Study J-1300 March 18, 1998

First Supplement to Memorandum 98-12

Trial Court Unification: Comments of State Bar Committee on Administration of Justice

The State Bar Committee on Administration of Justice ("CAJ") has submitted comments (Exhibit pp. 1-3) on Memorandum 98-3, which was considered at the January meeting. We will discuss these comments at tomorrow's meeting.

Respectfully submitted,

Barbara S. Gaal
Staff Counsel

THE COMMITTEE ON ADMINISTRATION OF JUSTICE
THE STATE BAR OF CALIFORNIA

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March 11, 1998

Nathaniel Sterling, Esq.
California Law Revision Commission
4000 Middlefield Road, Room 1
Palo Alto, California 94303-4739

Re: SCA-4 Trial Court Unification;
Law Revision Commission Memorandum 98-3

Dear Mr. Sterling:

I am writing on behalf of the Committee on Administration of Justice of the State Bar of California, which has reviewed the Commission's Memorandum 98-3 concerning SCA-4, Trial Court Unification.

1. Appeals.

The proposed amendment to CCP § 904.2 would provide that a "An appeal may be taken from a limited civil case in the following cases." Proposed § 904.2 is verbally awkward: The counterpart speaks of appeals "from a court" whereas 940.2 speaks from appeals "from a case" "in [certain] cases." The language ought to be parallel, but it is not and the proposal uses the word "case" twice in the same sentence for two difference meanings.

Proposed CCP § 904.3 directs appeals to the court of appeal "other than in a limited civil case" and to the appellate division in a "limited civil case."

The Commission may wish to consider dividing § 904.3 in half and adding its language to proposed § 904.1 and § 904.2, respectively, so that in one section there is both a "from" and "to" or, and perhaps better, by stating what types of orders or judgments may be appealed in civil cases, and in limited civil cases, and then simply saying where those appeals go (i.e., by making the "from" superfluous).

2. Good Faith Improver.

The proposed amendment continues the present pattern, although the present pattern may not be consistent. At present, a good faith improver can only bring an action in superior court, regardless of amount, but the cross-claim will be heard in municipal court if it is an under $25,000 cross-complaint. Thus, there is at present a theoretical inconsistency between requiring under $25,000 good faith improver claims be brought in superior court but allowing them to be

tried in municipal court if they arise out of a cross-complaint. The Commission may (or may not) wish to deal with this inconsistency at the present time.

3. Mechanic's Lien - Stay Pending Arbitration.

Here again, the present statutory format is awkward. Construction contracts frequently require arbitration. Contractors and subcontractors must file a timely action to enforce a lien, usually within 120 days after completion. To make it clear that filing a foreclosure action did not preclude the plaintiff from arbitrating, the present statute allows the plaintiff to move for a stay of the action concurrently with filing the action. It would seem that a simple allegation in the complaint electing arbitration should be sufficient to preserve the arbitration rights and seems unnecessary to require the plaintiff to move for a stay on filing the complaint. If neither the court nor the defendant understands that a stay is appropriate, then the plaintiff can later move for a stay.

The statute presently does not say that a municipal court cannot grant the stay; rather, in backwards fashion, it implies that an otherwise municipal court lien foreclosure action can (or perhaps must) be filed in superior court to obtain a stay.

The Commission may wish to simplify the procedure at this time or re-visit the procedure at a later date.

4. Remaining Subjects of Memorandum 98-3.

The Committee supports the concepts and proposals in the memorandum concerning enforcement of judgments, victim restitution, court reporters, municipal court venue, access to juror information, telephonic appearances at trial setting conferences, depositions and arbitration proceedings, and the provisions relating to Commissioners and Referees.

The Committee also examined the first supplement to Memorandum 98-3 concerning classification matters.

The Committee was of the view that misclassification should not extend the time to answer or otherwise plead to the complaint or cross-complaint, as the concept of court unification should be to minimize delays in the litigation process caused by the differences in courts.

The Committee also questioned the rationale for limiting reclassification motions, if raised by a party, to being brought "within 30 days after service of the initial pleading." This limitation raises the question of how time is computed if there are multiple defendants and how reclassification is handled if the basis for reclassification does not appear until an amended

complaint. It may be better to state that a party waives the right to request reclassification by filing an answer.

The Committee appreciates having had the opportunity to review and provide comments to these memoranda.

Very truly yours,

Paul Crane

Paul N. Crane

PNC:ktc