

Memorandum 97-85

Trial Court Unification: Revision of Miscellaneous Codes

The Superior Court of Los Angeles County has reviewed and commented on the tentative recommendation revising miscellaneous codes to implement SCA 4 (all codes except the Code of Civil Procedure, Government Code, and Penal Code). (Memorandum 97-81, Exhibit pp. 4-5.) The court's comments are discussed below, along with some other issues. The staff is continuing its review and analysis of the statutes and will supplement this memorandum if necessary.

(An extra copy of the tentative recommendation is attached to Commissioners' copies of this memorandum.)

BUSINESS & PROFESSIONS CODE SECTION 6301.1

The tentative recommendation includes the following amendment of Business and Professions Code Section 6301.1:

6301.1. Notwithstanding Section 6301, in San Diego County the board of law library trustees shall be constituted, as follows:

(a) Two judges of the superior court, to be elected by and from judges in the San Diego County Judicial District. Each superior court judge so elected shall serve a three-year term.

(b) Two judges from the municipal courts of the county. The courts may, by joint agreement, determine the pattern of representation on the board. Each municipal court judge so elected shall serve a three-year term. If the superior and municipal courts in San Diego County become unified, the two judges authorized by this subdivision shall be selected in the manner provided in subdivision (a).

(c) The board of supervisors shall appoint three attorneys resident in the county to the board of law library trustees, to serve overlapping three-year terms. In order to stagger the three appointments, the board of supervisors shall, in January of 1997, appoint one attorney to a one-year term, one attorney to a two-year term, and one attorney to a three-year term; and as each term expires, the new appointee shall thereafter serve three-year terms. At least one attorney appointed pursuant to this subdivision shall be a member of the San Diego Bar Association.

(d) In the event a trustee cannot serve a full term, the appointing authority for that individual shall appoint another qualified person to complete that term. Interim appointments may be made by the board of law library trustees in accordance with Section 6305.

This provision is specific to San Diego County. On reconsidering the proposed amendment and analyzing the issues relating to county-specific statutes (see Memorandum 97-84, pp. 1-3), the staff recommends deleting the amendment from the draft legislation. If the courts in San Diego County unify, Section 6301.1 will be just one of many statutes specific to San Diego County that will require revision.

CIVIL CODE SECTION 1181

The Commission's proposed amendment of Civil Code Section 1181 reads:

1181. The proof or acknowledgment of an instrument may be made before a notary public at any place within this state, or within the county or city and county in this state in which the officer specified below was elected or appointed, before either:

- (a) A clerk of a superior, ~~municipal, or justice~~ or municipal court.
- (b) A county clerk.
- (c) A court commissioner.
- (d) A judge or retired judge of a municipal or justice court.
- (e) A district attorney.
- (f) A clerk of a board of supervisors.
- (g) A city clerk.
- (h) A county counsel.
- (i) A city attorney.

The Los Angeles Superior Court urges the Commission to delete the reference to the justice court in subdivision (d). (Memorandum 97-81, Exhibit p. 5.) The decision to retain that reference was not accidental, however. As explained in the proposed Comment, "[t]he reference to a retired judge of a justice court is maintained in subdivision (d) to enable retired judges of justice courts to continue to take proofs or acknowledgments of instruments." Unless it becomes clear that there are no retired judges of justice courts interested in performing that function, the staff recommends leaving the amendment as in the tentative recommendation.

FISH & GAME CODE SECTION 2357

In the tentative recommendation, Fish and Game Code Section 2357 would be amended as follows:

2357. It is unlawful to carry trout into an area where the season is closed unless an affidavit is made in duplicate before the nearest ~~judge of the justice court or a~~ notary public in the area in which the trout are or might be lawfully taken. Such affidavit shall state the date and place of taking such trout, and the name, address, and number of the angling license of the person legally taking such trout. The duplicate of the affidavit shall be left on file with the ~~judge of the justice court or~~ notary public before whom the affidavit is made.

The amendment would not replace the reference to a justice court judge with a reference to a municipal court judge.

The Los Angeles Superior Court “does not have any concerns regarding having a notary public witness the making of the affidavit.” (Memorandum 97-81, Exhibit p. 5.) It believes, however, that “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.” (*Id.*) It explains:

...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.

(*Id.*)

The problem the court raises already seems to exist under the current version of Section 2357, because there no longer are any justice court judges. Rather than attempting to resolve the issue in the implementing legislation for SCA 4, the staff recommends listing it in the Commission’s recommendation on SCA 4 as a topic that may be appropriate for future study.

OTHER ISSUES

The Los Angeles Superior Court has suggested minor stylistic changes in the proposed amendments of Business and Professions Code Section 6322 and Welfare and Institutions Code Section 601.4(b). (Memorandum 97-81, Exhibit p.

5.) The staff intends to incorporate the first of these suggestions into the next draft, but not the second, because it is inconsistent with the minimalist approach the Commission has taken in drafting legislation to implement SCA 4. We do not plan to discuss these points at the Commission's meeting, unless someone raises an issue.

In reviewing the codes, the staff discovered a justice court reference that was overlooked in preparing the tentative recommendation. We will add an amendment of the statute containing this reference (Business and Professions Code Section 470.3) to the draft legislation. See Exhibit p. 1.

Respectfully submitted,

Barbara S. Gaal
Staff Counsel

Exhibit

MISCELLANEOUS CODES: ADDITIONAL JUSTICE
COURT CONFORMING REVISIONS

The following revision should be added to the proposed legislation:

Bus. & Prof. Code § 470.3 (technical amendment). Fee for filing first paper in civil action

470.3. (a) Except as provided in subdivision (b), a fee of not less than one dollar (\$1) and not more than eight dollars (\$8) may be added to the total fees collected and fixed pursuant to Sections 26820.4, 26826, 26827, 68090, 72055, and 72056 of the Government Code for the filing of a first paper in a civil action in superior, or municipal, ~~or justice~~ court, other than a small claims action.

(b) A fee of not less than one dollar (\$1) and not more than three dollars (\$3) may be added to the total fees collected and fixed pursuant to Sections 26820.4, 26826, 26827, 68090, 72055, and 72056 of the Government Code for the filing of a first paper in a civil action in superior, or municipal, ~~or justice~~ court, for those cases where the monetary damages do not exceed the sum of two thousand five hundred dollars (\$2,500). To facilitate the computation of the correct fee pursuant to this section, the complaint shall contain a declaration under penalty of perjury executed by a party requesting a reduction in fees that the case filed qualifies for the lower fee because claim for money damages will not exceed the sum of two thousand five hundred dollars (\$2,500).

(c) The fees described in subdivisions (a) and (b) shall only be utilized for the support of the dispute resolution programs authorized by this chapter.

(d) A county may carry over moneys received from the additional fees authorized pursuant to subdivisions (a) and (b), which shall be deposited in a special fund created for those purposes, until such time as the county elects to fund a dispute resolution program. Records of those fees shall be available for inspection by the public, upon request.

Comment. Section 470.3 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).