipation of passage of SCA 3 at the June 1994 election in order to obtain enactment of implementing legislation by July 1, 1995. The Law Revision Commission has been directed to make a report to the Legislature pertaining to statutory changes that may be necessitated by court unification.[83] While Commission resources are limited, the Commission believes statutory implementation by SCA 3's July 1, 1995, operative date is feasible assuming allocation of the necessary resources.

Pending Proceedings

SCA 3 includes a clause that pending actions, trials, proceedings, and other business of the preexisting court shall become pending in the unified court. The Commission believes this deals with the issue satisfactorily.

Severability

It is possible that an amendment of the state Constitution to implement trial court unification could be held to violate the federal Constitution. Specific instances identified in this report include (1) violation of the Supremacy Clause via the Voting Rights Act;[84] (2) violation of the Contract Clause by assignment of sitting superior court judges to causes formerly within the municipal and justice

[83]1993 Cal. Stat. Res. ch. 96.
[84]See discussion of "Voting Rights Act", above.

court jurisdiction;[85] and (3) violation of the Contract Clause for changes in compensation or vested retirement benefits.[86]

Trial court unification should proceed even though, due to constitutional limitations, it may not be possible to achieve countywide election of all unified court judges, immediate unlimited assignability of unified court judges, or immediate uniformity of salary and retirement benefits. The Commission therefore recommends addition of a severability clause to the measure.

[85]See discussion of "Assignment of Judges", above.
[86]See discussion of "Compensation of Judges", above.

Appendix 1.

SENATE CONSTITUTIONAL AMENDMENT NO. 3 (LOCKYER)

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 1993-94 Regular Session commencing on the seventh day of December 1992, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First—That Section 1 of Article VI is amended to read:

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

Second—That Section 4 of Article VI is amended to read:

SEC. 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~~ district court. ~~If the governing body of each affected county concurs, the~~ The Legislature may provide that one or more judges serve more than one ~~superior court.~~ district court, or that two or more district courts may be organized into one or more circuits for regional resource sharing or administrative purposes.

The Legislature may divide the district court into one or more branches.

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

Third—That Section 5 of Article VI is repealed.

Fourth—That Section 6 of Article VI is amended 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~~ 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.

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.

Fifth—That Section 8 of Article VI is amended to read:

SEC. 8. (a) The Commission on Judicial Performance consists of 2 judges of courts of appeal, ~~2 judges of superior courts, and one judge of a municipal court~~ and 3 judges of 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.

Sixth—That Section 10 of Article VI is amended to read:

SEC. 10. The Supreme Court, courts of appeal, ~~superior~~ district courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition.

~~Superior~~ District courts have original jurisdiction in all causes ~~except those given by statute to other trial courts~~ .

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.

Seventh—That Section 11 of Article VI is amended to read:

SEC. 11. The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when ~~superior~~ district 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.~~

An appellate division shall be created within each district court. The appellate division has appellate jurisdiction in causes prescribed by statute that arise within that district court.

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.

Eighth—That Section 15 of Article VI is amended to read:

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.

Ninth—That Section 16 of Article VI is amended to read:

SEC. 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 courts shall be elected in their ~~counties or~~ districts or branches 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 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, 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.

Tenth—That Section 16.5 is added to Article VI to read:

SEC. 16.5. The purpose of the repeal of Section 5, and the amendments to Sections 1, 4, 6, 8, 10, 11, 15, and 16, of this article, adopted at the June 1994 primary election is to convert each superior, municipal, and justice court to a district court.

In each former superior, municipal, and justice court district, the previously selected judges, officers, and employees shall become the judges, officers, and employees of the district court; each preexisting superior, municipal, and justice court location shall be retained as a district court location; pending actions, trials, proceedings, and other business of the preexisting court shall become pending in the district court; and the records of the preexisting court shall become records of the district court.

The terms of office of the judges of the preexisting superior, municipal, and justice courts shall not be affected by their succession to office as district court judges.

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

Eleventh—That this measure shall become operative on July 1, 1995.

Appendix 2.

RECOMMENDED REVISIONS OF CALIFORNIA CONSTITUTION

Cal. Const. Art. I, § 16 (amended). Trial by jury

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~~ designated by 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. See Article VI, Section 4 (superior court) and former Section 5 (municipal court and justice court).

The Legislature may designate the civil causes in which an eight-person jury may be used. This preserves the effect of former Article VI, Section 10 under which the Legislature could define the jurisdiction of municipal and justice courts, thereby determining the civil causes in which an eight-person jury may be used.

Staff Note. *The Commission has made no initial decision on issues involved in this section. For discussion of the issues, see Memorandum 93-73.*

Cal. Const. Art. VI, §1 (amended). Judicial power

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

Comment. Section 1 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a single trial level system of superior courts. See Section 4 (superior court) and former Section 5 (municipal court and justice court).

Cal. Const. Art. VI, § 4 (amended). Superior court

SEC. 4. In each county there is a superior 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. ~~If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court.~~ Each superior court may divide itself into one or more branches, and two or more superior courts may organize themselves into one or more circuits

for regional resource sharing or administrative purposes, subject to concurrence of the Legislature, governing board of the affected county, or other funding authority. ~~The county clerk is ex officio clerk of the superior court in the county.~~

Comment. Section 4 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a single trial level system of superior courts. See former Section 5 (municipal court and justice court).

The first sentence preserves the county-based trial court structure for the unified superior court.

The second sentence is revised to delete the authority of the Legislature to provide for officers and employees of the trial courts. This leaves personnel matters to control by the judicial branch, subject to statutory and funding limitations. See Section 6 (Judicial Council may adopt rules for court administration not inconsistent with statute). Qualifications of judges in the unified court are governed by Section 15. Compare former Section 5 (Legislature prescribes qualifications of municipal court judges and provides for qualifications of justice court judges).

The third sentence is deleted because it is unused and unnecessary. See Art. VI, Section 6 ("The Chief Justice may provide for the assignment of any judge to another court.") It is replaced by a provision delegating to the individual courts the formation of branches and circuits, in consultation with the funding entity or entities, which maintain ultimate control of these matters through the funding authority.

The last sentence, relating to the county clerk as ex officio court clerk of the superior court is deleted. The court may appoint a clerk which may, but need not, be the county clerk. This continues existing statute and case law. See, e.g., Gov't Code §§ 69898 (superior court appointment of executive officer as clerk), 71181 (municipal and justice court appointment of clerk); Zumwalt v. Superior Court, 49 Cal. 3d 167 (1989).

Staff Note. *The Commission's initial decision on branches and circuits was that these matters should be within the control of the individual courts, which as a practical matter would be influenced by the funding authority. The staff believes it is necessary under this approach, to give the funding authorities express veto power. Otherwise, separation of powers doctrine would allow the court, as decision-making authority, to mandate the desired funding. For further discussion of branches and circuits, see Memorandum 93-70.*

Cal. Const. Art. VI, § 5 (repealed). Municipal and justice court

~~SEC. 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. Section 5 is deleted to reflect unification of the superior courts, municipal courts, and justice courts in a single trial level system of superior courts. See Section 4 (superior court).

Initially, the previously selected judges, officers, and employees of the municipal and justice courts become unified superior court personnel, and preexisting municipal and justice court locations are retained as unified superior court locations. Section 23.

The unified court may provide for branches with the concurrence of the funding entity. Section 4. The original jurisdiction of the unified court extends to all causes. Section 10. The Legislature prescribes the number of judges. Section 4. The qualifications of judges are governed by Section 15. The Legislature prescribes the compensation of judges. Section 19. The number, qualifications, and compensation of court officers and employees is left to control by the judicial branch, subject to statutory and funding limitations. See Section 6 (Judicial Council may adopt rules for court administration not inconsistent with statute).

Cal. Const. Art. VI, § 6 (amended). Judicial Council

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~~ and 10 judges of superior 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.

Comment. Section 6 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a single trial level system of superior courts. See Section 4 (superior court) and former Section 5 (municipal and justice court).

The authority of the Judicial Council to adopt rules under this section for court administration, practice, and procedure, not inconsistent with statute, is not limited to rules for existing courts but extends to adoption of rules for the unified trial courts in advance of the operative date of unification.

The authority of the Judicial Council to adopt rules of practice and procedure not inconsistent with statute includes authority to establish or provide for divisions or departments within the superior courts dealing with specific causes. The Legislature may also prescribe special

procedures or divisions for specific causes under this section, and may authorize adoption of local court rules,

Unification of the trial courts enables the presiding judge to assign a judge to hear any cause 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 superior court is a unified single trial level court with original jurisdiction of all causes. See Section 10 (original jurisdiction).

Cal. Const. Art. VI, § 8 (amended). Commission on Judicial Performance

SEC. 8. (a) The Commission on Judicial Performance consists of 2 judges of courts of appeal, ~~2~~ and 3 judges of superior courts, ~~and one judge of a municipal court,~~ 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~~ All terms are 4 years. No member shall serve more than 2 4-year terms.

(b) 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. Subdivision (a) of Section 8 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a single trial level system of superior courts. See Section 4 (superior court) and former Section 5 (municipal court and justice court).

Former subdivision (b) is deleted. It was a transitional provision added in 1988 by Proposition 92 to initiate staggered terms, and is no longer necessary.

Cal. Const. Art. VI, § 10 (amended). Original jurisdiction

SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings ~~. Those courts also have original jurisdiction~~ and in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition , except that original jurisdiction for review of proceedings in the superior courts is limited to the Supreme Court, courts of appeal, appellate divisions of the superior courts, and their judges .

Superior courts have original jurisdiction in all causes ~~except those given by statute to other trial courts~~ .

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.

Comment. Section 10 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a single trial level system of superior courts. See Section 4 (superior court) and former Section 5 (municipal court and justice court).

The first paragraph of Section 10 is amended to limit the former jurisdiction of superior courts to issue extraordinary writs to compel or prohibit action by the municipal and justice courts and their judges. Only the Supreme Court, courts of appeal, and appellate divisions of superior courts may issue extraordinary writs for review of court proceedings in the unified superior courts.

Although the unified superior court has original jurisdiction of all causes, nothing in this section limits the authority of the judicial branch by court rule to establish or provide for divisions or departments within the superior courts dealing with specific causes, or the authority of the Legislature to prescribe special procedures or divisions for specific causes. See Section 6 (Judicial Council).

Cal. Const. Art. VI, § 11 (amended). Appellate jurisdiction

SEC. 11. 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 , except in causes within the appellate jurisdiction of the superior courts 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.~~

An appellate division shall be created within each district court. The appellate division has appellate jurisdiction in criminal causes other than felonies, and in civil causes prescribed by statute or by rule adopted by the Judicial Council not inconsistent with statute, that arise within that district court. The Judicial Council shall adopt rules to ensure the independence of the appellate division.

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. Section 11 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a single trial level system of superior courts. See Section 4 (superior court) and former Section 5 (municipal court and justice court).

The first paragraph is amended to make clear that the appellate jurisdiction of the courts of appeal is limited by the appellate jurisdiction of the appellate divisions of the superior courts. The courts of appeal do not have appellate jurisdiction over causes assigned for appellate review by the appellate divisions. Likewise, the courts of appeal do not have appellate jurisdiction over matters made nonappealable by statute. This preserves the effect of existing law. See, e.g., 9 B. Witkin, California Procedure, Appeal § 2 (3d ed. 1985). Nothing in this section limits the original writ jurisdiction of the courts of appeal. Section 10 (original jurisdiction).

The second paragraph preserves in the unified superior court the appellate jurisdiction of the former superior courts and vests appellate jurisdiction in an appellate division. The provision requires adoption of court rules intended to guarantee independence of judges serving in the appellate division. Rules may set forth relevant factors to be used in making appointments to the appellate division, such as length of service as a judge, reputation within the unified court, and degree of separateness of the appellate division workload from the judge's regular assignments (e.g., a superior court judge who routinely handles large numbers of misdemeanors might ordinarily not serve in the appellate division). In addition, appointments to the appellate division

might be made by the Chief Justice for a minimum term of years, and review by a panel of judges might include judges assigned from another county in appropriate circumstances.

The reference to appellate courts in the third paragraph includes the appellate divisions of the superior courts.

Appellate jurisdiction under this section is defined by Section 23 (transitional provision) pending statutory revisions.

Cal. Const. Art. VI, § 15 (amended). Qualifications of judges

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.~~

Comment. The first sentence of Section 15 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a single level trial system of superior courts. See Section 4 (superior court) and former Section 5 (municipal court and justice court).

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 unified superior court judges, as well as 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. As used in this section, the term "selection" is intended to refer to the date of appointment or election, whichever occurs first.

A sitting municipal and justice court judge who lacks the requisite 10 years experience on July 1, 1995, the operative date of this amendment, is eligible to continue service under Section 23 for the duration of the judge's term.

The former second sentence of this section 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.

Staff Note. *An issue has been raised concerning the meaning of the term "selection" as used in this section. We have been able to find no case construing it, but we think it is a short-hand for "appointed or elected". It is used in other constitutional provisions, and we would be reluctant to start changing the terminology here. We have added constructional language to the Comment, for what it is worth.*

Cal. Const. Art. VI, § 16 (amended). Elections of judges

SEC. 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~~ superior 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 and may provide for election by district or other arrangement to the extent required by federal law .

(c) Terms of judges of superior 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 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, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior courts.

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. See Section 4 (superior court) and former Section 5 (municipal court and justice court). Unification does not affect the terms of sitting judges. Section 23.

Subdivision (b) is revised to authorize the Legislature to provide for alternate voting arrangements, including voting by electoral district rather than countywide, if mandated by federal law. See, e.g., Voting Rights Act, 42 U.S.C. § 1973 et seq. The Legislature may provide for this directly or by delegation, for example to the board of supervisors of an affected county.

Cal. Const. Art. VI, § 23 (added). Transitional provision

SEC. 23. The purpose of the repeal of Section 5, and the amendments to Sections 1, 4, 6, 8, 10, 11, 15, and 16, of this article and to Section 16 of Article I, adopted at the June 1994 primary election is to convert each superior, municipal, and justice court to a unified superior court. The Legislature may provide for implementation of this measure.

Immediately on the operative date of this section, in each former superior, municipal, and justice court district, the previously selected judges shall become the judges of the unified superior court. The terms of office of the judges of the preexisting superior, municipal, and justice courts shall not be affected by their succession to office as judges of the unified superior court. The 10-year

membership or service requirement of Section 15 of this article 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.

Subject to contrary action pursuant to statute for implementation of this measure, immediately on the operative date of this section, in each former superior, municipal, and justice court district, the previously selected officers and employees shall become the officers and employees of the unified superior court; each preexisting superior, municipal, and justice court location shall be retained as a unified superior court location; pending actions, trials, proceedings, and other business of the preexisting court shall become pending in the unified superior court; any matter formerly within the original jurisdiction of the municipal or justice court or a judge or magistrate of that court, reviewable by the superior court or a judge of the superior court, whether by appeal, writ, or otherwise, is reviewable by the appellate division of the unified superior court, or a judge of the appellate division; and the records of the preexisting court shall become records of the unified superior court.

This section shall be operative only until July 1, 2001, and as of that date is repealed.

Comment. Section 23 is added to implement unification of the superior courts, municipal courts, and justice courts in a single trial level system of superior courts. See Section 4 (superior 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, 2001.

The first paragraph grants express authority to the Legislature to provide for implementation of trial court unification. The Legislature may prescribe implementing provisions directly by statute or may delegate authority, for example to a committee of presiding judges and others in each unified superior court. Implementing legislation must be consistent with the constitution, but it should be noted that the transitional matters outlined in the third paragraph govern only absent contrary action pursuant to statute.

The second paragraph ensures the continuation in office of existing trial court judges in the unified trial court for the duration of their terms. The provision for education and training addresses the limited issue of qualifications of municipal and justice court judges elevated to the unified superior 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.

Among the previously selected officers who become officers of the unified superior court pursuant to the third paragraph are officers such as commissioners and referees appointed to perform subordinate judicial duties as provided for pursuant to Section 22 (subordinate judicial officers).

The third paragraph converts existing trial court facilities into unified superior court facilities. The ultimate location and use of facilities is determined by the courts in consultation with funding authorities. Sections 4 (superior court) and 6 (Judicial Council).

The third paragraph preserves the existing review and appeal structure of the superior, municipal, and justice courts, but localizes review in the appellate division. This includes writ authority within the court pursuant to Section 10, and review of preliminary criminal matters under Penal Code Sections 995 (setting aside indictment or information) and 1538.5 (motion to suppress), as well as small claims trials de novo and other matters of appeal.

Note. *The Commission is developing recommendations for a statutorily authorized transition process for personnel and other decisions to implement trial court unification. Final recommendations will await receipt of a Judicial Council sponsored study by the Justice Management Institute. The Commission solicits comments from interested persons concerning the structure of the implementation process.*

Cal. Const. (uncodified) (added). Operative Date

This measure shall become operative on July 1, 1995.

Cal. Const. (uncodified) (added). Severability Clause

If any provision of this measure or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

Appendix 3.

RECOMMENDED STATUTORY CONFORMING REVISIONS FOR IMMEDIATE IMPLEMENTATION

Note. Numerous statutory revisions would be required by trial court unification. These will be the subject of a separate report by the Law Revision Commission. This Appendix collects those statutory revisions recommended by the Commission for immediate enactment so that they will be operative on or before the operative date of trial court unification.

Gov't Code § 68070.3 (added). Transitional rules of court

SECTION 1. Section 68070.3 is added to the Government Code to read:

68070.3. (a) The Judicial Council shall adopt rules not inconsistent with statute for the orderly transition on July 1, 1995, of proceedings pending in superior, municipal, and justice courts to proceedings in unified superior courts, and for proceedings commenced in unified superior courts 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 shall 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 unified superior courts, and for proceedings commenced in unified superior courts 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. On approval by a majority of all the judges, the presiding judge shall have the transitional rules published and filed with the Judicial Council as required by Section 68071. Rules adopted pursuant to this subdivision shall be not inconsistent with statute or with rules adopted by the Judicial Council. Rules adopted pursuant to this subdivision shall, on July 1, 1995, become rules of the unified superior court.

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.

Gov't Code § 68122 (added). Superior court electoral districts

SEC. 2. Section 68122 is added to the Government Code, to read:

68122. (a) Judges of unified superior courts shall be elected in their counties at general elections.

(b) Notwithstanding subdivision (a), the board of supervisors of a county may by ordinance provide for election of judges of unified superior courts by district or other arrangement to the extent required by federal law.

Comment. Subdivision (a) of Section 68122 codifies the first sentence of Article VI, Section 16(b) of the Constitution.

Subdivision (b) implements a portion of the second sentence of Article VI, Section 16(b) of the Constitution, which permits the Legislature to provide for voting for superior court judges other than by countywide election where federal law mandates it. In that case, subdivision (b) delegates

the authority to the county board of supervisors to adopt an appropriate arrangement for superior court judicial elections.

The board of supervisors may adopt an appropriate ordinance in advance of the operative date of trial court unification if necessary to comply with the federal law, to become operative on the operative date of trial court unification. For preclearance activities under the federal Voting Rights Act, see Section 68123 (preclearance of trial court unification).

Gov't Code § 68123 (added). Preclearance of trial court unification

SEC. 3. Section 68122 is added to the Government Code, to read:

68123. The Attorney General shall, pursuant to the preclearance provisions of the federal Voting Rights Act, 42 U.S.C. § 1973 *et seq.*, seek to obtain preclearance of Senate Constitutional Amendment No. 3, adopted at the June 1994 primary election, before it becomes operative, with respect to any county subject to preclearance requirements.

Comment. Section 68123 requires the Attorney General to seek preclearance of trial court unification under the federal Voting Rights Act before it goes into effect in those counties in which preclearance is required. For authority of the county board of supervisors to provide for a superior court judicial election scheme that satisfies the Voting Rights Act, see Section 68122 (superior court electoral districts).

Gov't Code § 69500 (added). Interim administration of unified court

SEC. 4. Section 69500 is added to the Government Code, to read:

69500. Subject to contrary action pursuant to statute for implementation of Senate Constitutional Amendment No. 3, adopted at the June 1994 primary election:

(a) The presiding judge of the preexisting superior court is the presiding judge of the unified superior court until selection of a successor. The presiding judge shall distribute the business of the court among the judges according to the presiding judge's estimation of their abilities, without regard to whether a particular judge was a former judge of the superior court, municipal court, or justice court.

(b) The clerk or administrative officer of the preexisting superior court is the clerk or administrative officer of the unified superior court until selection of a successor.

Comment. Section 69500 is an interim measure, pending full implementation of SCA 3. It is important to proper implementation of trial court unification that the presiding judge ensure appropriate judicial assignments. This section prescribes a subjective standard—the presiding judge's estimation of the abilities of the unified superior court judges.

Staff Note. *This section is included to stimulate discussion of the implementation process. It is anticipated that a process will be adopted for implementation activities in advance of the operative date of the unification measure. The Commission solicits suggestions for that process.*

Gov't Code § 71001 (amended). Laws applicable in unified superior court

SEC. 4. Section 71001 of the Government Code is amended to read:

71001. ~~All laws relating to the municipal and justices' courts existing prior to November 7, 1950, and to the judges, marshals, constables, and other officers or attaches of the courts, not inconsistent with the Municipal and Justice Court Act of~~

~~1949, or the provisions of law succeeding that act, apply to the municipal and justice courts provided for in the Municipal and Justice Court Act of 1949, or the provisions of law succeeding that act, and to the judges, marshals, constables, and other officers or attaches of the courts until altered by the Legislature.~~

(a) Except as otherwise provided in this section, all laws relating to superior, municipal, and justice courts, and their judges, officers, and employees, in effect on June 30, 1995, apply on July 1, 1995, to unified superior courts and their judges, officers, and employees.

(b) If inconsistent provisions relating to superior, municipal, and justice courts or their judges, officers, or employees are applicable to a unified superior court or its judges, officers, or employees, the provisions relating to superior courts shall prevail. If inconsistent provisions relating to municipal and justice courts or their judges, officers, or employees are applicable to a unified superior court or its judges, officers, or employees, the provisions relating to municipal courts shall prevail.

(c) Notwithstanding any other provision of this section, the following provisions remain applicable to causes of a type that would be within the jurisdiction of the municipal and justice courts as it existed on June 30, 1995:

(1) The economic litigation procedures provided by Article 2 (commencing with Section 90) of Chapter 5 of Title 1 of Part 1 of the Code of Civil Procedure.

(2) The small claims procedures provided by Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure.

(3) Any other provision relating to the municipal and justice courts that the unified superior court or judge determines is necessary because application of the provision applicable to superior courts would substantially interfere with the effective conduct of the proceedings or the rights of the parties or other interested persons.

Comment. Section 71001 provides interim statutory conversion provisions. The general rule is that in case of a conflict, the provisions governing superior courts prevail. Nonetheless, subdivision (c) recognizes the necessity that some rules applicable to municipal and justice courts continue to apply to causes formerly within the jurisdiction of those courts. Paragraphs (1) and (2) preserve the Economic Litigation and small claims procedures. Paragraph (3) is drawn from transitional provisions in Probate Code Section 3 and Family Code Section 4.

Note. *It is anticipated that this general provision will be replaced by specific implementing statutes before July 1, 1995.*

Uncodified (added). Operative date

SEC. 6. This act shall become operative only if Senate Constitutional Amendment No. 3 is adopted by the voters at the June 1994, primary election, in which case Sections 1, 2, and 3 shall become operative on certification of the election result by the Secretary of State and Sections 4 and 5 shall become operative on July 1, 1995.

Uncodified (added). Urgency clause

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning or Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Senate Constitutional Amendment No. 3, if adopted by the voters at the June 1994 primary election, would unify the trial courts operative July 1, 1995. It is necessary that implementing steps be taken immediately so that an orderly transition of the trial court system will occur on that date.

Appendix 4.

RECOMMENDED REVISIONS OF SCA 3, AS AMENDED JULY 16, 1993

Note. If the Law Revision Commission recommendation that the name of the unified trial court be the Superior Court is *not* adopted, revisions also should be made to replace the word "superior" in California Constitution Article V, Section 13 (powers of Attorney General) and Article XA, Section 6 (procedure in certain water-related actions).

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 1993-94 Regular Session commencing on the seventh day of December 1992, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First—*That Section 16 of Article I is amended to read:*

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~~ designated by 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.

Second—That Section 1 of Article VI is amended to read:

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

~~Second~~ Third—That Section 4 of Article VI is amended to read:

SEC. 4. In each county there is a ~~district~~ superior court of one or more judges. The Legislature shall prescribe the number of judges ~~and provide for the officers and employees of each district court. The Legislature may provide that one or more judges serve more than one district court, or that two or more district courts may be organized into one or more circuits for regional resource sharing or administrative purposes.~~

~~The Legislature may divide the district court into one or more branches.~~

~~The county clerk is ex officio clerk of the superior court in the county of each superior court.~~ of each superior court. Each superior court may divide itself into

one or more branches, and two or more superior courts may organize themselves into one or more circuits for regional resource sharing or administrative purposes, subject to concurrence of the Legislature, governing board of the affected county, or other funding authority.

~~Third~~ Fourth—That Section 5 of Article VI is repealed.

~~Fourth~~ Fifth—That Section 6 of Article VI is amended 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, and 10 judges of ~~district~~ superior 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.

~~Fifth~~ Sixth—That Section 8 of Article VI is amended to read:

SEC. 8. (a) The Commission on Judicial Performance consists of 2 judges of courts of appeal, 2 judges of superior courts, and one judge of a municipal court and 3 judges of ~~district~~ superior 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~~ All terms are 4 years. No member shall serve more than 2 4-year terms.

(b) 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.~~

~~Sixth~~ Seventh—That Section 10 of Article VI is amended to read:

SEC. 10. The Supreme Court, courts of appeal, ~~district~~ superior courts, and their judges have original jurisdiction in habeas corpus proceedings ~~. Those courts also have original jurisdiction~~ and in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition , except that original jurisdiction for review of proceedings in the superior courts is limited to the Supreme Court, courts of appeal, appellate divisions of the superior courts, and their judges .

~~District~~ Superior courts have original jurisdiction in all causes.

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.

~~Seventh~~ Eighth—That Section 11 of Article VI is amended to read:

SEC. 11. The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when ~~district~~ superior courts have original jurisdiction , except in causes within the appellate jurisdiction of the superior courts and in other causes prescribed by statute.

An appellate division shall be created within each district court. The appellate division has appellate jurisdiction in ~~causes prescribed by statute~~ criminal causes other than felonies, and in civil causes prescribed by statute or by rule adopted by the Judicial Council not inconsistent with statute, that arise within that district court. The Judicial Council shall adopt rules to ensure the independence of the appellate division.

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.

~~Eighth~~ Ninth—That Section 15 of Article VI is amended to read:

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

~~Ninth~~ Tenth—That Section 16 of Article VI is amended to read:

SEC. 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~~ superior courts shall be elected in their ~~districts or branches~~ counties at general elections. The Legislature may provide that an unopposed incumbent's name not appear on the ballot and may provide for election by district or other arrangement to the extent required by federal law .

(c) Terms of judges of ~~district~~ superior 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 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, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of ~~district~~ superior courts.

~~Tenth~~ Eleventh—That Section ~~16.5~~ 23 is added to Article VI to read:

SEC. ~~16.5~~ 23. The purpose of the repeal of Section 5, and the amendments to Sections 1, 4, 6, 8, 10, 11, 15, and 16, of this article and to Section 16 of Article I, adopted at the June 1994 primary election is to convert each superior, municipal,

and justice court to a ~~district~~ unified superior court. The Legislature may provide for implementation of this measure.

~~In~~ Immediately on the operative date of this section, in each former superior, municipal, and justice court district, the previously selected judges shall become the judges of the unified superior court. The terms of office of the judges of the preexisting superior, municipal, and justice courts shall not be affected by their succession to office as judges of the unified superior court. The 10-year membership or service requirement of Section 15 of this article 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.

Subject to contrary action pursuant to statute for implementation of this measure, immediately on the operative date of this section, in each former superior, municipal, and justice court district, the previously selected ~~judges,~~ officers , and employees shall become the ~~judges,~~ officers , and employees of the ~~district~~ unified superior court; each preexisting superior, municipal, and justice court location shall be retained as a ~~district~~ unified superior court location; pending actions, trials, proceedings, and other business of the preexisting court shall become pending in the ~~district~~ unified superior court; any matter formerly within the original jurisdiction of the municipal or justice court or a judge or magistrate of that court, reviewable by the superior court or a judge of the superior court, whether by appeal, writ, or otherwise, is reviewable by the appellate division of the unified superior court, or a judge of the appellate division; and the records of the preexisting court shall become records of the ~~district~~ unified superior court.

~~The terms of office of the judges of the preexisting superior, municipal, and justice courts shall not be affected by their succession to office as district court judges.~~

This section shall be operative only until January 1, ~~2000~~ 2001, and as of that date is repealed.

~~Eleventh~~ Twelfth—That this measure shall become operative on July 1, 1995.

Thirteenth—That if any provision of this measure or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.