

Memorandum 98-12

Trial Court Unification: Miscellaneous Issues

This memorandum reviews miscellaneous issues concerning trial court unification under SCA 4.

Implementing Legislation

Senator Lockyer has introduced a spot bill for the trial court unification implementing legislation. The bill is SB 2139 (Exhibit pp. 1-9). His intent is to amend into the bill the actual implementing legislation at an appropriate time.

Commission's Report

It is clear to the staff that the statutory revision process to implement trial court unification will continue for some time. Searching the mass of California statutes for problem areas is a painstaking task. Moreover, once unification occurs, problems will be discovered that were not necessarily apparent simply from reading the statutes.

The staff would hold off finalizing the Commission's report. We can add material to it as the material is discovered, until introduction of the implementing legislation. We would not want to compromise Senator Lockyer's intentions on this matter by prematurely finalizing proposed legislation.

Judicial Administration Issues

The staff has concluded that it is appropriate for the Commission to recommend a mechanism for the study of issues in judicial administration identified in the Commission's report on trial court unification. While it may be presumptuous to suggest that the Commission is the proper body to conduct the study, **we can certainly recommend that the study be done by an appropriate body**, such as the Judicial Council or the Commission. We can leave it to the Legislature to select the body.

Judges' Retirement

As pointed out in the draft recommendation, provisions of the Judges' Retirement Law are keyed to salaries currently being paid to judges of the same

rank. In the case of a retired municipal court judge, this system will become problematic if as a result of unification there is no municipal court judgeship to serve as a basis for determining the retirement allowance. Our draft states that as a practical matter, this issue does not need to be addressed immediately because it is unlikely that all courts will unify immediately.

The staff is reassessing this conclusion. As a result of incentives to unify enacted by the Legislature, statewide unification may occur sooner rather than later. Moreover, one possible interpretation of the law is that if the courts in a county unify, there will be no basis for pension payments to the retired municipal court judges from that county, since the office of municipal court judge in that county no longer exists.

The staff would delete the language from the recommendation suggesting that this is not an urgent matter. We would refer it to the Judicial Council and the Public Employees Retirement System now. Perhaps we can include their suggestions on it when we finalize our report.

Telephone Appearances at Trial Setting Conferences

Several statutes authorize telephonic trial setting conferences in superior courts. See Code Civ. Proc. § 575.6; Gov't Code § 68070.1. Professor Kelso reports that, nonetheless, telephonic trial setting conferences are also held in some municipal courts. Moreover, on unification it will be impractical to distinguish between limited civil cases and other cases for purposes of the conduct of trial setting conferences.

The Judicial Council informs us that they believe it is an important aspect of judicial administration to provide for telephonic trial setting conferences, and that it is impractical to distinguish limited civil cases in the superior court. They recommend that on unification, the provisions for telephonic trial setting conferences in superior courts apply to all civil cases in the unified courts.

The current Commission draft accomplishes this result. We should note this in the preliminary part of our recommendation:

Trial Setting Conferences

If the municipal and superior courts in a county unify, statutes providing for telephonic trial setting conferences in superior court will also apply to cases formerly within the jurisdiction of the municipal court. Cf. Code Civ. Proc. § 575.6; Gov't Code § 68070.1. This result is appropriate; it will be neither practical nor desirable

to distinguish among cases for this purpose in a unified court. The proposed legislation leaves existing statutes on this point intact.

Written Notice of Motions

Code of Civil Procedure Section 1005 requires written notice of certain motions and sets a briefing schedule for those motions:

1005. (a) Written notice shall be given, as prescribed in subdivision (b), for the following motions:

(1) Notice of Application and Hearing for Writ of Attachment under Section 484.040.

(2) Notice of Application and Hearing for Claim and Delivery under Section 512.030.

(3) Notice of Hearing for Claim of Exemption under Section 706.105.

(4) Motion to Quash Summons pursuant to subdivision (b) of Section 418.10.

(5) Motion for Determination of Good Faith Settlement pursuant to Section 877.6.

(6) Hearing for Discovery of Peace Officer Personnel Records pursuant to Section 1043 of the Evidence Code.

(7) Notice of Hearing of Third-Party Claim pursuant to Section 720.320.

(8) Motion for an Order to Attend Deposition more than 150 miles from deponent's residence pursuant to paragraph (3) of subdivision (e) of Section 2025.

(9) Notice of Hearing of Application for Relief pursuant to Section 946.6 of the Government Code.

(10) Motion to Set Aside Default or Default Judgment and for Leave to Defend Actions pursuant to Section 473.5.

(11) Motion to Expunge Notice of Pendency of Action pursuant to Section 405.30.

(12) Motion to Set Aside Default and for Leave to Amend pursuant to Section 585.5.

(13) Any other proceeding under this code in which notice is required and no other time or method is prescribed by law or by court or judge.

(b) Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 15 calendar days before the time appointed for the hearing. However, if the notice is served by mail, the required 15-day period of notice before the time appointed for the hearing shall be increased by five days if the place of mailing and the place of address are within the State of California, 10 days if either the place of mailing or the place of address is outside the State of California but within the United

States, and 20 days if either the place of mailing or the place of address is outside the United States, and if the notice is served by facsimile transmission, Express Mail, or another method of delivery providing for overnight delivery, the required 15-day period of notice before the time appointed for the hearing shall be increased by two court days. Section 1013, which extends the time within which a right may be exercised or an act may be done, does not apply to a notice of motion, papers opposing a motion, or reply papers governed by this section. All papers opposing a motion so noticed shall be filed with the court and served on each party at least five court days, and all reply papers at least two court days before the time appointed for the hearing. Notwithstanding any other provision of this section, all papers opposing a motion and all reply papers shall be served by personal delivery, facsimile transmission, express mail, or other means consistent with the provisions of Sections 1010, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties not later than the close of the next business day after the time the opposing papers or reply papers, as applicable, are filed.

The court, or a judge thereof, may prescribe a shorter time.

To account for unification and the differentiation between limited civil cases and other civil cases, the draft recommendation would add a provision (proposed Section 395.9) setting forth a procedure for challenging the classification of an action as a limited civil case or otherwise. As currently drafted, that provision does not include a briefing schedule, nor does it specify whether the application for reclassification must be noticed.

We could fix that by amending Section 1005(a) to include an application for reclassification. This may not be necessary, however, because Section 1005(a)(13) is a catchall provision making the requirements of Section 1005(b) applicable to “[a]ny other proceeding under this code in which notice is required and no other time or method is prescribed by law or by court or judge.” Thus, a two word change in proposed Section 395.9 — specifying that an application for reclassification must be “duly noticed” — would suffice to import the notice and briefing requirements of Section 1005(b):

Code Civ. Proc. § 395.9 (added). Misclassification as limited civil case or otherwise

SEC. _____. Section 395.9 is added to the Code of Civil Procedure, to read:

395.9. (a) In a county in which there is no municipal court, if the caption of the complaint, cross-complaint, petition, or other initial

pleading erroneously states or fails to state, pursuant to Section 422.30, that the action or proceeding is a limited civil case, the action or proceeding shall not be dismissed, except as provided in Section 399.5 or subdivision (b)(1) of Section 581, but shall, on the duly noticed application of either party within 30 days after service of the initial pleading, or on the court's own motion at any time, be reclassified as a limited civil case or otherwise. The action or proceeding shall then be prosecuted as if it had been so commenced, all prior proceedings being saved. If summons is served before the court rules on reclassification of the action or proceeding, as to any defendant, so served, who has not appeared in the action or proceeding, the time to answer or otherwise plead shall date from the denial or reclassification or, if reclassification is granted, from service upon that defendant of written notice that the clerk has refiled the case pursuant to Section 399.5.

(b) If an action or proceeding is commenced as a limited civil case or otherwise pursuant to Section 422.30, and it later appears from the verified pleadings, or at the trial, or hearing, that the determination of the action or proceeding, or of a cross-complaint, will necessarily involve the determination of questions inconsistent with that classification, the court shall, on the application of either party within 30 days after the party is or reasonably should be aware of the grounds for misclassification, or on the court's own motion at any time, reclassify the case.

(c) An application for reclassification pursuant to this section shall be supported by a declaration, affidavit, or other evidence if necessary to establish that the case is misclassified. A declaration, affidavit, or other evidence is not required if the grounds for misclassification appear on the face of the challenged pleading.

(d) An action or proceeding which is reclassified under the provisions of this section shall be deemed to have been commenced at the time the complaint or petition was initially filed, not at the time of reclassification.

(e) Nothing in this section shall be construed to preclude or affect the right to amend the pleadings as provided in this code.

(f) Nothing in this section shall be construed to require the superior court to reclassify any action or proceeding because the judgment to be rendered, as determined at the trial or hearing, is one which might have been rendered in a limited civil case.

(g) In any case where the erroneous classification is due solely to an excess in the amount of the demand, the excess may be remitted and the action may continue as a limited civil case.

(h) Upon the making of an order for reclassification, proceedings shall be had as provided in Section 399.5. Unless the court ordering the reclassification otherwise directs, the costs and fees of those proceedings, and other costs and fees of reclassifying

the case, including any additional amount due for filing the initial pleading, are to be paid by the party filing the pleading that erroneously classified the case.

Comment. Section 395.9 is added 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.

For the briefing schedule on an application for reclassification, see Section 1005.

Appearance By Defendant

Code of Civil Procedure Section 1014 specifies when a defendant is deemed to have appeared in an action, and requires service of notice and papers on all defendants who have appeared. The statute should be amended to make clear that filing an application for reclassification pursuant to Section 395.9 constitutes an appearance triggering the right to service of notice and papers:

Code Civ. Proc. § 1014 (amended). Appearance by defendant

1014. A defendant appears in an action when he answers, demurs, files a notice of motion to strike, files a notice of motion to transfer pursuant to Section 396b, files an application for reclassification pursuant to Section 395.9, gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him. After appearance, a defendant is entitled to notice of all subsequent proceedings of which notice is required to be given. Where a defendant has not appeared, service of notice or papers need not be made upon him.

Comment. Section 1014 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The amendment reflects the addition of Section 395.9 (misclassification as limited civil case or otherwise), which sets forth a procedure for challenging a caption stating, or failing to state, that an action or proceeding is a limited civil case. See also Sections 85 (limited civil cases) & Comment, 399.5 (reclassification pursuant to Section 395.9), 400 (petition for writ of mandate), 422.30 (caption).

Conforming Amendments

At least one of the revisions we are proposing requires further conforming amendments in other statutes. We would renumber Code of Civil Procedure Section 85 as Section 582.5. This requires correction of cross-references in three statutes.

Code Civ. Proc. § 697.310 (amended). Creation and duration of lien generally

SEC. _____. Section 697.310 is amended to read:

697.310. (a) Except as otherwise provided by statute, a judgment lien on real property is created under this section by recording an abstract of a money judgment with the county recorder.

(b) Unless the money judgment is satisfied or the judgment lien is released, subject to Section 683.180 (renewal of judgment), a judgment lien created under this section continues until 10 years from the date of entry of the judgment.

(c) The creation and duration of a judgment lien under a money judgment entered pursuant to Section ~~85~~ or 117 or 582.5 of this code or Section 16380 of the Vehicle Code or under a similar judgment is governed by this section, notwithstanding that the judgment may be payable in installments.

Comment. Section 697.310 is amended to reflect relocation of the substance of former Section 85 to Section 582.5.

Code Civ. Proc. § 697.350. Lien on real property

SEC. _____. Section 697.350 of the Code of Civil Procedure is amended to read:

697.350. (a) Except as otherwise provided by statute, a judgment lien on real property is a lien for the amount required to satisfy the money judgment.

(b) A judgment lien on real property created under a money judgment payable in installments pursuant to Section ~~85~~ or 117 or 582.5 of this code or Section 16380 of the Vehicle Code or under a similar judgment is in the full amount required to satisfy the judgment, but the judgment lien may not be enforced for the amount of unmaturing installments unless the court so orders.

(c) A judgment lien created pursuant to Section 697.320 is a lien for the amount of the installments as they mature under the terms of the judgment, plus accrued interest and the costs as they are added to the judgment pursuant to Chapter 5 (commencing with Section 685.010) of Division 1, and less the amount of any partial satisfactions, but does not become a lien for any installment until it becomes due and payable under the terms of the judgment.

Comment. Section 697.350 is amended to reflect relocation of the substance of former Section 85 to Section 582.5.

Code Civ. Proc. § 697.540. Lien on personal property

SEC. _____. Section 697.540 of the Code of Civil Procedure is amended to read:

697.540. (a) Except as otherwise provided by statute, a judgment lien on personal property is a lien for the amount required to satisfy the money judgment.

(b) A judgment lien on personal property created under a money judgment payable in installments pursuant to Section 85 ~~or 117 or 582.5~~ of this code or pursuant to Section 16380 of the Vehicle Code is in the full amount required to satisfy the judgment, but the judgment lien may not be enforced for the amount of unmatured installments unless the court so orders.

Comment. Section 697.540 is amended to reflect relocation of the substance of former Section 85 to Section 582.5.

References to “Same Court”

Upon unification, traditional municipal court cases (to be renamed limited civil cases) and traditional superior court cases will be tried in the same court. This necessitates revision of statutes stating that some step (e.g., taking an appeal) may be done in the same manner as in other cases in the same court. Otherwise, there will be ambiguity about applicable procedures (e.g., the proper appeal path). We have already corrected some of these references to reflect the differentiation between limited civil cases and other civil cases, but the staff has discovered several more. These should be revised along the following lines to account for unification:

§ 1140 (amended). Enforcement and appeal of judgment where controversy is submitted on agreed statement of facts

SEC. __. Section 1140 of the Code of Civil Procedure is amended to read:

1140. The judgment may be enforced in the same manner as if it had been rendered in an action of the same classification (limited civil case or otherwise) in the same court, and is in the same manner subject to appeal.

Comment. Section 1140 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.

§ 1171 (amended). Jury trial in unlawful detainer cases

SEC. __. Section 1171 of the Code of Civil Procedure is amended to read:

1171. Whenever an issue of fact is presented by the pleadings, it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in an action of the same classification (limited civil case or otherwise) in the Court in which the action is pending.

Comment. Section 1171 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.

§ 1206 (amended). Asserting preferred labor claim in connection with writ of attachment or execution

SEC. __. Section 1206 of the Code of Civil Procedure is amended to read:

1206. Upon the levy under a writ of attachment or execution not founded upon a claim for labor, any miner, mechanic, salesman, servant, clerk, laborer or other person who has performed work or rendered personal services for the defendant within 90 days prior to the levy may file a verified statement of the claim therefor with the officer executing the writ, file a copy thereof with the court which issued the writ, and give copies thereof, containing his or her address, to the plaintiff and the defendant, or any attorney, clerk or agent representing them, or mail copies to them by registered mail at their last known address, return of which by the post office undelivered shall be deemed a sufficient service if no better address is available, and such claim, not exceeding nine hundred dollars (\$900), unless disputed, must be paid by such officer, immediately upon the expiration of the time for dispute of the claim as prescribed in Section 1207, from the proceeds of such levy remaining in the officer's hands at the time of the filing of such statement or collectible by the officer on the basis of the writ.

The court issuing the writ must make a notation on its docket of every preferred labor claim of which it receives a copy and must endorse on any writ of execution or abstract of judgment issued subsequently in the case that it is issued subject to the rights of a preferred labor claimant or claimants thereunder and giving the names and amounts of all such preferred labor claims of which it has notice. In levying under any writ of execution the officer making the levy shall include in the amount due under the execution any and all preferred labor claims that have been filed in the action and of which the officer has notice, except any claims which may have been finally disallowed by the court under the procedure provided for herein and of which disallowance the officer has actual notice. The amount due on preferred labor claims that have not been finally disallowed by the court shall be considered a part of the sum due under any writ of attachment or execution in augmentation of the amount thereof and it shall be the duty of any person, firm, association or corporation on whom a writ of attachment or execution is levied to immediately pay to the levying officer the amount of such preferred labor claims, out of any money belonging to the defendant in the action, before paying the principal sum called for in the writ.

If any claim is disputed within the time, and in the manner prescribed in Section 1207, and a copy of the dispute is mailed by registered mail to the claimant or the claimant's attorney at the address given in the statement of claim and the registry receipt is attached to the original of the dispute when it is filed with the levying officer, or is handed to the claimant or the claimant's attorney, the claimant, or the claimant's assignee, must within 10 days after such copy is deposited in the mail or is handed to the claimant or the claimant's attorney petition the court having jurisdiction of the action on which the writ is based, for a hearing before it to determine the claim for priority, or the claim to priority is barred. If more than one attachment or execution is involved, the petition shall be filed in the court having jurisdiction over the senior attachment or execution. The hearing shall be held within 20 days from the filing of the petition unless the court continues it for good cause. Ten days' notice of the hearing shall be given by the petitioner to the plaintiff and the defendant, and to all parties claiming an interest in the property, or their attorneys. The notice may be informal and need specify merely the name of the court, names of the principal parties to the senior attachment or execution and name of the wage claimant or claimants on whose behalf it is filed but shall specify that the hearing is for the purpose of determining the claim for priority. The plaintiff or the defendant, or any other party claiming an interest may contest the amount or validity of the claim in spite of any confession of judgment or failure to appear or to contest the claim on the part of any other person.

There shall be no cost for filing or hearing the petition and the hearing on the petition shall be informal but all parties testifying must be sworn. Any claimant may appear on the claimant's own behalf at the hearing and may call and examine witnesses to substantiate his or her claim. An appeal may be taken from a judgment in a proceeding under this section in the manner provided for appeals from judgments of the court where the proceeding is had, in an action of the same classification (limited civil case or otherwise).

The officer shall retain in possession until the determination of the claim for priority so much of the proceeds of the writ as may be necessary to satisfy the claim, and if the claim for priority is allowed, the officer shall pay the amount due, including the claimant's cost of suit, from such proceeds, immediately after the order allowing the claim becomes final.

Comment. Section 1206 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), 904.1 (taking appeal),

904.2 (taking appeal in limited civil case). See also Section 85 Comment.

§ 1287.4 (amended). Judgment on confirmation of arbitration award

SEC. __. Section 1287.4 of the Code of Civil Procedure is amended to read:

1287.4. If an award is confirmed, judgment shall be entered in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action of the same classification (limited civil case or otherwise); and it may be enforced like any other judgment of the court in which it is entered, in an action of the same classification.

Comment. Section 1287.4 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), 86(a)(10)(A) (arbitration-related limited civil cases). See also Section 85 Comment.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Introduced by Senator Lockyer

February 20, 1998

An act to amend Section 911 of, and to add Sections 46, 76, and 80 to, the Code of Civil Procedure, and to add Chapter 5.1 (commencing with Section 70200) to Title 8 of the Government Code, relating to courts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 2139, as introduced, Lockyer. Courts: unification.

The California Constitution presently provides for the establishment of superior and municipal courts, as specified, in each county. SCA 4 of the 1995–96 Regular Session would provide for the abolition of municipal courts within a county, and for the establishment of a unified superior court for that county upon a majority vote of superior court judges and a majority vote of municipal court judges within the county; provide for the qualification and election of the judges; and revise the number of jurors required in certain civil actions.

This bill would, contingent upon the approval of SCA 4 of the 1995–96 Regular Session, make various statutory changes to implement and conform to the unification of trial courts pursuant to the constitutional amendment.

The bill would state that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 46 is added to the Code of Civil
2 Procedure, to read:

3 46. (a) Courts of appeal have appellate jurisdiction in
4 the following causes:

5 (1) In a county in which the municipal and superior
6 courts have not unified, causes within the original
7 jurisdiction of the superior court.

8 (2) In a county in which the municipal and superior
9 courts have unified, causes within the original jurisdiction
10 of the superior court, excluding causes that would be
11 within the original jurisdiction of the municipal court
12 absent unification.

13 (b) Nothing in this section limits the appellate
14 jurisdiction of the courts of appeal in causes of a type
15 within their appellate jurisdiction on June 30, 1995, or in
16 other causes prescribed by statute.

17 SEC. 2. Section 76 is added to the Code of Civil
18 Procedure, to read:

19 76. (a) A reference in any statute to the appellate
20 department of the superior court means the appellate
21 division of the superior court.

22 (b) Notwithstanding subdivision (e) of Section 77, the
23 appellate division of the superior court has jurisdiction on
24 appeal from the following courts, in all cases in which an
25 appeal may be taken to the superior court as is now or
26 may hereafter be provided by law, except appeals that
27 require a retrial in the superior court:

28 (1) The municipal courts in the county.

29 (2) The superior court in a county in which the
30 municipal and superior courts have unified in a cause that
31 would be within the original jurisdiction of the municipal
32 court absent unification.

33 SEC. 3. Section 80 is added to Chapter 5
34 (commencing with Section 81) of Title 1 of Part 1 of the
35 Code of Civil Procedure, to read:

36 80. In a county in which the municipal and superior
37 courts are unified:

1 (a) Causes that would be within the original
2 jurisdiction of the municipal court absent unification,
3 shall be within the original jurisdiction of the superior
4 court.

5 (b) Statutes governing causes that would be within the
6 original jurisdiction of the municipal court absent
7 unification, including, but not limited to, statutes
8 governing filing fees, publication of notices, reporting of
9 proceedings, appeals, and other court procedures, shall
10 be construed, to the extent practical and except to the
11 extent necessary to avoid injustice, to govern those causes
12 in the superior court.

13 SEC. 4. Section 911 of the Code of Civil Procedure is
14 amended to read:

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

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

27 A court to which any case is transferred pursuant to this
28 section shall have similar power to review any matter and
29 make orders and judgments as the *appellate division of*
30 *the superior court* would have in such case, except that if
31 the case was tried anew in the superior court, the
32 ~~reviewing court of appeal~~ shall have similar power to
33 review any matter and make orders and judgments as it
34 has in a case ~~within the original jurisdiction of the~~
35 ~~superior court~~ *appealed pursuant to Section 904.1.*

36 SEC. 5. Chapter 5.1 (commencing with Section
37 70200) is added to Title 8 of the Government Code, to
38 read:

39

CHAPTER 5.1. UNIFICATION OF MUNICIPAL AND SUPERIOR
COURTS

Article 1. Unification Voting Procedure

70200. (a) The municipal and superior courts in a county shall be unified on a majority vote of superior court judges and a majority vote of municipal court judges in the county, pursuant to the procedure provided in this article.

(b) The vote shall be conducted by the Judicial Council or, if authorized by the Judicial Council, the county's registrar of voters.

(c) The Judicial Council may adopt rules not inconsistent with this article for the conduct of the vote, including, but not limited to, rules governing the frequency of vote calls, manner of voting, duration of the voting period, and selection of the operative date of unification.

70201. (a) A vote of the judges in a county for unification shall be called by the Judicial Council on application of the presiding judge of the superior court or all of the presiding judges of the municipal courts in the county, or on application of a majority of the superior court judges or a majority of the municipal court judges in the county.

(b) The vote shall be taken 30 days after it is called.

(c) A judge is eligible to vote if the judge is serving in the court pursuant to an election or appointment under Section 16 of Article VI of the California Constitution at the time the vote is taken.

(d) The ballot shall be in substantially the following form:

“Shall the municipal and superior courts in the County of [name county] be unified on [specify date]? [Yes] [No]”

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

1 70202. (a) The Judicial Council or registrar of voters
2 shall certify the results of a vote to unify the municipal
3 courts and the superior courts in a county.

4 (b) Unification of the municipal and superior courts in
5 a county requires an affirmative vote of a majority of all
6 superior court judges in the county eligible to vote and a
7 majority of all municipal court judges in the county
8 eligible to vote.

9 (c) On certification, a vote in favor of unification of the
10 municipal and superior courts in a county is final and may
11 not be rescinded or revoked by a subsequent vote.

12 70203. Unification of the municipal and superior
13 courts in a county shall occur on the earlier of the date
14 specified in the unification vote or 180 days following
15 certification of the vote for unification.

16
17 Article 2. Transitional Provisions for Unification
18

19 70210. The Judicial Council shall adopt rules of court
20 not inconsistent with statute for:

21 (a) The orderly conversion of proceedings pending in
22 municipal courts to proceedings in superior courts, and
23 for proceedings commenced in superior courts on and
24 after the date the municipal and superior courts in a
25 county are unified.

26 (b) Selection of persons to coordinate implementation
27 activities for the unification of municipal courts with
28 superior courts in a county, including:

29 (1) Selection of a presiding judge for the unified
30 superior court.

31 (2) Selection of a court executive officer for the
32 unified superior court.

33 (3) Appointment of court committees or working
34 groups to assist the presiding judge and court executive
35 officer in implementing unification.

36 (c) The authority of the presiding judge, in
37 conjunction with the court executive officer and
38 appropriate individuals or working groups of the unified
39 superior court, to act on behalf of the court to implement
40 unification.

1 (d) Preparation and submission of a written personnel
2 plan to the judges of a unified superior court for adoption.

3 (e) Preparation of local court rules necessary to
4 facilitate the orderly conversion of proceedings pending
5 in municipal courts to proceedings in superior courts, and
6 for proceedings commenced in superior courts on and
7 after the date the municipal and superior courts in a
8 county are unified. These rules shall, on the date the
9 municipal and superior courts in a county are unified, be
10 the rules of the unified superior court.

11 (f) Other necessary activities to facilitate the
12 transition to a unified superior court.

13 70211. When the municipal and superior courts in a
14 county are unified:

15 (a) The judgeships in each municipal court in that
16 county are abolished and the previously selected
17 municipal court judges become judges of the superior
18 court in that county. Until revised by statute, the total
19 number of judgeships in the unified superior court shall
20 equal the previously authorized number of judgeships in
21 the municipal court and superior court combined.

22 (b) The term of office of a previously selected
23 municipal court judge is not affected by taking office as
24 a judge of the superior court.

25 (c) The 10-year membership or service requirement
26 of Section 15 of Article VI of the California Constitution
27 does not apply to a previously selected municipal court
28 judge.

29 70212. Except as provided by statute to the contrary,
30 in a county in which the municipal and superior courts
31 become unified, the following shall occur automatically in
32 each preexisting municipal and superior court:

33 (a) Previously selected officers (including
34 subordinate judicial officers), employees, and other
35 personnel who serve the court become the officers and
36 employees of the superior court.

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

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

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

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

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

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

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

26 70213. (a) In a county in which the municipal and
27 superior courts become unified, until revised by the
28 Judicial Council, forms for proceedings within the
29 jurisdiction of municipal courts may be used as if the
30 proceedings were in a municipal court.

31 (b) The Judicial Council may adopt rules resolving any
32 problem that may arise in the conversion of statutory
33 references from the municipal court to the superior court
34 in a county in which the municipal and superior courts
35 become unified.

36 70214. When the municipal and superior courts in a
37 county are unified:

38 (a) Until revised by statute, the total number of
39 authorized court commissioners in the unified superior
40 court shall equal the previously authorized number of

1 court commissioners in the municipal court and superior
2 court combined.

3 (b) Until revised by statute, the total number of
4 authorized traffic referees or traffic trial commissioners
5 in the unified superior court shall equal the previously
6 authorized number of court traffic referees or traffic trial
7 commissioners in the municipal court.

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

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

15 70215. The provisions of this article and other statutes
16 governing unification of the municipal and superior
17 courts in a county shall prevail over inconsistent statutes
18 otherwise applicable to the municipal or superior courts
19 in the county, including, but not limited to, statutes
20 governing the number of judges, selection of a presiding
21 judge, selection of a court executive officer, and
22 employment of officers (including subordinate judicial
23 officers), employees, and other personnel who serve the
24 court.

25 70216. The Attorney General shall, to the extent
26 required by the preclearance provisions of the federal
27 Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) seek to
28 obtain preclearance of paragraph (1) of subdivision (b)
29 of Section 16 of Article VI of the California Constitution
30 as it applies in a county in which the courts are unified
31 pursuant to subdivision (e) of Section 5 of Article VI of the
32 California Constitution.

33 70217. On unification of the municipal and superior
34 courts in a county, until adoption of a written personnel
35 plan by the judges of the unified superior court and
36 approval of the plan by the Legislature:

37 (a) Previously selected officers, employees, and other
38 personnel who serve the courts become the officers,
39 employees, and other personnel of the unified superior

1 court at their existing or equivalent classifications,
2 salaries, and benefits.

3 (b) Permanent employees of the municipal and
4 superior courts on the effective date of unification shall
5 be deemed qualified, and no other qualifications shall be
6 required for employment or retention. Probationary
7 employees on the effective date of unification shall retain
8 their probationary status and rights, and shall not be
9 deemed to have transferred so as to require serving a new
10 probationary period.

11 (c) Employment seniority of an employee of the
12 municipal or superior courts on the effective date of
13 unification shall be counted toward seniority in the
14 unified superior court, and all time spent in the same,
15 equivalent, or higher classification shall be counted
16 toward classification seniority.

17 SEC. 6. This bill shall become operative only upon the
18 adoption by the voters of Senate Constitutional
19 Amendment 4 of the 1995–96 Regular Session of the
20 Legislature, in which event it shall become operative at
21 the same time as Senate Constitutional Amendment 4.

22 SEC. 7. This act is an urgency statute necessary for the
23 immediate preservation of the public peace, health, or
24 safety within the meaning of Article IV of the
25 Constitution and shall go into immediate effect. The facts
26 constituting the necessity are:

27 Senate Constitutional Amendment 4 of the 1995–96
28 Regular Session of the Legislature, if approved by the
29 voters, would change the appellate jurisdiction of the
30 courts and would enable the municipal and superior
31 courts in a county to unify. It is necessary that
32 implementing measures be taken immediately so that an
33 orderly transition of the court system will occur.