

## Memorandum 97-84

### **Trial Court Unification: Revision of Government Code**

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We have received comments addressed to Government Code issues from the Los Angeles County Superior Court. See Exhibit to Memorandum 97-81. In addition, the staff's continuing review of the statutes has uncovered other issues for Commission resolution. The issues are discussed below.

We are developing information on court reporters and the impact of unification, as well as on several other issues, and will supplement this memorandum.

#### **County-Specific Statutes**

The Commission has requested further staff research on the problem presented by county-specific statutes and their interrelation with general statutes governing trial court unification. The Commission has decided to include a caveat in its final recommendation along the following lines:

This recommendation proposes only revisions of the laws of the state relating to the courts generally. It does not propose revisions of the special statutes relating to the courts in a particular county. If the courts in a particular county elect to unify, the codes should be reviewed at that time to determine whether the special statutes relating to the courts in that county should be revised or repealed.

An example of the types of county-specific statutes that exist may be demonstrated by taking any county, say Butte. Government Code Section 69581 prescribes the number of superior judges in Butte County (five). Section 69984(h) sets the court reporter fee in contested Butte County superior court cases (\$75 per day). Section 70045.8 prescribes duties of Butte County superior court and municipal court reporters, allows the board of supervisors to set salary rates, provides for reimbursements and employment benefits, and allows for court appointment of additional reporters. Sections 749934-74945 deal with two Butte County municipal court districts, prescribing the number of judges, court facilities, court reporters, clerks, judge-appointed positions, marshals, salary

schedules, officer and attache duties, compensation, and benefits, deposit of fees, and board of supervisor control of other details.

Other county-specific statutes, not necessarily applicable in Butte County, do such things as specify locations of court sessions in that county (see, e.g., Section 69746.5, relating to sessions between 40 and 50 miles from the county seat in a county of the 14th class (Kern)) and formation of criminal justice advisory committees (see, e.g., Section 74673, relating to a county with a population of over 1,000,000 and not over 1,070,000 as determined by the 1970 federal census (Santa Clara)). The statutes are seemingly endless.

Clearly some of these county-specific statutes should be overridden by unification of the courts in the county, even though revision of the statutes may take some time to accomplish. For example, it is intended that the statute setting the number of superior court judges in a county should no longer control, on unification. Instead, the authorized number of superior court judges in the county should equal the number of superior court judges plus the number of municipal court judges.

Absent statutory direction on how to resolve a facial conflict in the statutes, the courts will have to ascertain the probable intent of the Legislature, balancing the older but more specific statute against the newer but more general statute. Unfortunately, some of the older statutes proclaim that they prevail over all other statutes. See, e.g., Section 74991, relating to special rules governing the Shasta County Judicial District (“The provisions of this article shall prevail over any other provisions of this title which may conflict therewith.”)

The staff thinks it would be helpful to add a provision allowing trial court unification legislation to override conflicting county-specific provisions. **The staff suggests addition of a statute to the trial court unification transitional provisions along the following lines:**

**Gov’t Code § 70215. County-specific legislation**

70215. The provisions of this article and other statutes governing unification of the municipal and superior courts in a county shall prevail over inconsistent statutes otherwise applicable to the municipal or superior courts in the county, including but not limited to statutes governing the number of judges, selection of a presiding judge, selection of a court executive officer, and employment of officers, employees, and other personnel who serve the court.

**Comment.** Section 70215 is added to accommodate prompt unification of the municipal and superior courts in a county when approved by a majority of the judges of those courts. Cal. Const. art.

VI, § 5(e). If the courts in a particular county elect to unify, the codes should be reviewed at that time to determine whether special statutes relating to the courts in that county should be revised or repealed. Section 70215 provides guidance pending enactment of such legislation.

### **Personnel Issues**

It is generally the intent of the unification provisions to transfer municipal court officers and employees wholesale to the superior court on unification. See, e.g., Section 70212(a) (previously selected officers, employees and other personnel who serve the court become the officers and employees of the superior court). To help avoid any uncertainty about the scope of this provision, **the staff will expand the Comment** to refer specifically to municipal court personnel such as court commissioners, court reporters, and traffic referees.

To maintain authority in a unified superior court to continue to appoint new commissioners and referees previously authorized for the municipal court, Professor Kelso suggests addition of a transitional provision along the following lines:

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 commissioners in the municipal court.

**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.

**The staff would add such a statute to the transitional provisions.** It will help remove any doubt, and also resolve some, but not all, of the difficult drafting problems relating to traffic referees and traffic trial commissioners. See discussion below of Sections 72400 and 72450.

The most difficult personnel issues, however, relate to compensation, benefits, seniority, etc. in the merged courts. SCA 4, and our transitional provisions, merely preserve existing court employees in the unified court without coming to grips with the issue. The 1997 trial court funding legislation created a Task Force on

Trial Court Employees designed to address such matters. However, that task force will not complete its work before the first unifications are likely to occur.

Our transitional provisions require the Judicial Council to adopt rules, not inconsistent with statute, for “Preparation and submission of a written personnel plan to the judges of a unified superior court for adoption.” Gov’t Code § 70210(d). Professor Kelso has suggested a further provision to the effect that:

In a county in which there is no municipal court, the superior court may employ such officers and employees as it deems necessary for the performance of the duties and exercise of the power conferred by law upon it and its members at such rates and on such terms as may be agreed upon by the superior court and each officer or employee.

The staff believes this is too radical a departure from the current legislative control of employment and salaries, and would not recommend it.

The staff believes this is a basic policy issue that the Legislature — not the Commission — must resolve. **We would highlight the personnel problem in the Commission’s report to the Legislature**, note that employment issues currently are handled by county-specific statutes, and that the Commission’s recommendations do not attempt to deal with them.

### **Judges’ Salaries**

The salaries of judges are set by statute, with a statutory escalator clause. The last time salaries of judges were set in 1984, superior court salaries were \$72,763 and municipal court salaries were \$66,449. Gov’t Code § 68202. These salaries are subject to annual increase based on the average percentage salary increase for California State employees. Gov’t Code § 68203. Currently superior court judges earn \$107,390 and municipal court judges earn \$98,070.

The ratio of municipal court to superior court salaries is .9132... . This may be a useful number when considering statutes governing judges’ retirement and when considering salaries of court officers that may be based on municipal court judge salaries. See discussions below of judges’ retirement and traffic court referees.

We have assumed that when the courts in a county are unified, former municipal court judges will earn the superior court judge salary. This is not a necessary consequence of unification, however, and various formulas could be applied, including blended salary scales, transitional phase-ins, etc. The staff believes it is appropriate, though, that in a unified superior court all judges will

received the same salary. No statutory revisions are required to accomplish this result. **But we should note in our recommendation to the Legislature that the statutory revision maintains superior court salaries for all judges in a unified superior court.**

### **Judges' Retirement**

A number of the provisions of the Judges' Retirement Law are keyed to salaries currently being paid to judges of the same rank. Thus, for example, Government Code Section 75076 provides that a retired judge governed by its provisions is to receive a retirement allowance equal to 65 percent of "the salary payable, at the time payment of the allowance falls due, to the judge holding the judicial office to which he or she was last elected or appointed". What happens, under this provision, when there is no salary against which to gauge the retirement allowance because there is no judge holding the relevant judicial office as a consequence of unification of the courts and abolition of municipal court judgeships?

(Note. This is not a problem for judges under the Judges' Retirement System II, applicable to persons who first become judges on or after November 9, 1994. Under that system, retirement payments are based on a percentage of salary at retirement, augmented by a cost of living escalator. Payments are not based on a percentage of salary of currently serving judges in the same class.)

A number of options are available. One would be to tie the retirement pay of retired judges to a percentage of the salary of superior court, rather than municipal court, judges. Since the current differential between superior court and municipal court salaries is .9132..., this would translate to 59.4 percent of the salary currently payable to a superior court judge, rather than 65 percent of the salary payable to a municipal court judge.

A better option, perhaps, would be to continue the existing retirement formula until the last municipal court judge retires, and at that point the retirement formula would be based on the last salary paid plus a cost of living escalator.

As a practical matter, this issue does not need to be addressed immediately, because it is unlikely that all courts will unify immediately. There will be municipal court judgeships to serve as a basis for retirement allowances for some time to come. However, the issue should be addressed at some point. **The staff recommends that the Commission, in its report on the matter, note this for**

**further study, and also refer it to the Judicial Council and the Public Employees Retirement System for their attention.**

### **Action in Defunct Court**

Suppose a statute provides for remand of a case to, or other action by, a municipal court that originally had jurisdiction of a case, but that court no longer exists due to unification. See, e.g., Penal Code Section 851.8(c):

In any case where a person has been arrested, and an accusatory pleading has been filed, but where no conviction has occurred, **the defendant may, at any time after dismissal of the action, petition the court which dismissed the action** for a finding that the defendant is factually innocent of the charges for which the arrest was made. A copy of such petition shall be served on the district attorney of the county in which the accusatory pleading was filed at least 10 days prior to the hearing on the petitioner's factual innocence. The district attorney may present evidence to the court at such hearing. Such hearing shall be conducted as provided in subdivision (b). If the court finds the petitioner to be factually innocent of the charges for which the arrest was made, then the court shall grant the relief as provided in subdivision (b).

Our general transitional provisions for unification don't quite deal with this situation, although they come close. See, e.g., proposed Gov't Code §§ 70210(a) (rules of court for conversion of municipal court proceedings pending at the time of unification), 70212(d) (procedures applicable to pending municipal court proceedings). We do have a catch-all safety net in proposed Government Code Section 70213(b):

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 staff believes we should address known transitional problems directly rather than relying on the court rules safety net. The issue was addressed by statute in similar circumstances under the Municipal and Justice Court Act of 1949:

71003. The municipal court and the justice court and each judge of the court has all the powers and shall perform all of the acts which were by law conferred upon or required of any court superseded by such municipal or justice court and any judge or

justice of such superseded court, and all such laws not inconsistent with the Municipal and Justice Court Act of 1949, or the provisions of law succeeding that act, apply to any such municipal and justice court and to each judge of such court.

**Such a provision could easily be adapted for unification of the municipal and superior courts in a county:**

70212. In a county in which the municipal and superior courts become unified, the following shall occur automatically in each preexisting municipal and superior court:

....

(h) The superior court and each judge of the superior court has all the powers and shall perform all of the acts that were by law conferred on or required of any court superseded by the superior court and any judge of the superseded court, and all laws applicable to the superseded court not inconsistent with the statutes governing unification of the municipal and superior courts, apply to the superior court and to each judge of the court.

**Comment.** Subdivision (h) is drawn from Section 71003 (powers of municipal court judge). Under this provision, if a statute provides for remand to or other proceedings in, or before a judge of, a municipal court that no longer exists as a result of the unification of the municipal and superior courts in a county, the proceedings are in the superior court in the county.

### **Organization and Location of Fee Provisions**

The statutes governing fees charged in court proceedings are scattered among provisions governing the courts, clerks, and officers, and could benefit from a clear organizational structure. **The staff will add this to the list of judicial administration topics that need work.**

The structural problems are further complicated by the fact that some fee provisions currently located among the municipal court statutes will, after revision, apply also in unified superior courts in limited cases. See, e.g., Sections 72055-72060. Rather than trying to relocate these statutes somehow, **the staff suggests the simple device of expanding the relevant chapter heading to indicate that the provisions may apply beyond the municipal court:**

The heading of Chapter 8 (commencing with Section 72000) of Title 8 of the Government Code is amended to read:

Chapter 8. Municipal and Superior Courts

**Comment.** The chapter heading of Chapter 8 (commencing with Section 72000) is amended to reflect the fact that some of the

provisions of the chapter may apply in the superior court in a county in which there is no municipal court. See Sections 72055-72060 (fees). Application of any specific provision is to be determined by the provision and not by the chapter heading. See Section 6 (headings do not affect scope, meaning, or intent of provisions).

Such a revision would also help organizationally with other municipal court provisions that will have application to the superior court in a unified county. See, e.g., Sections 72301-72302, relating to the hours of business of the court, discussed below.

In any event, **a cross-reference to the “limited case” fee provisions, whatever their location, is appropriate**, since the clerk in a unified court will be responsible for collecting the limited case fees:

**Gov’t Code § 26820. Fees collected by clerk**

26820. The county clerk shall charge and collect the fees fixed in this article and in Article 2 (commencing with Section 72053) of Chapter 8 of Title 8 for service performed by ~~him~~ the clerk, when not otherwise provided by law.

A related organizational issue is whether the Section 26800 series of statutes is the proper location for superior court fee provisions, now that the county clerk no longer necessarily serves as superior court clerk. **This matter may be appropriate for future study of judicial administration issues**, if not addressed now.

**Gov’t Code § 26820.4. First filing fee**

The Los Angeles County Superior Court suggests the following improvement in wording, which **the staff agrees** with:

The total fee for filing of the first paper in a civil action or proceeding in the superior court, except other than in a limited case or an adoption proceeding, shall be one hundred eighty-two dollars (\$182).

This provision was also revised by 1997 legislation relating to trial court funding, and the fee was raised to \$185. **The staff will implement this and other changes required by 1997 legislation throughout the draft statute.** (Note: Some of the 1997 statutes will make further revision of the statutes by the Commission unnecessary. See, e.g., Gov’t Code §§ 68073, 68090.8, 68113, 71383, 72054.)

### **Gov't Code § 26826. First responsive filing fee**

Subdivision (a) of Section 26826 provides a first responsive filing fee:

The total fee for filing the first paper in the action on behalf of any defendant, intervenor, respondent, or adverse party, whether separately or jointly, except for the purpose of making disclaimer shall be one hundred eighty-two dollars (\$182).

It is arguable that the reference to “the action” in this provision is limited by the “other than in a limited case” language we are adding to Section 26820.4 (above). However, **the staff thinks it would be clearer to make these provisions explicitly parallel** — “fee for filing the first paper in the action described in Section 26820.4 on behalf of any defendant ...”

### **Gov't Code § 26826.01. Fee for amended pleadings**

The 1997 trial court funding legislation adds a **new fee provision for superior courts that requires amendment:**

26826.01. (a) The fee for filing an amended complaint or amendment to a complaint in a civil action or proceeding in the superior court other than in a limited case is seventy-five dollars (\$75).

(b) The fee for filing a cross-complaint, amended cross-complaint, or amendment to a cross-complaint in a civil action or proceeding in the superior court other than in a limited case is seventy-five dollars (\$75).

(c) A party shall not be required to pay the fee provided by this section for an amended complaint, amendment to a complaint, amended cross-complaint, or amendment to a cross-complaint more than one time in any action.

(d) The fee provided by this section shall not apply to any of the following:

(1) An amended pleading or amendment to a pleading ordered by the court to be filed.

(2) An amended pleading or amendment to a pleading that only names previously fictitiously named defendants.

(e) This section shall become inoperative on July 1, 2000, and, as of January 1, 2001, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed.

### **Gov't Code § 26826.1. Surcharge**

The tentative recommendation would make the following revision:

26826.1. In addition to the total filing fee authorized pursuant to Section 26820.4, 26826, or 26827 or any other fee authorized by this code, after giving notice and holding a public hearing on the proposal, the Board of Supervisors of Riverside County may impose a surcharge not to exceed fifty dollars (\$50) for the filing in superior court of any of the following, other than in a limited case: (a) a complaint, petition, or other first paper in a civil or probate action or special proceeding, (b) a first paper on behalf of any defendant, respondent, intervenor, or adverse party, (c) a motion for change of venue from another court, (d) a petition for sole custody of a minor, (e) a first paper on behalf of any party in a proceeding under Section 98.2 of the Labor Code, or (f) any motion, order to show cause, or other proceeding seeking to modify or enforce any judgment or order. The surcharge shall be in an amount determined to be necessary by the board of supervisors to cover the costs of the seismic stabilization, construction, and rehabilitation of the Riverside County Courthouse, and the Indio Branch Courthouse, and collection thereof shall terminate upon repayment of the amortized costs incurred.

The Commission's current approach on this project is to leave alone statutes relating to specific counties, with a note that if the courts in a county elect to unify, any special governing statutes should be examined and adjusted at that time. **Consistent with that approach, the staff would delete this revision from the draft legislation.**

#### **Gov't Code §§ 26835, 26835.1. Authentication fees**

Section 26835 provides a two dollar fee per signature to the "county clerk" for any document the clerk is required to authenticate pursuant to court order. Section 26835.1 (added by the trial court funding bill) provides a six dollar fee to the "clerk of the court" for the same service, with two dollars of it going to the county general fund. (The new provision also refers, apparently inadvertently, to authentication by the "county clerk".)

Should these fees apply in limited cases as well as other court cases? The staff is aware of no special authentication fees in municipal court, and applying fees in a unified court could increase the cost of small cases, contrary to general public policy.

The Judicial Council indicates, however, that the practice in municipal courts is to adopt the superior court authentication fees pursuant to county ordinances or local rules. That being the case, the staff would simply allow these

authentication fees to continue in a unified court without excepting limited cases.  
**No statutory change is required.**

**Gov't Code § 68513. Uniform court data in civil cases in superior court**

Section 68513 requires the Judicial Council to provide for preservation of detailed civil case superior court data:

68513. The Judicial Council shall provide for the uniform entry, storage, and retrieval of court data relating to civil cases in superior court by means provided for in this section, in addition to any other data relating to court administration, including all of the following:

(a) The category type of civil case, such as contract or personal injury-death-property damage by motor vehicle.

(b) The time from filing of the action to settlement.

(c) The type of settlement procedure, if any, which contributed to the settlement disposition.

(d) The character and amount of any settlement made as to each party litigant, but preserving the confidentiality of such information if the settlement is not otherwise public.

(e) The character and amount of any judgments rendered by court and jury trials for comparison with settled cases.

(f) The extent to which damages prayed for compare to settlement or judgment in character and amount.

(g) The extent to which collateral sources have contributed, or will contribute, financially to satisfaction of the judgment or settlement.

Provision for the uniform entry, storage, and retrieval of court data may be by use of litigant statements or forms, if available, or by collection and analysis of statistically reliable samples.

The Judicial Council shall report to the Legislature on or before January 1, 1998, and annually thereafter on the uniform entry, storage, and retrieval of court data as provided for in this section. The Legislature shall evaluate and adjust the level of funds available to pay the costs of automating trial court recordkeeping systems, pursuant to Section 68090.8, for noncompliance with the requirements of this section.

Should these requirements be extended to limited cases in a unified superior court? Preliminary indications from the Judicial Council indicate extension to limited cases would be appropriate. No revision of the statute would be required to achieve this result in a unified court. Therefore, **the staff recommends no change in this section.**

### **Gov't Code § 69510. Superior court sessions**

The tentative recommendation notes that no change is proposed in Section 69510, relating to superior court sessions, because the provision appears to function satisfactorily without change in a unified or nonunified court. On further consideration, **the staff has come to the conclusion that it would be helpful to continue the authority of the judges to hold sessions at locations remote from regularly scheduled sessions**, provided adequate facilities exist for that purpose. The existing statutes governing court sessions generally appear to place control within the county board of supervisors, and Section 69510 preserves what may be a significant balance of power in the courts.

The transitional provisions for SCA 4 make clear that on unification, preexisting municipal court locations become superior court locations. See also proposed Gov't Code § 70212(b) (preexisting court locations are retained as superior court locations). This offers an easy opportunity to apply Section 69510 in a unified court:

69510. A majority of the judges of a superior court may order sessions of the court to be held at any place where a municipal court holds sessions within the county or, in a county in which there is no municipal court, where there is a court facility. The order shall be filed with the county clerk and published as the judges may prescribe.

### **Gov't Code § 70201. Conduct of vote**

Our current draft relating to persons authorized to apply for a unification vote reads:

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 or all of the presiding judges of the municipal courts in the county, or on application of a majority of the superior court judges or a majority of the municipal court judges in the county.

The Los Angeles County Superior Court suggests that it might be appropriate to require a majority of both the superior court judges and municipal court judges in a county to apply for a vote call. **The staff believes this is too cumbersome and would not make the change.**

### **Gov't Code § 70202. Certification of results**

Subdivision (c) of the draft provides that a vote in favor of unification is final and cannot subsequently be rescinded. The Los Angeles County Superior Court questions this policy. Suppose unification does not achieve the desired result in a county? Maybe there should be a two or three year window of opportunity for a confirmation vote, during which it could be determined whether the program is successful.

The staff can see nothing but problems from such a scheme. Municipal court employment and compensation systems would have to be reestablished, with associated demotions. What about new superior court judges selected in the interim — would they become municipal court judges? Pending cases would also need to be dealt with. **The staff thinks it's an interesting idea, but unworkable.**

### **Gov't Code § 70210. Transitional rules of court**

The tentative recommendation requires the Judicial Council to adopt rules of court not inconsistent with statute for selection of a presiding judge and a court executive officer for the unified superior court. Section 70210(b)(1)-(2). The Los Angeles County Superior Court is concerned that this provision removes control of these matters from the local courts and gives it to the state bureaucracy. They point out that recently-enacted legislation states, "The Judicial Council shall promulgate rules which establish a decentralized system of trial court management" and shall ensure that "the trial court 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." Gov't Code § 77001.

There is no intent to eliminate local control of presiding judge and executive officer decisions. The only intent is to require the Judicial Council to act to facilitate this in a unified court. The Judicial Council rules must be consistent with statute. **We have no problem adding language to the Comment to the effect that "The rules adopted by the Judicial Council may not be inconsistent with statute, including Section 77001, which requires that the Judicial Council promulgate rules that establish a decentralized system of trial court management and ensure that the trial court of each county establishes the means of selecting presiding judges and executive officers."**

### **Gov't Code § 70211. Conversion of judgeships**

The Los Angeles County Superior Court is mildly troubled by the prospect that a lawyer with less than 10 years experience might be appointed to the superior court, under the transitional provision in subdivision (c). However, this provision is merely a “grandfather” clause to accommodate the possibility that at the time of unification, a municipal court judge might have 5 to 10 years experience. In fact, there are currently no municipal court judges with less than 10 years experience. Moreover, this statutory provision simply repeats what will be in the Constitution if SCA 4 is adopted.

### **Gov't Code § 70212. Transitional provisions**

The Los Angeles County Superior Court is concerned about the possibility that on unification one superior court judge might be called on to review the decision of another. For example, one superior court judge could hold a criminal defendant to answer at preliminary hearing, while the judge’s colleague declares the evidence insufficient and grants a Penal Code Section 995 motion.

The staff agrees this is a concern, and it has troubled the Commission and others throughout this study. The matter is discussed in some detail in Memorandum 97-83, relating to Penal Code revisions. One option would be to have these matters reviewed by a judge in the appellate division. The Commission has considered this possibility before, but been deterred by workload questions. **We think it certainly merits further study, as suggested by the Los Angeles court, and would ask the Judicial Council to take another look at it.**

### **Gov't Code § 71003. Powers of municipal court judge**

The tentative recommendation proposes to eliminate obsolete references to the justice court in the following provision:

71003. The municipal court ~~and the justice court~~ and each judge of the court has all the powers and shall perform all of the acts which were by law conferred upon or required of any court superseded by such municipal ~~or justice~~ court and any judge ~~or justice~~ of such superseded court, and all such laws not inconsistent with the Municipal and Justice Court Act of 1949, or the provisions of law succeeding that act, apply to any such municipal ~~and justice~~ court and to each judge of such court.

**On further consideration, the staff would leave this provision alone.** It may have some historical value in jurisdictional terms. And in any case, the whole provision is probably obsolete. We have decided to note for future study the general issue of obsolete statutes reflecting prior court reorganizations that litter the Government Code.

**Gov't Code § 71040.5. Madera County judicial district**

Government Code 71040.5 provides:

71040.5. In the event that the board of supervisors of Madera County consolidates the Madera Judicial District and the Sierra Judicial District into the same district, any justice court established in the consolidated district shall have two judges. The judges shall be selected as otherwise provided by law.

This provision was preserved in the tentative recommendation pending a determination whether it may be used to set the number of judges in the municipal court. Staff research shows that **this provision is superseded by more recently enacted statutes governing the structure of the Madera County municipal courts, and may be repealed.**

**Gov't Code § 72056.01. Fee for amended pleadings**

The 1997 trial court funding legislation adds a **new fee provision for municipal courts that requires amendment:**

72056.01. (a) The fee for filing an amended complaint or amendment to a complaint in a ~~civil action or proceeding in the municipal court~~ limited case is forty-five dollars (\$45).

(b) The fee for filing a cross-complaint, amended cross-complaint or amendment to a cross-complaint in a ~~civil action or proceeding in the municipal court~~ limited case is forty-five dollars (\$45).

(c) A party shall not be required to pay the fee provided by this section for an amended complaint, amendment to a complaint, amended cross-complaint or amendment to a cross-complaint more than one time in any action.

(d) The fee provided by this section shall not apply to either of the following:

(1) An amended pleading or amendment to a pleading ordered by the court to be filed.

(2) An amended pleading or amendment to a pleading that only names previously fictitiously named defendants.

**Gov't Code § 72060. Fee in limited civil appeals**

Currently the fee for certificate and transmitting transcript and papers on appeal from municipal court to superior court is six dollars. The tentative recommendation would preserve this fee in a unified court for appeal from the superior court to the appellate division, but queries whether this would still be an appropriate fee.

The Los Angeles County Superior Court responds that at least six dollars is appropriate, since both a certificate and a transmittal are required.

**Gov't Code § 72193. City prosecutor**

Section 72193 provides that the city attorney of a city in which a misdemeanor is committed may prosecute the misdemeanor in the municipal court district in which the city is located. See also Section 41083.5 (prosecution of misdemeanor with the consent of the district attorney).

If there is no municipal court in the county, the city attorney probably ought to be authorized to prosecute misdemeanors in the superior court. There is precedent for this approach in prior court consolidations:

71099. Whenever a municipal or justice court is established in a city and county or in a district containing a city in which there is an officer charged with the duty of prosecuting misdemeanor charges in a court superseded by such municipal or justice court, he shall prosecute all such misdemeanor charges in the municipal or justice court with the same rights, duties, and privileges that he formerly exercised with respect to such charges in the superseded court, including the prosecution of appeals in criminal cases arising in the municipal or justice court and the defense of all writs arising out of arrests for offenses triable in the municipal or justice court in whatever court or courts they may be appealed to or initiated in.

However, any change along these lines should be cleared by the city attorneys and district attorneys.

**The staff tentative suggests revision of Section 72193 along the following lines:**

72193. Whenever the charter of any city ~~situated within a district for which a municipal court has been established~~ creates the office of city prosecutor, or provides that a deputy city attorney shall act as city prosecutor, and charges such prosecutor with the duty, when authorized by law, of prosecuting misdemeanor offenses arising out

of violations of state laws, ~~he~~ the city prosecutor may exercise the following powers:

(a) ~~He~~ The city prosecutor shall prosecute all such misdemeanors committed within the city ~~which are within the jurisdiction of the municipal court of the district in which such city is located,~~ and handle all appeals arising from it. ~~He~~ The city prosecutor shall draw complaints for such misdemeanors, and shall prosecute all recognizances or bail bond forfeitures arising from or resulting from the commission of such offenses.

(b) Whenever any person applying for a writ of habeas corpus is held in custody by any peace officer of such city, charged with having committed within the city any ~~criminal offense of which the municipal court of the district in which such city is located has jurisdiction~~ misdemeanor, a copy of the application for such writ shall be served upon such city prosecutor at the time and in the manner provided by law for the service of writs of habeas corpus upon district attorneys. On behalf of the people, the prosecutor shall conduct all proceedings relating to such application. If the constitutionality of any law is questioned in any such habeas corpus proceeding, the city prosecutor shall immediately notify the city attorney who may take charge of the proceedings on behalf of the people, or become associated with the city prosecutor in the proceedings.

**Gov't Code §§ 72301, 72302. Open for business at all hours for bail purposes**

Government Code Section 72301 requires the municipal court clerk or other personnel to be available at all hours for the purpose of fixing and accepting bail for misdemeanor arrestees. Section 72302 provides for acceptance of bail in felony arrests. It would seem that these functions should be maintained in the superior court in a county in which there is no municipal court. **The staff suggests the following Government Code revisions:**

72301. The clerk of the ~~court~~ municipal court or superior court in a county in which there is no municipal court or one or more deputy clerks, the sheriff or one or more deputy sheriffs, or one or more city police officers shall be in attendance at ~~the department~~ at all hours of the day and night, including Sundays and holidays, and may fix and accept bail pursuant to procedures established by the court for the appearance before the court of any defendant charged in the court with an offense of which the court has jurisdiction or whenever a defendant has been arrested and booked within the territorial limits of said judicial district for having committed a misdemeanor. The amount of bail shall be pursuant to a schedule of bail in such cases previously fixed and approved by the judges of

the court at their annual meeting. If a warrant has been issued for the arrest of the defendant, the bail shall be in the amount fixed in the warrant. The bail shall be cash, negotiable United States Treasury bonds, or a surety bond executed by a certified, admitted surety insurer as provided in the Insurance Code.

72302. If a defendant has been arrested for felony upon a warrant issued by a judge of such ~~municipal~~ court, the clerk may, under like conditions, accept bail in the amount fixed in the warrant.

Two related matters warrant mention:

(1) Because the municipal court clerk is required to be open for business at all times, that office is statutorily excepted from general provisions governing Saturday vacations of county employees. Gov't Code § 6704. The staff is not suggesting any conforming revisions of Section 6704 for the superior court, since superior court employees are generally considered to be state, rather than county, employees. (Note, however, that the county clerk may act as superior court clerk.) In any case, the staff thinks we need more information about other statutes governing state holidays and hours of business of state offices.

(2) Conversion of Sections 72301 and 72302 to municipal or superior court statutes will leave them organizationally in a chapter applicable to municipal courts. Renaming the chapter, as suggested above in connection with the organization and location of fee provisions, should help mitigate this problem.

#### **Gov't Code § 72400 et seq. Traffic referees**

Section 72400 permits the judges of larger municipal courts to appoint traffic referees to hear misdemeanor Vehicle Code violations. **This authority probably ought to be transferred to judges of superior courts in unified counties:**

72400. The judges of a municipal court having three or more judges, or of a superior court having six or more judges in a county in which there is no municipal court, may appoint one traffic referee, who shall hold office at the pleasure of the judges. The judges of a municipal court having more than 20 judges and located in a county containing a population, as determined by the 1970 federal decennial census, of 1,300,000 and under 1,400,000, may appoint two traffic referees, who shall hold office at the pleasure of the judges. A traffic referee shall serve his the court full time or, if appointed to serve two or more courts, sufficient time with each to total full time. A person is ineligible to be a traffic referee unless he the person is a member of the State Bar of California or has had five years' experience as a justice court judge in this state within the

eight years immediately preceding his appointment as a traffic referee.

The staff notes the following features about this revision:

(1) While equating a three-judge municipal court with a six-judge unified superior court may work in some counties, it obviously will not work in many counties. Take a county in which there are four or five municipal court districts, each having three or more judges. Right now each would get one traffic referee, but on unification they would be limited to one. A transitional provision preserving the total number of authorized referees, such as that suggested above in connection with “Personnel Issues” would be helpful. Meanwhile, we need more information on this from the Judicial Council.

(2) We have not suggested any change in the provision relating to a county between 1,300,000 and 1,400,000; this is special legislation that should be adjusted if that county (evidently San Diego) elects to unify.

(3) We have left intact the justice court provision at the end of the section, since there may still be active traffic referees relying on this provision for their qualifications.

Another aspect of the traffic referee statutes also should be considered. The salary of a traffic referee is based on a proportion of the salary of a municipal court judge. See Gov’t Code §§ 72404, 72406. These statutes will function satisfactorily as long as there remain municipal courts, but if all counties eventually unify, it is likely that the statutory scheme governing municipal court judge salaries will fall into disuse. We might anticipate this eventuality by basing traffic referee salaries on a percentage of a superior court judge’s salary, rather than on a percentage of a municipal court judge’s salary.

There is a preferable alternate approach, in the staff’s opinion. Legislation enacted in 1997 creates a Task Force on Trial Court Employees, which ought to address issues of this sort. **The staff would refer the matter of traffic referee salaries to the Task Force.**

#### **Gov’t Code § 72450. Traffic Trial Commissioners**

The issues relating to traffic trial commissioners are similar those relating to traffic referees.

72450. A municipal court or superior court in a county in which there is no municipal court, if the board of supervisors finds there are sufficient funds for the position, may appoint a traffic trial

commissioner to serve, at the pleasure of the court. The traffic trial commissioner shall be selected from a list of qualified applicants openly recruited after advertisement for the position in a newspaper of general circulation pursuant to Sections 6000 and 6061.3. A traffic trial commissioner shall serve full time but may be appointed to serve two or more courts. Each traffic trial commissioner shall have the qualifications of a judge of the municipal court and shall not engage in the private practice of law. A traffic trial commissioner may exercise all the powers and perform all the duties authorized by law to be performed by commissioners of municipal courts. *Unless otherwise expressly provided by law, a traffic trial commissioner shall receive the same salary provided by law for municipal court commissioners in the county. In a county where there is no salary established for a municipal court commissioner, a traffic trial commissioner shall receive a salary of not less than 75 percent of that paid to a judge of the municipal court.*

The issues here include:

(1) It appears under this statute that each municipal court district in the county is entitled to one traffic trial commissioner. Unification of the courts should not be an occasion to reduce the authorized number of commissioners. A transitional provision preserving the total number of authorized commissioners, such as that suggested above in connection with "Personnel Issues" would be helpful. Meanwhile, we need more information on this from the Judicial Council.

(2) This section conditions appointment of the commissioner on a determination by the county board of supervisors that there are sufficient funds. Does this make sense for the superior court, which is considered more a state than a county court? This question may be mooted out as state funding of the trial courts becomes more dominant.

(3) Will the Task Force on Trial Court Employees be reviewing salaries of traffic trial commissioners?

### **Miscellaneous Technical Revisions**

#### **Gov't Code § 70141. Court commissioners**

70141. (a) To assist the court in disposing of its business connected with the administration of justice, the superior court of any city and county may appoint not exceeding 10 commissioners, and the superior court of every county, except a county with a population of 4,000,000 or over, may appoint one commissioner. Each person so appointed shall be designated as "court commissioner" of the county.

(b) In addition to the court commissioners authorized by subdivision (a) or any other provision of law, either the superior court or the municipal court, but not both, of any county or city and county may appoint one additional commissioner, at the same rate of compensation as the other commissioner or commissioners for that court, upon adoption of a resolution by the board of supervisors pursuant to subdivision (c).

(c) The county or city and county shall be bound by, and the resolution adopted by the board of supervisors shall specifically recognize, the following conditions:

(1) The county or city and county has sufficient funds for the support of the position and any staff who will provide direct support to the position, agrees to assume any and all additional costs that may result therefrom, and agrees that no state funds shall be made available, or shall be used, in support of this position or any staff who provide direct support to this position.

(2) The additional commissioner shall not be deemed a judicial position for purposes of calculating trial court funding pursuant to Section 77202.

(3) The salary for this position and for any staff who provide direct support to this position shall not be considered as part of court operations for purposes of Sections 77003 and 77204.

(4) The county or city and county agrees not to seek funding from the state for payment of the salary, benefits, or other compensation for such a commissioner or for any staff who provide direct support to such a commissioner.

(d) The court may provide that the additional commissioner may perform all duties authorized for a commissioner of that court in the county. In a county or city and county that has undertaken a consolidation of the trial courts, the additional commissioner shall be appointed by the superior, ~~municipal, or justice~~ or municipal courts pursuant to the consolidation agreement.

(e) In addition to the court commissioners authorized by subdivisions (a) and (b), the superior court of any county or city and county shall appoint additional commissioners pursuant to Sections 4251 and 4252 of the Family Code. These commissioners shall receive a salary equal to 85 percent of a superior court judge's salary. These commissioners shall not be deemed a court operation for purposes of Section 77003.

### **Gov't Code § 70212. Transitional provisions**

70212. In Except as provided by statute to the contrary, in a county in which the municipal and superior courts become unified, the following shall occur automatically in each preexisting municipal and superior court:

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

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

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

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

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

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

(g) Subpoenas, summons of jurors, and other process issued by the court shall be enforceable by the superior court.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary