

## Memorandum 98-3

**Trial Court Unification: Miscellaneous Issues**

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At its December 1997 meeting, the Commission considered comments on its four tentative recommendations (Code of Civil Procedure, Government Code, Penal Code, and Miscellaneous Codes) proposing legislation to implement SCA 4, the trial court unification measure scheduled to be on the statewide ballot in June. The staff has revised the proposed legislation to incorporate decisions made at that meeting, and has submitted those revisions to Legislative Counsel. A revised draft of the preliminary part is attached for the Commission to review.

In its continuing examination of the codes for purposes of implementing SCA 4, the staff has found a number of new issues warranting consideration. We have also received additional input from Judge Charles L. Patrick, whose letter is attached as Exhibit pages 1-3. This memorandum discusses these new points.

## APPEALS IN CIVIL CASES

The staff sees a technical problem in the proposed revisions of the statutes governing civil appeals. See Code Civ. Proc. §§ 904.1-904.5. As phrased, the amendments may create the incorrect implication that in a limited civil case, a matter not appealable to the appellate division of the superior court is appealable to the court of appeal. The staff would correct this defect by revising Code of Civil Procedure Sections 904.1 and 904.2 and adding Section 904.3, as follows:

**Code Civ. Proc. § 904.1 (amended). Taking appeal**

904.1. (a) An Except as provided in Sections 904.2 and 904.5, an appeal may be taken from a superior court in the following cases:

....

**Code Civ. Proc. § 904.2 (amended). Taking appeal in limited civil case**

904.2. An appeal may be taken from a ~~municipal or justice court~~ a limited civil case in the following cases:

....

**Code Civ. Proc. § 904.3 (added). Court to which appeal is taken**

904.3. (a) An appeal, other than in a limited civil case, is to the court of appeal.

(b) An appeal in a limited civil case is to the appellate division of the superior court.

**Comment.** Subdivision (a) of Section 904.3 implements California Constitution Article VI, Section 11(a), as it applies in civil cases (courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within appellate jurisdiction of courts of appeal on June 30, 1995, and in other causes prescribed by statute).

Subdivision (b) implements California Constitution Article VI, Section 11(b), as it applies in civil cases (appellate division of superior court has appellate jurisdiction in causes prescribed by statute).

CLASSIFYING COURT PROCEEDINGS RELATING  
TO ENFORCEMENT OF A JUDGMENT

Courts may be involved in various ways in the enforcement of a judgment. See, e.g., Code Civ. Proc. §§ 683.170, 685.070, 685.080, 688.030, 689.010 *et seq.*, 697.410, 697.660, 699.030, 699.040, 699.070, 701.520, 701.680, 701.830, 703.550, 704.080, 704.750 *et seq.*, 706.076, 706.105, 708.020, 708.030, 708.110, 708.120 *et seq.*, 708.210 *et seq.*, 708.320, 708.450, 708.510 *et seq.*, 708.610 *et seq.*, 708.710 *et seq.*, 708.920 *et seq.*, 709.010 *et seq.*, 714.030, 716.030, 720.010 *et seq.*, 724.050 *et seq.*, 724.230 *et seq.* Under proposed Code of Civil Procedure Sections 85 and 86(a)(8), a court proceeding relating to enforcement of a judgment in a limited civil case would itself be a limited civil case, at least if the amount in controversy (exclusive of attorney fees, interest, and costs) is \$25,000 or less and the relief sought is “a type that may be granted in a limited civil case” (i.e., relief other than a permanent injunction, a determination of title to real property, enforcement of an order under the Family Code, or declaratory relief (except as authorized by Code of Civil Procedure Section 86)).

Is this treatment appropriate? To answer this question, the staff compiled the a list of the various provisions specifying consequences of classification as a limited case or otherwise. See Exhibit p. 4.

Many of the provisions differentiating between limited civil cases and other civil cases are relevant in the enforcement context. For example, suppose property is sold at an execution sale and there are conflicting claims to the sale

proceeds. In some instances, such conflicting claims can be resolved in court without commencement of a separate action. See Code Civ. Proc. § 701.830 (reproduced at Exhibit p. 5). Those proceedings may involve some of the matters that are subject to differing rules for limited civil cases and other cases, such as economic litigation discovery procedures, court reporter duties and electronic reporting, appellate jurisdiction (e.g., an appeal from the court's determination of conflicting claims to the sale proceeds), the filing fee for a notice of appeal, writ jurisdiction (e.g., a writ challenging an order for discovery of allegedly privileged material), and retention of records. Other provisions differentiating between limited civil cases and other cases may be wholly inapplicable, such as the provisions on specifying personal injury or wrongful death damages (proposed Code of Civil Procedure Sections 425.10 and 425.11) and the statute on filing a statement of jurisdictional facts in a limited civil cause subject to Civil Code Section 1812.10 or 2984.4 or Code of Civil Procedure Section 395(b).

This situation is no different than for the typical limited civil case, in which some of the provisions specific to limited civil cases will be applicable and others inapplicable. The staff has not detected any problems unique to enforcement of judgments. Unless such problems are identified, the staff recommends continuing with the Commission's current approach on classifying court proceedings relating to enforcement of a judgment.

#### VICTIM RESTITUTION: SB 150 (KOPP)

SB 150 (Kopp), 1997 Cal. Stat. ch. 527, concerns restitution in criminal cases and the authority of a municipal court to enforce restitution orders and restitution fines. To preserve the policy of this new measure under SCA 4, the Commission will need to make adjustments in its draft legislation implementing SCA 4. The discussion below (1) explains the law as it existed before enactment of SB 150, (2) explains the impact of SB 150, and (3) proposes means of accounting for SB 150 in the SCA 4 implementing legislation.

#### **Restitution Before SB 150: Jurisdiction of Municipal Court**

In every case where a person is convicted of a crime, the court "shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record." Penal Code § 1202.4(b). The fine shall be between \$200 and \$10,000 if the person

is convicted of a felony, and between \$100 and \$1,000 if the person is convicted of a misdemeanor. *Id.*

Where a victim has suffered economic loss as a result of the defendant's conduct, the court is to enter a restitution order payable to the victim, as well as imposing a restitution fine. "The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record." Penal Code § 1202.4(f).

Under these provisions, a municipal court appears to be able to require restitution exceeding \$25,000. The criminal jurisdiction of a municipal court is not geared to an amount in controversy, but rather to the nature of the offense. A municipal court has jurisdiction in all misdemeanor and infraction cases, except those within the jurisdiction of the juvenile court or the exclusive jurisdiction of another court. Penal Code § 1462(a). The distinction between felonies, on the one hand, and misdemeanors and infractions, on the other, turns on the punishment, not the monetary amount involved. Penal Code § 17 (felonies are crimes punishable with death or imprisonment in the state prison; all other crimes are misdemeanors or infractions). Thus, the municipal court may have jurisdiction of a misdemeanor or infraction case in which full restitution, or a combination of full restitution and a restitution fine, exceeds \$25,000. A municipal court may also require such restitution where it acts pursuant to its jurisdiction "in all noncapital criminal cases to receive a plea of guilty or nolo contendere, appoint a time for pronouncing judgment under Section 859a, pronounce judgment, and refer the case to the probation officer if eligible for probation." Penal Code § 1462(b); see also Penal Code § 859a; *People v. Callahan*, \_\_ Cal. App. 4th \_\_, 63 Cal. Rptr. 2d 684, 686-90 (1997).

It is less clear whether, before enactment of SB 150, the municipal court had jurisdiction to enforce a victim restitution order, particularly one exceeding \$25,000. "Superior courts have original jurisdiction in all causes except those given by statute to other trial courts." Cal. Const. art. VI, § 10. Under Code of Civil Procedure Section 86(a)(1), municipal courts have original jurisdiction of all cases at law in which the amount in controversy is \$25,000 or less, except certain tax cases. Municipal courts also have jurisdiction to "appoint a receiver and to make any order or perform any act, pursuant to Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments)." Code Civ. Proc. § 86(a)(8). It is unclear whether this grant of jurisdiction would encompass enforcement of a victim restitution order or fine, or only enforcement of judgments in the types of

civil actions and proceedings enumerated in Code of Civil Procedure Section 86. Under Penal Code Sections 1202.4 and 1214, a restitution order or restitution fine is enforceable as if it were a civil judgment. This does not expressly address the jurisdictional point, however, especially the issue of whether a municipal court may enforce a victim restitution order exceeding the \$25,000 limit set forth in Section 86. Thus, before enactment of SB 150 (Kopp) there was “some uncertainty as to whether or not a municipal court may enforce a restitution order that exceeds the municipal court jurisdictional limit of \$25,000.” (Bill Analysis (SB 150 (Kopp)), Assembly Committee on Judiciary, July 16, 1997, p. 3; Bill Analysis (SB 150 (Kopp)), Assembly Committee on Public Safety, June 24, 1997, p. 3.)

### **Victim Restitution After SB 150: Jurisdiction of Municipal Court**

SB 150 addressed the uncertainty by amending Code of Civil Procedure Section 86 to give the municipal court jurisdiction in “all actions to enforce restitution orders or restitution fines that were imposed by the municipal court.” Although a court arguably always has jurisdiction to enforce its own orders and judgments, this amendment makes more explicit that so long as a victim restitution order or fine was imposed by a municipal court, it is enforceable by that court regardless of amount.

### **Accounting for SB 150 in the Implementing Legislation for SCA 4**

The Commission’s implementing legislation for SCA 4 needs to be revised to account for SB 150. This is not a simple matter of inserting the amended version of Section 86 into the draft legislation. Rather, the new provision on municipal court jurisdiction to enforce victim restitution orders or fines (Code of Civil Procedure Section 86(a)(11)) must be recast in light of the proposed differentiation between limited civil cases and other civil cases.

This could be done by deleting the provision from Section 86 and continuing it in Penal Code Section 1214, with modifications to accommodate trial court unification:

1214. (a) If the judgment is for a fine, including a restitution fine ordered pursuant to Section 1202.4 or Section 1203.04, as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994, with or without imprisonment, the judgment may be enforced in the manner provided for the enforcement of money judgments generally.

(b) In any case in which a defendant is ordered to pay restitution, the order to pay restitution (1) is deemed a money

judgment if the defendant was informed of his or her right to have a judicial determination of the amount and was provided with a hearing, waived a hearing, or stipulated to the amount of the restitution ordered, and (2) shall be fully enforceable by a victim as if the restitution order were a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. Upon the victim's request, the court shall provide the victim in whose favor the order of restitution is entered with a certified copy of that order. In addition, upon request, the court shall provide the State Board of Control with a certified copy of any order imposing a restitution fine or order. A victim shall have access to all resources available under the law to enforce the restitution order, including, but not limited to, access to the defendant's financial records, use of wage garnishment and lien procedures, information regarding the defendant's assets, and the ability to apply for restitution from any fund established for the purpose of compensating victims in civil cases. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation or parole is enforceable by the victim pursuant to this section. Victims and the State Board of Control shall inform the court whenever an order to pay restitution is satisfied.

(c) Except as provided in subdivision (d), and notwithstanding the amount in controversy limitation of Section 85 of the Code of Civil Procedure, a restitution order or restitution fine that was imposed pursuant to Section 1202.4 by the municipal court, or by the superior court acting pursuant to subdivision (d) of Section 1462, may be enforced in the same manner as a money judgment in a limited civil case.

(e) (d) Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure shall not apply to a judgment for any fine or restitution ordered pursuant to Section 1202.4 or Section 1203.04, as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994.

**Comment.** Section 1214 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). New subdivision (c) continues the policy of former Code of Civil Procedure Section 86(a)(11), which provided that the municipal court had original jurisdiction in all actions to enforce restitution orders or restitution fines that were imposed by the municipal court (without any limitation on amount in controversy). In certain criminal cases, a municipal court could impose a restitution order or restitution fine. Penal Code §§ 1462(a) (misdemeanor or infraction case), 1462(b) (pronouncing judgment in noncapital criminal case). In a county in which there is no municipal court, Penal Code Section 1462(d) gives the superior

court the jurisdiction provided in Section 1462(a)-(b). Thus, new subdivision (c) of this section accommodates trial court unification and continues the effect of former law.

See Code of Civil Procedure §§ 85 (limited civil cases), 86(a)(8) (enforcement of judgment in limited civil case).

In essence, under these revisions the post-unification equivalent of an action to enforce a victim restitution order or fine imposed by the municipal court would be treated as a limited civil case but would not be denominated as such. This treatment appears appropriate: The staff perceives no adverse effects from triggering the procedures applicable to limited civil cases. Just as with a court proceeding to enforce a judgment in a limited civil case (see pages 2-3, *supra*), some of the provisions differentiating between limited civil cases and other cases would come into play in enforcing a victim restitution order or fine, while others would not. We do not see any potential for confusion or inappropriate results, but we invite others to consider this point.

#### ENFORCEMENT OF JUDGMENTS: APPEALS

(CODE OF CIVIL PROCEDURE SECTIONS 703.600, 706.105, 708.180, AND 720.420)

Four provisions relating to enforcement of judgments specify that an appeal (e.g., an appeal of an order on a claim of exemption or an appeal of a determination of a third-party claim) may be taken “in the manner provided for appeals in the court in which the proceeding takes place.” (Exhibit pp. 6-9.) Unless modified, these provisions will be ambiguous with respect to a unified superior court, because there are two appeal paths for cases in such a court: Limited civil cases are appealable to the appellate division (proposed Section 904.2); other civil cases are appealable to the court of appeal (proposed Section 904.1).

This problem could be addressed by amending the provisions to specify that an appeal may be taken “in the manner provided for an appeal of the underlying judgment.” Thus, for example, suppose a creditor prevails in a limited civil case, the creditor attempts to enforce the judgment, the debtor claims an exemption, the creditor challenges that claim, and the validity of the claim of exemption is determined in court. Under the proposed approach, an appeal of the court’s determination on the claim of exemption would be to the appellate division, because the underlying judgment being enforced is in a limited civil case.

This approach would be consistent with existing policy, under which municipal courts have jurisdiction to enforce civil judgments entered in those courts. Code Civ. Proc. § 86(a)(8) (“...to appoint a receiver and to make any order or perform any act, pursuant to Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments) ....”) If a judgment was entered in a municipal court, a challenge to a claim of exemption in enforcing that judgment would be determined in that court, and any appeal of the court’s determination on the claim of exemption would be to the appellate division, because that is the “manner provided for appeals in the court in which the proceeding takes place.”

The approach could engender confusion, however, with regard to enforcement of a victim restitution order or fine. In some instances, a municipal court may impose such restitution in a noncapital felony case. Penal Code § 1462(b). Under SB 150 (Kopp), however, enforcement of the victim restitution order or fine would be within the original jurisdiction of the municipal court and thus appealable to the appellate division of the superior court. But any appeal of the underlying felony conviction would be to the court of appeal. To state that an appeal from an enforcement ruling may be taken “in the manner provided for an appeal of the underlying judgment” would alter this situation.

To maintain the status quo in light of trial court unification, the staff would instead simply delete the language specifying that an appeal may be taken “in the manner provided for appeals in the court in which the proceeding takes place.” (Exhibit pp. 6-9.) That language is unnecessary, because Code of Civil Procedure Sections 85 (limited civil cases), 86(a)(8) (enforcement of judgments in limited civil cases), and 904.1 *et seq.* (appellate jurisdiction) are sufficient to determine the proper appeal path.

## COURT REPORTERS

### **Preparation of Record on Appeal: Code of Civil Procedure Section 269**

Code of Civil Procedure Section 269, concerning preparation of the record on appeal, presently applies only to the “official reporter of a superior court.” (For a similar but not completely parallel provision applicable to official reporters of a municipal court, see Code of Civil Procedure Section 274c, which is discussed below.) To avoid extending Section 269 to official reporters in cases now brought in municipal court, an amendment along the following lines could be added to the draft:



269. (a) The official reporter of a superior court, or any of them, where there are two or more, shall, at the request of either party, or of the court in a civil action or proceeding case other than a limited civil case, and on the order of the court, the district attorney, or the attorney for the defendant in a criminal action or proceeding felony case, take down in shorthand all testimony, objections made, rulings of the court, exceptions taken, all arraignments, pleas, and sentences of defendants in criminal felony cases, arguments of the prosecuting attorney to the jury, and all statements and remarks made and oral instructions given by the judge. If directed by the court, or requested by either party, the official reporter shall, within such reasonable time after the trial of the case as the court may designate, write the transcripts out, or the specific portions thereof as may be requested, in plain and legible longhand, or by typewriter, or other printing machine, and certify that the transcripts were correctly reported and transcribed, and when directed by the court, file the transcripts with the clerk of the court.

(b) In any case where a defendant is convicted of a felony, after a trial on the merits, the record on appeal shall be prepared immediately after the verdict or finding of guilt is announced unless the court determines that it is likely that no appeal from the decision will be made. The court's determination of a likelihood of appeal shall be based upon standards and rules adopted by the Judicial Council.

(c) Any court, party, or person may request delivery of any transcript in a computer-readable form, except that an original transcript shall be on paper. A copy of the original transcript ordered within 120 days of the filing or delivery of the transcript by the official reporter shall be delivered in computer-readable form upon request if the proceedings were produced utilizing computer-aided transcription equipment. Except as modified by standards adopted by the Judicial Council, the computer-readable transcript shall be on disks in standard ASCII code unless otherwise agreed by the reporter and the court, party, or person requesting the transcript. Each disk shall be labeled with the case name and court number, the dates of proceedings contained on the disk, and the page and volume numbers of the data contained on the disk. Each disk as produced by the court reporter shall contain the identical volume divisions, pagination, line numbering, and text of the certified original paper transcript or any portion thereof. Each disk shall be sequentially numbered within the series of disks.

**Comment.** Section 269 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See Section 85 (limited civil cases) & Comment.

This amendment is similar to (but the flip side of) the amendment of Government Code Section 72194.5 that was discussed at the Commission's December 1997 meeting. See also Memorandum 97-81, page 8. We have received no new input on court reporters since that meeting. Similar concerns apply to both of these amendments, as well as to the amendments of Sections 274a and 274c discussed below. We will supplement this memorandum if we receive further pertinent information.

#### **Transcription at Judge's Request: Code of Civil Procedure Section 274a**

Similarly, Code of Civil Procedure Section 274a presently applies only to transcription at the request of judges "of the superior court." An amendment along the following lines is necessary to avoid extending Section 274a to judges in cases now brought in municipal court:

274a. Judges of the superior court may have any opinion given or rendered by such judge in the trial of any action or proceeding a felony case or a civil case other than a limited civil case, pending in such court, or any necessary order, petition, citation, commitment or judgment in any probate proceeding, proceeding concerning new or additional bonds of county officials or juvenile court proceeding, or necessary order, petition, citation, commitment, or oral testimony or judgment in any insanity proceeding or proceedings relative to an alleged feeble minded person, or the testimony or judgment relating to the custody or support of minor children in any proceeding in which the custody or support of minor children is involved, taken down in shorthand and transcribed together with such copies as the court may deem necessary by the official reporter of such court, but if there be no official reporter for such court, then by any competent stenographer; the cost thereof shall be a legal charge against the county, payable out of the county treasury, except the fee for reporting and transcribing in any civil action or proceeding or in any probate proceeding, in the manner set forth in Sections 69947 to 69953, inclusive, of the Government Code.

**Comment.** Section 274a is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See Section 85 (limited civil cases) & Comment.

#### **Official Reporters of Municipal Courts: Code of Civil Procedure Section 274c**

Finally, we have revised the amendment of Section 274c for consistency with parallel amendments throughout the codes:

274c. Official reporters of ~~a municipal or justice court, or any one of them,~~ must, at the request of either party or of the court in a civil proceeding limited civil case, or on the order of the court in a ~~criminal action or proceeding~~ misdemeanor or infraction case, take down in shorthand all the testimony, the objections made, the rulings of the court, the exceptions taken, all arraignments, pleas and sentences of defendants in criminal cases, the arguments of the prosecuting attorney to the jury, and all statements and remarks made and oral instructions given by the judge; and if directed by the court, or requested by either party, must, within such reasonable time after the trial of such case as the court may designate, write out the same, or such specific portions thereof as may be requested, in plain and legible longhand, or by typewriter, or other printing machine, and certify to the same as being correctly reported and transcribed, and when directed by the court, file the same with the clerk of the court.

**Comment.** Section 274c is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

See Section 85 (limited civil cases) & Comment; Penal Code § 691 (misdemeanor or infraction case).

#### DELETION OF REFERENCES TO MUNICIPAL COURT

Several statutes include references to the subject matter jurisdiction of the municipal court that are somewhat confusing. The staff suggests clarifying these references as set out below (changes shown in boldface ~~strikeout~~):

#### **Code Civ. Proc. § 395 (amended). Actions generally**

....

(c) If within the county there is a municipal ~~or justice~~ court having jurisdiction of the subject matter established, in the cases mentioned in subdivision (a), in the judicial district in which the defendant or any defendant resides, in which the injury to person or personal property or the injury causing death occurs, or, in which the obligation was contracted to be performed or, in cases mentioned in subdivision (b), in the judicial district which the buyer or lessee resides, in which the buyer or lessee in fact signed the contract, in which the buyer or lessee resided at the time the contract was entered into, or in which the buyer or lessee resides at the commencement of the action, then that court is the proper court for the trial of the action. Otherwise, any ~~municipal or justice~~ court

in the county having jurisdiction of the subject matter is a proper court for the trial thereof.

....

**Civ. Code § 1812.10 (amended). Action on contract or installment account**

....

If within any such county there is a municipal ~~or justice~~ court, having jurisdiction of the subject matter, established in the city and county or judicial district in which the contract was in fact signed by the buyer, or in which the buyer resided at the time the contract was entered into, or in which the buyer resides at the commencement of the action or in which the goods purchased pursuant to such contract have been so affixed to real property as to become a part of such real property, then such court is the proper court for the trial of such action. Otherwise, any ~~municipal or justice~~ court in such county, having jurisdiction of the subject matter, is the proper court for the trial thereof.

....

**Civ. Code § 2984.4 (amended). Action on contract or purchase order**

....

If within any such county there is a municipal ~~or justice~~ court, having jurisdiction of the subject matter, established in the judicial district in which the contract, conditional sale contract, or purchase order was in fact signed by the buyer, or in which the buyer resided at the time the contract, conditional sale contract, or purchase order was entered into, or in which the buyer resides at the commencement of the action, or in which the motor vehicle purchased pursuant to such contract is permanently garaged, such court is the proper court for the trial of the action. Otherwise, any ~~municipal or justice~~ court in such county, having jurisdiction of the subject matter, is the proper court for the trial of the action.

....

**MISCELLANEOUS ISSUES: CODE OF CIVIL PROCEDURE**

**Section 237: Access to Juror Information**

Code of Civil Procedure Section 237, concerning access to juror information, presently applies only to “qualified jurors drawn from the qualified juror list for the superior court.” To avoid extending Section 237 to qualified jurors in cases now brought in municipal court, the Commission should add an amendment like the following amendment to its draft:

237. (a)(1) ~~The~~ In a felony case or a civil case other than a limited civil case, the names of qualified jurors drawn from the qualified juror list for the superior court shall be made available to the public upon request unless the court determines that a compelling interest, as defined in subdivision (b), requires that this information should be kept confidential or its use limited in whole or in part.

(2) Upon the recording of a jury's verdict in a ~~criminal~~ felony jury proceeding, the court's record of personal juror identifying information of trial jurors, as defined in Section 194, consisting of names, addresses, and telephone numbers, shall be sealed until further order of the court as provided by this section.

(3) For purposes of this section, "sealed" or "sealing" means extracting or otherwise removing the personal juror identifying information from the court record.

(4) This subdivision applies only to cases in which a jury verdict was returned on or after January 1, 1996.

(b) Any person may petition the court for access to these records. The petition shall be supported by a declaration that includes facts sufficient to establish good cause for the release of the juror's personal identifying information. The court shall set the matter for hearing if the petition and supporting declaration establish a prima facie showing of good cause for the release of the personal juror identifying information, but shall not set the matter for hearing if there is a showing on the record of facts that establish a compelling interest against disclosure. A compelling interest includes, but is not limited to, protecting jurors from threats or danger of physical harm. If the court does not set the matter for hearing, the court shall by minute order set forth the reasons and make express findings either of a lack of a prima facie showing of good cause or the presence of a compelling interest against disclosure.

(c) If a hearing is set pursuant to subdivision (b), the petitioner shall provide notice of the petition and the time and place of the hearing at least 20 days prior to the date of the hearing to the parties in the ~~criminal action~~ felony case. The court shall provide notice to each affected former juror by personal service or by first-class mail, addressed to the last known address of the former juror as shown in the records of the court. In a capital case, the petitioner shall also serve notice on the Attorney General. Any affected former juror may appear in person, in writing, by telephone, or by counsel to protest the granting of the petition. A former juror who wishes to appear at the hearing to oppose the unsealing of the personal juror identifying information may request the court to close the hearing in order to protect the former juror's anonymity.

(d) After the hearing, the records shall be made available as requested in the petition, unless a former juror's protest to the

granting of the petition is sustained. The court shall sustain the protest of the former juror if, in the discretion of the court, the petitioner fails to show good cause, the record establishes the presence of a compelling interest against disclosure as defined in subdivision (b), or the juror is unwilling to be contacted by the petitioner. The court shall set forth reasons and make express findings to support the granting or denying of the petition to disclose. The court may require the person to whom disclosure is made, or his or her agent or employee, to agree not to divulge jurors' identities or identifying information to others; the court may otherwise limit disclosure in any manner it deems appropriate.

(e) Any court employee who has legal access to personal juror identifying information sealed under subdivision (a), who discloses the information, knowing it to be a violation of this section or a court order issued under this section, is guilty of a misdemeanor.

(f) Any person who intentionally solicits another to unlawfully access or disclose personal juror identifying information contained in records sealed under subdivision (a), knowing that the records have been sealed, or who, knowing that the information was unlawfully secured, intentionally discloses it to another person is guilty of a misdemeanor.

**Comment.** Section 237 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See Section 85 (limited civil cases) & Comment.

#### **Section 575.6: Telephone Appearances at Trial Setting Conferences**

Code of Civil Procedure Section 575.6 presently requires the superior court of each county to adopt a rule “enabling the appearance of counsel by telephone at trial setting conferences in civil cases.” An amendment like the following would avoid extending Section 575.6 to civil cases now brought in municipal court:

575.6. Notwithstanding Section 575.5, the superior court of each county shall adopt a rule enabling the appearance of counsel by telephone at trial setting conferences in civil cases other than limited civil cases. A local rule adopted pursuant to this section may require the personal appearance of counsel at a civil trial setting conference for good cause stated.

**Comment.** Section 575.6 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See Section 85 (limited civil cases) & Comment.

### **Section 871.3: Good Faith Improver**

Code of Civil Procedure Section 871.3 presently allows a good faith improver (as defined in Code of Civil Procedure Section 871.1) to bring an action in the superior court or, *subject to Section 396*, file a cross-complaint in a pending action in the superior or municipal court for relief under the chapter on good faith improvers. Section 396 governs transfers between superior and municipal courts for lack of subject matter jurisdiction. To make clear that a good faith improver's cross-complaint is not only subject to the rules on subject matter jurisdiction but also the rules on misclassification of a civil case in a unified superior court, Section 871.3 should be amended to refer to proposed Section 395.9 (misclassification as limited civil case or otherwise), as well as Section 396:

871.3. A good faith improver may bring an action in the superior court or, subject to Section Sections 395.9 and 396, may file a cross-complaint in a pending action in the superior or municipal court for relief under this chapter. In every case, the burden is on the good faith improver to establish that he is entitled to relief under this chapter, and the degree of negligence of the good faith improver should be taken into account by the court in determining whether the improver acted in good faith and in determining the relief, if any, that is consistent with substantial justice to the parties under the circumstances of the particular case.

**Comment.** Section 871.3 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

### **Section 1281.5: Application to Stay Pending Arbitration**

Code of Civil Procedure Section 1281.5 provides that a person who commences an action to enforce a lien (pursuant to Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code) does not waive arbitration of the dispute pursuant to an arbitration agreement, so long as the person simultaneously files in the same court an application to stay the action pending arbitration. Presumably, both the action and the application for a stay must be filed in superior court, because there does not seem to be any provision (in Code of Civil Procedure Section 86 or elsewhere) granting the municipal court jurisdiction of an application to stay an action pending arbitration. Consistent with that conclusion, Section 1281.5 provides that the applicant "may join with the application for the stay, pending arbitration, a claim of lien otherwise within the jurisdiction of the municipal court." This appears to mean that even though

the action to enforce the lien and application to stay the action pending arbitration are filed in superior court, the applicant may join with those claims a different claim of lien that is within the jurisdiction of the municipal court. To account for SCA 4, the Commission should consider amending Section 1281.5 as follows:

1281.5. (a) Any person, who proceeds to record and enforce a claim of lien by commencement of an action pursuant to Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, shall not thereby waive any right of arbitration which that person may have pursuant to a written agreement to arbitrate, if, in filing an action to enforce the claim of lien, the claimant at the same time presents to the court an application that the action be stayed pending the arbitration of any issue, question, or dispute which is claimed to be arbitrable under the agreement and which is relevant to the action to enforce the claim of lien. The In a county in which there is a municipal court, the applicant may join with the application for the stay, pending arbitration, a claim of lien otherwise within the jurisdiction of the municipal court.

(b) The failure of a defendant to file a petition pursuant to Section 1281.2 at or before the time he or she answers the complaint filed pursuant to subdivision (a) shall constitute a waiver of that party's right to compel arbitration.

**Comment.** Section 1281.5 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See Section 85 (limited civil cases) & Comment.

### **Section 1283.05: Depositions in Arbitration Proceedings**

Code of Civil Procedure Section 1283.05 concerns depositions in arbitration proceedings. In two places, it says that arbitrations should be treated the same way as a civil action in superior court. Those references should be revised to reflect trial court unification:

1283.05. To the extent provided in Section 1283.1 depositions may be taken and discovery obtained in arbitration proceedings as follows:

(a) After the appointment of the arbitrator or arbitrators, the parties to the arbitration shall have the right to take depositions and to obtain discovery regarding the subject matter of the arbitration, and, to that end, to use and exercise all of the same rights, remedies, and procedures, and be subject to all of the same duties, liabilities, and obligations in the arbitration with respect to the subject matter thereof, as provided in Chapter 2 (commencing with Section 1985)



of, and Article 3 (commencing with Section 2016) of Chapter 3 of, Title 3 of Part 4 of this code, as if the subject matter of the arbitration were pending in a civil action before a superior court of this state, other than a limited civil case, subject to the limitations as to depositions set forth in subdivision (e) of this section.

(b) The arbitrator or arbitrators themselves shall have power, in addition to the power of determining the merits of the arbitration, to enforce the rights, remedies, procedures, duties, liabilities, and obligations of discovery by the imposition of the same terms, conditions, consequences, liabilities, sanctions, and penalties as can be or may be imposed in like circumstances in a civil action other than a limited civil case by a superior court of this state under the provisions of this code, except the power to order the arrest or imprisonment of a person.

....

**Comment.** Section 1283.05 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See Section 85 (limited civil cases) & Comment.

#### MISCELLANEOUS ISSUES: GOVERNMENT CODE

##### **Section 70214: Commissioners and Referees**

Government Code Section 70214, the Commission's proposed transitional provision on commissioners and referees, should be clarified through addition of a new subdivision along the following lines:

70214. 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.

(d) Commissioners and referees of the unified superior court shall have all of the powers and authority of commissioners and referees of superior courts and of municipal courts.

**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. For existing authority to appoint superior court commissioners, see Section 70141 et seq. Existing authority to appoint municipal court commissioners is found among county-specific statutes in the Government Code governing municipal courts. *Cf.* Sections 72000-74991. For existing authority to appoint municipal court traffic referees, see Section 72400. For existing authority to appoint municipal court traffic trial commissioners, see Section 72400.

### **Section 77003: Court Operations Defined**

The 1997 trial court funding legislation includes a provision that is problematic when applied to the circumstances of trial court unification:

For purposes of this paragraph, “subordinate judicial officers” include all commissioner or referee positions created prior to July 1, 1997, including those commissioner positions created pursuant to Sections 69904, 70141, 70141.9, 70142.11, 72607, 73794, 74841.5, and 74908; and includes any staff who provide direct support to commissioners; but does not include commissioners or staff who provide direct support to the commissioners whose positions were created after July 1, 1997, unless approved by the Judicial Council, subject to availability of funding.

If an existing subordinate judicial office is transferred from the municipal court to the superior court as a result of unification, is this a superior court office “created after July 1, 1997” for purposes of trial court funding?

The staff believes the intent of these provisions is to address funding for court positions created before July 1, 1997, whether in the municipal or superior court. Transfer of an existing position from the municipal to the superior court should not be construed as creation of a new position. The Commission could clarify the matter by the following amendment:

For purposes of this paragraph, “subordinate judicial officers” include all commissioner or referee positions created prior to July 1, 1997, including positions created in the municipal court prior to July 1, 1997, which thereafter become positions in the superior court as a result of unification of the municipal and superior courts in a county, and including those commissioner positions created pursuant to Sections 69904, 70141, 70141.9, 70142.11, 72607, 73794, 74841.5, and 74908; and includes any staff who provide direct support to commissioners; but does not include commissioners or staff who provide direct support to the commissioners whose

positions were created after July 1, 1997, unless approved by the Judicial Council, subject to availability of funding.

We should ask the Judicial Council to confirm that this amendment is right, as a matter of policy, and to make sure that it does not create a negative implication elsewhere.

#### MISCELLANEOUS ISSUES: PENAL CODE

##### **Section 859: Counsel for Defendant**

In the course of amending Penal Code Section 859 we are incidentally picking up a conforming change to language in the Article I, Section 14 of the California Constitution — “The magistrate must, upon the request of the defendant, require a peace officer to ~~take~~ transmit a message to any counsel whom the defendant may name, in the ~~judicial district~~ county in which the court is situated.” Judge Patrick would simply delete this provision. He points out that it is obsolete, and in any case it is not needed since the Constitution already covers it. (Exhibit p. 1.)

The staff agrees that the provision is obsolete. To facilitate prompt passage of the implementing legislation for SCA 4, however, the Commission has taken the general position that we will not tamper with obsolete provisions in the context of trial court unification. We could simply leave the section unamended, as we have with some apparently obsolete provisions referring to justice courts (Code of Civil Procedure Sections 221 and 1012.5, which are identified in footnote 98 on page 14 of the preliminary part as topics for future study). In any event, a review of this provision should be included within the scope of our proposed review of other Penal Code statutes relating to the subject of counsel in criminal cases. (See page 15 of the attached preliminary part.) With respect to Penal Code Sections 860 and 869, Judge Patrick is happy that the topic at least is to be considered for later cleanup. (Exhibit p. 1.)

##### **Section 949: First Pleading by People**

The first sentence of Penal Code Section 949, as we propose to amend it, would read, “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.” Judge Patrick points out that the reference to Section 859a is incorrect. (Exhibit p. 2; Memorandum 97-83,

Exhibit p. 7.) He would reword the provision to refer instead to “a complaint filed pursuant to Section 859.” The staff would make this change.

### **Sections 977, 977.2: Presence of Defendant and Counsel**

Judge Patrick acknowledges that language in Penal Code Sections 977 and 977.2 relating to presence of counsel “if the defendant does not plead guilty or nolo contendere to any charge” is beyond the scope of the present project, but would like to see them considered for future study. (Exhibit p. 2.) The staff had not proposed this matter for future study because it seems to go beyond the narrow issues of judicial administration into the area of criminal procedure.

### **Section 987.1: Representation by Counsel**

Judge Patrick believes a reference to an arraignment “on the information” should be added to Penal Code Section 987.1 to make clear that what is referred to is the arraignment after the bindover. (Exhibit p. 2.) He would revise the provision as we show here in boldface underscore: “Counsel at the preliminary examination shall continue to represent a defendant who has been ordered to stand trial for a felony until the date set for his arraignment ~~in superior court~~ **on the information** unless relieved by the court upon the substitution of other counsel or for cause.” The staff does not see any problem with this.

### **Section 987.2: Compensation of Assigned Counsel**

The proposed revision of Penal Code Section 987.2 includes the following:

(i) Counsel shall be appointed to represent, in the ~~municipal or justice court~~ a misdemeanor case or, subject to Section 19.6, in an infraction case, a person who desires but is unable to employ counsel, when it appears that the appointment is necessary to provide an adequate and effective defense for the defendant.

Judge Patrick finds this formulation a little murky and suggests dealing with misdemeanors and infractions in separate sentences. (Exhibit p. 2.) The staff thinks this is a good idea:

(i) Counsel shall be appointed to represent, in the ~~municipal or justice court~~ a misdemeanor case, a person who desires but is unable to employ counsel, when it appears that the appointment is necessary to provide an adequate and effective defense for the defendant. Appointment of counsel in an infraction case is governed by Section 19.6.

### **Section 1010: Dismissal Due to Defective or Insufficient Indictment or Information**

Judge Patrick is concerned that we may have inadvertently missed a reference to dismissal of “an indictment or information” in Penal Code Section 1010. (Exhibit p. 2.) We have not missed it; that revision is included in the Commission’s draft.

### **Section 1203.1: Probation**

Judge Patrick acknowledges that language in Penal Code Section 1203.1 relating to probation bonds is beyond the scope of the present project, but would like to see it considered for future study. (Exhibit p. 2.) The staff had not proposed this matter for future study because it seems to go beyond the narrow issues of judicial administration into the area of criminal procedure.

### **Section 1462: Municipal and Superior Court Jurisdiction**

Penal Code Section 1462(a) gives the municipal court jurisdiction of misdemeanors, but excepts misdemeanors “of which other courts are given exclusive jurisdiction.” Judge Patrick notes this exception can be eliminated, since no courts other than municipal courts (or superior courts in unified counties) are given exclusive jurisdiction of misdemeanors. (Exhibit p.2.) The staff recommends doing this, as indicated in boldface strikeout:

(a) Each municipal ~~and justice~~ court shall have jurisdiction in all criminal cases amounting to misdemeanor, where the offense charged was committed within the county in which the municipal ~~or justice~~ court is established ~~except those of which the juvenile court is given jurisdiction and those of which other courts are given exclusive jurisdiction.~~ Each municipal ~~and justice~~ court shall have exclusive jurisdiction in all cases involving the violation of ordinances of cities or towns situated within the district in which the court is established.

(b) Each municipal ~~and justice~~ court shall have jurisdiction in all noncapital criminal cases to receive a plea of guilty or nolo contendere, appoint a time for pronouncing judgment under Section 859a, pronounce judgment, and refer the case to the probation officer if eligible for probation.

(c) The superior courts shall have jurisdiction in all misdemeanor criminal cases to receive a plea of guilty or nolo contendere, appoint a time for pronouncing judgment, and pronounce judgment.

(d) The superior court in a county in which there is no municipal court has the jurisdiction provided in subdivisions (a) and (b).

### **Section 1471: Transfer to Court of Appeal**

The current draft includes an amendment of Penal Code Section 1471, relating to transfer of municipal court appeals from the superior court to the court of appeal. This statute parallels Code of Civil Procedure Section 911, relating to civil appeals. For consistency of drafting, the amendment of Section 1471 should be revised to read:

1471. A court of appeal may order any case on appeal ~~within the original jurisdiction of the municipal and justice courts to a~~ superior court in its district transferred to it for hearing and decision as provided by rules of the Judicial Council when the superior court certifies, or the court of appeal determines, that such transfer appears necessary to secure uniformity of decision or to settle important questions of law.

~~No case in which there is a right on appeal to a trial anew in the superior court shall be transferred pursuant to this section before a decision in such case becomes final therein.~~

A court to which any such case is transferred shall have similar power to review any matter and make orders and judgments as the appellate division of the superior court by statute would have in such case, except as otherwise expressly provided ~~and except that if the case was tried anew in the superior court, the reviewing court shall have similar power to review any matter and make orders and judgments as it has by statute in a case within the original jurisdiction of the superior court.~~

**Comment.** Section 1471 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court and any associated right on appeal to trial anew. Cal. Const. art. VI, §§ 1, 5(b).

**Note.** The reference in the first sentence to “the” superior court should be changed to “a” superior court both in this section and in Code of Civil Procedure Section 911.

### **MISCELLANEOUS TECHNICAL REVISIONS**

#### **Provisions Deleted from Draft**

The staff has deleted the following proposed amendments from the draft because the provisions proposed to be amended were either repealed by the 1997

Legislature or amended in such a way that further amendment is no longer necessary:

- Bus. & Prof. § 12606 (amended). Deceptive packaging
- Food & Agric. Code § 55784 (amended). Witness fees and mileage
- Food & Agric. Code § 56473 (amended). Witness fees and mileage
- Gov't Code § 68073 (amended). Facilities
- Gov't Code § 68090.8 (amended). Automation fund
- Gov't Code § 68113 (amended). Coordination reports
- Gov't Code § 71383 (amended). Audits
- Gov't Code § 72054 (amended). Fees
- Penal Code § 1529 (amended). Form of search warrant

We have also deleted the following proposed amendments from the draft because the provisions proposed to be amended may only be amended by initiative measure, and the proposed amendments were technical only:

- Penal Code § 412 (amended). Pugilistic exhibitions
- Penal Code § 413 (amended). Pugilistic exhibitions (continued)

#### **Code of Civil Procedure Section 116.231**

As shown below in boldface strikeout, the staff has revised the amendment of Code of Civil Procedure Section 116.231(d) for consistency of terminology with other proposed revisions:

(d) The limitation on the number of filings exceeding two thousand five hundred dollars (\$2,500) does not apply to filings where the claim does not exceed five thousand dollars (\$5,000) which are filed by a city, county, city and county, school district, county office of education, community college district, local district, or any other local public entity. If any small claims action is filed by a city, county, city and county, school district, county office of education, community college district, local district, or any other local public entity pursuant to this section, and the defendant informs the court either in advance of the hearing by written notice or at the time of the hearing, that he or she is represented in the action by legal counsel, the action shall be transferred ~~to the municipal court out of the small claims division to an appropriate division of the court.~~ A city, county, city and county, school district, county office of education, community college district, local district, or any other local public entity may not file a claim within

the small claims division if the amount of the demand exceeds five thousand dollars (\$5,000).

**Penal Code Section 1203.1b**

The current draft includes a proposed amendment of Penal Code Section 1203.1b (payment of costs), which is reproduced at Exhibit pages 10-12. The staff would delete this amendment, because it is too subtle and does not really appear necessary.

**FURTHER WORK**

The staff is still continuing its review of the codes and discovering new provisions requiring modification in light of SCA 4. We will discuss additional issues in a supplement to this memorandum. As before, input on the draft legislation from interested persons and organizations would be much appreciated.

Respectfully submitted,

Barbara S. Gaal  
Staff Counsel



## THE MUNICIPAL COURT

SAN DIEGO JUDICIAL DISTRICT  
220 WEST BROADWAY  
SAN DIEGO, CALIFORNIA 92101-3877

HONORABLE CHARLES L. PATRICK  
JUDGE

Law Revision Commission  
RECEIVED

JAN - 8 1998

December 30, 1997

File: \_\_\_\_\_

Nathaniel Sterling, Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Room D1  
Palo Alto, CA 94303-4739

Re: Trial Court Unification;  
Revision of Penal Code

Dear Mr. Sterling:

Thank you for sending me a copy of the Commission's Memorandum 97-83, and for the consideration given to the comments I sent on November 21, 1997. I have just a few follow-up comments that I would like to have considered.

P.C. 859: Memorandum 97-83 notes that the language "replicates a provision of the California Constitution", and thus suggests there be no modification such as I had suggested in my earlier letter. Since, as pointed out, the language is in the Constitution, and inasmuch as West's Annotated Code indicates that no appellate decision has apparently found it necessary to comment on the specified language since 1962, I would think that would be an argument for modification rather than against (i.e., the constitutional provision would appear to be self-executing). This seems to me particularly true when one considers that it is virtually inconceivable nowadays that someone in custody would encounter difficulty in sending a message to counsel of his or her choice.

PC 860 and 869: I believe that essentially the same reasoning applies to the modifications suggested in my November 21 letter for these two sections, but am happy that the topic at least is to be considered for "later clean-up".

P.C. 949: I don't believe the fix recommended in Memorandum 97-83 will solve the problem, since in a county with a consolidated court you would have complaints filed pursuant to P.C. 859 as the "First Pleading" in Superior Court.

Thus, I believe the suggestion in my letter of November 21 (or some comparable language) is needed to clarify the item.

P.C. 977 and 977.2: As I had earlier acknowledged, my suggested changes are beyond the scope of the current projects. However, I'd at least like to see them considered for future study.

P.C. 987.1: The reason the words "or the information" need to be added is to make it clear that what is referred to is the arraignment after the bindover. The reason no reference to indictment is appropriate is because there is no preliminary examination on an indictment.

P.C. 987.2: I'm afraid the language proposed in Memorandum 97-83 "... subject to Section 19.6, in an infraction case ...." is still a little murky. How about deleting the reference to infractions in the existing sentence, and adding a second sentence along the lines of : "No such appointment shall be required in an infraction case, except as provided in Section 19.6"?

P.C. 1050: Although the comment in Memorandum 97-83 indicates a modification along the lines of my suggestion as to Sections 1010 and 1050, the only language provided is that which would appear in Section 1050. I assume this was simply an oversight.

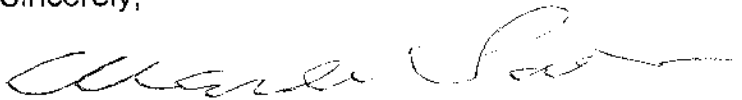
P.C. 1203.1: Again, I would hope my suggestion can be added to what is undoubtedly (considering the multiple examples that can be found in the code of obscure and/or inaccurate language) a long list of "future study" items.

P.C. 1462: I'm sorry my suggested revision did not find favor - it would be so simple! However, on re-reading, I noticed another problem - the proposed revision fails to delete the language at the end of the first sentence in paragraph (a): ("... except those of which other courts are given exclusive jurisdiction.") This seems to be an outmoded reference to misdemeanors filed in the Juvenile Court and/or to prosecutions for violation of P.C. 272, which have been dealt with in other suggested revisions (e.g., see the comment to P.C. 949, in your original "Tentative Recommendation"). I believe this section needs to be fixed.

California Law Revision Commission  
December 30, 1997  
Page 3

Thanks in advance for any consideration these comments may receive. Again, I'm very grateful that I occupy the role solely of "constructive critic" (I hope that's how I'd be viewed) rather than to be faced with the actual responsibility for this project. I can be reached at (619) 531-3214 if any additional input is desired.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles L. Patrick", written in dark ink.

**CHARLES L. PATRICK**  
**Judge of the Municipal Court**

CLP/plb

CONSEQUENCES OF CLASSIFICATION AS LIMITED CIVIL CASE (“LCC”)  
OR OTHERWISE

Statute	Substance
Proposed Code Civ. Proc. § 85.1	Original jurisdiction of LCC
Proposed Code Civ. Proc. § 91	Economic litigation procedures for LCC (pleadings, discovery, trial testimony)
Proposed Code Civ. Proc. § 274c, proposed Gov’t Code § 72194.5	Duties of court reporters in LCC; electronic recording of LCC
Proposed Code Civ. Proc. § 396a	Statement of jurisdictional facts in LCC subject to Civil Code § 1812.10 or § 2984.4 or Code Civ. Proc. § 395(b)
Proposed Code Civ. Proc. § 402.5	Change of venue within county — LCC
Proposed Code Civ. Proc. §§ 425.10, 425.11	Specifying personal injury or wrongful death damages
Proposed Code Civ. Proc. §§ 489.220, 720.160, 720.260	Amt. of undertaking (prejudgment attachment, third-party claims)
Proposed Code Civ. Proc. § 580	Relief awardable in LCC (incorporated by reference into proposed Code Civ. Proc. § 85)
Proposed Code Civ. Proc. § 582.5	Terms of paying money judgment in LCC
Proposed Code Civ. Proc. § 631	Waiver of jury trial in case other than LCC
Proposed Code Civ. Proc. § 685.030	Substantial satisfaction of money judgment in LCC
Proposed Code Civ. Proc. §§ 904.1, 904.2	Appellate jurisdiction — LCCs; other cases
Proposed Code Civ. Proc. § 1033	Costs where recovery is small
Proposed Code Civ. Proc. §§ 1068, 1085, 1103	Writ procedures
Proposed Code Civ. Proc. § 1134	Confession of judgment and associated costs — LCCs; other cases
Proposed Code Civ. Proc. § 1141.11	Arbitration of certain civil actions
Proposed Code Civ. Proc. § 1161.2	Access to court file — LCC
Proposed Code Civ. Proc. § 1167.2	Rent deposit pilot program — optional for LCCs
Proposed Gov’t Code §§ 26820.4, 72055, 72056, 72046.1	Fee for filing initial paper
Proposed Gov’t Code § 26824	Filing fee — notice of appeal in LCC
Proposed Gov’t Code §§ 26826.01, 72056.01	Filing fee — amending complaint or filing cross-complaint
Proposed Gov’t Code § 68152	Retention of records — LCCs; other cases
Proposed Gov’t Code § 68513	Entry, storage & retrieval of court data — cases other than LCCs
Proposed Gov’t Code § 72060	Fee for certificate & transmitting transcript & papers on appeal in LCC
Proposed Ins. Code § 12961	Annual report of tort actions — permits exclusion of LCCs from study

**Code Civ. Proc. § 701.830. Conflicting claims**

701.830. (a) If there are conflicting claims to all or a portion of the proceeds of sale or collection known to the levying officer before the proceeds are distributed, the levying officer may deposit with the court the proceeds that are the subject of the conflicting claims instead of distributing such proceeds under Section 701.810. Any interested person may apply on noticed motion for an order for the distribution of the proceeds deposited with the court. A copy of the notice of motion shall be served on such persons as the court shall by order determine in such manner as the court prescribes. Any interested person may request time for filing a response to the motion for an order for the distribution of the proceeds, for discovery proceedings in connection with the motion, or for other preparation for the hearing on the motion, and the court shall grant a continuance for a reasonable time for any of these purposes.

(b) Except as provided in subdivision (c), at the hearing on the motion the court shall determine the issues presented by the motion and make an order for the distribution of the proceeds deposited with the court.

(c) The court shall not determine the issues presented by the motion and instead shall abate the hearing until the issues presented by the motion can be determined in a civil action in the following cases if:

(1) The court is not the proper court under any other provision of law for the trial of a civil action with respect to the subject matter of the motion and any interested person at or prior to the hearing objects to the determination of the issues presented by the motion by the court.

(2) A civil action is pending with respect to the subject matter of the motion and jurisdiction has been obtained in the court in which the civil action is pending.

(3) The court determines that the matter should be determined in a civil action.

**Code Civ. Proc. § 703.600 (amended). Appeal of order on claim of exemption**

SEC. \_\_. Section 703.600 of the Code of Civil Procedure is amended to read:

703.600. An appeal lies from any order made under this article ~~and shall be taken in the manner provided for appeals in the court in which the proceeding takes place.~~

**Comment.** Section 703.600 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See Sections 85 (limited civil cases), 86(a)(8) (enforcement of judgment in limited civil case), 904.1 (taking appeal), 904.2 (taking appeal in limited civil case). See also Section 85 Comment.

**Code Civ. Proc. § 706.105 (amended). Claim of exemption under § 706.051**

SEC. \_\_. Section 706.105 of the Code of Civil Procedure is amended to read:

706.105. (a) A judgment debtor may claim an exemption under Section 706.051 under either of the following circumstances:

(1) No prior hearing has been held with respect to the earnings withholding order.

(2) There has been a material change in circumstances since the time of the last prior hearing on the earnings withholding order.

(b) A claim of exemption shall be made by filing with the levying officer an original and one copy of (1) the judgment debtor's claim of exemption and (2) the judgment debtor's financial statement.

(c) Upon filing of the claim of exemption, the levying officer shall promptly send to the judgment creditor, at the address stated in the application for the earnings withholding order, by first-class mail, postage prepaid, all of the following:

(1) A copy of the claim of exemption.

(2) A copy of the financial statement.

(3) A notice of claim of exemption. The notice shall state that the claim of exemption has been filed and that the earnings withholding order will be terminated, or modified to reflect the amount of earnings claimed to be exempt in the claim of exemption, unless a notice of opposition to the claim of exemption is filed with the levying officer by the judgment creditor within 10 days after the date of the mailing of the notice of claim of exemption.

(d) A judgment creditor who desires to contest a claim of exemption shall, within 10 days after the date of the mailing of the notice of claim of exemption, file with the levying officer a notice of opposition to the claim of exemption.

(e) If a notice of opposition to the claim of exemption is filed with the levying officer within the 10-day period, the judgment creditor is entitled to a hearing on the claim of exemption. If the judgment creditor desires a hearing on the claim of exemption, the judgment creditor shall file a notice of motion for an order determining the claim of exemption with the court within 10 days after the date the levying officer mailed the notice of claim of exemption. If the notice of motion is so filed, the hearing on the motion shall be held not later than 30 days from the date the notice of motion was filed unless continued by the court for good cause.

At the time prescribed by subdivision (b) of Section 1005, the judgment creditor shall give written notice of the hearing to the levying officer and shall serve a notice of the hearing and a copy of the notice of opposition to the claim of exemption on the judgment debtor and, if the claim of exemption so requested, on the attorney for the judgment debtor. Service is deemed made when the notice of the hearing and a copy of the notice of opposition to the claim of exemption are deposited in the mail, postage prepaid, addressed to the judgment debtor at the address stated in the claim of exemption and, if service on the attorney for the judgment debtor was requested in the claim of exemption, to the attorney at the address stated in the claim of exemption. The judgment creditor shall file proof of the service with the court. After receiving the notice of the hearing and before the date set for the hearing, the levying officer shall file the claim of exemption and the notice of opposition to the claim of exemption with the court.

(f) If the levying officer does not receive a notice of opposition to the claim of exemption within the 10-day period after the date of mailing of the notice of claim of exemption and a notice of the hearing not later than 10 days after the filing of the notice of opposition to the claim of exemption, the levying officer shall serve on the employer one of the following:

(1) A notice that the earnings withholding order has been terminated if all of the judgment debtor's earnings were claimed to be exempt.

(2) A modified earnings withholding order which reflects the amount of earnings claimed to be exempt in the claim of exemption if only a portion of the judgment debtor's earnings was claimed to be exempt.

(g) If, after hearing, the court orders that the earnings withholding order be modified or terminated, the clerk shall promptly transmit a certified copy of the order to the levying officer who shall promptly serve on the employer of the judgment debtor (1) a copy of the modified earnings withholding order or (2) a notice that the earnings withholding order has been terminated. The court may order that the earnings withholding order be terminated as of a date which precedes the date of hearing. If the court determines that any amount withheld pursuant to the earnings withholding order shall be paid to the judgment debtor, the court shall make an order directing the person who holds that amount to pay it promptly to the judgment debtor.

(h) If the earnings withholding order is terminated by the court, unless the court otherwise orders or unless there is a material change of circumstances since the time of the last prior hearing on the earnings withholding order, the judgment creditor may not apply for another earnings withholding order directed to the same employer with respect to the same judgment debtor for a period of 100 days following the date of service of the earnings withholding order or 60 days after the date of the termination of the order, whichever is later.

(i) If an employer has withheld and paid over amounts pursuant to an earnings withholding order after the date of termination of the order but prior to the receipt of notice of its termination, the judgment debtor may recover those

amounts only from the levying officer if the levying officer still holds those amounts or, if those amounts have been paid over to the judgment creditor, from the judgment creditor. If the employer has withheld amounts pursuant to an earnings withholding order after termination of the order but has not paid over those amounts to the levying officer, the employer shall promptly pay those amounts to the judgment debtor.

(j) An appeal lies from any court order under this section denying a claim of exemption or modifying or terminating an earnings withholding order. ~~The appeal shall be taken in the manner provided for appeals in the court in which the proceeding is had.~~ An appeal by the judgment creditor from an order modifying or terminating the earnings withholding order does not stay the order from which the appeal is taken. Notwithstanding the appeal, until the order modifying or terminating the earnings withholding order is set aside or modified, the order allowing the claim of exemption in whole or in part shall be given the same effect as if the appeal had not been taken.

(k) This section does not apply to a withholding order for support or a withholding order for taxes.

**Comment.** Section 706.105 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See Sections 85 (limited civil cases), 86(a)(8) (enforcement of judgment in limited civil case), 904.1 (taking appeal), 904.2 (taking appeal in limited civil case). See also Section 85 Comment.

**Code Civ. Proc. § 708.180 (amended). Adverse claim of, or denial of debt by third party**

SEC. \_\_. Section 708.180 of the Code of Civil Procedure is amended to read:

708.180. (a) Subject to subdivision (b), if a third person examined pursuant to Section 708.120 claims an interest in the property adverse to the judgment debtor or denies the debt, the court may, if the judgment creditor so requests, determine the interests in the property or the existence of the debt. Such a determination is conclusive as to the parties to the proceeding and the third person, but an appeal may be taken from the determination ~~in the manner provided for appeals from the court in which the proceeding takes place.~~ The court may grant a continuance for a reasonable time for discovery proceedings, the production of evidence, or other preparation for the hearing.

(b) The court may not make the determination provided in subdivision (a) if the third person's claim is made in good faith and any of the following conditions is satisfied:

(1) The court would not be a proper court for the trial of an independent civil action (including a creditor's suit) for the determination of the interests in the property or the existence of the debt, and the third person objects to the determination of the matter under subdivision (a).

(2) At the time an order for examination pursuant to Section 708.120 is served on the third person a civil action (including a creditor's suit) is pending with respect to the interests in the property or the existence of the debt.



(3) The court determines that the interests in the property or the existence of the debt should be determined in a creditor's suit.

(c) Upon application of the judgment creditor made ex parte, the court may make an order forbidding transfer of the property to the judgment debtor or payment of the debt to the judgment debtor until the interests in the property or the existence of the debt is determined pursuant to subdivision (a) or until a creditor's suit may be commenced and an order obtained pursuant to Section 708.240. An undertaking may be required in the discretion of the court. The court may modify or vacate the order at any time with or without a hearing on such terms as are just.

(d) Upon application of the judgment creditor upon noticed motion, the court may, if it determines that the judgment debtor probably owns an interest in the property or that the debt probably is owed to the judgment debtor, make an order forbidding the transfer or other disposition of the property to any person or forbidding payment of the debt until the interests in the property or the existence of the debt is determined pursuant to subdivision (a) or until a creditor's suit may be commenced and an order obtained pursuant to Section 708.240. The court shall require the judgment creditor to furnish an undertaking as provided in Section 529. The court may modify or vacate the order at any time after notice and hearing on such terms as are just.

**Comment.** Section 708.180 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See Sections 85 (limited civil cases), 86(a)(8) (enforcement of judgment in limited civil case), 904.1 (taking appeal), 904.2 (taking appeal in limited civil case). See also Section 85 Comment.

**Code Civ. Proc. § 720.420 (amended). Appeals of judgment on third-party claim**

SEC. \_\_. Section 720.420 of the Code of Civil Procedure is amended to read:

720.420. An appeal may be taken from a judgment given pursuant to Section 720.390 ~~in the manner provided for appeals from the court in which the proceeding takes place.~~

**Comment.** Section 720.420 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See Sections 85 (limited civil cases), 86(a)(8) (enforcement of judgment in limited civil case), 904.1 (taking appeal), 904.2 (taking appeal in limited civil case). See also Section 85 Comment.

**Penal Code § 1203.1b (amended). Payment of costs**

SEC. \_\_. Section 1203.1b of the Penal Code is amended to read:

1203.1b. (a) In any case in which a defendant is convicted of an offense and is the subject of any preplea or presentence investigation and report, whether or not probation supervision is ordered by the court, and in any case in which a defendant is granted probation or given a conditional sentence, the probation officer, or his or her authorized representative, taking into account any amount that the defendant is ordered to pay in fines, assessments, and restitution, shall make a determination of the ability of the defendant to pay all or a portion of the reasonable cost of any probation supervision or a conditional sentence, of conducting any preplea investigation and preparing any preplea report pursuant to Section 131.3 of the Code of Civil Procedure, of conducting any presentence investigation and preparing any presentence report made pursuant to Section 1203, and of processing a jurisdictional transfer pursuant to Section 1203.9 or of processing a request for interstate compact supervision pursuant to Sections 11175 to 11179, inclusive, whichever applies. The reasonable cost of these services and of probation supervision or a conditional sentence shall not exceed the amount determined to be the actual average cost thereof. A payment schedule for the reimbursement of the costs of preplea or presentence investigations based on income shall be developed by the probation department of each county and approved by the presiding judges of the municipal and superior courts in the county. The court shall order the defendant to appear before the probation officer, or his or her authorized representative, to make an inquiry into the ability of the defendant to pay all or a portion of these costs. The probation officer, or his or her authorized representative, shall determine the amount of payment and the manner in which the payments shall be made to the county, based upon the defendant's ability to pay. The probation officer shall inform the defendant that the defendant is entitled to a hearing, that includes the right to counsel, in which the court shall make a determination of the defendant's ability to pay and the payment amount. The defendant must waive the right to a determination by the court of his or her ability to pay and the payment amount by a knowing and intelligent waiver.

(b) When the defendant fails to waive the right provided in subdivision (a) to a determination by the court of his or her ability to pay and the payment amount, the probation officer shall refer the matter to the court for the scheduling of a hearing to determine the amount of payment and the manner in which the payments shall be made. The court shall order the defendant to pay the reasonable costs if it determines that the defendant has the ability to pay those costs based on the report of the probation officer, or his or her authorized representative. The following shall apply to a hearing conducted pursuant to this subdivision:

(1) At the hearing, the defendant shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, and to confront and cross-examine adverse witnesses, and to disclosure of the evidence against the defendant, and a written statement of the findings of the court or the probation officer, or his or her authorized representative.

(2) At the hearing, if the court determines that the defendant has the ability to pay all or part of the costs, the court shall set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability.

(3) At the hearing, in making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

(4) When the court determines that the defendant's ability to pay is different from the determination of the probation officer, the court shall state on the record the reason for its order.

(c) The court may hold additional hearings during the probationary or conditional sentence period to review the defendant's financial ability to pay the amount, and in the manner, as set by the probation officer, or his or her authorized representative, or as set by the court pursuant to this section.

(d) If practicable, the court shall order or the probation officer shall set payments pursuant to subdivisions (a) and (b) to be made on a monthly basis. Execution may be issued on the order issued pursuant to this section in the same manner as a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

(e) The term "ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the preplea or presentence report, processing a jurisdictional transfer pursuant to Section 1203.9, processing requests for interstate compact supervision pursuant to Sections 11175 to 11179, inclusive, and probation supervision or conditional sentence, and shall include, but shall not be limited to, the defendant's:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than one year from the date of the hearing for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the defendant shall be able to obtain employment within the one-year period from the date of the hearing.

(4) Any other factor or factors that may bear upon the defendant's financial capability to reimburse the county for the costs.

(f) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered

may petition the probation officer for a review of the defendant's financial ability to pay or the rendering court to modify or vacate its previous judgment on the grounds of a change of circumstances with regard to the defendant's ability to pay the judgment. The probation officer and the court shall advise the defendant of this right at the time of rendering of the terms of probation or the judgment.

(g) All sums paid by a defendant pursuant to this section shall be allocated for the operating expenses of the county probation department.

(h) The board of supervisors in any county, by resolution, may establish a fee for the processing of payments made in installments to the probation department pursuant to this section, not to exceed the administrative and clerical costs of the collection of those installment payments as determined by the board of supervisors, except that the fee shall not exceed fifty dollars (\$50).

(i) This section shall be operative in a county upon the adoption of an ordinance to that effect by the board of supervisors.

**Comment.** Section 1203.1b is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

#J-1300

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

**Staff Draft**

RECOMMENDATION

Trial Court Unification:  
Revision of Codes

January 1998

California Law Revision Commission  
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## SUMMARY OF RECOMMENDATION

This recommendation proposes revisions of the California codes to implement trial court unification under SCA 4. The legislation would be contingent on voter approval of SCA 4.

The objective of the proposed revisions is generally to preserve existing rights and procedures through unification. There should be no disparity of treatment between a party appearing in municipal court and a similarly situated party appearing in superior court as a result of unification of the municipal and superior courts in the county.

This recommendation was prepared pursuant to Resolution Chapter 102 of the Statutes of 1997.

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# TRIAL COURT UNIFICATION: REVISION OF CODES

## BACKGROUND

### **Trial Court Unification Under SCA 4**

Senate Constitutional Amendment 4 (Lockyer) was enacted as Resolution Chapter 36 of the Statutes of 1996.<sup>1</sup> It provides for unification of the municipal and superior courts in a county on a vote of a majority of the municipal court judges and a majority of the superior court judges in that county.<sup>2</sup>

The measure is scheduled to appear on the ballot in a statewide election on June 2, 1998.<sup>3</sup> If it is approved by the voters, it will become operative the day after the election.<sup>4</sup> The measure includes a number of provisions that are self-executing,<sup>5</sup> and other provisions that apply only on unification of the municipal and superior courts in a county.<sup>6</sup>

### **Role and Methodology of Law Revision Commission**

Both the self-executing provisions and the other provisions of SCA 4 require conforming or implementing legislation. The Legislature has directed the Law Revision Commission to report recommendations “pertaining to statutory changes that may be necessitated by court unification.”<sup>7</sup> This assignment follows an earlier

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1. A copy of the measure is attached as Appendix 1.

2. Proposed Cal. Const. art. VI, § 5(e).

3. 1996 Cal. Stat. ch. 333, § 2(i).

4. Cal. Const. art. XVIII, § 4.

5. The measure contains a number of constitutional revisions that will apply regardless of whether the courts in any county ever elect to unify. These include:

(1) Creation of an appellate division in the superior court. Cal. Const. art. VI, § 4.

(2) Changes in structure of Judicial Council. Cal. Const. art. VI, § 6.

(3) Protection of the appellate jurisdiction of the courts of appeal in causes of a type within that jurisdiction on June 30, 1995. Cal. Const. art. VI, § 11(a).

(4) Delegation of the appellate jurisdiction of the superior court to causes prescribed by statute. Cal. Const. art. VI, § 11(b).

(5) Change in the date of an election to fill a superior court vacancy (to the next general election after the second January following the vacancy). Cal. Const. art. VI, § 16(c).

6. Provisions contingent on unification within a county include:

(1) Composition of Judicial Council. Cal. Const. art. VI, § 6.

(2) Composition of Commission on Judicial Performance. Cal. Const. art. VI, § 8.

(3) Election of judges in unified counties. Cal. Const. art. VI, § 16(b)(1).

(4) Transitional provisions for unification. Cal. Const. art. VI, § 23.

7. 1997 Cal. Stat. res. ch. 102.

1 legislative assignment in which the Commission made recommendations on the  
2 constitutional revisions necessary to implement trial court unification.<sup>8</sup>

3 The Commission engaged the services of the Institute for Legislative Practice  
4 and its director, Professor Clark Kelso of McGeorge Law School, to prepare initial  
5 drafts of suggested code revisions. The initial drafts were reviewed by the Judicial  
6 Council, which established working groups for this purpose, and were revised  
7 appropriately before being considered by the Law Revision Commission. The  
8 Commission issued a series of tentative recommendations, which were publicized  
9 and circulated for comment before the Commission adopted its final  
10 recommendations for code revision.

11 In the interest of submitting its recommendations to the Governor and  
12 Legislature by the beginning of the 1998 legislative session, for enactment at that  
13 session, the Commission has narrowly limited its recommendations to generally  
14 preserve existing procedures in the context of unification. The objective of the  
15 proposed revisions is to preserve existing rights and procedures through  
16 unification, with no disparity of treatment between a party appearing in municipal  
17 court and a similarly situated party appearing in superior court as a result of  
18 unification of the municipal and superior courts in the county.

19 However, the Law Revision Commission has identified and compiled a number  
20 of related issues that may be appropriate for future study.<sup>9</sup>

## 21 **Drafting Conventions**

22 Any legislation introduced may include not only changes necessitated by SCA 4,  
23 but also unrelated technical revisions requested by Legislative Counsel.<sup>10</sup> To  
24 highlight the SCA 4 changes for those who have occasion to review them, this  
25 recommendation does not include technical revisions unrelated to SCA 4.<sup>11</sup>

26 The draft does, however, delete existing statutory references to justice courts.  
27 Justice courts have been eliminated from California's judicial structure,<sup>12</sup> but the  
28 statutes have not been revised to account for this.<sup>13</sup>

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8. See *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1 (1994); *Trial Court Unification: Transitional Provisions for SCA 3*, 24 Cal. L. Revision Comm'n Reports 627 (1994).

9. See "Issues in Judicial Administration Appropriate for Future Study" *infra*.

10. For example, Legislative Counsel habitually expunges the word "such" from the text of all statutes.

11. Gender-neutral language is adopted throughout, however.

12. 1994 Cal. Stats. res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994). The draft also eliminates the few remaining references to the justices' court — an obsolete inferior court superseded by the justice court by Constitutional Amendment on November 7, 1950. See Mil. & Vet. Code § 467; Drainage District Act of 1903 (Chapter 238 of the Statutes of 1903), § 4.

13. Statutory references to the justice court office of constable are likewise corrected in the proposed law.

## County-Specific Statutes

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.<sup>14</sup> 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.<sup>15</sup>

## Employment Statutes

Municipal court employment statutes constitute the great bulk of county-specific statutes.<sup>16</sup> The California Constitution requires the Legislature to prescribe for each municipal court the number, qualifications, and compensation of judges, officers, and employees.<sup>17</sup> The Law Revision Commission's recommendation does not attempt to address these highly specific statutes. In the event of unification of the courts in a county, the Legislature must examine the statutes and determine whether and to what extent they are to be preserved.<sup>18</sup>

## UNIFICATION PROCEDURE

Under SCA 4 the municipal and superior courts in a county are unified on a vote of a majority of the municipal court judges and a majority of the superior court judges in that county.<sup>19</sup> The proposed law includes a unification voting procedure.<sup>20</sup>

The voting procedure allows for a vote call on application of the presiding superior court judge or all of the presiding municipal court judges in a county, or on application of a majority of the superior court judges or a majority of the municipal court judges in a county.<sup>21</sup> The vote is conducted by the Judicial Council or the county's registrar of voters,<sup>22</sup> and all judges serving at the time the

14. See, e.g., Bus. & Prof. Code § 6301.1 (board of law library trustees of San Diego County); Code Civ. Proc. §§ 199.2 (Placer County jurors), 199.3 (Nevada County jurors), 200 (Alameda and Los Angeles County municipal court jurors); Gov't Code §§ 26826.1 (Riverside County filing fee surcharge), 69640-69650 (Los Angeles County superior court districts).

15. The draft legislation includes a provision that general statutes governing unification of the courts prevail over inconsistent county-specific statutes. See proposed Gov't Code § 70215 (county-specific legislation).

16. Gov't Code §§ 72000-74991.

17. Cal. Const. art. VI, § 5(c).

18. See discussion of "Employment Issues" *infra*.

19. Proposed Cal. Const. art. VI, § 5(e).

20. Cf. proposed Cal. Const. art. VI, § 23(a) (purpose of SCA 4 "to permit the Legislature to provide for the abolition of the municipal courts and unify their operations within the superior courts").

21. Proposed Gov't Code § 70201(a).

22. Proposed Gov't Code § 70200(b).

1 vote is taken are eligible to vote.<sup>23</sup> The vote may be done by unanimous written  
2 consent of all the judges in the county.<sup>24</sup>

3 Unless an earlier date is specified in the unification vote, unification occurs 180  
4 days following certification of the vote for unification.<sup>25</sup> Once unification has been  
5 approved, it may not be rescinded.<sup>26</sup>

## 6 CIVIL PROCEDURE

### 7 **Distinguishing Between Civil Causes**

8 On unification of the trial courts in a county, all causes will be within the  
9 original jurisdiction of the superior court. It is important to continue to  
10 differentiate among superior court causes to preserve filing fees, economic  
11 litigation procedures, local appeals, and other significant procedural distinctions  
12 for matters that traditionally have been within the municipal court's jurisdiction.  
13 The alternative — treating all causes in the same manner as traditional superior  
14 court causes — would be impractical for a number of reasons, including limited  
15 trial and appellate court resources.

16 The statutes could differentiate among civil causes simply by referring to causes  
17 that would be within the jurisdiction of the municipal court if the courts in a  
18 county had not unified. But this approach is predicated on the assumption that  
19 municipal courts in some counties will exist indefinitely. The approach also makes  
20 it necessary to refer to statutes applicable in another county to determine  
21 jurisdiction issues in a county in which the courts have unified. In the long run, all  
22 courts may be unified, at which time further statutory revision would be necessary.

23 A preferable approach is to identify causes that are traditionally within the  
24 municipal court jurisdiction and deal with them directly. In the proposed law, these  
25 matters are listed in new Section 85 of the Code of Civil Procedure and are  
26 identified as “limited civil cases.” In a county in which the courts have not unified,  
27 the municipal court has jurisdiction of limited civil cases. In a county in which the  
28 courts have unified, the superior court has original jurisdiction of limited civil  
29 cases, but these cases are governed by economic litigation procedures, local  
30 appeal, filing fees, and the other procedural distinctions that characterize these  
31 cases in a municipal court.

### 32 **Misclassification of Civil Causes in a Unified Court**

33 To facilitate differentiation among civil cases, the proposed law would require  
34 that in a unified superior court a litigant in a limited civil case must identify it as  
35 such in the caption of the complaint, cross-complaint, petition, or other initial

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23. Proposed Gov't Code § 70201(c).

24. Proposed Gov't Code § 70201(e).

25. Proposed Gov't Code § 70203.

26. Proposed Gov't Code § 70202(c).

1 pleading. Where a caption erroneously states or fails to state that the matter is a  
2 limited civil case, the case may be reclassified on the application of a party or on  
3 the court's own motion.<sup>27</sup>

#### 4 **Judicial Arbitration**

5 Judicial arbitration of cases where the amount in controversy is \$50,000 or less  
6 is mandatory in a superior court with ten or more judges and permissive in a  
7 superior court with fewer than ten judges.<sup>28</sup> Because unification will increase the  
8 number of superior court judges in a county, the proposed law would apply these  
9 provisions to a unified superior court with eighteen or more judges. This will  
10 preserve judicial arbitration in all courts where it is currently applicable.<sup>29</sup>

#### 11 **Small Claims Sessions**

12 Each small claims division of a municipal court with four or more judicial  
13 officers must conduct at least one night session or Saturday session each month.<sup>30</sup>  
14 The proposed law would apply this requirement to a 7-judge unified superior  
15 court. This will preserve the special small claims session requirements in all courts  
16 currently subject to them.<sup>31</sup>

#### 17 **Increase in Jurisdictional Amounts**

18 A number of statutes in the Food and Agricultural Code, enacted in 1967, give  
19 the municipal court jurisdiction where the amount in controversy does not exceed  
20 \$5,000.<sup>32</sup> This was the jurisdictional limit of the municipal court in civil cases at  
21 that time. During the past 30 years the jurisdictional limit of the municipal court in  
22 civil cases has increased to \$25,000,<sup>33</sup> but the statutes in the Food and Agricultural  
23 Code have not been adjusted. The proposed law increases the amounts in those  
24 statutes to \$25,000, consistent with the contemporary civil jurisdictional limit of  
25 the municipal court.

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27. Proposed Code Civ. Proc. §§ 395.9, 399.5, 400.

28. Code Civ. Proc. § 1141.1.

29. Monterey County would also be subject to these judicial arbitration provisions. There are currently eight superior court judges and 10 municipal court judges in Monterey County.

30. Code Civ. Proc. 116.250(b).

31. Butte County would also be subject to these requirements. That county currently has four municipal court judges, but they are divided between two judicial districts.

32. See Food & Agric. Code §§ 7581, 12647, 27601, 53564. See also Food & Agric. Code § 52514 (\$3,000 limit).

33. Code Civ. Proc. § 86.

## CRIMINAL PROCEDURE

### Distinguishing Between Criminal Causes

On unification of the trial courts in a county, all criminal causes, including misdemeanors and infractions as well as felonies, will fall within the original jurisdiction of the superior court. Many criminal procedure statutes, however, are not phrased in terms of felonies, misdemeanors, or infractions, but rather in terms of the original trial jurisdiction of superior and municipal courts.

The proposed law revises the criminal procedure statutes to accommodate the possibility of unification by replacing references to matters within the original jurisdiction of the superior court with references to felonies,<sup>34</sup> and by replacing references to matters within the original jurisdiction of the municipal court with references to misdemeanors and infractions.<sup>35</sup>

The original penal jurisdiction of the superior court currently includes some matters that are not felonies. Specifically:

- A misdemeanor or infraction charge may be joined with a felony charge, and thus remain within the superior court's original jurisdiction. The proposed law makes clear that a felony case may include joined misdemeanor and infraction charges.<sup>36</sup>
- The superior court's juvenile court jurisdiction is noncriminal.<sup>37</sup> The proposed law eliminates from the Penal Code references to the superior court's juvenile court jurisdiction that imply it may be criminal or otherwise governed by the Penal Code.<sup>38</sup>
- The superior court's Penal Code jurisdiction includes proceedings for expungement of an arrest record.<sup>39</sup> These proceedings are noncriminal in character; the proposed law clarifies the appeal path for these proceedings.
- Proceedings under the Government Code for removal of a local public official from office for willful or corrupt misconduct in office are quasi-criminal in

34. See, e.g., Penal Code §§ 682, 737, 806, 813, 827, 859.

35. See, e.g., Penal Code §§ 691, 740, 804, 829.

36. Penal Code § 691.

37. Criminal cases of which the juvenile court is given jurisdiction are governed by the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code. See Welf. & Inst. Code §§ 203 (juvenile court proceedings noncriminal), 245 (superior court jurisdiction), 602 (criminal law violation by minor subject to juvenile court jurisdiction), 603 (juvenile crimes not governed by general criminal law).

38. See Penal Code §§ 682, 737, 860, 1462. In this connection the proposed law also adjusts Penal Code Section 949, which implies that a violation of Penal Code Section 272 (misdemeanor contributing to delinquency of a minor) is within the jurisdiction of the superior court. This is a relic of an era when that crime was within the non-felony juvenile court jurisdiction of the superior court. Cf. 2 B. Witkin & N. Epstein, *California Criminal Law Crimes Against Decency and Morals* § 836, at 951-52 (2d ed. 1989); 4 *id.*, *Jurisdiction and Venue* § 1838, at 2176-77.

39. Penal Code § 851.8.

1 nature.<sup>40</sup> The proposed law adjusts references to these proceedings found in the  
2 Penal Code<sup>41</sup> and clarifies the appeal path for these proceedings.<sup>42</sup>

### 3 **Review of Ruling or Order of Municipal Court Judge**

4 Some criminal procedures call for a preliminary decision by a municipal court  
5 judge, followed by superior court review.<sup>43</sup> This dual system requires revision in a  
6 county in which the courts have unified.

7 Under SCA 4, in a county in which the courts have unified, Penal Code  
8 procedures that necessitate superior court review of, or action based on, a ruling or  
9 order by a municipal court judge are to be performed by a superior court judge  
10 other than the superior court judge who originally made the ruling or order.<sup>44</sup> This  
11 scheme is maintained in the proposed law.<sup>45</sup>

### 12 **Reenactment of Section 1538.5**

13 Penal Code Section 1538.5 provides for a motion to suppress evidence on a  
14 number of grounds, including “violation of state constitutional standards”.<sup>46</sup>  
15 Proposition 8, the Victims’ Bill of Rights, includes a provision that “relevant  
16 evidence shall not be excluded in any criminal proceeding” except as provided by  
17 statute thereafter enacted by a two-thirds vote of the Legislature.<sup>47</sup> Reenactment of  
18 Section 1538.5 to adjust for trial court unification is not intended to override  
19 Proposition 8, but only to preserve the status quo.<sup>48</sup> Disclamatory language to this  
20 effect is included in the Commentary to revision of Section 1538.5.

### 21 **Business Hours for Bail Purposes**

22 The municipal court clerk or other court personnel must be available at all hours  
23 for the purpose of fixing and accepting bail for misdemeanor arrestees<sup>49</sup> and must  
24 also accept bail in felony arrests.<sup>50</sup> The proposed law maintains these functions in  
25 the superior court in a county in which there is no municipal court.

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40. Gov’t Code §§ 3060 *et seq.*

41. Penal Code §§ 737, 860.

42. Proposed Gov’t Code § 3075.

43. See, e.g., Penal Code §§ 995, 1538.5.

44. Cal. Const. art. VI, § 23(c)(7).

45. See proposed Penal Code § 859c.

46. Penal Code § 1538.5(a)(2).

47. Cal. Const. art. I, § 28(d).

48. *Cf. People v. Daan*, 161 Cal. App. 3d 22 (1984).

49. Gov’t Code § 72301.

50. Gov’t Code § 72302.



1 **Authority of City Prosecutor**

2 The city attorney of a city in which a misdemeanor is committed may prosecute  
3 the misdemeanor in the municipal court district in which the city is located.<sup>51</sup> The  
4 proposed law provides that if there is no municipal court in a county, the city  
5 attorney may prosecute such misdemeanors in the superior court.<sup>52</sup>

6 **JUDICIAL DISTRICTS**

7 **Judicial Districts in Unified Counties**

8 Statutes refer to “judicial districts” for various purposes. The references  
9 generally intend the “municipal court district” in a county.<sup>53</sup> On unification of the  
10 municipal and superior courts in a county, the former municipal court districts  
11 have little relevance for most purposes. The proposed law treats statutory  
12 references to judicial districts as references to the county if there is no municipal  
13 court in the county.<sup>54</sup> Exceptions to this rule,<sup>55</sup> and circumstances where  
14 application of the rule could result in a significant change, are noted in  
15 Commentary following relevant provisions in the proposed law.

16 **Court Sessions**

17 Superior court judges have authority to hold sessions at any place where a  
18 municipal court holds sessions within the county.<sup>56</sup> The authority of the judges to  
19 hold sessions at locations remote from regularly scheduled sessions should be  
20 continued in a county in which the courts have unified despite the absence of  
21 municipal court districts, provided adequate facilities exist for that purpose. On  
22 unification, preexisting municipal court locations become superior court  
23 locations.<sup>57</sup> The proposed law preserves the authority of a majority of the judges of  
24 a unified superior court to order sessions held at any place where there is a court  
25 facility.

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51. Gov’t Code § 72193; see also Gov’t Code § 41083.5 (prosecution of misdemeanor with the consent of district attorney).

52. There is precedent for this approach in prior court consolidations. See Gov’t Code § 71099.

53. See, e.g., Elec. Code § 325. There appear to be only two instances in the codes where “judicial district” might have been intended to mean “superior court district” (see Food & Agric. Code § 31622; Ins. Code § 11542.2), and one where “judicial district” means “court of appeal district” (see Pub. Util. Code § 1756). While the California Constitution does refer to “municipal court districts,” it does not equate them with “judicial districts.”

54. See proposed Code Civ. Proc. § 38.

55. See, e.g., Gov’t Code §§ 69744.5, 69746.5 (superior court sessions). See also the discussions below of “Publication in Former Municipal Court Districts” and “Judicial Districts in Los Angeles County.”

56. Gov’t Code § 69510.

57. Cal. Const. art. VI, § 23(c)(2); proposed Gov’t Code § 70212(b).



**Venue**

In specified circumstances, existing law allows transfer of a case from one municipal court to another municipal court in the same county.<sup>58</sup> In a county with a unified superior court, there are no municipal court districts; the proposed law would preserve the ability of the court to transfer a case from one location to another location within the county.<sup>59</sup>

**Jury Venire**

The general policy of the state is that juries are selected from the population of the “area served by the court”.<sup>60</sup> 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 — superior courts may draw from the judicial district in which a particular session is located,<sup>61</sup> and municipal courts may draw from the superior court pool.<sup>62</sup>

Statistics on the frequency with which the superior courts use municipal court jury pools are not available. However, a survey conducted by the Judicial Council reveals that a substantial number of municipal courts use the superior court pool.

The proposed law maintains the existing flexibility enabling a court to draw a jury from the area served by it. After unification, the court will have sufficient authority to continue the practice most appropriate for that county.<sup>63</sup>

**Publication in Former Municipal Court Districts**

The general rule that judicial districts are countywide in a county in which the courts have unified is subject to a significant exception for legal publication requirements. Under existing law, if the municipal courts in a county consolidate, the former municipal court districts are preserved for purpose of publication.<sup>64</sup> The proposed law applies the same principle if the municipal courts in a county unify with the superior court.

**Judicial Districts in Los Angeles County**

Los Angeles is the only county that has superior court districts.<sup>65</sup> In Los Angeles County it is not clear whether existing statutory references to “judicial

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58. Code Civ. Proc. §§ 392, 393, 395; Penal Code §§ 1034, 1035.

59. Proposed Code Civ. Proc. § 402.4; proposed Penal Code § 1038.

60. Code Civ. Proc. §§ 190, 197.

61. Code Civ. Proc. § 198.5.

62. Code Civ. Proc. § 200.

63. As a technical matter, the proposed law revises Code of Civil Procedure Section 198.5 to refer to the area in which a session is held, rather than the municipal court district, in a county in which the courts have unified.

64. Gov’t Code § 71042.5 (preservation of judicial districts for purpose of publication).

65. See Gov’t Code Sections 69640-69650 (board of supervisors may divide county into 12 or fewer superior court districts).

districts” mean superior court districts or municipal court districts. If the municipal and superior courts in Los Angeles County unify, the statutes probably would be construed to refer to superior court districts.<sup>66</sup> In that event, statutes that refer to judicial districts should be reviewed for propriety of operation.<sup>67</sup>

## APPEALS UNDER SCA 4

### **Appellate Jurisdiction of Court of Appeal**

SCA 4 provides that the courts of appeal have appellate jurisdiction when superior courts have original 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.<sup>68</sup> The effect of this provision is to perpetuate the court of appeal jurisdiction as it existed on June 30, 1995, but allow for statutory expansion of the court of appeal jurisdiction.

The provision presents a number of challenges, such as ascertaining what it means to be a cause “of a type” within the court of appeal jurisdiction, keeping the legal community aware of the historical jurisdiction of the court of appeal, and dealing with pending appeals on the operative date of SCA 4 in causes of a type not within the appellate jurisdiction of the court of appeal on June 30, 1995.

The proposed law resolves these issues through a statutory grant of appellate jurisdiction to the court of appeal in cases within the original jurisdiction of the superior court, excluding limited civil cases (cases historically within the original jurisdiction of the municipal courts) and misdemeanor and infraction criminal cases. Statutory expansion of court of appeal jurisdiction is allowed under SCA 4<sup>69</sup> and provides a ready means of determining the extent of the appellate jurisdiction of the court of appeal. The statutory grant of jurisdiction is also consistent with the intent of SCA 4: to preserve the appellate jurisdiction of the court of appeal in cases historically within the original jurisdiction of the superior court.

### **Appellate Division of Superior Court**

*Creation of appellate division.* SCA 4 creates an appellate division in each superior court.<sup>70</sup> The appellate division is similar to the existing appellate department, but is intended to have greater autonomy so that it can exercise a true

66. As a general rule, the proposed law treats statutory references to judicial districts as references to the county if there is no municipal court in the county. See discussion of “Judicial Districts in Unified Counties” *supra*; proposed Code Civ. Proc. § 38.

67. The statute on Los Angeles County superior court districts is one of many county-specific statutes that will need to be reviewed if the Los Angeles County courts unify. See discussion of “County-Specific Statutes” *supra*.

68. Proposed Cal. Const. art. VI, § 11(a).

69. Proposed Cal. Const. art. VI, § 11(a) (“and in other causes prescribed by statute”).

70. Proposed Cal. Const. art. VI, § 4.

review function in a unified superior court.<sup>71</sup> SCA 4 creates appellate divisions in all superior courts, regardless of whether the trial courts in the county have unified.

*Appellate jurisdiction of appellate division.* Under existing law, the appellate jurisdiction of the superior court is defined by causes “that arise in municipal courts in their counties.”<sup>72</sup> SCA 4 would delete this provision, simply leaving the appellate jurisdiction of superior courts to statute.<sup>73</sup> The proposed law would make clear that the appellate jurisdiction of the appellate division covers limited civil cases and misdemeanor and infraction cases — causes traditionally within the original jurisdiction of municipal courts — regardless of whether the courts in a county have unified.

*Appointments to appellate division.* SCA 4 requires the Chief Justice to assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.<sup>74</sup> The provision

... requires adoption of court rules intended to foster independence of judges serving in the appellate division. Rules may set forth relevant factors to be used in making appointments to the appellate division, such as length of service as a judge, reputation within the unified court, and degree of separateness of the appellate division workload from the judge’s regular assignments (e.g., a superior court judge who routinely handles large numbers of misdemeanors might ordinarily not serve in the appellate division). Review by a panel of judges might include judges assigned from another county in appropriate circumstances, or even by a panel of appellate division judges from different superior courts who sit in turn in each of the superior courts in the “circuit.”<sup>75</sup>

To effectuate this intent, the proposed law does not attempt to specify terms or conditions, but leaves the Judicial Council freedom to adopt appropriate rules and leaves the Chief Justice broad discretion in making appointments.

## Small Claims

The current appeal route for a small claim is a new trial in the superior court, a court of higher jurisdiction.<sup>76</sup> Upon unification of the municipal and superior courts in a county, the superior court will include the small claims division and will not be a court of higher jurisdiction. SCA 4 addresses this matter by providing for a rehearing in the superior court by a judge other than the judge who originally heard the case.<sup>77</sup> The proposed law preserves the scheme of SCA 4: A hearing

71. Assignments to the appellate division are made by the Chief Justice for specified terms and pursuant to rules (not inconsistent with statute) adopted by the Judicial Council to promote the independence of the appellate division. *Id.*

72. Cal. Const. art. VI, § 11.

73. Proposed Cal. Const. art. VI, § 11(b).

74. Proposed Cal. Const. art. VI, § 4.

75. *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm’n Reports 1, 77 (1994).

76. Code Civ. Proc. §§ 116.710, 116.770.

77. This rule is subject to overriding statutes. Proposed Cal. Const. art. VI, § 23(c)(6).

1 before a new judicial officer, with legal representation,<sup>78</sup> is a sufficient review  
2 opportunity for the litigants without being a substantial burden on judicial  
3 resources.

## 4 EMPLOYMENT ISSUES

5 Employment issues are among the most difficult matters to resolve in unifying  
6 the municipal and superior courts in a county. Hundreds of statutes in the  
7 Government Code specify salaries of employees, benefits, privileges, and so forth,  
8 in every municipal court district in the state. Bargaining rights, salary parity,  
9 seniority, and other issues must be addressed in each court that unifies. The  
10 present Law Revision Commission recommendations do not attempt to deal with  
11 this.<sup>79</sup> Because the statutes governing court employment in each judicial district  
12 are unique, it is not possible to generalize as to the effect of unification on salaries  
13 and other employment matters.

14 Recent legislation addresses employee rights<sup>80</sup> and establishes a mechanism for  
15 rationalizing the system — the Task Force on Trial Court Employees.<sup>81</sup> It is likely,  
16 however, that immediate problems will be triggered by unification and will need to  
17 be statutorily addressed on an urgency basis before the Task Force is able to  
18 complete its work.

### 19 **Continued Employment of Existing Court Employees**

20 SCA 4 continues existing employees in a county in which the courts have  
21 unified, until changed by the Legislature.<sup>82</sup> The proposed law provides that the  
22 courts in a county in which the courts have unified will develop and adopt a  
23 personnel plan.<sup>83</sup> These general transitional provisions are not completely  
24 adequate, however, and in any event, existing statutes governing court employees  
25 in an individual county will need to be cleaned up by the Legislature on a case-by-  
26 case basis as unification occurs.

### 27 **Court Reporters**

28 Among the county-specific statutes that must be harmonized in a county in  
29 which the courts unify are those governing appointment and compensation of  
30 municipal court reporters, and regulating their fees.<sup>84</sup> This is an appropriate matter  
31 for review by the Trial Court Employees Task Force.

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78. Code Civ. Proc. § 116.770(c).

79. See discussion of “County-Specific Statutes” *supra*.

80. See AB 233 (Escutia & Pringle), 1997 Cal. Stat. ch. 850.

81. Gov’t Code § 77600-77606.

82. See proposed Cal. Const. art. VI, § 23(c)(1).

83. See proposed Gov’t Code § 70210(d). The provision parallels Rule of Court 205(11).

84. *Cf.* Gov’t Code §§ 72195,

## Subordinate Judicial Officers

Municipal court personnel who become superior court personnel on unification include subordinate judicial officers.<sup>85</sup> Existing law provides authority to the municipal courts to appoint a number of subordinate judicial officers, such as court commissioners and referees.<sup>86</sup> The proposed law preserves the existing municipal court authority in a unified superior court.<sup>87</sup> While this will work as an interim measure, ultimately the Legislature should address the use of subordinate judicial officers in a county in which the courts have unified.<sup>88</sup>

Salaries of some municipal court officers are based on salaries of municipal court judges.<sup>89</sup> This statutory scheme will function adequately as long as municipal courts remain, but if the courts in all counties unify, there will be no municipal court judge salaries to serve as a benchmark. This matter should be referred to the Task Force on Trial Court Employees.

## Judges' Salaries

While it is not possible to generalize on the consequences of unification for court employee salaries (due to county-specific statutes governing these matters), it is possible to generalize on the consequences of unification for judicial salaries. Judges' salaries are set by general statute,<sup>90</sup> with a statutory escalator clause.<sup>91</sup> Currently superior court judges earn \$107,390 and municipal court judges earn \$98,070. On unification, municipal court judges become superior court judges<sup>92</sup> and are compensated as superior court judges.

## Judges' Retirement

Provisions of the Judges' Retirement Law are keyed to salaries currently being paid to judges of the same rank.<sup>93</sup> For example, a retired judge may 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".<sup>94</sup> In the case of a retired municipal court judge, this system will become problematic if as a result of unification there

85. Cf. proposed Gov't Code § 70212(a) & Comment.

86. See, e.g., Gov't Code §§ 72400 (traffic referees), 72450 (traffic trial commissioners).

87. Proposed Gov't Code § 70214.

88. See "Issues in Judicial Administration Appropriate for Future Study" *infra*.

89. See, e.g., Gov't Code §§ 72404, 72406, 72450.

90. Gov't Code § 68202.

91. Gov't Code § 68203.

92. Cal. Const. art. VI, § 23(b).

93. This does not apply to 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.

94. Gov't Code § 75076.

1 no longer exists a municipal court judgeship to serve as a basis for determining the  
2 retirement allowance.

3 As a practical matter, this issue does not need to be addressed immediately  
4 because it is unlikely that all courts will unify immediately. The Commission  
5 believes the matter requires further attention. The Legislature might refer it to the  
6 Judicial Council and the Public Employees Retirement System for their  
7 recommendations.

## 8 OTHER TRIAL COURT UNIFICATION ISSUES

### 9 **Electronic Reporting**

10 Existing law, while generally requiring stenographic court reporting, authorizes  
11 electronic reporting in municipal courts in some circumstances.<sup>95</sup> The proposed  
12 law preserves the ability of the court to use electronic reporting in similar  
13 circumstances where the municipal and superior courts in a county have unified.

### 14 **Transitional Issues**

15 On the operative date of unification in a county there will be causes pending in  
16 the municipal court as well as new causes that are statutorily within the  
17 jurisdiction of the municipal court. SCA 4 includes transitional provisions that  
18 address these matters.<sup>96</sup> The proposed law covers transitional problems not dealt  
19 with directly in SCA 4, and also makes the constitutional transitional provisions  
20 more accessible to attorneys and others by repeating them in statutes.<sup>97</sup>

## 21 ISSUES IN JUDICIAL ADMINISTRATION 22 APPROPRIATE FOR FUTURE STUDY

23 In the process of preparing proposed statutory revisions to implement trial court  
24 unification, the Commission has noted the following issues in judicial  
25 administration that may be appropriate for future study:

- 26 • Obsolete statutes relating to expired pilot projects.<sup>98</sup>
- 27 • Obsolete statutes relating to prior court and personnel restructurings.<sup>99</sup>
- 28 • Special superior court sessions.<sup>100</sup>

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95. See Gov't Code § 72194.5.

96. Proposed Cal. Const. art. VI, § 23(c)(4)-(5).

97. See proposed Gov't Code §§ 70210-70216.

98. See, e.g., Code Civ. Proc. §§ 221, 1012.5.

99. See, e.g., Gov't Code. §§ 71003, 71040.5.

100. See, e.g., Gov't Code §§ 69744.5, 69746.5.



- Whether to conform the statutory provisions on circumstances for appointment of a receiver.<sup>101</sup>
- Whether to make revisions regarding the repository for the duplicate of an affidavit pursuant to Fish & Game Code Section 2357.<sup>102</sup>
- The number of authorized commissioners and referees in a county in which the courts have unified.<sup>103</sup>
- Clarification of provisions relating to obtaining counsel for defendants in criminal cases.<sup>104</sup>
- The role of court reporters in a county in which the courts have unified, particularly in criminal cases.<sup>105</sup>
- Reorganization of statutes governing court fees.<sup>106</sup>
- Jurisdictional limits for economic litigation procedures.<sup>107</sup>
- Jurisdictional limits for small claims procedures.<sup>108</sup>
- Eligibility of judges to serve on the small claims advisory committee.<sup>109</sup>
- The extent to which municipal and superior courts may set terms and conditions for payment of money judgments.<sup>110</sup>

101. Compare Code Civ. Proc. § 86(a)(8) (appointment of receiver in municipal court) with Code Civ. Proc. § 564 (appointment of receiver in superior court). See also Code Civ. Proc. §§ 708.610-708.630, 712.060.

102. Is a notary a proper repository, and does this provision serve a useful function?

103. The trial court unification transitional provisions would merely preserve existing authority to appoint commissioners and referees. Cf. Gov't Code §§ 70141 *et seq.* (existing authority to appoint superior court commissioners), 72000-74991 (existing authority to appoint municipal court commissioners found among county-specific statutes in the Government Code governing municipal courts), 72400 (existing authority to appoint municipal court traffic trial commissioners).

104. Penal Code Sections 859, 859a, 859b, and 860 relate to obtaining counsel for defendants in criminal cases. The statutes appear to be somewhat dated, and their interrelation is unclear. A more clear statutory statement of the governing rules may be appropriate.

105. Existing statutes governing functions of court reporters may be problematic as applied in a county in which the courts have unified, particularly in criminal cases. Cf. Code Civ. Proc. § 274c; Gov't Code § 72194.5; Penal Code § 869.

106. Existing statutes governing court fees are organized by court rather than by cause. See, e.g., Gov't Code §§ 26800 *et seq.* (fees collected by county clerk), 72055 *et seq.* (municipal court fees). It may be appropriate to consolidate the fee provisions for ease of use. In addition, it may be appropriate to replace provisions for collection of fees by the county clerk with provisions relating to the court executive officer.

107. The existing limit is \$25,000. Code Civ. Proc. § 91.

108. The existing limit is \$5,000. Code Civ. Proc. § 116.220.

109. See Code Civ. Proc. § 116.950(d), which could be broadened to allow 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) to serve on the committee.

110. Compare Code Civ. Proc. § 85 (municipal court has broad discretion to set terms and conditions) with Code Civ. Proc. § 667.7 (superior court may enter judgment for periodic payments in certain circumstances in actions for injury or damages against health care providers).

- 1 • Catalogue of cases within the appellate jurisdiction of the courts of appeal  
2 on June 30, 1995.<sup>111</sup>
- 3 • Consolidation of jury commissioner functions for the courts in each county.
- 4 • Appealability of orders of recusal in a criminal case.<sup>112</sup>
- 5 • Magistrate as judicial officer of the state or judicial officer of a particular  
6 court.
- 7 • Publication of legal notices in a county with a unified superior court.<sup>113</sup>
- 8 • Whether to reform provisions appearing to give municipal and superior  
9 courts concurrent jurisdiction.<sup>114</sup>

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111. See proposed Cal. Const. art. VI, § 11, which may make it worthwhile to construct such a catalogue.

112. Compare Penal Code § 1466(a)(1)(A) (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”) with Penal Code § 1238 (comparable provision for a felony case, but no mention of an appeal from an order recusing the district attorney or city attorney).

113. See proposed Gov’t Code § 71042.5, which would preserve former municipal court districts for purposes of publication, but may be unsatisfactory in the long-term because it would not account for changing demographics.

114. See, e.g., 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; Code Civ. Proc. § 688.010; Food & Agric. Code §§ 25564, 29733, 43039, 59289; Health & Safety Code §§ 108580, 111880, 111895; Veh. Code §§ 11102.1, 11203, 11301.5, 11710.2.



APPENDIX: TEXT OF SCA 4

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 1995-96 Regular Session commencing on the fifth day of December, 1994, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First — That Section 16 of Article I thereof is amended to read:

SEC. 16. Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes ~~in municipal or justice court~~ other than causes within the appellate jurisdiction of the court of appeal the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court.

In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a misdemeanor is charged, the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court.

Second — That Section 1 of Article VI thereof is amended to read:

SEC. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, and municipal courts. ~~All courts,~~ all of which are courts of record.

Third — That Section 4 of Article VI thereof is amended to read:

SEC. 4. In each county there is a superior court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each superior court. If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court.

~~The county clerk is an ex-officio clerk of the superior court in the county.~~

In each superior court there is an appellate division. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.

Fourth — That Section 5 of Article VI thereof is amended to read:

SEC. 5. (a) Each county shall be divided into municipal court districts as provided by statute, but a city may not be divided into more than one district. Each

1 municipal court shall have one or more judges. Each municipal court district shall  
2 have no fewer than 40,000 residents; provided that each county shall have at least  
3 one municipal court district. The number of residents shall be determined as  
4 provided by statute.

5 (b) On the operative date of this subdivision, all existing justice courts shall  
6 become municipal courts, and the number, qualifications, and compensation of  
7 judges, officers, attaches, and employees shall continue until changed by the  
8 Legislature. Each judge of a part-time municipal court is deemed to have agreed to  
9 serve full time and shall be available for assignment by the Chief Justice for the  
10 balance of time necessary to comprise a full-time workload.

11 (c) The Legislature shall provide for the organization and prescribe the  
12 jurisdiction of municipal courts. It shall prescribe for each municipal court the  
13 number, qualifications, and compensation of judges, officers, and employees.

14 (d) Notwithstanding subdivision (a), any city in San Diego County may be  
15 divided into more than one municipal court district if the Legislature determines  
16 that unusual geographic conditions warrant such division.

17 (e) Notwithstanding subdivision (a), the municipal and superior courts shall be  
18 unified upon a majority vote of superior court judges and a majority vote of  
19 municipal court judges within the county. In those counties, there shall be only a  
20 superior court.

21 Fifth — That Section 6 of Article VI thereof is amended to read:

22 SEC. 6. The Judicial Council consists of the Chief Justice and one other judge of  
23 the Supreme Court, 3 judges of courts of appeal, 5 judges of superior courts, and 5  
24 judges of municipal courts, 2 nonvoting court administrators, and such other  
25 nonvoting members as determined by the voting membership of the council, each  
26 appointed by the Chief Justice for a 2-year 3-year term pursuant to procedures  
27 established by the council; 4 members of the State Bar appointed by its governing  
28 body for 2-year 3-year terms; and one member of each house of the Legislature  
29 appointed as provided by the house. Vacancies in the memberships on the Judicial  
30 Council otherwise designated for municipal court judges shall be filled by judges  
31 of the superior court in the case of appointments made when fewer than 10  
32 counties have municipal courts.

33 Council membership terminates if a member ceases to hold the position that  
34 qualified the member for appointment. A vacancy shall be filled by the appointing  
35 power for the remainder of the term.

36 The council may appoint an Administrative Director of the Courts, who serves at  
37 its pleasure and performs functions delegated by the council or the Chief Justice,  
38 other than adopting rules of court administration, practice and procedure.

39 To improve the administration of justice the council shall survey judicial  
40 business and make recommendations to the courts, make recommendations  
41 annually to the Governor and Legislature, adopt rules for court administration,

1 practice and procedure, ~~not inconsistent with statute~~, and perform other functions  
2 prescribed by statute. The rules adopted shall not be inconsistent with statute.

3 The Chief Justice shall seek to expedite judicial business and to equalize the  
4 work of judges. The Chief Justice may provide for the assignment of any judge to  
5 another court but only with the judge's consent if the court is of lower jurisdiction.  
6 A retired judge who consents may be assigned to any court.

7 Judges shall report to the ~~Judicial Council~~ council as the Chief Justice directs  
8 concerning the condition of judicial business in their courts. They shall cooperate  
9 with the council and hold court as assigned.

10 Sixth — That Section 8 of Article VI thereof is amended to read:

11 SEC. 8. (a) The Commission on Judicial Performance consists of one judge of a  
12 court of appeal, one judge of a superior court, and one judge of a municipal court,  
13 each appointed by the Supreme Court; 2 members of the State Bar of California  
14 who have practiced law in this State for 10 years, each appointed by the governor;  
15 and 6 citizens who are not judges, retired judges, or members of the State Bar of  
16 California, 2 of whom shall be appointed by the Governor, 2 by the Senate  
17 Committee on Rules, and 2 by the Speaker of the Assembly.

18 Except as provided in ~~subdivision (b)~~ subdivisions (b) and (c), all terms are for 4  
19 years. No member shall serve more than 2 4-year terms, or for more than a total of  
20 10 years if appointed to fill a vacancy. A vacancy in the membership on the  
21 Commission on Judicial Performance otherwise designated for a municipal court  
22 judge shall be filled by a judge of the superior court in the case of an appointment  
23 made when fewer than 10 counties have municipal courts.

24 (b) Commission membership terminates if a member ceases to hold the position  
25 that qualified the member for appointment. A vacancy shall be filled by the  
26 appointing power for the remainder of the term. A member whose term has  
27 expired may continue to serve until the vacancy has been filled by the appointing  
28 power. Appointing powers may appoint members who are already serving on the  
29 commission prior to March 1, 1995, to a single 2-year term, but may not appoint  
30 them to an additional term thereafter.

31 (b) (c) To create staggered terms among the members of the Commission on  
32 Judicial Performance, the following members shall be appointed, as follows:

33 (1) Two members appointed by the Supreme Court to a term commencing March  
34 1, 1995, shall each serve a term of 2 years and may be reappointed to one full  
35 term.

36 (2) One attorney appointed by the Governor to a term commencing March 1,  
37 1995, shall serve a term of 2 years and may be reappointed to one full term.

38 (3) One citizen member appointed by the Governor to a term commencing  
39 March 1, 1995, shall serve a term of 2 years and may be reappointed to one full  
40 term.

1 (4) One member appointed by the Senate Committee on Rules to a term  
2 commencing March 1, 1995, shall serve a term of 2 years and may be reappointed  
3 to one full term.

4 (5) One member appointed by the Speaker of the Assembly to a term  
5 commencing March 1, 1995, shall serve a term of 2 years and may be reappointed  
6 to one full term.

7 (6) All other members shall be appointed to full 4-year terms commencing  
8 March 1, 1995.

9 Seventh — That Section 10 of Article VI thereof is amended to read:

10 SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges  
11 have original jurisdiction in habeas corpus proceedings. Those courts also have  
12 original jurisdiction in proceedings for extraordinary relief in the nature of  
13 mandamus, certiorari, and prohibition. The appellate division of the superior court  
14 has original jurisdiction in proceedings for extraordinary relief in the nature of  
15 mandamus, certiorari, and prohibition directed to the superior court in causes  
16 subject to its appellate jurisdiction.

17 Superior courts have original jurisdiction in all other causes except those given  
18 by statute to other trial courts.

19 The court may make such comment on the evidence and the testimony and  
20 credibility of any witness as in its opinion is necessary for the proper  
21 determination of the cause.

22 Eighth — That Section 11 of Article VI thereof is amended to read:

23 SEC. 11. (a) The Supreme Court has appellate jurisdiction when judgment of  
24 death has been pronounced. With that exception courts of appeal have appellate  
25 jurisdiction when superior courts have original jurisdiction in causes of a type  
26 within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in  
27 other causes prescribed by statute. When appellate jurisdiction in civil causes is  
28 determined by the amount in controversy, the Legislature may change the  
29 appellate jurisdiction of the courts of appeal by changing the jurisdictional amount  
30 in controversy.

31 ~~Superior courts have appellate jurisdiction in causes prescribed by statute that~~  
32 ~~arise in municipal courts in their counties.~~

33 (b) Except as provided in subdivision (a), the appellate division of the superior  
34 court has appellate jurisdiction in causes prescribed by statute.

35 (c) The Legislature may permit appellate courts exercising appellate jurisdiction  
36 to take evidence and make findings of fact when jury trial is waived or not a matter  
37 of right.

38 Ninth — That Section 16 of Article VI thereof is amended to read:

39 SEC. 16. (a) Judges of the Supreme Court shall be elected at large and judges of  
40 courts of appeal shall be elected in their districts at general elections at the same

1 time and places as the Governor. Their terms are 12 years beginning the Monday  
2 after January 1 following their election, except that a judge elected to an unexpired  
3 term serves the remainder of the term. In creating a new court of appeal district or  
4 division the Legislature shall provide that the first elective terms are 4, 8, and 12  
5 years.

6 ~~(b) Judges of other~~ (1) In counties in which there is no municipal court, judges of  
7 superior courts shall be elected in their counties at general elections except as  
8 otherwise necessary to meet the requirements of federal law. In the latter case the  
9 Legislature, by two-thirds vote of the membership of each house thereof, with the  
10 advice of judges within the affected court, may provide for their election by the  
11 system prescribed in subdivision (d), or by any other arrangement. The Legislature  
12 may provide that an unopposed incumbent's name not appear on the ballot.

13 (2) In counties in which there is one or more municipal court districts, judges of  
14 superior and municipal courts shall be elected in their counties or districts at  
15 general elections. The Legislature may provide that an unopposed incumbent's  
16 name not appear on the ballot.

17 (c) Terms of judges of superior courts are 6 years beginning the Monday after  
18 January 1 following their election. A vacancy shall be filled by election to a full  
19 term at the next general election after the second January 1 following the vacancy,  
20 but the Governor shall appoint a person to fill the vacancy temporarily until the  
21 elected judge's term begins.

22 (d) Within 30 days before August 16 preceding the expiration of the judge's  
23 term, a judge of the Supreme Court or a court of appeal may file a declaration of  
24 candidacy to succeed to the office presently held by the judge. If the declaration is  
25 not filed, the Governor before September 16 shall nominate a candidate. At the  
26 next general election, only the candidate so declared or nominated may appear on  
27 the ballot, which shall present the question whether the candidate shall be elected.  
28 The candidate shall be elected upon receiving a majority of the votes on the  
29 question. A candidate not elected may not be appointed to that court but later may  
30 be nominated and elected.

31 The Governor shall fill vacancies in those courts by appointment. An appointee  
32 holds office until the Monday after January 1 following the first general election at  
33 which the appointee had the right to become a candidate or until an elected judge  
34 qualifies. A nomination or appointment by the Governor is effective when  
35 confirmed by the Commission on Judicial Appointments.

36 Electors of a county, by majority of those voting and in a manner the Legislature  
37 shall provide, may make this system of selection applicable to judges of superior  
38 courts.

39 Tenth — That Section 23 is added to Article VI thereof, to read:

40 SEC. 23. (a) The purpose of the amendments to Sections 1, 4, 5, 6, 8, 10, 11, and  
41 16, of this article, and the amendments to Section 16 of Article I, approved at the  
42 November 5, 1996, general election is to permit the Legislature to provide for the

1 abolition of the municipal courts and unify their operations within the superior  
2 courts. Notwithstanding Section 8 of Article IV, the implementation of, and  
3 orderly transition under, the provisions of the measure adding this section may  
4 include urgency statutes that create or abolish offices or change the salaries, terms,  
5 or duties of offices, or grant franchises or special privileges, or create vested rights  
6 or interests, where otherwise permitted under this Constitution.

7 (b) When the superior and municipal courts within a county are unified, the  
8 judgeships in each municipal court in that county are abolished and the previously  
9 selected municipal court judges shall become judges of the superior court in that  
10 county. The term of office of a previously selected municipal court judge is not  
11 affected by taking office as a judge of the superior court. The 10-year membership  
12 or service requirement of Section 15 does not apply to a previously selected  
13 municipal court judge. Pursuant to Section 6, the Judicial Council may prescribe  
14 appropriate education and training for judges with regard to trial court unification.

15 (c) Except as provided by statute to the contrary, in any county in which the  
16 superior and municipal courts become unified, the following shall occur  
17 automatically in each preexisting superior and municipal court:

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

20 (2) Preexisting court locations are retained as superior court locations.

21 (3) Preexisting court records become records of the superior court.

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

25 (5) Matters of a type previously within the appellate jurisdiction of the superior  
26 court remain within the jurisdiction of the appellate division of the superior court.

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

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

33 Eleventh — That if any provision of this measure or its application to any person  
34 or circumstance is held invalid, the invalidity does not affect other provisions or  
35 applications of this measure that can be given effect without the invalid provision  
36 or application, and to this end the provisions of this measure are severable.