Study J-1000 January 28, 1994

First Supplement to Memorandum 94-8

Trial Court Unification: Draft of Final Report on SCA 3 (Comments of Justice Anderson)

Attached is a letter from Justice Anderson concerning the SCA 3 report's discussion of the volume of appeals. Justice Anderson repeats his criticism of the statement in the report that, "If the number of appeals from trial court judgments in the unified court roughly equals the combined number of existing superior court, municipal court, and justice court appeals, the court of appeals workload could increase by about 25%." SCA 3 Report at 27.

The Commission has acknowledged Justice Anderson's point in a paragraph immediately following this sentence:

> However, the Commission must alert the Legislature to the possibility that trial court unification may increase the workload of the courts of appeal by substantially more than this as a consequence of trial courts concentrating their resources on cases within the appellate jurisdiction of the courts of appeal, thereby processing a greater volume of these cases in a shorter time. If this occurs, significant changes in the existing appellate system may be required.

There is nothing wrong with the Commission's report on this matter. Justice Anderson's ultimate concern is that there will need to be some adjustment of the court of appeals workload after unification. But as the Commission's report notes, this is a statutory rather than a constitutional matter, and need not be addressed at this point in the trial court unification process.

Justice Anderson concludes, "I appreciate your limiting the Commission's disclaimer to Constitutional changes, but implore you to recognize the urgency of contemporaneous statutory reform. In particular, I urge you to recommend that the Legislature substitute 'petition for leave to appeal' for the present right to appeal in all civil, criminal, and juvenile matters."

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

EXHIBIT

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January 25, 1994

Mr. Sanford Skaggs, Chair
California Law Revision Commission
4000 Middlefield Road, Suite D-2
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Re: Trial Court Unification

Dear Chairperson Skaggs and Commission Members:

Thank you for your courtesy in hearing from me at the Law Revision Commission hearing on January 6, 1994, and for accommodating my schedule by doing so before the noon recess. I am also appreciative of the kindness extended to me the preceding day by your Executive Secretary, Nathaniel Sterling.

During my testimony describing the ever-increasing expectations placed upon intermediate appellate justices you asked me the total number of filings experienced per year; I believe I responded "approximately 22,000." That figure for fiscal 1991-1992, the most recent year recorded, was actually 21,628 (14,763 records of appeals & 6865 original proceedings). Note that our workload is actually greater since this figure is not "notices of appeal filed," but "records of appeal filed"; many more notices are filed, many of which necessitate action by the court of appeal clerk and/or presiding judge (computer imputing, classification, determining motions, etc.). The total number of dispositions during that same period of time was 22,415, which includes 2653 dispositions without opinion in cases in which no record was filed. The total of notices of appeal filed and original proceedings during FY 1991-1992 was actually 24,322. (Judicial Council of Cal., Ann. Rep. (1993) vol. II, pp. 25 & 27.)

The figures I quoted you at the hearing (129 contested matters per justice in 1960-1961 compared with 246 in 1991-1992 and projected to 304 per justice for FY 2000-2001) consider records on appeal filed and not notices of appeal. The table for 1960 through 2001 is found at appendix A in the enclosed law review article.

My point in contesting your figure of a possible 25% increase in workload in California intermediate courts of appeal with implementation of trial court unification is simply this:

(1) The number of appeals from a unified trial court will not equal present day appeals plus those appeals presently taken from municipal and justice courts.

(2) Appeals from municipal and justice courts will be determined by the unified court's "constitutional appellate division." These will have little impact upon appellate courts.

(3) Appellate court workload depends upon the number of judgments rendered which are reviewable by the appellate court.

(4) Presently 789 superior judges qualify to render judgments reviewable by California's 88 appellate jurists.

(5) SCA 3 will add 670 judges who have the potential of rendering judgments reviewable by the intermediate appellate courts: 47 justice court judges and 623 municipal court judges.

(6) SCA 3 thus increases the number of judges who can render decisions reviewable by the appellate court by 85%. It follows that SCA 3 has the potential of increasing the number of appeals by 85% or 14,838 notices of appeal. If original proceedings are filed at the present ratio of 1 to every 2 1/2 notices of appeals, then total workload will be increased by 20,773 contested matters.

(7) Thus, the statement repeated at page 27 of your January 1994 prepublication copy is absolutely wrong: "If the number of appeals from trial court judgments in the unified court roughly equals the combined number of existing superior court, municipal court, and justice court appeals, the court of appeals (sic) workload could increase by about 25%." The number of appeals will not so "roughly equal."

I commend you for recognizing some possible reforms in processing appeals (id., p. 28) and respectfully suggest that these measures must be explored even if all appeals are not made appealable to the courts of appeal. I appreciate your limiting the Commission's disclaimer to Constitutional changes, but implore you to recognize the urgency of contemporaneous statutory reform. In particular, I urge you to recommend that the Legislature substitute "petition for leave to appeal" for

the present right to appeal in all civil, criminal, and juvenile matters; this discretionary appeal is discussed briefly at pages 354-355 of the enclosed article. Without such reform California's courts of appeal will be rendered hopelessly ineffective by adoption of SCA 3.

I thank you for your attention and your commitment to sensible reform of the instruments of justice delivery in California.

Sincerely yours,

Carl West Anderson

CWA/nr

Encl.: U.S.F. Law Review, Vol. 27, No. 2

cc: Hon. Malcolm M. Lucas, Chief Justice of California
Senator Bill Lockyer
Mr. William Vickery, Director, Administrative Office of the Courts