Study J-1300 September 4, 1996

Memorandum 96-61

**Trial Court Unification by County**

## BACKGROUND

SCA 4 (Lockyer), providing for trial court unification in a county on a vote of a majority of the superior court judges and a majority of the municipal court judges in that county, has been approved by the Legislature. 1996 Res. ch. 36. A copy of the measure in its last amended form is attached as Exhibit pp. 1-5.

Because unification of the trial courts requires a constitutional amendment, the matter must be submitted to the electors for approval. It was the Legislature's intent to have it appear on the November 5, 1996, ballot, unless the State Printer determined its inclusion in the ballot pamphlet would not be possible or it would unduly delay or impede the timely printing of the official ballots. 1996 Cal. Stat. ch. 333, § 2.

The State Printer has determined that inclusion of SCA 4 is not possible or it would unduly delay or impede printing, so the matter will not appear on the November ballot. Instead, it will appear on the ballot at the next statewide general election. The next statewide general election is scheduled for June 1998.

## ROLE OF COMMISSION

The Legislature is looking to the Commission for statutory implementation of the constitutional amendment. The Legislature has revised the Commission's calendar of topics to include, "Recommendations to be reported pertaining to statutory changes that may be necessitated by court unification." See, e.g., 1996 Cal. Stat. Res. ch. 38.

This assignment follows an earlier legislative assignment performed by the Commission on the constitutional revisions necessary to implement trial court unification. See *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1 (1994).

The Commission was brought into this process because the legislative and judicial branches of government have mistrusted each other's intentions in connection with trial court unification. But each branch could trust the Law Revision Commission's neutrality and ability to do a competent job in this tendentious area.

## SCOPE OF PROJECT

### Operative Date Issues

SCA 4 contains no deferral of its operative date. On the day after its approval by the electors, the trial courts in any county may vote to unify. And there are a few courts that we understand are poised to unify as soon as the authority is granted. Practical problems in the transition need to be addressed. At least we will have until June 1998 to address them.

Moreover, some aspects of the measure are self-executing and become operative on approval, regardless of whether any court ever elects to unify. The key self-executing provisions create and vest jurisdiction in an appellate division in the superior court, and prescribe the jurisdiction of the court of appeals. Although these provisions become operative without the further act of any court, the provisions demand statutory implementation.

This discussion assumes the measure will be approved by the electors. At this point there is no substantial opposition to it, and the efficiencies and cost savings involved in unification make a compelling argument for it.

The staff believes we must proceed on the assumption that the measure will be approved at the June 1998 election. Our objective should be to have a complete legislative implementation package in place so that the transition will be smooth if the measure is approved.

### Complexity of Task

Statutory implementation of SCA 4 will be a more complex task than implementation of SCA 3 would have been. This is because SCA 3 would have unified all courts at once, making necessary only one set of statutes for all courts (plus perhaps some transitional provisions for proceedings pending on the date of unification).

But with unification by county option, there must be two sets of statutes — one for unified courts and one for non-unified courts (plus transitional provisions for proceedings pending on the date of unification of the courts in a

county). In addition, some special provisions dealing with interrelation of unified and non-unified courts — for example change of venue rules — will be required.

There are complexities caused by dated language within the text of SCA 4 as well. For example, SCA 4 vests appellate jurisdiction in the courts of appeal "in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995". There are ways we can statutorily attempt to make this provision less troublesome than it appears on its surface.

SCA 4 contains a statement that the purpose of the constitutional amendments "approved at the November 5, 1996, general election" is to permit the Legislature to provide for unification of the courts. While this is merely a statement of legislative intent, it includes what might prove to be important legislative authority in an area where separation of powers considerations are at the forefront. The obsolete date is unfortunate and adds another layer of complexity to the task.

It is conceivable the dated language will be remedied before the measure goes before the electors, although the staff thinks it unlikely, based on the difficulty of enactment of SCA 4. There will be a natural reluctance to tamper with it further.

Finally, the justice courts and municipal courts were unified at the general election two years ago. But the statutes have never been revised to account for this. We should do that cleanup as part of our statutory revision.

**Practical Considerations**

There is a substantial body of law that must be reviewed and revised as part of this study. The main statutes are found in the Code of Civil Procedure and Government Code, and to some extent in the Penal Code. But there are statutes throughout the codes that need adjustment.

Many of the implementing provisions will be fairly routine (except for having to maintain different sets of them for unified and non-unified courts). They do not involve significant policy issues, merely a recasting of statutory language to recognize that there is only one court now in a county in which the courts have unified.

However, other implementing provisions have important procedural aspects with substantive consequences, and there will be substantial interest and involvement of consumer attorneys and insurance defense attorneys (on the civil side), and of prosecutors and defense attorneys (on the criminal side), as well as of judges, court personnel, and the Judicial Council, among others.

The volume of statutes and the number of significant issues will demand a substantial amount of Commission and staff resources. In order to have implementing legislation in place by June 1998 it will be necessary for the Commission to complete its work on this project and submit its report to the Legislature by January 1998. To accomplish this, the Commission will need to give the matter priority during the coming year.

**Political Considerations**

There is a possibility that some of the issues that come up in the course of the project will raise political concerns that cannot easily be resolved. We must be careful when making decisions that could potentially influence the outcome of the June 1998 election. The approach we took in our report on the constitutional revisions served us well, and the staff would urge the same approach on the statutory revisions:

(1) Restrict recommendations to those immediately required to implement trial court unification. Save incidental issues, including judicial overload, for another time.

(2) Do not use unification recommendations as an occasion to affect fundamental procedural rights of litigants. Seek to implement the structure and organization of trial court unification as a matter of court administration, without altering existing rights.

(3) Do not seek to shift the existing balance of power between legislative and judicial branches — this should not be injected as an element in the debate over trial court unification.

## METHOD OF PROCEEDING

The staff suggests the following method of proceeding on this project.

We will publicize the reactivation of this study, and update our mailing list, encouraging active participation by interested persons and organizations.

The staff will reinstate the process of collecting and reviewing affected statutes, but will not begin scheduling Commission consideration of them until we have a substantial bulk to start on. Meanwhile the Commission can be devoting its time to finishing up work on legislative proposals for the 1997 session.

Before beginning public discussion of issues, we would alert Senator Lockyer's office to potential politically sensitive issues we have been able to

identify, and seek guidance as to the best way to address these issues in the context of the study. We would use the same procedure for any other issues that surface during the course of deliberations whose resolution appears to create political concerns.

To assist us in this effort, we would make a research contract with Professor Clark Kelso and the Institute for Legislative Practice at McGeorge Law School. The contract would pay for travel expenses and our standard honorarium for Professor Kelso to attend Commission meetings. In exchange, besides getting Professor Kelso's advice at staff and Commission levels, we would get the benefit of law student research provided by the Institute. Professor Kelso has been a consultant to the Judicial Council, and has been actively involved with Senator Lockyer's office, on trial court unification issues. He knows the issues well and thinks clearly about them; he would bring great value to the Commission's proceedings.

Although we ordinarily contract only with individuals, we are authorized to contract for research with entities such as the Institute:

> **Gov't Code § 8297. Research contracts**
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> The commission may, with the approval of the Director of General Services, enter into, amend and terminate contracts with colleges, universities, schools of law or other research institutions, or with qualified individuals for the purposes of research.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

# SCA 4 Courts: consolidation.

**BILL NUMBER: SCA 4 CHAPTERED 07/12/96**

RESOLUTION CHAPTER 36
FILED WITH SECRETARY OF STATE JULY 12, 1996

ADOPTED IN SENATE JULY 11, 1996

ADOPTED IN ASSEMBLY JULY 11, 1996
AMENDED IN ASSEMBLY FEBRUARY 7, 1996
AMENDED IN ASSEMBLY JULY 17, 1995

## INTRODUCED BY Senator Lockyer

## DECEMBER 6, 1994

Senate Constitutional Amendment No. 4--A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 16 of Article I thereof, and by amending Sections 1, 4, 5, 6, 8, 10, 11, and 16 of, and adding and repealing Section 23 of, Article VI thereof, relating to courts.

## LEGISLATIVE COUNSEL'S DIGEST

SCA 4, Lockyer. Courts: consolidation.

The California Constitution currently provides for superior and municipal courts, provides for their establishment and jurisdiction, and provides for the qualification and election of their judges.

This measure would provide for the abolition of municipal courts within a county, and for the establishment of a unified superior court for that county upon a majority vote of superior court judges and a majority vote of municipal court judges within the county. The measure would provide for the qualification and election of the judges. It would also revise the number of jurors required in certain civil actions. The measure would also specify its purposes, and make related, conforming changes. The measure would also declare that its provisions are severable.

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 1995-96 Regular Session commencing on the fifth day of December, 1994, two-thirds of the membership of each house concurring, 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 thereof 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 other than causes within the appellate jurisdiction of the court of appeal 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 thereof is amended to read:

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

Third--That Section 4 of Article VI thereof is amended to read:

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.

In each superior court there is an appellate division. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.

Fourth--That Section 5 of Article VI thereof is amended to read:

SEC. 5. (a) Each county shall be divided into municipal court districts as provided by statute, but a city may not be divided into more than one district. Each municipal court shall have one or more judges. Each municipal court district shall have no fewer than 40,000 residents; provided that each county shall have at least one municipal court district. The number of residents shall be determined as provided by statute.

(b) On the operative date of this subdivision, all existing justice courts shall become municipal courts, and the number, qualifications, and compensation of judges, officers, attaches, and employees shall continue until changed by the Legislature. Each judge of a part-time municipal court is deemed to have agreed to serve full time and shall be available for assignment by the Chief Justice for the balance of time necessary to comprise a full-time workload.

(c) The Legislature shall provide for the organization and prescribe the jurisdiction of municipal courts. It shall prescribe for each municipal court the number, qualifications, and compensation of judges, officers, and employees.

(d) Notwithstanding subdivision (a), any city in San Diego County may be divided into more than one municipal court district if the Legislature determines that unusual geographic conditions warrant such division.

(e) Notwithstanding subdivision (a), the municipal and superior courts shall be unified upon a majority vote of superior court judges and a majority vote of municipal court judges within the county. In those counties, there shall be only a superior court.

Fifth--That Section 6 of Article VI thereof 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, 5 judges of municipal courts, 2 nonvoting court administrators, and such other nonvoting members as determined by the voting membership of the council, each appointed by the Chief Justice for a 3-year term pursuant to procedures established by the council; 4 members of the State Bar appointed by its governing body for 3-year terms; and one member of each house of the Legislature appointed as provided by the house. Vacancies in the memberships on the Judicial Council otherwise designated for municipal court judges shall be filled by judges of the superior court in the case of appointments made when fewer than 10 counties have municipal courts.

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, and perform other functions prescribed by statute. The rules adopted shall not be inconsistent with 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 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.

Sixth--That Section 8 of Article VI thereof is amended to read:

SEC. 8. (a) The Commission on Judicial Performance consists of one judge of a court of appeal, one judge of a superior court, 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, each appointed by the governor; and 6 citizens who are not judges, retired judges, or members of the State Bar of California, 2 of whom shall be appointed by the Governor, 2 by the Senate Committee on Rules, and 2 by the Speaker of the Assembly. Except as provided in subdivisions (b) and (c), all terms are for 4 years. No member shall serve more than 2 4-year terms, or for more than a total of 10 years if appointed to fill a vacancy. A vacancy in the membership on the Commission on Judicial Performance otherwise designated for a municipal court judge shall be filled by a judge of the superior court in the case of an appointment made when fewer than 10 counties have municipal courts.

(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. Appointing powers may appoint members who are already serving on the commission prior to March 1, 1995, to a single 2-year term, but may not appoint them to an additional term thereafter.

(c) To create staggered terms among the members of the Commission on Judicial Performance, the following members shall be appointed, as follows:

(1) Two members appointed by the Supreme Court to a term commencing March 1, 1995, shall each serve a term of 2 years and may be reappointed to one full term.

(2) One attorney appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(3) One citizen member appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(4) One member appointed by the Senate Committee on Rules to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(5) One member appointed by the Speaker of the Assembly to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(6) All other members shall be appointed to full 4-year terms commencing March 1, 1995.

Seventh--That Section 10 of Article VI thereof is amended to read:

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 in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.

Superior courts have original jurisdiction in all other 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.

Eighth--That Section 11 of Article VI thereof is amended to read:

SEC. 11. (a) 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 in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in other causes prescribed by statute. When appellate jurisdiction in civil causes is determined by the amount in controversy, the Legislature may change the appellate jurisdiction of the courts of appeal by changing the jurisdictional amount in controversy.

(b) Except as provided in subdivision (a), the appellate division of the superior court has appellate jurisdiction in causes prescribed by statute.

(c) The Legislature may permit courts exercising appellate jurisdiction to take evidence and make findings of fact when jury trial is waived or not a matter of right.

Ninth--That Section 16 of Article VI thereof 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) (1) In counties in which there is no municipal court, judges of superior courts shall be elected in their counties at general elections except as otherwise necessary to meet the requirements of federal law. In the latter case the Legislature, by two-thirds vote of the membership of each house thereof, with the advice of judges within the affected court, may provide for their election by the system prescribed in subdivision (d), or by any other arrangement. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(2) In counties in which there is one or more municipal court districts, judges of superior and municipal 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.

(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 second 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.

Tenth--That Section 23 is added to Article VI thereof, to read:

SEC. 23. (a) The purpose of the amendments to Sections 1, 4, 5, 6, 8, 10, 11, and 16, of this article, and the amendments to Section 16 of Article I, approved at the November 5, 1996, general election is to permit the Legislature to provide for the abolition of the municipal courts and unify their operations within the superior courts. Notwithstanding Section 8 of Article IV, the implementation of, and orderly transition under, the

provisions of the measure adding this section may include urgency statutes that create or abolish offices or change the salaries, terms, or duties of offices, or grant franchises or special privileges, or create vested rights or interests, where otherwise permitted under this Constitution.

(b) When the superior and municipal courts within a county are unified, the judgeships in each municipal court in that county are abolished and the previously selected municipal court judges shall become judges of the superior court in that county. The term of office of a previously selected municipal court judge is not affected by taking office as a judge of the superior court. The 10-year membership or service requirement of Section 15 does not apply to a previously selected municipal court judge. Pursuant to Section 6, the Judicial Council may prescribe appropriate education and training for judges with regard to trial court unification.

(c) Except as provided by statute to the contrary, in any county in which the superior and municipal courts become unified, the following shall occur automatically in each preexisting superior and municipal court:

(1) Previously selected officers, employees, and other personnel who serve the court become the officers and employees of the superior court.

(2) Preexisting court locations are retained as superior court locations.

(3) Preexisting court records become records of the superior court.

(4) Pending actions, trials, proceedings, and other business of the court become pending in the superior court under the procedures previously applicable to the matters in the court in which the matters were pending.

(5) Matters of a type previously within the appellate jurisdiction of the superior court remain within the jurisdiction of the appellate division of the superior court.

(6) Matters of a type previously subject to rehearing by a superior court judge remain subject to rehearing by a superior court judge, other than the judge who originally heard the matter.

(7) Penal Code procedures that necessitate superior court review of, or action based on, a ruling or order by a municipal court judge shall be performed by a superior court judge other than the judge who originally made the ruling or order.

Eleventh--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.

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