Study J-1300 November 10, 1997

First Supplement to Memorandum 97-66

Trial Court Unification: Miscellaneous Issues

In addition to the issues discussed in Memorandum 97-66, the following trial court unification issues will be considered at the Law Revision Commission's meeting on November 13, 1997:

TRIAL SETTING PREFERENCES

The Litigation Section has expressed concern about the impact of trial court unification on trial setting, particularly in civil cases:

> Without trial court unification, litigants have two points of access for getting their cases to trial. A case may be set on the municipal court trial calendar or on the superior court trial calendar. If unification is passed by the electorate and elected by the judiciary, there will be only one point of access to trial departments, namely the superior court trial calendar. Cutting the routes to trial in half will adversely impact the time for cases to get to trial.

(Memorandum 97-66, Exhibit p. 15.) The Litigation Section points out that there are many grounds for preference in trial setting, including Penal Code Section 1050, which provides in part that "criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings."

Consequently,

> one result of unification under SCA 4 will be that all civil cases presently tried in the superior court will have to wait in line behind misdemeanor cases currently tried in the municipal court. Cases currently tried in the superior court which are not entitled to priority in setting will also have to wait for setting behind all unlawful detainer and other cases now entitled to priority in what is now the superior court. They will also have to wait behind all cases with preference in setting which would have been tried in what is now the municipal court. The municipal court civil cases that are not entitled to statutory preference will have no priority in

> setting. They will wait in line behind all criminal cases, and behind all cases which are now superior court cases that have priority in setting, and behind what are now municipal court civil cases which have priority in setting. Thus, there is a risk that what are now municipal court civil cases without preference may never be set for trial in some counties.

(Memorandum 97-66, Exhibit p. 16.) The Litigation Section urges the Commission to address this situation in the implementing legislation for SCA 4, so as "to avoid the risk that municipal court civil cases and superior court civil cases that are not entitled to a preference in setting may never get to trial." (*Id.*)

The staff's preliminary exploration of this concern included a phone conversation with Mike Roddy, Executive Officer of the superior and municipal courts in Sacramento County, which are fully coordinated through use of blanket cross-assignments. He reported that the Sacramento experience was the opposite of what the Litigation Section predicts: Following full coordination, civil cases came to trial more quickly than in the past, until the court was inundated with "three strikes" cases, which appear to have slowed the progress of civil cases regardless of whether a county's municipal and superior courts are fully coordinated.

The Judicial Council has provided similar information. (Exhibit pp. 1-4.) After extensive analysis of how trial court unification will affect processing of civil cases, the Judicial Council concludes:

> Given the efficiencies produced by unification as demonstrated in other states and by coordinated courts in California, together with measures already in place to quickly process burdensome criminal or civil caseloads using teams of retired judges, there is little cause for concern about setting civil cases for trial. In fact, the entire thrust behind trial court unification is the ability to implement efficiencies and equalize the work of the judges, using judges where they are most needed. The scenario suggested by the State Bar has not come about in other unified states nor in California's coordinated courts. There is good reason to believe that trial court unification will lead to timely criminal and civil case processing to trial.

(Exhibit p. 4.)

Thus, it may be premature to include provisions altering existing trial setting preferences in the Commission's 1998 legislation implementing SCA 4. If court congestion problems develop, injustice will be an immediate threat in cases

approaching the five-year deadline for bringing a case to trial (Code of Civil Procedure Section 583.310), but in other cases there should be time to address the problem through corrective legislation before the five-year deadline arrives. Even the cases approaching the five-year deadline could be addressed on a temporary basis through use of Code of Civil Procedure Section 36(e), which provides:

> (e) Notwithstanding any other provision of law, the court may in its discretion grant a motion for preference served with the memorandum to set or the at-issue memorandum and accompanied by a showing of cause which satisfies the court that the interests of justice will be served by granting this preference.

The Supreme Court has made clear that court congestion is a ground for invoking Section 36(e) where the plaintiff has been diligent:

> We are concerned that court congestion remains an unfortunate reality, causing inevitable delay, often of several years, regardless of a party's diligence.... [I]t is monstrous to deny a forum to a plaintiff simply because the procedure of the courts has been too slow.

Salas v. Sears, Roebuck & Co., 42 Cal. 3d 342, 349, 721 P.2d 590, 228 Cal. Rptr. 504 (1986).

Despite this assessment, the staff recommends continuing to be alert to the matter of trial setting preferences. If the issue is not addressed in the Commission's 1998 legislation, it should at least be listed in the Commission's report as a topic that may be appropriate for future study.

UNIFICATION VOTING PROCEDURE

The proposed unification voting procedure in the tentative recommendations provides that the Judicial Council shall call a vote on application of specified judges and the vote shall be taken 30 days later. A number of courts have indicated that this is a needless formality, because the judges in those counties unanimously agree on unification. The voting procedure in those counties could be simplified through a provision along the following lines:

> **§ 70201. Conduct of vote**
>
> 70201. (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 serving in the court pursuant to an election or appointment under Section 16 of Article VI of the California Constitution at the time the vote is taken.

(d) 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]"

(e) Notwithstanding subdivisions (a) and (b), the judges in a county may vote for unification by delivering to the Judicial Council a ballot endorsed in favor of unification by unanimous written consent of all judges in the county eligible to vote.

FURTHER TECHNICAL CORRECTIONS

The staff has discovered several errors in the Commission's proposed amendment of Harbors and Navigation Code Section 664, which should be corrected as shown at Exhibit pages 5-6.

A new list of "Technical Corrections to Tentative Recommendations on Implementation of SCA 4" is attached as Exhibit page 7. This replaces the list that is attached as Exhibit page 31 to Memorandum 97-66.

ISSUES FOR FUTURE STUDY

Memorandum 97-66 describes possible additions to the Commission's list of issues that may be appropriate for future study (pp. 20-23). Another potential topic is publication of legal notices, which currently is geared to judicial districts. If the municipal courts in a county consolidate into a countywide judicial district, publication continues to be geared to "the territory embraced within the respective prior component judicial districts." Gov't Code § 71042.5. The tentative recommendation would continue this pattern for counties in which the courts unify, but Section 71042.5 as so amended is not a satisfactory long-term solution. This is a clear candidate for separate study and treatment in the future.

Respectfully submitted,

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FROM : Monica Driggers, Staff Analyst

DATE: November 5, 1997

SUBJECT: SCA 4: Effect of Trial Court Unification on Civil Cases

This analysis addresses concerns presented by the State Bar on the effects of trial court unification in processing civil cases. Statutory rules give trial-setting preference to criminal cases and specified categories of civil cases. The State Bar expresses concern that unification under SCA 4 may undermine the current trial-setting process and eventually create insurmountable difficulties in calendaring civil trials. The State Bar notes that civil cases presently tried in the municipal and superior courts ("two points of access") will have to wait in line behind the high volume of criminal cases and civil preferences, including unlawful detainers, in the new unified superior court ("one point of access"). The bar states that " . . . there is a risk that what are now municipal court civil cases without preference may never be set for trial in some counties."

Several sources of information were utilized in preparing the analysis. These sources are: a report prepared by the National Center for State Courts (NCSC); current case processing times; the experiences of fully coordinated courts; existing and approved programs for judicial assistance; and plans to assist courts with the unification process. Review of these sources leads to the conclusion that civil cases actually may be managed more efficiently and reach trial more quickly as a result of unification.

Effects of Trial Court Unification in Other States and Trial Court Coordination in California

In 1994, the NCSC prepared a report titled *California Unification Study* that assessed the likely effect of trial court unification on (1) the efficiency of trial court operations, (2) the composition of the judiciary, (3) the quality of the judiciary, (4) judicial leadership, (5) the trial court support system, (6) and service to the public. As part of its research, the NCSC conducted phone interviews with court officials in states that have undergone unification, namely Connecticut, Minnesota, Utah, and Iowa. The authors found that, "It is the unanimous and emphatic opinion of officials in unified states that a one-tier court system provides a wide range of benefits not fully available in a trial system with two tiers, among them: . . . (2) better use of judicial resources and as a result better case management and better public service . . . ."[1] The report also cites examples of administratively coordinated courts in California (Sacramento, San Bernardino, Yolo, and San Diego counties) that have experienced the benefits of cross-assignment procedures, joint calendaring, and other cooperative management efforts.[2]

The NCSC also listed the disadvantages of keeping separate trial court scheduling systems. These included:

". . .
- inability to make use of judges who have 'down time' for reasons of calendar breakdown or chronic lack of work at a particular court location;
- having superior court commissioners hear relatively complex cases which could be heard by a judge of the municipal court under a unified system;
- diffusion of similar cases among several facilities when they could be handled more efficiently at one facility, for example, arraignments for in-custody cases when one court is adjacent to the holding facility and other courts distant;
- reduced ability to create teams of judges and provide them with back up judges;

. . .

- time delays due to transfer of cases between courts and forum shopping;
- administrative redundancy in calendar management;
- possibility of inconsistent policy objectives for case processing; and
- fragmented case management information."[3]

[1] National Center for State Courts, *California Unification Study* (Feb. 1994) p. 6.
[2] *Id.* at p. 26.
[3] *Ibid.*

The efficiencies created in case processing by unified calendar management would therefore create a "domino effect" resulting in more timely processing of all cases, despite trial-setting preference for criminal and specified civil cases. This conclusion is supported by the experiences of states with unified courts.

Effects of Trial Court Delay Reduction

In 1986 the California Legislature enacted the Trial Court Delay Reduction Act, which makes judges rather than attorneys responsible for guiding cases through the court system. As a result of enacting this legislation, elapsed time to trial has dropped significantly in recent years, causing Chief Justice Ronald M. George to hail the state's delay reduction program as a success.[4] Current data compiled by the Administrative Office of the Courts show that for fiscal year 1995–96, the superior courts reported that 80% of civil filings were disposed of in two years or less from the filing date and 95% of criminal cases were disposed of in one year or less. For the same fiscal year, municipal courts disposed of 88% of felony preliminary hearings in 90 days or less, 93% of misdemeanor cases in 120 days or less, 90% of general civil cases in two years or less, 72% of unlawful detainers in 45 days or less, and 87% of in-county small claims cases in 90 days or less.

Relief Teams

In making its argument, the bar presents a situation in which the sheer quantity of already scheduled criminal cases can push even priority civil cases off the calendaring system. Backlogs of criminal cases can be handled by relief teams composed of retired judges. Senate Bill 1393, chapter 162, provided $3.5 million in fiscal year 1996–97 for the Three Strikes Relief Team Program. The teams were ". . . specifically created to adjudicate second and third strike cases in courts where excessive backlog of those cases exists, as determined by the Judicial Council."[5] While three strikes relief team assignments are intended to relieve excessive second and third strike backlogs, judges may also be assigned to adjudicate cases that will directly free up sitting judges to hear strike cases. The legislation mandates that the number of civil cases processed may not decline while the relief team is assigned.

Three Strikes Relief Team Program judges were assigned to the courts starting in November 1996, based upon responses to a *survey of need* that was sent to all trial courts in the state. The program has no specified duration and will operate as long as the

[4] Judicial Council of California, *State Court Outlook: California Courts in Crisis* (1996) p. 17.
[5] Sen. Bill 1393.

funding continues. Use of these teams therefore reduces the likelihood that important civil cases will not be set for trial as a result of "standing in line" behind large numbers of criminal cases.

In addition, under the Trial Court Funding Act of 1997 (Assem. Bill 233, Stats. 1997, ch. 850), which gives the State of California primary responsibility for funding the trial courts, there is a provision for Civil Delay Reduction Teams. The primary purpose of these teams is to reduce or eliminate the delay in adjudicating *civil* cases. Under this provision, team judges will be assigned to courts ". . . after taking into account the following.

(1) The number of delayed civil cases in each county and court.
(2) The delay in processing civil cases.
(3) The age of inventory of cases, with greater weight to be given to cases with a long delay without resolution.
(4) The average length of time needed to dispose of civil cases.
(5) The adverse impact on civil litigants.
(6) The likelihood that utilization of the team will encourage effective and efficient use of existing local court resources."[6]

The statute provides that this program will remain in effect until July 1, 1999.

The new Civil Delay Reduction Teams are the first line of defense against the civil case-processing-delay scenario described by the State Bar. This program together with the Three Strikes Relief Team Program will provide ample assurance that civil cases will be processed in a timely manner before and after trial court unification.

Conclusion

Given the efficiencies produced by unification as demonstrated in other states and by coordinated courts in California, together with measures already in place to quickly process burdensome criminal or civil caseloads using teams of retired judges, there is little cause for concern about setting civil cases for trial. In fact, the entire thrust behind trial court unification is the ability to implement efficiencies and equalize the work of the judges, using judges where they are most needed. The scenario suggested by the State Bar has not come about in other unified states nor in California's coordinated courts. There is good reason to believe that trial court unification will lead to timely criminal and civil case processing to trial.

[6] Stats. 1997, ch. 850.

Harbors and Navigation Code Section 664

The Commission's proposed amendment of Harbors and Navigation Code Section 664 should be revised to replace the word "superior" with the word "municipal" at page 46, line 41, and at page 47, lines 5 and 12, and to eliminate the phrase "municipal court" at page 47, lines 6-7:

Harb. & Nav. Code § 664 (amended). Arrest procedures

SEC. ___. Section 664 of the Harbors and Navigation Code is amended to read:

664. (a) When any person is arrested for a violation of this chapter or any regulation adopted by the department pursuant to this chapter or any ordinance or local law relating to the operation and equipment of vessels, and such person is not immediately taken before a magistrate, the arresting officer shall prepare in duplicate a written notice to appear in court, containing the name and address of such person, the offense charged, and the time and place where and when such person shall appear in court.

(b) The time specified in the notice to appear must be at least five (5) days after such arrest.

(c) The place specified in the notice to appear shall be either:

1. Before ~~a judge of a justice court or~~ a municipal court judge, or superior court judge in a county in which there is no ~~superior~~ ***municipal*** court, within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and who is nearest and most accessible with reference to the place where the arrest is made; or

2. Upon demand of the person arrested, before ~~a judge of a justice court or~~ a municipal court judge, or superior court judge in a county in which there is no ~~superior~~ ***municipal*** court, having jurisdiction of such offense at the county seat of the county in which such offense is alleged to have been committed; or before a ~~municipal court~~ judge in the judicial district in which the offense is alleged to have been committed.

3. Before an officer authorized by the county, city or city and county, to receive a deposit of bail.

4. Before ~~a judge of a justice court or~~ a municipal court judge, or superior court judge in a county in which there is no ~~superior~~ ***municipal*** court, within 50 miles by the nearest road to the place of the alleged offense who has jurisdiction of the offense and whose judicial district contains any portion of the body of water upon which the offense charged is alleged to have been committed.

(d) The officer shall deliver one copy of the notice to appear to the arrested person and the arrested person in order to secure

release must give ~~his~~ a written promise so to appear in court by signing the duplicate notice which shall be retained by the officer. Thereupon the arresting officer shall forthwith release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice with the magistrate specified therein. Thereupon the magistrate shall fix the amount of bail which in ~~his~~ the magistrate's judgment, in accordance with the provisions of Section 1275 of the Penal Code, will be reasonable and sufficient for the appearance of the defendant and shall indorse upon the notice a statement signed by ~~him~~ the defendant in the form set forth in Section 815a of the Penal Code. The defendant may, prior to the date upon which ~~he~~ the defendant promised to appear in court, deposit with the magistrate the amount of bail thus set. Thereafter, at the time when the case is called for arraignment before the magistrate, if the defendant shall not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may in ~~his~~ the magistrate's discretion order that no further proceedings shall be had in such case.

Upon the making of such order that no further proceedings be had, all sums deposited as bail shall forthwith be paid into the county treasury for distribution pursuant to Section 1463 of the Penal Code.

(f) No warrant shall issue on such charge for the arrest of a person who has given such written promise to appear in court, unless and until ~~he~~ the person has violated such promise or has failed to deposit bail, to appear for arraignment, trial or judgment, or to comply with the terms and provisions of the judgment, as required by law.

Technical Corrections to Tentative Recommendations on
IMPLEMENTATION OF SCA 4

The Law Revision Commission issued four tentative recommendations on implementation of SCA 4: (1) Code of Civil Procedure, (2) Government Code, (3) Penal Code, and (4) Miscellaneous Codes. The following technical corrections should be made in those proposals:

Code of Civil Procedure

(1) At page 1, line 10, replace "June 9, 1998" with "June 2, 1998"

(2) At page 42, line 14, replace "subdivisions (b)(1)-(b)(4)" with "subdivisions (b)(2)-(b)(5)"

Government Code

(1) At page 1, line 10, replace "June 9, 1998" with "June 2, 1998"

(2) At page 4, footnote 15, replace "Gov't Code § 70201(d)" with "Gov't Code § 70210(d)"

Penal Code

(1) At page 1, line 10, replace "June 9, 1998" with "June 2, 1998"

(2) At page 83, line 21, replace "810" with "830.1"

Miscellaneous Codes

(1) At page 1, line 10, replace "June 9, 1998" with "June 2, 1998"

(2) At page 56, line 28, replace "117070" with "5560"

(3) At page 58, line 14, replace "23146" with "103100"