Study J-1300 July 15, 1997

Memorandum 97-52

Trial Court Unification by County: Judicial Districts

BACKGROUND

Among the issues in implementing SCA 4 is the treatment of judicial districts. Judicial districts have existed chiefly, but not exclusively, for the operation of inferior courts and the election of their judges.

Under existing law, statutes refer to these districts in a variety of ways: as judicial districts, municipal court districts, municipal court judicial districts, justice court districts, justice court judicial districts, and judicial subdivisions. Moreover, the statutes refer to these districts for a variety of administrative and jurisdictional purposes. There are also a small number of references, for purposes of venire selection, to smaller geographic divisions of the municipal court.

Each of these entities — judicial districts, municipal court districts, justice court districts, and geographic divisions of the municipal court — could, in the course of a reordering of the court system such as SCA 4 envisions, be addressed by preserving them or eliminating them. This memorandum will set out some of the advantages and disadvantages involved in these choices.

At the outset, it must be acknowledged that some uncertainty clouds this issue. In particular, it is unclear what the effect was on the justice court districts of the elimination of the justice courts by SCA 7, operative January 1, 1995. Were the justice court districts actually eliminated? Did they become municipal court districts? Do they remain as a sort of vestigial entity? Language in the constitution was modified to delete references not only to justice courts but to justice court districts. For instance, Section 5(a) of Article VI had read in part: "Each county shall be divided into municipal court and justice court districts as provided by statute." It now reads: "Each county shall be divided into municipal court districts as provided by statute." On the other hand, there do not appear to be any statutes explicitly stating either that justice court districts have been eliminated or that they have become municipal court districts. What lessons does

the experience of the justice court districts provide for the current issue? **The Judicial Council may be able to provide us with some insight.**

With this caveat in mind, the Commission should consider the issue of the judicial districts under trial court unification. To eliminate judicial districts automatically in counties whose trial courts unify could result in a number of problems, some examples of which are set out below. To continue judicial districts in unified counties without making particular modifications presents other difficulties. The problems arise in part from the need to modify the codes to accommodate simultaneously counties with and without unifed trial courts.

CONTINUING JUDICIAL DISTRICTS IN UNIFIED COUNTIES

A section that illustrates the utility of continuing judicial districts in unified counties is Section 859 of the Penal Code, which concerns the right to counsel for defendants in serious criminal cases. It provides that the defendant in certain instances "be taken before a magistrate of the court in which the complaint is on file." Regarding judicial districts, the pertinent portion of the section reads:

> The magistrate must, upon the request of the defendant, require a peace officer to take a message to any counsel whom the defendant may name, in the judicial district in which the court is situated. The officer shall, without delay and without a fee, perform that duty.

If judicial districts are continued in unified counties, this passage could continue unchanged with no impact on how it functions, at least initially. But court locations could be consolidated after unification to take advantage of the efficiencies that unification is meant to bring. Consolidation of court locations in unified counties could result in there being a judicial district without a court in it if district boundaries are not concurrently adjusted. While every court would be situated in a judicial district, not every judicial district would contain a court.

The impact on Section 859 could be that prior to consolidation a defendant would have appeared in a court in District A, but that court was consolidated with the court in District B, where the consolidated court now sits. Thus the territory in which the defendant's message must be delivered would shift to the different territory where the court is now situated. A defendant may protest, having wanted to contact a lawyer in the old district. Even more forceful protest, perhaps, would come not from defendants but from lawyers in districts whose courts have disappeared through consolidation, arguing that the new rule puts

them at a disadvantage compared with lawyers in judicial districts with functioning courts.

If, rather than preserving judicial districts in unified counties, a provision with broad application is enacted to the effect that for unified counties, any time the term "judicial district" appears it shall mean the county, this passage could continue to operate without changing its wording, but not without altering its effect. The effect would be to enlarge the territory in which a defendant's request must be honored. If no provision with broad application is adopted, amendment of this portion of Section 859 could take one of several possible routes.

(1) Refer to the area that formerly comprised the judicial district:

> In a county in which there is no municipal court, the ~~The~~ magistrate must, upon the request of the defendant, require a peace officer to take a message to any counsel whom the defendant may name, in the area comprising what was formerly the judicial district in which the court was situated. In a county in which the municipal and superior courts are not unified, the magistrate must, upon the request of the defendant, require a peace officer to take a message to any counsel whom the defendant may name, in the judicial district in which the court is situated. The officer shall, without delay and without a fee, perform that duty.

The advantage to this approach is that it seems to continue the effect of the existing law, keeping parallel, as between defendants in unified and non-unified counties, the territory in which courts must honor a defendant's request to have a message delivered to a particular counsel. The disadvantages are that it is lengthy and awkward, and that it essentially treats a unified county as though it were not unified.

(2) Change the geographic designation to "county" for unified counties, while leaving it "judicial district" for non-unified counties:

> The magistrate must, upon the request of the defendant, require a peace officer to take a message to any counsel whom the defendant may name, in the judicial district in which the court is situated if in a county in which the municipal and superior courts are not unified, or in the county in which the court is situated if in a county in which the municipal and superior courts are unified. The officer shall, without delay and without a fee, perform that duty.

The logic of this approach is to employ the basic geographic area for court functions in each type of county, unified and non-unified. However, this would

change the policy by enlarging the territory within which a court must honor the request of a defendant in a unified county to have a message delivered to a particular counsel. (The impact is the same as that produced by a provision with broad application stating that for unified counties, any time the term "judicial district" appears it shall mean the county.) This approach seems inequitable as between defendants in unified versus non-unified counties, perhaps to the point of raising equal protection issues with regard to criminal procedure.

(3) Substitute "county" for "judicial district" for both types of counties:

> The magistrate must, upon the request of the defendant, require a peace officer to take a message to any counsel whom the defendant may name, in the ~~judicial district~~ county in which the court is situated. The officer shall, without delay and without a fee, perform that duty.

The advantages to this approach are simplicity and equal treatment as between defendants in unified and non-unified counties. It would, however, change the policy by enlarging the territory within which a court must honor the request of a defendant in either type of county to have a message delivered to a particular counsel. This very well could have an impact on the administration of justice in counties throughout the state.

PROBLEMS CAUSED BY PRESERVING JUDICIAL DISTRICTS

As noted above, if judicial districts are continued in unified counties, then subsequent consolidation of court locations would result in there being a judicial district without a court in it, unless the board of supervisors simultaneously changed the district boundaries. This could present a problem in some statutes, such as Section 599a of the Penal Code. While in Section 859 the problem was that consolidation could move the proper court from one judicial district to another, here the problem is that the appropriate court prescribed by statute could be consolidated out of existence. Section 599a would require only a simple amendment to resolve the difficulty:

> **Penal Code § 599a (amended). Warrants in humane cases**
>
> 599a. When complaint is made, on oath, to any magistrate authorized to issue warrants in criminal cases, that the complainant believes that any provision of law relating to, or in any way affecting, dumb animals or birds, is being, or is about to be violated in any particular building or place, the magistrate must issue and

deliver immediately a warrant directed to any sheriff, police or peace officer or officer of any incorporated association qualified as provided by law, authorizing him to enter and search that building or place, and to arrest any person there present violating, or attempting to violate, any law relating to, or in any way affecting, dumb animals or birds, and to bring that person before some court or magistrate of competent jurisdiction, within the city, county, city and county, or judicial district within which the offense has been committed or attempted, to be dealt with according to law, and the attempt must be held to be a violation of Section 597.

Comment. Section 599a is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

The existing section applies to a list of political subdivisions ("city, city and county, or judicial district") within which a relevant offense has been committed or attempted. If judicial districts are not continued, then in a unified county that is not a city and county, an offense conceivably may be committed or attempted in a city with no "court or magistrate of competent jurisdiction" over the matter. Even if judicial districts are continued in unified counties, future consolidation of court locations means that an offense could be committed in a judicial district that has no "court or magistrate of competent jurisdiction." Adding "county" to the list of political units, as proposed, would solve the problem. Continued inclusion of the term "judicial district" is appropriate for non-unified counties, and would not disturb how the section, amended as proposed, would function for unified counties.

Another section that might require modification if judicial districts are continued in unified counties is Section 12150 of the Fish and Game Code. The existing section reads:

Fish & Game Code § 12150. Killing or wounding a person while hunting

12150. Whenever any person, while taking a bird or mammal, kills or wounds any human being and that fact is ascertained by the department, the department shall notify the district attorney of the county in which the act occurred. The district attorney may thereupon bring an action in the municipal or justice court of the judicial district in which the act occurred for the purpose of determining the cause of the killing or the wounding. Such proceedings shall be conducted in the same manner as an action to try a misdemeanor and the defendant may request that all findings

of fact shall be made by a jury. The court shall inform the defendant of the nature of the proceedings and of his right to have a jury.

If it is found that such person did the killing or wounding but that it was not intentional or negligent, the court shall dismiss the proceeding. Otherwise, if it is found that such person did the killing or wounding intentionally, by an act of gross negligence, or while under the influence of alcohol, the court shall issue an order permanently prohibiting him from taking any bird or mammal.

If it is found that such person was negligent, but not grossly negligent, the court shall issue an order prohibiting him from taking any bird or mammal for a period specified at the discretion of the court but not less than five years.

This section, which prescribes that the type of proceeding it authorizes shall be conducted in the manner of a misdemeanor action, illustrates some of the issues that the Commission needs to consider with respect to judicial districts. The Commission has considered recommending the adoption of a general provision with broad application to the effect that misdemeanor actions would be brought in the superior court unless there is a municipal court in the county. Such a provision, however, would not necessarily determine in which superior court *location* — i.e., branch — the action should be brought.

Section 12150 provides that the district attorney may bring an action in the municipal court (justice courts having been eliminated) of the judicial district in which the killing or wounding occurred. In a unified county, an action would be brought in superior court. May it be brought in superior court anywhere in the county, or should it be brought in a particular branch? After a county's courts unify, the municipal court locations at least initially would be maintained as branches of the superior court. Thus, if judicial districts are continued in unified counties, the district attorney could be required, at least initially, to bring the action in the branch located in the judicial district where the act occurred. It may not be long, however, before court locations in the county are consolidated for efficiency's sake — with the result that a judicial district might contain no court.

One way to amend the section to avoid this potential problem is as follows:

Fish & Game Code § 12150 (amended). Killing or wounding a person while hunting

12150. Whenever any person, while taking a bird or mammal, kills or wounds any human being and that fact is ascertained by the department, the department shall notify the district attorney of the county in which the act occurred. The district attorney may

thereupon bring an action in the municipal ~~or justice~~ court of the judicial district in which the act occurred if in a county in which there is at least one municipal court, or in the superior court of the county in which the act occurred if in a county in which there is no municipal court, for the purpose of determining the cause of the killing or the wounding. Such proceedings shall be conducted in the same manner as an action to try a misdemeanor and the defendant may request that all findings of fact shall be made by a jury. The court shall inform the defendant of the nature of the proceedings and of his right to have a jury.

If it is found that such person did the killing or wounding but that it was not intentional or negligent, the court shall dismiss the proceeding. Otherwise, if it is found that such person did the killing or wounding intentionally, by an act of gross negligence, or while under the influence of alcohol, the court shall issue an order permanently prohibiting him from taking any bird or mammal.

If it is found that such person was negligent, but not grossly negligent, the court shall issue an order prohibiting him from taking any bird or mammal for a period specified at the discretion of the court but not less than five years.

Comment. Section 12150 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

This approach ensures that there would always be an appropriate court in which to bring an action. Since the formulation does not specify in which superior court location the district attorney in a unified county should bring an action, he or she theoretically could bring the action in any branch, however distant from where the act occurred. Venue provisions presumably could resolve that problem.

Another approach is to authorize the district attorney in a unified county to bring an action in the superior court branch "nearest or most accessible to" the place where the act occurred:

Fish & Game Code § 12150 (amended). Killing or wounding a person while hunting

12150. Whenever any person, while taking a bird or mammal, kills or wounds any human being and that fact is ascertained by the department, the department shall notify the district attorney of the county in which the act occurred. The district attorney may thereupon bring an action ~~in the municipal or justice court of the judicial district in which the act occurred~~ for the purpose of determining the cause of the killing or the wounding. Such proceedings shall be conducted in the same manner as an action to

try a misdemeanor and the defendant may request that all findings of fact shall be made by a jury. The court shall inform the defendant of the nature of the proceedings and of his right to have a jury. The proper court for the proceedings is the municipal court of the judicial district in which the act occurred if in a county in which there is at least one municipal court, or the superior court branch nearest or most accessible to the place where the act occurred if in a county in which there is no municipal court.

If it is found that such person did the killing or wounding but that it was not intentional or negligent, the court shall dismiss the proceeding. Otherwise, if it is found that such person did the killing or wounding intentionally, by an act of gross negligence, or while under the influence of alcohol, the court shall issue an order permanently prohibiting him from taking any bird or mammal.

If it is found that such person was negligent, but not grossly negligent, the court shall issue an order prohibiting him from taking any bird or mammal for a period specified at the discretion of the court but not less than five years.

Comment. Section 12150 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Several statutes use similar formulations with respect to locations of courts or judges, though none specifically with respect to superior court branches. See, e.g., Code Civ. Proc. § 393 (regarding proper court for trial of action for penalty or forfeiture against public officer); Harb. & Nav. Code § 664 (place specified in notice to appear may be before municipal court judge who is nearest and most accessible to place of arrest); Veh. Code §§ 40304 (procedures available to officer include bringing arrested person without unnecessary delay before magistrate who is, among other things, nearest and most accessible to place of arrest), 40502 (options for place to appear include magistrate who is, among other things, nearest and most accessible to place of arrest).

Superior Court Districts

Chapter 5 of Title 8 of the Government Code, which concerns the organization and government of the superior courts, contains a number of sections (mainly in Article 4) that govern the creation and administration of superior court districts in counties of four million or more people (Los Angeles County). Research has revealed no references to superior court districts elsewhere in the statutes. Whether or not the trial courts of Los Angeles County

elect to unify, continuation of judicial districts in unified counties should have no impact on superior court districts — as long as the term "judicial district" is understood not to include "superior court district." Without this proviso, statutes that refer to the "judicial district" in which a court is situated or in which an act occurred could change their meaning from municipal court district to superior court district, as applied to a Los Angeles County with a unified trial court.

This proviso would also be consistent with the caution that, as the California Supreme Court expressed it, "[a] municipal court judicial district is to be distinguished from a superior court judicial district." Hernandez v. Municipal Court, 49 Cal. 3d 713, 718 n.4, 781 P.2d 547, 550, 263 Cal. Rptr. 513, 516 (1989). The *Hernandez* court pointed out that "Los Angeles County Superior Court has been divided into judicial districts [sic] pursuant to guidelines set forth in Government Code sections 69640-69650." *Id.* While the court might have used "superior court districts" (or merely "districts") instead of "judicial districts" to avoid confusion with municipal court districts, it did note that significant differences exist between the two districts. For example, a city may not ordinarily be divided into more than one municipal court district. In addition, research has revealed no statute that uses the phrase "superior court judicial district," even though *Hernandez* and other court decisions have employed it. This lends some support to a view that "judicial district" should not include "superior court district."

Geographic Divisions of the Municipal Court

Many municipal court districts are further divided geographically into divisions; e.g., the Kings County Municipal Court District consists of the Corcoran Division, the Hanford Division, and the Lemoore Division. Gov't Code § 73391. In some cases, of which the Kings County Municipal Court District is an example, the divisions were established in conjunction with the consolidation of several judicial districts, with the divisions often retaining the names of the judicial districts they superseded. *Id.* Does it make sense to preserve the geographic divisions of the municipal court in counties whose municipal and superior courts become unified? While numerous statutes employ judicial districts for a variety of administrative functions, research has revealed only two statutes that employ geographic divisions of municipal court districts for similar administrative purposes: Sections 199.2 and 199.3 of the Code of Civil Procedure use divisions for purposes of jury selection in Placer County and Nevada

County, respectively. Unless further research reveals that a general provision would have broader application than merely to these two sections, a general provision preserving the geographic divisions of municipal court districts in unified counties probably is not warranted.

STAFF RECOMMENDATIONS

Preserving Judicial Districts

The foregoing examples illustrate some of the problems and options involving judicial districts under SCA 4. The staff has some general suggestions as to treatment of these issues.

The staff has looked at a number of basic approaches. First, the staff considered what would be the impact of a general provision, probably in the Government Code, to the effect that for unified counties, any time the term "judicial district" appears it shall mean the county.

Second, the staff considered what would be the impact of a general provision to the effect that for unified counties, any time "judicial district" appears it shall mean the former judicial district covering the relevant area at the moment of unification in the particular county.

Third, the staff considered what would be the impact of making no general provision about the meaning of "judicial district" in unified counties.

As between the first and second approaches, the staff found that while neither was a panacea, the second appears to continue the policy and effect of existing law in a greater number of instances than does the first. Where a general provision fails to continue the policy and effect of existing law, an exception to the general provision regarding judicial districts can be written into the section.

The third approach, making no general provision about the meaning of "judicial district" in unified counties, would itself entail treating the sections in two ways: First, those sections where the mention of judicial districts would remain useful for non-unified counties and would have no impact on the law's operation in unified counties would continue unchanged. Second, other sections would require modification — in some cases extensive modification — to preserve to the greatest extent possible the policies and effects of the existing law.

After considering these various approaches to the issue, the staff believes that it would be useful to continue judicial districts in unified counties for various administrative purposes that they fulfill under existing law. To help

accommodate the continuation of judicial districts in unified counties, a conforming change in Section 71040 of the Government Code would be helpful:

> **Gov't Code § 71040 (amended). Judicial districts**
>
> 71040. (a) As public convenience requires, the board of supervisors shall divide the county into judicial districts for the purpose of electing judges and other officers of municipal ~~and justice~~ courts, and other purposes that may be necessary for the proper administration of justice regardless whether there is a municipal court in the county. The board of supervisors may change district boundaries and create other districts. No city or city and county shall be divided so as to lie within more than one district.
>
> (b) If the municipal and superior courts in a county become unified:
>
> (1) Municipal court and other judicial districts in existence at the time of unification remain in existence as judicial districts until changed by the board of supervisors.
>
> (2) Judicial districts denominated as municipal court districts or justice court districts shall be known as judicial districts.
>
> (c) Nothing in this section precludes the board of supervisors from creating a county-wide judicial district.
>
> **Comment.** Section 71040 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

The provision might be relocated among general provisions on judicial administration, rather than among the provisions relating to municipal courts, where it is now located.

Defining "Judicial District"

It would also be helpful to clarify the meaning of "judicial district" in a general provision, with broad application, to exclude superior court districts and court of appeal districts explicitly:

> **Gov't Code § ____ (added). Exclusive meaning of judicial district**
>
> ___. As used in any statute of this state, the term "judicial district" does not include superior court district or court of appeal district.
>
> **Comment.** Section ___ is added to clarify the meaning of "judicial district" in general provisions of broad application enacted to accommodate unification of the municipal and superior

courts in a county. Cal. Const. art. VI, §§ 3, 5(e); Gov't Code §§ 69640-69650.

This provision might be located among general provisions on judicial administration, either separately or as subdivision (d) of amended Government Code Section 71040, *supra.* The broad application of the provision would allow, for instance, the repeal of Section 325 of the Elections Code:

> **Elec. Code § 325 (repealed). Judicial district**
>
> ~~325. "Judicial district" includes municipal court district and justice court district.~~
>
> **Comment.** Section 325 is repealed to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

A cross reference to the added section of the Government Code should be included.

The staff believes that repeal of Section 325 would not leave the few other sections of the Elections Code that use the term "judicial district" prone to misinterpretation. See Elec. Code §§ 8203 (incumbent as only nominee for office of superior court judge, municipal court judge, or justice court judge), 12222 (prohibiting drawing precinct boundaries to cross boundaries of certain political subdivisions), 21000 (storage of information relevant to reapportionment). There is little chance that the term "judicial district" in those sections could be thought to mean superior court district or court of appeal district. Further, superior court judges in Los Angeles County are elected not from their superior court districts but county-wide, just as in other counties. This means that the superior court districts are not considered "districts" for election purposes under Article VI, Section 16(b) of the constitution (judges of courts other than the Supreme Court and the courts of appeal "shall be elected in their counties or districts at general elections."). A general provision that "judicial district" does not include superior court district would not conflict with existing election procedures.

Adjust District Boundaries To Match Consolidated Court Locations?

Consolidation of trial court locations in a county subsequent to unification could leave a judicial district without a court in it, unless the board of supervisors simultaneously adjusted the district boundaries, which they are authorized to do under Section 71040 of the Government Code. As noted above, some statutes would need to be modified to guard against this possibility.

One approach is to require that consolidation of court locations in unified counties be accompanied by concurrent adjustment of judicial district boundaries. Combined with a general provision continuing judicial districts in unified counties, this requirement would avoid the situation where a judicial district would exist without a court in it, eliminating the need to fine-tune individual statutes in this regard.

If, under this arrangement, certain measures or procedures warrant preservation of the judicial districts as they exist prior to consolidation, they could be preserved. The legislature has preserved for limited purposes judicial districts that were being consolidated with other judicial districts. For example, Section 71042.5 of the Government Code provides:

> Notwithstanding any other provision of law, upon consolidation of judicial districts, the territory embraced within the respective prior component judicial districts shall be separate judicial districts for the purpose of publication within a judicial district.

This section would appear to apply to several statutes providing for publication of various notices within a judicial district. See, e.g., Com. Code § 6105 (notice of impending bulk sale of seller's inventory and equipment); Rev. & Tax. Code §§ 3381 (local publication of list of tax-delinquent real property and tax collector's power and intent to sell), 3702 (notice of intended sale of tax-deeded property), 3703 (authorizing alternate means of publication if property to be auctioned is likely to bring less than cost of publication in newspaper).

The board of supervisors is authorized to change judicial district boundaries. It is unclear, though, who would have authority to consolidate court locations after trial court unification in a county. If the board of supervisors possesses this authority as well, then presumably a requirement that both actions be taken in concert would not produce additional political wrangling. If, however, the judiciary possesses the authority to consolidate court locations, then requiring the board of supervisors to act so as to conform with an administrative determination of the judicial branch could present political or even constitutional obstacles. Another potential difficulty in statutorily requiring that each time court locations are consolidated the judicial district boundaries shall be adjusted accordingly, is whether such a statute could later be repealed, thus allowing for the very problem that the statute was enacted to avoid.

In the past, consolidation of court locations has tended to occur in an uncontroversial fashion, but the question who may authorize consolidation could generate new conflicts. As a result, it may not be profitable to pursue this avenue.

Instead, the staff recommends a general provision to the effect that any statutory reference to a court situated in a judicial district, when there is no court situated in that district, shall mean the court nearest and most accessible to the place of the relevant occurrence, such as an arrest or criminal act:

> **Gov't Code § ____ (added). Court or magistrate in judicial district**
>
> **___**. In any statute of this state, any reference to the trial court or magistrate situated in the judicial district in which an act specified in that statute occurred, when there is no trial court or magistrate situated in that judicial district, shall mean the trial court or magistrate situated nearest and most accessible to the place at which the act specified in the statute occurred.
>
> **Comment.** Section **___** is added to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

This provision, like the recommendation to clarify the meaning of "judicial district," *supra*, might be made a separate general provision on judicial administration, or added as a subdivision of amended Government Code Section 71040, *supra.*

Respectfully submitted,

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