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**Memorandum 94-15****Trial Court Unification: Transitional Provisions (Personnel Decision Structure  
— comments on draft)**

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The Commission's report to the Legislature on SCA 3 promises that the Commission will deliver to the Legislature a supplemental report on transitional provisions to govern personnel decisions for unification of the courts. The Commission considered this matter at its February 1994 meeting and decided to circulate for comment a draft offered by the chairs of the Judicial Council's Trial Court Presiding Judges and Court Administrators Advisory Committees.

The draft has been circulated for comment. A copy of the material that was distributed is attached as Exhibit pp. 1-2. Under the draft, transitional decisions are made by the individual courts and their presiding judges, under guidance of California Rules of Court and Local Rules of Court.

The draft is apparently unobjectionable, since we received only one letter commenting on it. The Beverly Hills Bar Association (Exhibit pp. 3-4) supports the draft in principle, subject to a few comments discussed below.

**Necessity for Legislation**

The BHBA raises the issue whether legislative authorization for the rulemaking mandated by the draft statute is necessary, and whether existing authority is adequate for the purpose.

It is arguable that adequate authority might be implied from the proposed constitutional amendment and existing statutes. But the staff believes that this matter ought not to be left to implication and that lines of decision-making authority should be clear. The personnel decisions involved in unification will be divisive and the authority to make them will be challenged.

The staff's main concern with the draft statute, in fact, is whether it goes far enough in making clear the delegation of authority to the presiding judge to act and make decisions that affect employees' rights and interests. Proposed Section 70200(c) states that the Judicial Council shall adopt rules of court for the authority of the presiding judge to act on behalf of the court to implement trial court unification; this implies, but does not state directly, that the presiding judge has authority to act.

The staff thinks that, at a minimum, the Comment needs to characterize this provision as a statutory delegation of authority pursuant to the constitution:

**Comment.** ~~Section 70200 mandates that the Judicial Council adopt rules of court~~ *is a statutory delegation of authority to coordinate and guide the trial courts in effectively implementing trial court unification. See Cal. Const. Art. VI, §23(c) (constitutional transitional provisions for trial court unification subject to contrary action pursuant to statute); see also Cal. Const. Art. VI, § 6 (4th ¶) (Judicial Council shall adopt rules for court administration, practice and procedure, not inconsistent with statute). Section 70200 mandates that the Judicial Council adopt rules of court for this purpose.*

Subdivision (a) provides generally that the rules will ensure the orderly conversion of proceedings in the unified superior court as of July 1, 1996, the operative date of Senate Constitutional Amendment No 3 .

Subdivision (b) provides for the selection of the presiding judge, court executive officer, and appropriate committees or working groups to assist the presiding judge. The method of selection, and the specific duties and authorities for each will be set forth in the rules, as is currently the case in existing Rules 204, 205, 207, 532.5, 532.6, and 573 of the California Rules of Court. This preserves the balance of power that currently exists between the legislature and the judiciary.

Subdivision (c) is intended to encourage the presiding judge to work closely with the court executive officer and court committees or other working groups to implement unification decisions.

Subdivision (d) provides that the courts will develop and adopt a personnel plan. The section parallels Rule 205(11) ~~and is intended to be consistent with the language being proposed for SB 985.~~ Decisions on the appropriate personnel system and related labor relations matters can only be made after comprehensive study and with input from all affected entities.

Subdivision (e) provides for local rule adoption before July 1, 1996. As under current practice, the Judicial Council will determine which procedural issues shall be addressed by local rule and which by statewide rule.

Examples of issues that may be addressed by rule of court under subdivision (f) include the development of informational programs for the public and the Bar about unification, and education and training programs for judicial officers and court staff to facilitate the effective transition to a unified court system. See also Cal. Const. Art. VI, § 23(b) (*Judicial Council may prescribe appropriate education and training for judges with regard to trial court unification*).

## Separation of Powers

The BHBA inquires whether a legislative mandate that the Judicial Council adopt rules is a violation of the constitutional separation of legislative and judicial powers.

There should not be a problem in this case, since the constitution itself subjects the Judicial Council to legislative mandate. See Cal. Const. Art. VI, § 6 (4th ¶):

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.

## Location of Statute

We have laid out below the structure of the portion of the Government Code dealing with the organization and government of the courts. The proposed location of trial court unification transitional provisions is shown in bold italics.

### Title 8. The Organization and Government of the Courts

#### Chapter 1. General Provisions

##### Chapter 1.1. Judicial Emergencies

##### Chapter 1.3. Elections of Justices and Judges of Courts of Record

##### Chapter 1.5. Compensation of Justices and Judges of Courts of Record

#### Chapter 2. The Judicial Council

##### Chapter 2.5. Commission on Judicial Performance

#### Chapter 3. The Supreme Court

#### Chapter 4. The Courts of Appeal

#### Chapter 5. The Superior Courts

##### ***Chapter 5.5. The Unified Superior Courts***

##### Chapter 6. Provisions Relating to Both Municipal and Justice Courts

#### Chapter 7. Justice Courts

#### Chapter 8. Municipal Courts

##### Chapter 9. Municipal Court Districts in Los Angeles County

##### Chapter 9.1. Municipal Court Districts in Alameda County

##### Chapter 9.2. Municipal Courts in San Bernardino County

#### Chapter 10. Other Municipal Courts Districts

#### Chapter 11. Judges' Retirement Law

#### Chapter 12. County Penalties

### Chapter 13. State Funding of Trial Courts

This is a somewhat logical location, between the provisions on superior courts and the provisions on municipal and justice courts, since it deals with transitional unification issues for both the superior courts and the municipal and justice courts. It is also the approximate location of the 1982 statutory provisions implementing trial court unification, which never became operative due to the failure of the ballot measure. See former Chapter 5.1, Sections 70200-70223 (The Unified Superior Courts).

The BHBA suggests an alternate location for the transitional provisions “for purposes of topical consistency”:

#### Chapter 1. General Provisions

68070. Adoption of rules of court

**68070.1. Transitional rules for trial court unification**

68070.1 68070.2. Teleconferencing

68070.5. Communications between judges on review

68071. Effective date for rules of court

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This is the approximate location of the transitional provision suggested in the Commission’s report to the Legislature on SCA 3.

The reason the staff moved from Chapter 1 to a new Chapter 5.5 is that we anticipate the likelihood that other transitional provisions will be added — perhaps specifying additional court rules or perhaps laying out statutory rules — before this project is done. We think it will be useful to compile all the transitional provisions in one chapter, which will ultimately be repealed after the transition process is completed.

In sum, the staff believes that either location is fine, but that creation of a separate chapter for transitional provisions will best provide versatility to accommodate future developments in this area.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

## CALIFORNIA LAW REVISION COMMISSION

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March 1, 1994

To: Persons Interested in Trial Court Unification (SCA 3)  
From: Nathaniel Sterling, Executive Secretary

**Re: Transitional provisions**

The California Law Revision Commission plans to supplement its report to the Legislature on SCA 3 (Lockyer), relating to trial court unification. The supplemental report will propose transitional provisions to govern decision making concerning court officers, employees, and other personnel who serve the court.

The following draft of proposed legislation is currently under consideration by the Commission and the Commission has approved it in principle. The Commission solicits comments on the proposal from interested persons and organizations. The Commission will review comments it receives before submitting a supplemental report to the Legislature. Comments will be most useful if received by **April 15, 1994**.

Please note that the draft of proposed legislation assumes a November 8, 1994, election date and a July 1, 1996, operative date, consistent with Senator Lockyer's present intentions concerning SCA 3.

**PROPOSED LEGISLATION****Gov't Code § 70200 (added). Transitional rules of court**

SECTION 1. Chapter 5.5 (commencing with Section 70200) is added to Title 8 of the Government Code to read:

**CHAPTER 5.5. THE UNIFIED SUPERIOR COURTS**

70200. The Judicial Council shall, before July 1, 1996, adopt rules of court not inconsistent with statute for:

(a) The orderly conversion on July 1, 1996, of proceedings pending in municipal and justice courts to proceedings in superior courts, and for proceedings commenced in superior courts on and after July 1, 1996.

(b) Selection of persons to coordinate implementation activities for the unification of municipal and justice courts with superior courts in each county, including:

(1) Selection of a presiding judge for the unified superior court.

(2) Selection of a court executive officer for the unified superior court.

(3) Appointment of court committees or working groups to assist the presiding judge and court executive officer in implementing trial court unification.

(c) The authority of the presiding judge, in conjunction with the court executive officer and appropriate individuals or working groups of the unified superior court, to act on behalf of the court to implement trial court unification.

(d) Preparation and submission of a written personnel plan to the judges of the unified superior court for adoption.

(e) Preparation of any necessary local court rules that shall, on July 1, 1996, be the rules of the unified superior court.

(f) Other necessary activities to facilitate the transition to a unified court system.

**Comment.** Section 70200 mandates that the Judicial Council adopt rules of court to coordinate and guide the trial courts in effectively implementing trial court unification.

Subdivision (a) provides generally that the rules will ensure the orderly conversion of proceedings in the unified superior court as of July 1, 1996.

Subdivision (b) provides for the selection of the presiding judge, court executive officer, and appropriate committees or working groups to assist the presiding judge. The method of selection, and the specific duties and authorities for each, will be set forth in the rules, as is currently the case in existing Rules 204, 205, 207, 532.5, 532.6, and 573 of the California Rules of Court. This preserves the balance of power that currently exists between the legislature and the judiciary.

Subdivision (c) is intended to encourage the presiding judge to work closely with the court executive officer and court committees or other working groups to implement unification decisions.

Subdivision (d) provides that the courts will develop and adopt a personnel plan. The section parallels Rule 205(11) and is intended to be consistent with the language being proposed for SB 985. Decisions on the appropriate personnel system and related labor relations matters can only be made after comprehensive study and with input from all affected entities.

Subdivision (e) provides for local rule adoption before July 1, 1996. As under current practice, the Judicial Council will determine which procedural issues shall be addressed by local rule and which by statewide rule.

Examples of issues that may be addressed by rule of court under subdivision (f) include the development of informational programs for the public and the Bar about unification, and education and training programs for judicial officers and court staff to facilitate the effective transition to a unified court system.

### **Operative date**

SEC. 2. This act shall become operative only if Senate Constitutional Amendment No. 3 is approved by the voters at the November 8, 1994, general election, in which case this act shall become operative on the day after the election.

### **Urgency clause**

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Senate Constitutional Amendment No. 3, if approved by the voters at the November 8, 1994, general election, would unify the trial courts operative July 1, 1996. It is necessary that implementing steps be taken immediately so that an orderly transition of the trial court system will occur on that date.

# BEVERLY HILLS BAR ASSOCIATION

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*Serving the West Los Angeles Area for Six Decades*

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April 6, 1994

Law Revision Commission  
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California Law Revision Commission  
ATTN: Nathaniel Sterling, Executive Secretary  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 90403-4739

Re: S.C.A. 3 - Transitional Provisions  
Proposed CAL. GOVT. CODE § 70200  
Statement of Support in Principle

Ladies and Gentlemen:

In response to your request for comments dated March 1, 1994, and consistent with the support this Association has extended for SCA 3, we wish to express our support in principle for the proposed legislation, subject to the following comments:

1. We assume for purposes of this communication that legislative authorization for the rulemaking mandated by proposed section 70200 is necessary, and that existing authorization is inadequate for the purpose.

2. We express no opinion, but inquire, whether the proposed legislation, to the extent it mandates action by an agency of the judicial branch, is an unconstitutional interference in the affairs of that independent and co-equal branch of our triune government. We do recognize, however, that there is legislative precedent for both mandated and permissive Judicial Council rulemaking. (See, e.g., CAL. GOVT. CODE §§ 68070(b), 68070.1(a), 68071.)

3. For purposes of topical consistency, we suggest that, rather than enacting a separate Chapter 5.5, the transitional rulemaking provision (proposed section 70200) be included in Chapter 1 as section 68070.1 (renumbering existing section 68070.1 as 68070.2).

Thank you for extending to us the opportunity to comment on this legislative proposal of the Commission. Please feel free to contact me if you have any

California Law Revision Commission  
ATTN: Nathaniel Sterling, Executive Secretary  
April 6, 1994  
Page 2

questions or if the Beverly Hills Bar Association can be of further assistance to you.

Sincerely,

BEVERLY HILLS BAR ASSOCIATION

J. Anthony Vittal  
President-Elect

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VBHBA\LEG\CLRC.001

cc: Dee Miller Siegel, President  
Louis B. Fox, Executive Director  
David J. Pasternak, Chair,  
Committee on the Judiciary

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