Study J-1300 December 8, 1997

Memorandum 97-81

Trial Court Unification: Comments on Tentative Recommendations

Senate Constitutional Amendment 4 (Lockyer), passed by the Legislature in 1996, would amend the Constitution to allow trial court unification on a county by county basis. The measure will be on the ballot in the next statewide election, which is currently scheduled for June 1998.

If the voters approve SCA 4, many statutory revisions will be necessary to implement the measure. The Legislature has directed the Law Revision Commission to prepare the implementing legislation. Because SCA 4 will become operative the day after the election if it is approved, the implementing legislation needs to be in place by then.

To that end, the Commission circulated four tentative recommendations on statutory revisions necessary to implement SCA 4: (1) Code of Civil Procedure, (2) Government Code, (3) Penal Code, and (4) Miscellaneous Codes. The comment period for each of these tentative recommendations ended on November 21, 1997. The staff has prepared a separate memorandum discussing the comments on each tentative recommendation: Memoranda 97-82 (Code of Civil Procedure), 97-83 (Penal Code), 97-84 (Government Code), and 97-85 (Miscellaneous Codes).

Comments relating to only one of the tentative recommendations (e.g., the Penal Code) are attached to the appropriate memorandum. Attached to this memorandum are two letters that raise issues concerning a number of codes:

The points raised in these letters are addressed in the memoranda and supplements to which they relate.

This memorandum covers some points that affect more than one code.

The Penal Code tentative recommendation notes that replacement of references to proceedings in the superior court with references to proceedings in felony cases calls into question proceedings for removal of a public official under Government Code Section 3060, in which the trial is "conducted in all respects in the same manner as the trial of an indictment." Section 3070. The tentative recommendation proposes to treat these proceedings in all respects as a felony. The Department of Justice objects, noting that this would import many new procedures into Section 3060 cases that were previously inapplicable.

The problem, though, is that if no adjustment is made to the statutes, there will be no clear appeal path for Section 3060 cases. **The staff recommends the statutes simply be expanded to preserve appellate jurisdiction in Section 3060 cases in the court of appeal**:

> **Gov't Code § 3075 (added). Appeal in proceedings for removal from office**
>
> 3075. In a proceeding under this article, appeal is to the court of appeal.
>
> **Comment.** Section 3075 preserves the effect of pre-unification law that provides for appeals in superior court cases to the court of appeal. See Cal. Const. art. VI, § 11.

The Department of Justice also points out that a Section 3060 "accusation" does not necessarily relate to felonious conduct. They suggest that the Penal Code Section 949 reference to an accusation be removed from the indictment and information grouping, and listed separately:

> 949. The first pleading on the part of the people in the superior court in a felony case is the indictment, information, ~~accusation~~, or the complaint in any case certified ~~to the superior court~~ under Section 859a ~~or the complaint filed in accordance with the provisions of Section 272~~. The first pleading on the part of the people in a proceeding pursuant to Government Code Section 3060 is an accusation.

This appears to the staff to be a satisfactory way of dealing with this issue. (A parallel change should be made to Penal Code Section 737 — "all ~~public offenses triable in the superior court~~ felonies shall be prosecuted by indictment or information~~, except as provided in the Government Code~~. A proceeding pursuant to Government Code Section 3060 shall be prosecuted by accusation.")

The general policy of the state on jury venires is that juries are selected from the population of the "area served by the court". Code Civ. Proc. §§ 190, 197. Historically, this has meant that superior court juries are selected from the county and municipal court juries from the municipal court district. This concept has changed in recent years, however, and superior courts may draw from the judicial district in which a particular session is located (Code Civ. Proc. § 198.5), and municipal courts may draw from the superior court pool (Code Civ. Proc. § 200).

We do not have any statistics on the frequency with which the superior courts use municipal court jury pools, but we do know from information provided by the Judicial Council that a substantial number of municipal courts use the superior court pool. A substantial number do not, however. What does this mean for trial court unification?

Superior Court

If we are to preserve the authority of the superior court to draw from local pools for remote sessions of the court after the municipal court districts in the county disappear, some sort of statutory accommodation is required. The issue is significant in both civil and criminal cases. **The staff suggests**:

> 198.5. ~~In~~ (a) Except as provided in subdivision (b), in counties where sessions of the superior court are held in cities other than the county seat, the names for master jury lists and qualified jury lists to serve in those cities may be selected from the judicial district in which the city is located and, if the judges of the court determine that it is necessary or advisable, from a judicial district adjacent to a judicial district in which the city is located.
>
> (b) In a county in which there is no municipal court, if a session of the superior court is held in a location other than the county seat, the names for master jury lists and qualified jury lists to serve in that session may be selected from the area in which the session is held, pursuant to a local superior court rule that provides all qualified persons in the county an equal opportunity to be considered for jury service.

Municipal Court

The municipal courts currently have the option of using countywide jury pools, but many do not exercise that option. Unification with the superior court

could mean the loss of local jury pools for cases now tried locally, unless the superior court elects to exercise its option to draw from local pools under Section 198.5. Since in both the superior court and the municipal court the use of jury pools is subject to local court control, the staff does not believe any further adjustments need to be made to Code of Civil Section 200 to accommodate unification.

As Section 200 appears in our tentative recommendation, it provides:

> 200. Except in Alameda County, when authorized by local superior court rules, a municipal ~~or justice~~ court district pursuant to duly adopted court rule may use the same juror pool as that summoned for use in the superior court. Persons so selected for jury service in those municipal ~~or justice~~ courts need not be residents of the judicial district. In Los Angeles County, the municipal courts, if any, shall use the same jury pool as that summoned for use in the superior court.

We would delete the "if any" language from this draft, consistent with our general policy not to tamper with county-specific language until the courts in that county unify.

SIZE OF COURTS SUBJECT TO SPECIAL REQUIREMENTS

Existing law may impose special requirements on courts over a certain size. For example, mandatory arbitration is required in any superior court with 10 or more judges. Code Civ. Proc. § 1141.11. A municipal court with four or more judges must hold small claims court at least one night or one Saturday per month. Code Civ. Proc. § 116.250. A municipal court with three or more judges may appoint a traffic referee. Gov't Code § 72400.

In our drafts we have simply doubled these numbers for a unified court, subject to further information about the actual numbers of judges in each court. We have now received from the Judicial Council a breakdown of numbers of judges in each court, which will enable us to refine these statutes.

Code Civ. Proc. § 1141.11

Doubling the 10 superior court judge mandatory arbitration figure would work in all counties but Santa Barbara, which has 10 superior court judges and 8 municipal court judges, yielding an 18-judge unified court. **The staff suggests that we use 18 as the figure for mandatory arbitration**:

1141.1. (a) In each superior court with 10 or more judges, or 18 or more judges in a county in which there is no municipal court, all at-issue civil actions pending on or filed after the operative date of this chapter, other than a limited case, shall be submitted to arbitration, by the presiding judge or the judge designated, under this chapter if the amount in controversy in the opinion of the court will not exceed fifty thousand dollars ($50,000) for each plaintiff, which decision shall not be appealable.

(b) In each superior court with less than 10 judges, or fewer than 18 judges in a county in which there is no municipal court, the court may provide by local rule, when it determines that it is in the best interests of justice, that all at-issue civil actions pending on or filed after the operative date of this chapter, shall be submitted to arbitration by the presiding judge or the judge designated under this chapter if the amount in controversy in the opinion of the court will not exceed fifty thousand dollars ($50,000) for each plaintiff, which decision shall not be appealable.

.....

A consequence of this change, however, is that if Monterey County unifies, it would become subject to mandatory arbitration rules, whereas it is not now. That is because Monterey County currently has 8 superior court judges and 10 municipal court judges, yielding a total of 18. The staff thinks this result is appropriate — if the court elects to unify, one of the consequences is that the court becomes subject to the same mandatory arbitration requirements as all other courts of comparable size.

Code Civ. Proc. § 116.250

Doubling the four-judge municipal court figure for evening and Saturday small claims sessions would cut out a number of counties that currently have four municipal court judges and three superior court judges. **The staff recommends using seven judges as the basis for small claims sessions** in a unified court:

116.250. (a) Sessions of the small claims court may be scheduled at any time and on any day, including Saturdays, but excluding other judicial holidays. They may also be scheduled at any public building within the judicial district, including places outside the courthouse.

(b) Each small claims division of a municipal court with four or more judicial officers, and each small claims division of a superior court with seven or more judicial officers, shall conduct at least one night session or Saturday session each month. The term "session"

includes, but is not limited to, a proceeding conducted by a member of the State Bar acting as a mediator or referee.

This would subject Butte County to the weekend or evening session requirement if it unifies, whereas it is not subject to the requirement now. This is because the four municipal court judges in Butte County are divided between two separate two-judge municipal court districts. The staff thinks it is appropriate in a seven judge unified court, where all judges are pooled, to apply the requirement.

Gov't Code § 72400

The provision allowing a three-judge municipal court to appoint a traffic referee (and the provision allowing each municipal court to appoint a traffic trial commissioner — § 72450) presents a somewhat different problem. We have addressed this problem in part in Memorandum 97-84 by suggesting a general provision that on unification the total number of authorized referees and commissioners in a county remains constant. However, we still need to specify authority in the unified superior court to make the appointments formerly made by the municipal court.

After reviewing the statistics provided by the Judicial Council on the numbers of municipal court districts and judges in each county, the staff believes it is hopeless to try to develop language describing how many judges are required in a particular unified court to enable the court to appoint traffic referees and trial commissioners. The staff would not try to amend Sections 72400 and 72450, as suggested in Memorandum 97-84. Instead, **we would simply make clear the superior court's authority to make appointments to fill vacancies** in the total authorized number of traffic referees and trial commissioners:

> When the municipal and superior courts in a county are unified:
>
> (a) Until revised by statute, the total number of authorized court commissioners in the unified superior court shall equal the previously authorized number of court commissioners in the municipal court and superior court combined.
>
> (b) Until revised by statute, the total number of authorized traffic referees or traffic trial commissioners in the unified superior court shall equal the previously authorized number of ~~court~~ traffic referees or traffic trial commissioners in the municipal court.

(c) The superior court or its judges may make appointments previously authorized to be made by a municipal court or its judges.

Comment. This section maintains the total authorized number of court commissioners and traffic referees or traffic trial commissioners in the county on unification of the municipal and superior courts in the county.

Of course, this is not a long-term solution to the problem, since as the years go by it will become more and more difficult to reconstruct how many referees and commissioners were authorized in any particular county at the time of unification. In addition, as populations change, the numbers of authorized positions will require change. The amendment does accomplish the purpose of maintaining the status quo through unification. **However, the Commission should note this matter for future work** in the area of judicial administration.

COURT REPORTERS

The compensation scheme for court reporters is impossible to generalize. The statutes governing their appointment and compensation vary with each court, and constitute a substantial part of the bulk of statutory material concerning the structure and organization of the municipal and superior courts.

On unification of the courts in a county, the existing municipal court reporters will become superior court reporters in that county. This may alter the fees payable to those reporters, which in turn could affect the costs to the litigants in smaller cases. The general rule is that reporting fees are the same in municipal courts as in superior courts, but this general rule is subject to county-specific legislation:

Gov't Code § 72195. Municipal court reporters

72195. Sections 69942 to 69955, inclusive, of this code and Section 273 of the Code of Civil Procedure are hereby made applicable to the qualifications, duties, official oath, certification of transcripts, fees, and notes of official reporters of municipal courts, except that the fee for reporting testimony and proceedings in contested cases, except for official reporters of municipal courts where a statute provides otherwise, is fifty-five dollars ($55) a day, or any fractional part thereof.

After further review of this area of law, **the staff has concluded that it is best not to try to provide general rules for treatment of court reporters under**

unification. The specific statutes relating to a particular county will need to be reviewed and adjusted appropriately when the courts in that county unify. The matter of court reporter compensation should be reviewed by the Trial Court Employees Task Force.

The tentative recommendation includes a technical amendment to Section 72194.5. The Judicial Council points out that **this provision, relating to electronic recording, needs to preserved in a unified court for cases to which it currently applies**. This could be achieved by the following amendment:

> 72194.5. Whenever an official court reporter or a temporary court reporter is unavailable to report an action or proceeding in a ~~municipal or justice~~ court, subject to the availability of approved equipment and equipment monitors, the ~~municipal or justice~~ court may order that in a limited case or a misdemeanor or infraction case the action or proceeding be electronically recorded, including all the testimony, the objections made, the ruling of the court, the exceptions taken, all arraignments, pleas, and sentences of defendants in criminal cases, the arguments of the attorneys to the jury, and all statements and remarks made and oral instructions given by the judge. The court shall assign available reporters first to report preliminary hearings and then to other proceedings. A transcript derived from an electronic recording may be utilized whenever a transcript of court proceedings is required. The electronic recording device and appurtenant equipment shall be of a type approved by the Judicial Council for courtroom use.

LOS ANGELES COUNTY SUPERIOR COURT DISTRICTS

Los Angeles is the only county that has superior court districts. See Gov't Code Sections 69640-69650 (board of supervisors may divide county into not more than 12 superior court districts). It is not clear how statutes that refer to "judicial districts" are to be construed in Los Angeles County. That is because there are two types of judicial districts in Los Angeles County — superior court districts and municipal court districts.

For example, Code of Civil Procedure Section 701.530 provides that if an execution sale of personal property is held outside a city, notice of sale must be posted at three public places in the judicial district in which the property is to be sold. Does this mean superior court district or municipal court district? Probably it is intended to mean municipal court district, but the statutes are not clear; the answer may depend on which court issues the writ of execution.

Our proposed draft provides that on unification of the courts in a county, statutory references to "judicial district" are construed to mean the county. Code Civ. Proc. § 38:

> 38. Unless the provision or context otherwise requires, a reference in a statute to a judicial district means:
>
> (a) As it relates to a court of appeal, the court of appeal district.
>
> (b) As it relates to a superior court, the county.
>
> (c) As it relates to a municipal court, the municipal court district.
>
> (d) As it relates to a county in which there is no municipal court, the county.
>
> **Comment.** Section 38 is intended for drafting convenience. See also Section 17 ("judicial district" includes city and county). Court of appeal districts and municipal court districts are constitutionally mandated. See Cal. Const. art. VI, §§ 3, 5. Superior court districts do not exist except in Los Angeles County. See Gov't Code §§ 69640-69650.
>
> By operation of this section, in a county in which the superior and municipal courts have unified, a statutory reference to a judicial district means the county rather than a former municipal court district. This general rule is subject to exceptions. See, e.g., Gov't Code § 71042.5 (preservation of judicial districts for purpose of publication).

How would the posting requirement be interpreted if the courts in Los Angeles County unify? Under Section 38(d) posting could presumably be anywhere in the county. (Whether this is good policy is subject to debate; it would depend in part on one's view of the efficacy of posted notice.) Note, however, that the provisions of Section 38 would not apply if the statutory reference to the judicial district, or its context, requires a different interpretation.

Does the existence of superior court districts in Los Angeles County require a different interpretation (i.e., posting must be made in the superior court district rather than the county)? Section 38 is unclear on this point; nor is the Comment helpful, which simply notes the existence of superior court districts in Los Angeles County.

This is not an isolated example. There are dozens of statutes that refer to judicial districts. For example, Vehicle Code Section 23249.52 provides:

> 23249.52. A county may develop, implement, operate, and administer an alcohol and drug problem assessment program pursuant to this article by resolution of the board of supervisors. Any judicial district within the county may elect not to participate

> in the county alcohol and drug problem assessment program. The alcohol and drug problem assessment program may include a referral and client tracking component.

In each of statute referring to a judicial district the question is posed — in the case of a unified Los Angeles County, does this mean the superior court district or the county?

In all fairness to our proposed draft, it does not create the ambiguity. The ambiguity is present in existing law. However, in existing law, the question is does "judicial district" in Los Angeles refer to the municipal court district or superior court district. Under our draft, the question is whether it refers to the superior court district or the county after unification in Los Angeles.

One approach would be to make clear that statutory references to "judicial district" mean the superior court district, if the courts in Los Angeles County unify. This would roughly capture the intent of existing statutes referring to judicial districts, which are intended to localize notices, etc.

An alternate approach would be to do nothing, leave the matter ambiguous, and let practices develop as they will. If it has not been a critical issue before now, it is not likely to become a critical issue after unification. Moreover, the prospects for unification in Los Angeles County are not clear.

In either case, we should note in our report that among the county-specific statutes that should be addressed if the courts in Los Angeles County unify are the statutes as they relate to Los Angeles County judicial districts.

UNIFICATION VOTING PROCEDURE

The current draft of the unification voting procedure requires a vote to be taken 30 days after the vote is called. Gov't Code § 70201. The State Bar Committee on Administration of Justice suggests the time be lengthened. Exhibit p. 8.

On this issue, the previous input we have received is to the effect that a shorter, rather than longer, interval would be appropriate. State Bar input we have received in the past is concerned about politicking among judges during the voting period, and judges have wondered why there should be any delay at all if all the judges are in agreement. Given this range of opinion, the staff suspects the 30-day period of the current draft is about right.

TRANSITIONAL ISSUES

The transitional provisions state that on unification, "previously selected" municipal court judges become superior court judges, and the total number of judgeships in a unified court equal the number of "previously authorized" superior court and municipal court judgeships combined. Gov't Code § 70211. The State Bar Committee on Administration of Justice suggests that these terms be defined. Exhibit p. 8. The Commission considered this issue in another context at the November meeting, and decided to elaborate "previously selected" in the Comment. The concept of further revising the draft to refer to numbers of judgeships previously authorized "by statute" was rejected because the trial court funding legislation creates new unallocated judgeships that are subject to allocation by the Judicial Council.

The Bar Committee is also concerned about the breadth of the following provision of proposed Government Code Section 70213:

> The Judicial Council may adopt rules resolving any problem that may arise in the conversion of statutory references from the municipal court to the superior court in a county in which the municipal and superior courts become unified.

The Bar Committee is concerned that this could authorize the Judicial Council to make substantive changes in law through a court rule. Exhibit p. 9.

Of course, we don't intend that. Perhaps **a Comment along the following lines would be useful**:

> **Comment.** Section 70213 is intended to provide transitional Judicial Council rulemaking authority on procedural matters and not on matters of substantive law. The rules adopted by the Judicial Council may not be inconsistent with statute. Cal. Const. art. VI, § 6.

Finally, the State Bar Committee on Administration of Justice is concerned that local court rules implementing unification not be inconsistent with statewide rules of court. Exhibit p. 9. **The staff will add a reference in the Comment to Government Code Section 68070(b)**: "The Judicial Council shall adopt rules or procedures to encourage uniformity of requirements throughout a court and statewide."

ISSUES FOR FUTURE STUDY

The tentative recommendations list a number of issues that may be appropriate for future study. Possible additions to the list include:

(1) Concurrent jurisdiction. Scattered throughout the codes are provisions appearing to confer concurrent jurisdiction on municipal and superior courts. The interpretation and constitutionality of these provisions deserves further study. In addition to the provisions identified in the tentative recommendations, the following statutes should be referenced if this topic is listed in the Commission's report: Bus. & Prof. Code §§ 6405, 22391, 22443.1, 22455; Civ. Code §§ 1789.24, 1812.66, 1812.105, 1812.503, 1812.510, 1812.515, 1812.525, 1812.600; Veh. Code §§ 11102.1, 11203.

(2) Small claims advisory committee (Code of Civil Procedure Section 116.950). Code of Civil Procedure Section 116.950(d) specifies the composition of the small claims advisory committee. To accommodate trial court unification, the Commission has proposed the following amendment:

> (d) The advisory committee shall be composed as follows:
> ….
> (6) Six judges of the municipal court ~~or justice court~~, or of the superior court in a county in which there is no municipal court, who have had extensive experience as judges of small claims court, appointed by the Judicial Council.

An alternative approach would be to delete the phrase "of the municipal court or justice court" in Section 116.950(c)(6), so that any judge with extensive experience as a small claims judge (including a retired judge, an appellate court justice, or a judge of a non-unified superior court) could serve on the advisory committee. That change in policy may warrant consideration after the vote on SCA 4.

(3) Terms and conditions for payment of money judgments. Code of Civil Procedure Section 85 presently gives municipal courts broad discretion to set the terms and conditions for payment of money judgments. As far as the staff has deduced from limited research, the superior courts have less discretion in this regard than the municipal courts. For example, Code of Civil Procedure Section 667.7 authorizes superior courts to enter judgments for periodic payments under certain circumstances in actions for injury or damages against health care providers. In contrast, Section 85 grants municipal and justice courts authority to

provide for installment payments "regardless of the nature of the underlying debt and regardless whether the moving party appeared before entry of such judgment or order." Further research would be necessary to confirm whether the superior courts actually have less discretion than the municipal and justice courts, understand whatever differences do exist, and determine whether such differentiation should continue.

(4) Catalogue of cases within the appellate jurisdiction of the courts of appeal on June 30, 1995. If SCA 4 is enacted, Article VI, Section 11 of the Constitution will provide in part:

> The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate 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.

The staff has previously raised the possibility of compiling a statutory list of "causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995." The Litigation Section writes that "[s]uch a catalogue will be essential to avoid confusion and malpractice by attorneys in the future." They "consider this to be an important project which will protect the public from inadvertent mistakes by attorneys or the judiciary." In light of those comments, the staff recommends adding the project to the Commission's list of potential study topics. The merits of constructing the proposed catalogue can be more thoroughly explored when the Commission has resources available for the project.

(4) Jury commissioners. Consolidation of jury commissioner functions for the courts in each county is a potential topic of considerable importance.

A more technical issue involving jury commissioners relates to the last sentence of Code of Civil Procedure Section 195(a), which states: "In any court jurisdiction where any person other than a court administrator or clerk-administrator is serving as jury commissioner on the effective date of this section, that person shall continue to so serve at the pleasure of a majority or [sic] the judges of the superior court." That sentence, enacted in 1988, may now be unnecessary and obsolete. The Commission could undertake to confirm as much and amend the provision accordingly.

(5) Appealability of orders of recusal (Penal Code §§ 1238, 1424, 1466). Penal Code Section 1466(a)(1)(A) states that in a misdemeanor or infraction case an

appeal may be taken from "an order recusing the district attorney or city attorney pursuant to Section 1424." In contrast, the comparable provision for felony cases (Penal Code Section 1238) does not expressly authorize an appeal from an order recusing the district attorney or city attorney. This may be an oversight that should be corrected.

(6) Magistrate as judicial officer of state or judicial officer of a particular court. The Penal Code does not make clear whether a magistrate is a judicial officer of the state, as opposed to a judicial officer of a particular court. This point may warrant clarification when time permits.

(7) Publication of legal notices. Some publication statutes are geared to judicial districts. If the municipal courts in a county consolidate into a countywide judicial district, publication continues to be keyed 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.

MISCELLANEOUS TECHNICAL REVISIONS

The Commission took up Memorandum 97-66 and its First Supplement in November, but did not consider the miscellaneous revisions identified in the memoranda as "Additional Revisions to Implement SCA 4," "Additional Justice Court Conforming Revisions," and "Technical Corrections." We are incorporating these routine revisions into the draft legislation. Please let us know if there are any concerns.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

The Superior Court
LOS ANGELES, CALIFORNIA 90012
CHAMBERS OF
ROBERT W. PARKIN
PRESIDING JUDGE

TELEPHONE
(213) 974-5562

November 14, 1997

California Law Revision Commission
400 Middlefield, Room D-1
Palo Alto, California 94303-4739

Re: Comment on SCA4 Implementing Legislation

The following is the Los Angeles Superior Court's response to the Working Group's Invitation to Comment on **SCA 4 Implementing Legislation**, dated October 28, 1997.

CODE OF CIVIL PROCEDURE

CCP §77 page 20, line 8

COMMENT:

Does the fact that an out-of-county judge's travel expenses in connection with appellate division duty are identified as a county responsibility conflict with the intent of trial court funding? Should not this be a direct responsibility of the State, out of an account maintained at the state level for this purpose?

CCP §77 page 20, line 20

COMMENT:

Strike the comma after "presiding judge of"

CCP §116.250 page 30, line 15

COMMENT:

Language in the section should be made clear that the small claims division does not include courts hearing small claims appeals, and that night sessions are not required for these courts.

CCP §116.250 **page 30, line 25**

COMMENT:

Increasing the number of judges from four to eight is appropriate only if that approximates the average ratio of municipal judicial officers to total judicial officers in counties having four or less municipal judicial officers.

CCP §116.770 **page 31, line 4**

COMMENT:

Suggest adding the words: "at the same or a higher level" with reference to the judicial officer hearing the trial de novo appeal. This would avoid the situation in which an attorney acting as a judge pro tem would be reviewing the actions of a judge or commissioner of the small claims division.

CCP §442.30 **page 39, line 40**

COMMENT:

Strongly suggest that pleadings indicate affirmatively whether it is a limited or unlimited case. This is the best assurance that the required information will be provided.

GOVERNMENT CODE

Govt. §26820.4 **page 19, line 25**

COMMENT:

Very awkward wording. Suggest "~~except~~ an other than in a limited case or adoption proceedings, . . ."

Govt. §70201

COMMENT:

Some of our judges are concerned that a vote may be called by a majority of the

judges of the municipal court as opposed to the presiding judge of the superior court in a county. The question arises, as to whether or not, since it requires a majority of both courts to declare unification, why should it not require a vote of the majority of both courts to call for a vote.

Govt. §70202(c)

COMMENT:

There has been some question raised as to whether or not once a vote, in favor of unification is made, should it be "final" and not subject to being rescinded or revoked by a subsequent vote. Consideration should be given to allowing a vote to rescind the prior vote if unification does not produce the desired result in a county. The suggestion has been made that there might be a time limit, e.g., two or three years following which a revote could be taken to determine whether or not the program was successful.

Govt. §70210(b)(1)(c),(d), and (e)

COMMENT:

This provides for the selection of a presiding judge of the unified court, as well as, the court's executive officer. It would appear that this is contrary to that which has been repeatedly stated by the Chief Justice. If both the municipal and superior courts vote to unify, it is the belief that the decision with regard to leadership should be left locally and the selection of the presiding judge and the court executive officer should be made by the local judges through the elective process.

These proposals fly in the face of that which has already been discussed and promised by the Chief Justice. Such sections are in direct conflict with recently adopted Government Code section 77001 (AB 233-State funding) which reads, "The Judicial Council shall promulgate rules which establish a decentralized system of trial court management" and shall ensure that "the trial courts of each county shall establish the means of selecting presiding judges, assistant presiding judges, executive officers or court administrators, clerk of court, and jury commissioners."

Govt. §70211

COMMENT:

This section is mildly troublesome if it is anything but a "grandfather" clause which

might permit (in the future) a lawyer of less than ten years experience to be appointed a superior court judge.

Comments **page 41**

COMMENT:

The material could be interpreted that upon unification one superior court judge might be called upon to review the decision of another superior court judge, i.e., the first judge may hold the defendant to answer at preliminary hearing and his/her next door neighbor might declare the evidence insufficient and grant a 995 motion. This certainly should be clarified and studied.

Govt. §72060 **page 34, line 38**

COMMENT:

Since it requires both a certificate and a transmittal, the fee should be at least this amount ($6), so it is an appropriate fee.

CRIMINAL CODES

COMMENT:

The Los Angeles Superior Court has reviewed the proposed code revisions and do not have any changes or additions to the proposals by the Law Review Commission.

MISCELLANEOUS CODES

Harbor & Navig. §664(c)1 **page 46, line 40-41**

COMMENT:

Make the following change: "or superior court judge in a county in which there is no ~~superior court~~ municipal court. . ."

Harbor & Navig. §664(c)2. **page 47, line 4-5**

COMMENT:

Make the following change: "or superior court judge in a county in which there is no ~~superior court~~ municipal court. . ."

Welfare & Inst. §601.4(b) **page 80, line 13 and 14**

COMMENT:

Delete the following: In line 13 delete the comma after the word "subdivision (a)" and delete the words as indicated ". . complaint filed in the same manner as an infraction ~~may be prosecuted~~. . ." The deleted wording is repetitive of the language in line 13.

Business & Prof. §6322 **page 91, line 28-29**

COMMENT:

Insert the following language, ". . or intervening party, on ~~making a~~ his first appearance in a superior court, . . ."

Civil Code §1181(d) **page 92, line 18**

COMMENT:

Make the following change, "A judge or retired judge of a municipal ~~or justice~~ court."

Fish & Game §2357 **page 100, lines 33-34, 37-38**

COMMENT:

This Court does not have any concerns regarding having a notary public witness the making of the affidavit. However, the change made by eliminating the "justice court" from the language of the code section leaves a void as to where the affidavit should be deposited. A notary public is not a repository of legal documents, as stated in the code section. Another repository for the affidavit, once signed and witnessed, should be identified to serve this purpose. Perhaps the County Recorder's office should be identified as the repository or any other governmental agency.

Should you have any questions regarding any of the enclosed responses, please contact Timothy Gee of my staff at (213) 974-5247 or FAX (213) 621-7952.

Very truly yours,

Robert W. Parkin
Presiding Judge

RWP:gp
Enclosure(s)

c: Assistant Presiding Judge Victor E. Chávez

THE COMMITTEE ON ADMINISTRATION OF JUSTICE
THE STATE BAR OF CALIFORNIA

555 FRANKLIN STREET
SAN FRANCISCO, CA 94102-4498
(415) 561-8200

DATE: December 2, 1997

File: J-1300

TO: Nat Sterling, Executive Secretary, Law Revision Commission

FROM: Robert Waring, Staff Attorney, Committee on Administration of Justice

SUBJECT: State Bar Committee on Administration of Justice Positions re Trial Court Unification, No. J-1300

The Committee on Administration of Justice ("CAJ") reviewed Law Revision Commission staff drafts of the Tentative Recommendation on Trial Court Unification, No. J-1300. CAJ was extremely impressed with the careful thought and hard work underlying these detailed proposals. CAJ respectfully makes the following suggestions:

Section 77(a) Appellate Division

CAJ endorsed Section 77(a) by a vote of 23-2-1. However, one of the two CAJ sections disapproved of one provision. The CAJ North Section voted 9-2-2 that Appellate Division judges should not be appointed from outside a particular county unless there are too few judges within the county to fill the necessary Appellate Division positions. The concern was that out-of-county judges would not be accountable to the electorate in the county where they ruled as Appellate Division judges. The CAJ South Section endorsed out-of-county appointments by a vote of 11-2, believing that such appointments would contribute to the independence of appellate decisions.

CCP 46 Appellate Jurisdiction of Courts of Appeal

CAJ endorsed the language proposed in CCP 46 and disapproved of alternate wording proposed by LRC staff. The vote was 17-0-3. The alternate wording was thought to be too ambiguous.

Appellate Jurisdiction of Appellate Division of Superior Court

By a vote of 20-0, CAJ endorsed the proposed jurisdiction of the Appellate Division, with two exceptions. Section 77(e) creates confusion with the language "except appeals that require a retrial in Superior Court." CAJ recommends rewording this phrase to use the new court terminology. Section 77(g) states that the Judicial Council "may" be required to promulgate rules that promote the independence of the Appellate Division.

The word "may" should be changed to "shall" to state that the Judicial Council has an obligation to promulgate such rules.

Deletion of Section 81

CAJ voted to oppose the deletion of Section 81 because the notion that headings are not to be used in statutory interpretation is a basic principle of statutory construction. The vote was 20-0-1.

Deletion of Many Present Sections of the Code of Civil Procedure

CAJ supported the proposed deletion of sections 82, 83, 84, 85, 87, 88, 91(d), 221, 422.40 and 1012.5. The vote was 21-0.

Unification Voting Procedures

CAJ recommended that there be more time between a call for an election on unification and the actual voting, and that if unification is approved, that there be more time between the election and implementation of unification. The vote was 8-1.

Transition Problems in Pending Cases

CAJ endorsed the LRC staff's recommendation that the provisions of California Constitution Article VI, Section 23(c) be incorporated into a statute for ease of reference in order to ease transition problems in pending cases. The vote was 18-0-3.

Conversion of Judgeships

CAJ endorsed the LRC proposal regarding conversion of judgeships, along with a recommended change. Page 8 of the May 21,1997 LRC staff memorandum uses the terms "previously selected," "previously authorized," and "by appointment." These terms should be defined within the proposed statute and not left to interpretation. The vote was 7-0-4.

Miscellaneous Statutory Provisions Regarding the Municipal Court

CAJ endorsed the LRC proposal for counties where there is no municipal court. The endorsement was accompanied by three recommendations. CAJ proposes rewording paragraph (b) on Page 9 of the May 21,1997 LRC staff memorandum to read:

"Proceedings within the jurisdiction of the municipal courts shall be

conducted in the superior court under the procedures that would be applicable ~~to~~ *if* the proceedings *were held* in a municipal court."

Paragraph (c) refers to filing fees and other fees and costs for proceedings within the jurisdiction of municipal courts remaining the same as they would be if proceedings were within a municipal court. This could be interpreted to mean that the filing fees in municipal courts could never be increased. CAJ recommended that this paragraph be clarified so as not to preclude further increases.

Paragraph (h) permits the Judicial Council to adopt rules resolving any other problems that may arise in the conversion of statutory references from the municipal court to the superior court. This might be overbroad in that it could authorize the Judicial Council to make substantive changes in the law through a court rule. The vote was 15-0-4.

Transitional Rules of Court

CAJ endorsed, with one recommendation, the LRC proposal for a statute requiring that the Judicial Council adopt rules of court not inconsistent with the statute dealing with the unification process. Regarding paragraph (f) on page 10 of the May 21, 1997 LRC staff memorandum: CAJ recommended that, in accordance with new Rule of Court 302, the "necessary" local court rules should be not be inconsistent with statewide Rules of Court. The vote was 16-0-2.

New Ground for Demurrer

CAJ opposed the proposed amendments to Code of Civil Procedure sections 425.10 and 430.10. CAJ believes that a declaration does not belong in a complaint. It should be filed concurrently with the complaint or cross-complaint, not as part of the pleading. An acceptable change to paragraph (c) of Section 425.10 would be to change the phrase "a declaration" to "an allegation." The vote was 21-0.

Trial Preference Problems

At present, each of the court systems, municipal and superior, has separate priorities as to the order in which cases are heard. If the courts are merged, all the civil cases will stand behind all criminal cases. This could result in scheduling of large civil trials being preempted by minor criminal trials. CAJ voted 20-0-4 to point out the problem, but not otherwise take a position.