Study J-1300 May 21, 1997

Memorandum 97-37

Trial Court Unification by County: Stop-Gap Issues

Under 1996 Cal. Stat. ch. 333, § 2(i), SCA 4 is to appear on the ballot of the next statewide general election. The next statewide general election is currently set for June 1998, and the Commission is following a schedule for legislative implementation by that date.

However, there is a possibility that a statewide general election could be called before that time for any number of reasons, such as to modify term limits for elective office. In that case, under the 1996 mandate, SCA 4 would appear on that ballot.

With this scenario in mind, it is appropriate that the Commission consider what sort of stop-gap legislation would be desirable until full implementing legislation can be enacted. As we have noted in a previous memorandum, a bill has been introduced — AB 1110 (Murray) — that could serve as a vehicle for that purpose. Senator Lockyer's staff has advised us it would be prudent to consider interim legislation issues up front, just in case.

This memorandum reviews the issues the staff has identified for possible inclusion in stop-gap legislation. The staff will prepare draft legislation incorporating appropriate provisions after approval by the Commission.

IMMEDIATELY OPERATIVE PROVISIONS OF SCA 4

SCA 4 raises two types of issues that may require stop-gap treatment: (1) Immediately operative parts of the measure; and (2) Parts of the measure that will become operative only after the judges in a county vote to unify the superior and municipal courts.

The measure contains a number of constitutional revisions that will apply regardless of whether the courts in any county ever elect to unify. These include:

(1) Creation of an appellate division in the superior court. Art. VI, § 4.

(2) Changes in the structure of the Judicial Council. Art. VI, § 6.

(3) Protection of the appellate jurisdiction of the courts of appeal in causes of a type within that jurisdiction on June 30, 1995. Art. VI, § 11(a).

(4) Delegation of the appellate jurisdiction of the superior court to causes prescribed by statute. Art. VI, § 11(b).

(5) Change in the date of an election to fill a superior court vacancy to the next general election after the second January following the vacancy. Art. VI, § 16(c).

Some of these revisions demand, or would be facilitated by, implementing legislation. If SCA 4 is approved by the electors, it will become operative the day after the election. The implementing legislation for the immediately operative parts of SCA 4 therefore should be in place by the day after enactment.

Creation of Appellate Division in Superior Court

SCA 4 would create an appellate division in the superior court. The appellate division is similar to the existing appellate department, but it is intended to have greater autonomy so that it can exercise a true review function in unified superior courts. Therefore assignments to the appellate division are made by the Chief Justice for specified terms and pursuant to rules (not inconsistent with statute) adopted by the Judicial Council "to promote the independence of the appellate division." Art. VI, § 4.

The existing statutes governing the structure of the appellate department probably should ultimately be revised to give the Judicial Council a freer hand in complying with the constitutional mandate. As a stop-gap, however, it may simply be sufficient to incorporate the existing statutes by reference.

> **Appellate division of superior court**
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> A reference in any statute to the appellate department of the superior court means the appellate division of the superior court.
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> **Comment.** This section converts the appellate department of the superior court to the appellate division. The appellate division is created by Cal. Const. Art. VI, § 4. The existing structure of the appellate department is created in Code of Civil Procedure Section 77.

Appellate Jurisdiction of Courts of Appeal

SCA 4 provides that the 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. This unfortunate provision is the result of a political compromise forged in connection with SCA 3 and simply carried over into SCA 4.

The effect of this provision is to lock the court of appeal jurisdiction in place as it existed on June 30, 1995, regardless of changes in court of appeal jurisdiction that may have occurred between then and the SCA 4 enactment date, whenever that may be. This creates some obvious problems, such as:

(1) How is a person in the future to know what the court of appeal jurisdiction was on June 30, 1995, without doing research into 1995 law? Can we somehow ease the problems by enacting a statutory summary of the jurisdiction as it existed on that date?

(2) What is a cause "of a type" within the court of appeal jurisdiction? If a new cause of action is created for violation of a new statutory requirement (e.g., failure to put a new type of health warning label on a product), is this a cause of a type within previously existing appellate jurisdiction?

(3) If, on the effective date of SCA 4, an appeal is pending in the court of appeal in a cause not of a type within the court's jurisdiction on June 30, 1995, and not statutorily prescribed to be within the court's jurisdiction, must the appeal be dismissed?

This type of troublesome protective provision is not necessary in the context of SCA 4. Unlike SCA 3, which contemplated elimination of all municipal courts (and therefore the distinction between municipal and superior court jurisdiction), SCA 4 contemplates the continuation of municipal and superior courts, with the traditional jurisdictional definitions, in counties that do not elect to unify.

Therefore, the staff proposes that we deal with the court of appeal's appellate jurisdiction dilemma by statutorily continuing the same system that now exists. The courts of appeal would have jurisdiction in causes within the original jurisdiction of the superior courts.

> **Code Civ. Proc. § 46 (added). Appellate jurisdiction of courts of appeal**
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> 46. (a) Courts of appeal have appellate jurisdiction in causes [of a type] within the original jurisdiction of superior courts, as that jurisdiction exists in counties in which municipal and superior courts are not unified[, whether or not the cause arises in such a county].
>
> (b) Nothing in this section limits the appellate jurisdiction of the courts of appeal in causes of a type within their appellate jurisdiction on June 30, 1995, or in other causes prescribed by statute.
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> **Comment.** Section 46 implements the constitutional authority in Article VI, § 11 for appellate jurisdiction of courts of appeal in

"other causes provided by statute". It is designed to avoid the problem of restricting appellate jurisdiction of courts of appeal to matters within their appellate jurisdiction on June 30, 1995.

The appellate jurisdiction of the courts of appeal is defined by the superior court jurisdiction as it exists in nonunified counties. This rule applies regardless whether a particular cause coming before a court of appeal arose in a unified or nonunified court.

This section allocates appellate review authority to the court of appeal. It is not intended to create a right of appeal in a particular cause that does not otherwise exist. Cf. Powers v. City of Richmond, 40 Cal. Rptr. 2d 839 (1995).

Staff Note. AB 1110 (Murray), which may be a vehicle for the stop-gap legislation, includes the text of the provision set out above.

An alternate and simpler version of subdivision (a), that may be preferable, would read:

> Courts of appeal have appellate jurisdiction in causes within the original jurisdiction of superior courts, excluding causes of a type within the statutory jurisdiction of municipal courts.

These stop-gap provisions assume that some counties will continue to have a superior/municipal division for some time to come. The staff believes this is a safe assumption.

Appellate Jurisdiction of Superior Court

Under existing law, the appellate jurisdiction of the superior court is causes prescribed by statute "that arise in municipal courts in their counties". Art. VI, § 11. SCA 4 would delete this reference, simply leaving the appellate jurisdiction of superior courts to statute.

This provision needs to be reflected in the statutory scheme:

> **Appellate jurisdiction of appellate division of superior court**
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> Notwithstanding subdivision (e) of Section 77 of the Code of Civil Procedure, the appellate division of the superior court has jurisdiction on appeal from the following courts, in all cases in which an appeal may be taken to the superior court as is now or may hereafter be provided by law, except appeals that require a retrial in the superior court:
>
> (a) The municipal courts in the county.

(b) The superior court in the county, if there is no municipal court, in causes within the statutory jurisdiction of municipal courts.

Comment. This section implements the provision of Cal. Const. Art. VI, § 11(b) that "the appellate division of the superior court has appellate jurisdiction in causes prescribed by statute". It would replace Code of Civil Procedure Section 77(e) in part.

PROVISIONS OF SCA 4 OPERATIVE ON A VOTE TO UNIFY

The major issues presented by SCA 4 relate to a vote to unify the courts in a county. Problems that will arise before full implementing legislation can be enacted — and therefore require stop-gap legislation — include:

(1) Unification voting procedure.

(2) Transitional problems in pending causes.

(3) Other transitional issues.

(4) Judicial elections.

It would of course be possible to avoid the need for stop-gap legislation through a provision that postpones a unification vote until full implementing legislation is in place. However, the clear signal we have from the Legislature is to allow immediate unification for those courts that are interested in it.

Unification Voting Procedure

SCA 4 provides that the superior and municipal courts in a county "shall be unified upon a majority vote of superior court judges and a majority vote of municipal court judges" in the county. This provision obviously poses a number of problems, such as — Who calls the vote? How often can a vote be called? What is the voting procedure? Is a majority required of all authorized positions or only of filled judgeships? Is a judge temporarily appointed to fill a vacancy entitled to vote? Who certifies the results? When is the vote operative? Can a vote to unify later be rescinded?

The persons involved in putting SCA 4 together acknowledged ambiguities. They agreed that if the measure moves forward, the Legislature would contemporaneously enact a statute specifying the details of the voting process. There is a separation of powers consideration here — at least an argument can be made that SCA 4 vests control of the election procedure in the judicial rather than legislative branch. However, SCA 4 includes legislative intent language that its purpose "is to permit the Legislature to provide for the abolition of the municipal

courts and unify their operations within the superior courts." Art. VI, § 23(a) (although this provision also refers to SCA 4's approval at the *November 5, 1996,* general election).

The staff suggests a statutory voting procedure along the following lines:

Unification voting procedure provided in this article

(a) The municipal and superior courts in a county shall be unified upon a majority vote of superior court judges and a majority vote of municipal court judges in the county, pursuant to the procedure provided in this article.

(b) The vote shall be conducted by the Judicial Council.

(c) The Judicial Council may adopt rules not inconsistent with this article for the conduct of the vote, including but not limited to rules governing the frequency of vote calls, duration of the voting period, and changes within the voting period.

Comment. This section reiterates authority provided in Cal. Const. Art. VI, § 5(e) for unification of the municipal and superior courts in a county. The implementation of the unification procedure is vested in the Legislature by Cal. Const. Art. VI, § 23 (purpose of constitutional amendment is to permit Legislature to provide for unification).

Conduct of vote

(a) A vote of the judges in a county for unification shall be called by the Judicial Council on application of the presiding judge of the superior court in the county or on application of a majority of the judges of the municipal court or a majority of the judges of the superior court in the county.

(b) The vote shall be taken 30 days after it is called.

(c) A judge is eligible to vote if the judge is currently serving a term in the court pursuant to an election or appointment under Section 16 of Article VI of the California Constitution.

(d) The vote shall be by secret ballot.

(e) The ballot shall be in substantially the following form:

"Shall the municipal and superior courts in the County of [name county] be unified on [specify date]? [Yes] [No]"

Certification of results

(a) The Judicial Council shall certify the results of a vote to unify the municipal courts and the superior courts in a county.

(b) Unification of the municipal and superior courts in a county requires a majority of all votes actually cast by superior court judges in the county and a majority of all votes actually cast by municipal court judges in the county.

(c) After certification, a vote to unify the municipal and superior courts in a county may not be rescinded.

Operative date of unification

(a) Unification of the municipal and superior courts in a county shall occur on the earlier of the date specified in the unification vote or 180 days following certification of the vote for unification.

(b) When the superior and municipal courts in 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.

Comment. Subdivision (b) restates the first sentence of Cal. Const. Art. VI, §23(b).

Transitional Problems in Pending Causes

On the operative date of unification, there will be causes pending in the municipal court, as well as new causes that are statutorily within the jurisdiction of the municipal court. SCA 4 includes a number of transitional provisions, but these would be more accessible to attorneys and others if they were repeated in statutes and not buried in the Constitution.

Transitional provisions

In any county in which the superior and municipal courts become unified, the following shall occur automatically in each preexisting superior and municipal court:

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

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

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

(d) 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.

(e) 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.

(f) 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.

Comment. This section restates Cal. Const. Art. VI, § 23(c). Although embodied in the Constitution, these provisions are

subject to variation by statute. See Cal. Const. Art. VI, § 23(c) (introductory clause). See also Code Civ. Proc. § 77 (appellate division of superior court); Gov't Code § 69503 (AB 1110).

Staff Note. This provision duplicates the transitional provision of SCA 4 that municipal court records become superior court records. Subdivision (c). There may be a need to deal with the statutory retention periods for these records. This should be addressed as part of the general statutory recommendations and not as part of stop-gap legislation.

Other Transitional Issues

There are a number of issues left unresolved by SCA 4 that should be addressed by interim legislation pending a general statutory cleanup.

Conversion of Judgeships. Under SCA 4, unification abolishes municipal court judgeships and converts municipal court judges to superior court judges. The provision is silent as to the treatment of vacant judgeships.

It is conceivable that the unified court ultimately will require fewer total judgeships due to added scheduling flexibility. The Legislature controls the number of judgeships in the county. However, as an interim matter it would be prudent to maintain the existing total of judgeships. A provision along the following lines appears appropriate.

Conversion of judgeships

When the superior and municipal courts in a county are unified:

(a) 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. Until revised by statute, total number of judgeships in the unified superior court shall equal the previously authorized number of judgeships in the superior court and municipal court combined.

(b) The term of office of a previously selected municipal court judge is not affected by taking office as a judge of the superior court.

(c) The 10-year membership or service requirement of Section 15 does not apply to a previously selected municipal court judge.

Comment. This section restates the first three sentences of Cal. Const. Art. VI, § 23(b), with the addition in subdivision (a) of a provision maintaining the total number of judgeships in the county. The Legislature prescribes the number of judges. Cal. Const. Art. VI, §§ 4, 5.

The references in this section to a "previously selected" judge includes selection by election or by appointment to fill a vacancy. Cf. *Trial Court Unification: Constitutional Revision (SCA 3),* 24 Cal. L.

Revision Comm'n Reports 1, 82 (1994) (*Comment* to Article VI, § 23(b)).

Miscellaneous provisions. There are miscellaneous statutes keyed to the municipal court. It will be helpful as a temporary fix to simply provide that, in a unified court, those provisions are deemed to refer to the superior court.

Miscellaneous provisions relating to municipal court

In a county in which there is no municipal court:

(a) A reference in a statute to the municipal court or the judge of a municipal court shall be deemed to be a reference to the superior court or a judge of the superior court.

(b) Proceedings within the jurisdiction of the municipal courts shall be conducted in the superior court under the procedures that would be applicable to the proceedings in a municipal court.

(c) Filing fees and other fees and costs for proceedings within the jurisdiction of municipal courts shall remain the same as they would be if the proceedings were in a municipal court.

(d) Bond and undertaking requirements in proceedings within the jurisdiction of municipal courts shall remain the same as they would be if the proceedings were in a municipal court.

(e) Sessions, including days, hours, and locations of proceedings within the jurisdiction of municipal courts shall remain the same as they would be if the proceedings were in a municipal court.

(f) The relief available in proceedings within the jurisdiction of municipal courts shall remain the same as it would be if the proceedings were in a municipal court.

(g) Until revised by the Judicial Council, forms for proceedings within the jurisdiction of municipal courts may be used as if the proceedings were in a municipal court.

(h) The Judicial Council may adopt rules resolving any other problem that may arise in the conversion of statutory references from the municipal court to the superior court.

Comment. This section implements the provision of Cal. Const. Art. VI, § 5(e) that in a county in which there municipal and superior courts are unified, there is only a superior court.

Staff Note. This provision continues without change the references to existing laws governing municipal court sessions. Subdivision (c). There may be a need to allow some flexibility here in a unified court. This should be addressed as part of the overall unification statutory recommendations and not as part of stop-gap legislation.

Transitional rules of court. A provision along the following lines would consolidate authority of the Judicial Council to adopt implementing rules to

facilitate unification in those courts that elect to unify. The rules may not be inconsistent with statute.

Transitional rules of court

The Judicial Council shall adopt rules of court not inconsistent with statute for:

(a) The conduct and certification of a vote for unification of the municipal and superior courts in a county.

(b) The orderly conversion of proceedings pending in municipal courts to proceedings in superior courts, and for proceedings commenced in superior courts on and after the date the municipal and superior courts in a county are unified.

(c) Selection of persons to coordinate implementation activities for the unification of municipal courts with superior courts in a 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 unification.

(d) 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 unification.

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

(f) Preparation of any necessary local court rules that shall, on the date the municipal and superior courts in a county are unified, be the rules of the unified superior court.

(g) Other necessary activities to facilitate the transition to a unified superior court.

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

Subdivision (a) supplements the unification vote procedures.

Subdivision (b) provides generally that the rules will ensure the orderly conversion of proceedings in the unified superior court as of the date the municipal and superior courts in a county are unified.

Subdivision (c) 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 (d) 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 (e) provides that the courts will develop and adopt a personnel plan. The section parallels Rule 205(11). 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. See also Section 69503 (AB 1110).

Subdivision (f) provides for local rule adoption. 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 (g) 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.

Judicial Elections

Judicial elections in a county in which the courts have unified present at least two problems, one practical and one legal. Both problems stem from the fact that in a unified superior court, judges will be elected countywide, rather than in judicial districts.

The practical problem is that in a large county, a former municipal court judge who is converted to a superior court judge may have to stand for election countywide before the judge has an opportunity to become known outside the former municipal court district. The staff does not propose any remedies for this problem — and in fact our ability to deal with the matter legislatively is subject to constitutional provisions on judicial elections. In any event, the judges can control this situation, if that is a concern to them, by voting to unify when they will have sufficient time before the next election to become known.

The legal problem relates to the Voting Rights Act. For most counties in California, this should not be a problem. The judges will be elected countywide; if a federal court determines this to be illegal, it will fashion a remedy. SCA 4 provides a procedure by which the Legislature can revise judicial elections if necessary to comply with federal law.

In four California counties, however, the Voting Rights Act requires preclearance — Kings, Merced, Monterey, and Yuba. In fact, the United States

Supreme Court has invalidated judicial elections in Monterey County conducted, without preclearance, pursuant to a countywide municipal court consolidation. Lopez v. Monterey County (Nov. 1996).

In light of this situation, the staff believes it is advisable for the state immediately to seek preclearance of judicial elections in any preclearance county that votes to unify. This ought not to be a significant issue in Merced or Yuba counties, since they historically have had county-wide municipal court elections in a county-wide municipal court district.

> **Preclearance of trial court unification**
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> The Attorney General shall, to the extent required by the preclearance provisions of the federal Voting Rights Act, 42 U.S.C. § 1973 *et seq*., seek to obtain preclearance of Section 16(b)(1) of Article VI of the California Constitution as it applies in a county in which the courts are unified pursuant to Section 5(b) of Article VI of the California Constitution.
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> **Comment**. This section vests preclearance duties in the Attorney General. See 42 U.S.C. § 1973c (preclearance submission by state's chief legal officer); Cal. Const. Art. V, § 13 (Attorney General state's chief law officer).

Respectfully submitted,

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