Study J-1300 May 29, 1998

Memorandum 98-41

Trial Court Unification: Miscellaneous Issues

If SCA 4 is approved by the voters on June 2, it is Senator Lockyer's present intent to promptly amend the Commission's implementing legislation into Senate Bill 2139. Interested parties would have an opportunity to review and comment on the bill, and the Commission would be able to consider their suggestions at its July meeting. After making amendments as necessary, Senator Lockyer would seek passage of the bill in August.

Several matters warrant attention now. At its April meeting, the Commission requested further research and analysis of whether an application for reclassification should extend the time to answer or otherwise respond to the initial pleading. Since then, the Commission has also received new comments from the State Bar Committee on Administration of Justice ("CAJ") on the implementing legislation. (Exhibit pp. 1-2.) This memorandum discusses those points, as well as some additional issues uncovered by the staff in its continuing review of the codes for SCA 4 revisions. A separate memorandum (Memorandum 98-33) discusses the impact of unification on judicial elections.

CIVIL CASES OF SAME CLASSIFICATION

Upon unification, traditional municipal court cases (to be renamed "limited civil cases") and traditional superior court cases will be tried in the same court. As a result, it is necessary to revise statutes that state that a procedural step (e.g., taking an appeal) is to be done in the same manner as in other cases in the same court. Otherwise, there will be ambiguity about which procedures apply (e.g., the proper appeal path). The Commission's implementing legislation includes a number of amendments along these lines. For example:

> **Code Civ. Proc. § 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.

See also proposed Code Civ. Proc. §§ 1171, 1206, 1287.4, 996.430.

CAJ offers a stylistic suggestion. Instead of using a parenthetical in each such statute ("limited civil case or otherwise"), we should add a definition at the beginning of the Code of Civil Procedure "so that this language need not be continually repeated in the Code." (Exhibit p. 2.)

The staff agrees that such an approach may be more elegant than repeated use of the parenthetical. We would implement it by adding a definition of "jurisdictional classification" to the Code of Civil Procedure:

Code Civ. Proc. § 32.5 (added). "Jurisdictional classification" defined

SEC. __. Section 32.5 is added to the Code of Civil Procedure, to read:

32.5. A reference to the "jurisdictional classification" of a case means whether it is classified as a limited civil case or otherwise.

Comment. Section 32.5 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.

The amendment of Code of Civil Procedure Section 1140 could then be revised to read:

Code Civ. Proc. § 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 jurisdictional classification 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 32.5 (jurisdictional classification), 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.

The same approach could be taken in the amendments of Code of Civil Procedure Sections 1171, 1206, 1287.4, and 996.430.

APPLICATION FOR RECLASSIFICATION

Because classifying a case as a limited civil case or otherwise has procedural consequences, the proposed legislation establishes a procedure for challenging how a case is classified. (Proposed Code Civ. Proc. §§ 395.9, 399.5, 400.) In developing this procedure, the Commission grappled with whether misclassification of a case is akin to a lack of subject matter jurisdiction, improper venue, or another type of challenge. First Supplement to Memorandum 97-82, pp. 2-3. The Commission concluded that a challenge to the classification of a case does not fit cleanly in any existing procedural category. Rather, it "is a new procedural situation, which should be addressed by a new provision clearly specifying the applicable rules." First Supplement to Memorandum 97-82, p.3; see also Minutes (Dec. 12, 1997), pp. 6, 7.

Proposed Code of Civil Procedure Section 395.9 is the key provision:

> **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 the defendant or cross-defendant within the time allowed for that party to respond to 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 a party applies for reclassification, the time for the party to answer or otherwise plead shall date from the denial of reclassification or, if reclassification is granted, from service upon the party 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 five days in a proceeding for unlawful detainer, forcible detainer, or forcible entry, 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.

The Commission has received a couple of suggestions regarding this provision.

"Duly Noticed Application"

As originally drafted, proposed Code of Civil Procedure Section 395.9 did not include a briefing schedule, nor did it specify whether the application for reclassification had to be noticed. The Commission later addressed this problem by revising Section 395.9 to state that an application for reclassification must be "duly noticed." See Memorandum 98-12, pp. 3-6; Minutes (March 19-20, 1998), pp. 6-8. This revision imported the notice and briefing requirements of Code of Civil Procedure Section 1005, which apply to any civil proceeding "in which notice is required and no other time or method is prescribed by law or by court or judge."

CAJ comments, however, that use of the words "duly noticed" may create confusion, due to "the absence of similar phrases in other statutes." (Exhibit p. 1.) Instead of the "duly noticed" approach, the committee suggests substituting the phrase "motion" for "application." *Id.* The committee would either rely on the catchall language of Section 1005 to make the requirements of that section applicable, or add a sentence to proposed Section 395.9 stating that "Service and filing of all moving and supporting papers shall be made as required by Section 1005(b)." *Id.*

The staff recommends the latter approach. **We would delete the words "duly noticed" from proposed Section 395.9(a), replace "application for reclassification" (or equivalent terminology) with "motion for reclassification" (or equivalent terminology) throughout the Commission's draft, and add a sentence to proposed Section 395.9(c):**

> (c) ~~An application~~ A motion 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. All moving and supporting papers, opposition papers, and reply papers shall be served and filed in accordance with Section 1005.

Time to Respond to Complaint

Proposed Section 395.9(a) specifies how an application for reclassification affects a defendant's deadline for responding to a complaint:

> (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 the defendant or cross-defendant within the time allowed for that party to respond to 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 a party applies for reclassification, the time for the party to answer or otherwise plead shall date from the denial of reclassification or, if reclassification is granted, from service upon the party of written notice that the clerk has refiled the case pursuant to Section 399.5.*

(Emphasis added.)

CAJ comments 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." (First Supplement to Memorandum 98-12, Exhibit p. 2.) The State Bar Litigation Section concurs:

> …[A]fter unification, the same court will be able to hear a demurrer or motion to strike, and the same court would receive an answer for filing, even if the case is reclassified. Therefore, after trial court unification, a motion to reclassify would merely be a dilatory motion. The time to answer or otherwise respond to the complaint or cross-complaint should not be extended merely because a motion to reclassify is made.
>
> [Memorandum 98-25, Exhibit p. 3.]

In analyzing those comments for the Commission's April meeting, the staff pointed out that whether a case is classified as a limited civil case or otherwise has serious consequences, including differing rules on responding to a complaint (Memorandum 98-25, pp. 2-5):

> • In a limited civil case, the answer need not be verified, even if the complaint or cross-complaint is verified. (Proposed Code Civ. Proc. §§ 91, 92(b).)
>
> • In a limited civil case, special demurrers are not allowed. (Proposed Code Civ. Proc. §§ 91, 92(c).) Grounds for special demurrers include lack of legal capacity to sue, existence of another action pending between the same parties on the same cause of action, defect or misjoinder of parties, uncertainty of the complaint,

failure to allege whether a contract is oral or written, and failure to attach attorney certificates or ADR certificates where required. (R. Weil & I. Brown, Jr., Civil Procedure Before Trial §§ 7:69.1-7:97.5 (Rutter Group, rev. # 1, 1997).)

• In a limited civil case, motions to strike are allowed only on the ground that the damages or relief sought are not supported by the allegations of the complaint. (Proposed Code Civ. Proc. §§ 91, 92(d).) Other grounds for a motion to strike, now allowed in superior court but not in municipal court, include falsity or irrelevancy of the pleadings and various technical bases for striking the entire pleading (e.g., failure to file certificate of merit where required, filing of complaint by nonlawyer on behalf of another person). *Id.* at §§ 7:173-7:181. See also Code Civ. Proc. § 425.16 (motion to strike SLAPP suit).

• In a limited civil case, if the plaintiff serves a case questionnaire with the complaint, the defendant must complete the questionnaire and serve this response along with the defendant's answer. (Proposed Code Civ. Proc. §§ 91, 93.)

• In any case, if a defendant wants to assert a cross-claim against the plaintiff, the defendant must file the cross-complaint before or with the defendant's answer. (Code Civ. Proc. § 428.50). In some substantive contexts, different pleading requirements would apply depending on whether the cross-claim was in a limited civil case or otherwise. (See proposed Code Civ. Proc. §§ 396a (statement of jurisdictional facts in limited civil case pursuant to Civil Code Section 1812.10 or 2984.4 or Code of Civil Procedure Section 395(b) or 1161); proposed Code Civ. Proc. §§ 425.10, 425.11 (complaint for personal injury or wrongful death shall not state the amount of damages sought, except in a limited civil case).)

Because of these differing rules on responding to a complaint, the staff recommended that an application for reclassification *should* extend the time to respond. "Otherwise, parties will be forced to comply with pleading rules that may be inapplicable upon reclassification." (Memorandum 98-25, p. 4.)

At the April meeting, the Commission expressed concern about the potential for filing an application for reclassification as a dilatory tactic, particularly in unlawful detainer cases. The Commission asked the staff to explore what happens now when cases are brought in an improper court, and reanalyze the misclassification procedure in light of those current practices.

Existing Law

The existing contexts most akin to misclassifying a case in a unified superior court are (1) filing a case in the wrong venue and (2) filing a case in a court that lacks subject matter jurisdiction.

Venue. If a defendant moves for a change of venue, the defendant may but need not respond to the complaint before the court rules on the motion. Code Civ. Proc. § 396b(a). If the motion is denied, the defendant has 30 days to move to strike, demur, or otherwise plead. Code Civ. Proc. § 396b(e); Cal. R. Ct. 326 (rev. Jan. 15, 1998). If the motion is granted, the defendant has 30 days to plead, but this period does not begin to run until the transferee court mails notice of receipt of the case and its new case number. Cal. R. Ct. 326.

Lack of subject matter jurisdiction. Lack of subject matter jurisdiction is such a fundamental defect that it can be raised in many different ways. Where the defect appears on the face of the pleading or from matters judicially noticeable, the defendant may demur. Code Civ. Proc. § 420.10(a). Special demurrers are not allowed in municipal court (Code Civ. Proc. § 92(c)), but a demurrer based on lack of subject matter jurisdiction is considered a general demurrer. Buss v. J.O. Martin Co., 241 Cal. App. 2d 123, 133, 50 Cal. Rptr. 206, 213 (1966); R. Weil & I. Brown, Jr., California Practice Guide: Civil Procedure Before Trial § 7:37 (Rutter Group, rev. #1 1997); 5 B. Witkin, California Procedure *Pleading* § 922, at 380 (4th ed. 1996). A defendant need not answer while a demurrer is pending; the defendant has ten days to plead following the ruling on a demurrer (five days in unlawful detainer cases). Cal. R. Ct. 325(e) (rev. Jan. 15, 1998). Successive demurrers are allowed but discouraged. Cal. R. Ct. 325(g); R. Weil & I. Brown, Jr., *supra,* §§ 7:34.1-7:34.4.

Where the defect appears on the face of the pleading or from matters judicially noticeable, the defendant may also move to strike. Code Civ. Proc. §§ 435-437; R. Weil & I. Brown, Jr., *supra,* § 3:117. A motion to strike extends the time to answer, but not the time to demur. Code Civ. Proc. § 435(c), (d). "[W]hatever questions of law [the defendant] wishes to raise as to the sufficiency of the complaint, whether by demurrer or motion to strike, must be raised at the same time; [the defendant] does not have two successive periods — one for motion to strike and one for demurrer — before being required to plead, by answer, to the merits." 5 B. Witkin, *supra, Pleading* § 970, at 434. If a defendant files both a demurrer and a motion to strike, they will be heard at the same time. Cal. R. Ct. 329 (rev. Jan. 15, 1998).

Where the defect appears on the face of the pleading or from matters judicially noticeable, the defendant has still another option. The defendant may move for judgment on the pleadings, but only if the defendant has already answered the complaint. Code Civ. Proc. § 438(c)(1)(B)(ii), (f)(2). If the court determines that it lacks subject matter jurisdiction and that there is another court in the state having such jurisdiction, the case is to be transferred instead of dismissed. Code Civ. Proc. § 396. The different pleading rules in municipal and superior court do not seem to present a problem in this context, perhaps because Code of Civil Procedure Section 399 provides in part:

> The court to which an action or proceeding is transferred under this title shall have and exercise over the [transferred case] the like jurisdiction as if it had been originally commenced therein, all prior proceedings being saved, and such court may require such amendment of the pleadings, the filing and service of such amended, additional, or supplemental pleadings, and the giving of such notice, as may be necessary for the proper presentation and determination of the action or proceeding in such court.

In addition, the costs and fees associated with transferring the case are to be borne by "the party filing the pleading in which the question outside the jurisdiction of the court appears." Code Civ. Proc. § 396. Presumably, these provisions allow courts to make adjustments as needed to account for the differing pleading rules.

Where the lack of subject matter jurisdiction is not apparent on the face of the complaint, the options of demur, motion to strike, and motion for judgment on the pleadings are unavailable. The defendant may either move for transfer of the action pursuant to Code of Civil Procedure Section 396, move for summary judgment, or assert the lack of jurisdiction as an affirmative defense. R. Weil & I. Brown, Jr., *supra*, § 3:117. (These options are also available where the lack of jurisdiction is apparent on the face of the complaint.) Regardless of which approach the defendant selects, the defendant is not excused from responding to the complaint. If the defendant ultimately establishes that the court lacks subject matter jurisdiction, the case may be transferred pursuant to Section 396. Again, the different pleading rules in municipal and superior court do not seem to create problems, presumably because the transferee court is authorized to make necessary adjustments and allocations of fees under Sections 396 and 399.

Analysis

As CAJ comments, "the concept of court unification should be to minimize delays in the litigation process caused by the differences in courts." (First Supplement to Memorandum 98-12, Exhibit p. 2.) If an application for reclassification extends the time to plead, this necessarily will slow the progress of the case in which it is filed.

If an application for reclassification does not extend the time to plead, then the defendant may have to plead pursuant to the rules for a limited civil case, only to have the case reclassified and be subject to traditional superior court pleading rules (or vice versa). The differences (relating to verification of the complaint, special demurrers, types of motions to strike allowable, case questionnaires, and specific types of cross-claims) are not that dramatic, however, and may have little impact in many cases. Like the provisions applicable to transfer of a case for lack of subject matter jurisdiction (Sections 396 and 399), the Commission's proposed procedure for challenging the classification of a case would allow adjustments to account for those different pleading rules. Proposed Code of Civil Procedure Section 399.5(e) provides:

> (e) The court shall have and exercise over the refiled action or proceeding the same authority as if the action or proceeding had been originally commenced as reclassified, all prior proceedings being saved. The court may require whatever amendment of the pleadings, filing and service of amended, additional, or supplemental pleadings, or giving of notice, as may be necessary for the proper presentation and determination of the action or proceeding as reclassified.

Proposed Section 395.9(h) complements this authority by shifting the costs and fees associated with reclassification to the party who erroneously classified the 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.

Given these protections, **the staff is now persuaded that it is unnecessary to extend the time to plead where a defendant applies for reclassification. We suggest revising proposed Section 395.9 as follows:**

> (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 the defendant or cross-defendant within the time allowed for that party to respond to 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 a party applies for reclassification, the time for the party to answer or otherwise plead shall date from the denial of reclassification or, if reclassification is granted, from service upon the party of written notice that the clerk has refiled the case pursuant to Section 399.5~~ A motion for reclassification does not extend the moving party's time to answer or otherwise plead.

To ensure that the court has full authority to account for differences in pleading requirements, **the following revision of proposed Section 399.5(e) should also be made:**

> (e) The court shall have and exercise over the refiled action or proceeding the same authority as if the action or proceeding had been originally commenced as reclassified, all prior proceedings being saved. The court may require whatever amendment of the pleadings, filing and service of amended, additional, or supplemental pleadings, ~~or~~ giving of notice, or other appropriate action as may be necessary for the proper presentation and determination of the action or proceeding as reclassified.

An alternative approach would be to handle an application for reclassification like a motion to strike: Filing of an application for reclassification would extend the time to answer, but not the time to demur or move to strike. The staff does not think this additional complexity is warranted, in part because it would not address the differing treatment of demurrers and motions to strike in limited civil cases and other cases. The simple approach of not extending the time to plead would be most consistent with the goal of promoting prompt resolution of cases. If problems become apparent upon implementing that approach, they

should be addressed through corrective legislation tailored to those specific problems.

If the Commission approves the recommended revisions of Sections 395.9(a) and 399.5(e), **it should also delete two proposed amendments from the SCA 4 implementing legislation. The amendments of Code of Civil Procedure Sections 585 and 586**, concerning entry of default judgments, are predicated on the concept that an application for reclassification extends the time to plead. **They are unnecessary and inappropriate if an application for reclassification does not extend the time to plead.**

The revision of Code of Civil Procedure Section 1167.3 suggested by the staff in Memorandum 98-25 (pp. 8-11), would also be unnecessary, for the same reason. **We suggest, however, that this statute (concerning defaults in unlawful detainer cases) be added to the list of topics for future study in the Commission's report,** because it contains incorrect cross-references. See Memorandum 98-25, p. 10.

GENERAL APPEARANCE

The proposed legislation would amend Code of Civil Procedure Section 1014 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. CAJ "concurs with the approach" but suggests replacing "application for reclassification" with "motion for reclassification." As in Code of Civil Procedure Section 395.9 and elsewhere, **the staff would make this revision**.

CAJ also suggests using gender-neutral language in Section 1014. Consistent with the approach used throughout the Commission's draft, the staff already implemented such revisions before receiving CAJ's letter. We nonetheless appreciate CAJ's alertness in detecting the need for these revisions.

ACCESS TO JUROR INFORMATION

Code of Civil Procedure Section 237, concerning access to juror information, expressly 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 (on staff recommendation) decided to amend the statute such that it would apply only in a felony case or a civil case other than a limited civil case:

Code Civ. Proc. § 237 (amended). Access to juror information

SEC. __. Section 237 of the Code of Civil Procedure is amended to read:

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.

See Memorandum 98-3, pp. 12-14; Minutes (Jan. 23, 1998), p. 5.

It appears, however, that this amendment is unnecessary. Under Code of Civil Procedure Section 200, municipal courts often use the same juror pool as the superior court:

> 200. Except in Alameda County, when authorized by local superior court rules, a municipal or justice court district pursuant to duly adopted court rule may use the same juror pool as that summoned for use in the superior court. Persons so selected for jury service in those municipal or justice courts need not be residents of the judicial district. In Los Angeles County, the municipal courts shall use the same jury pool as that summoned for use in the superior court.

Thus, although Section 237 refers to "qualified jurors drawn from the qualified juror list for the superior court," the statute already appears to apply to qualified

jurors in municipal court cases where the municipal court uses the same juror pool as the superior court. **Leaving the statute as is (instead of amending it)** would extend the provision to qualified jurors in traditional municipal court cases where the municipal and superior courts have unified. **This seems more consistent with existing policy than limiting the statute to a felony case or civil case other than a limited civil case.**

The staff sought advice from the Commission's consultant, Professor J. Clark Kelso, on whether this assessment of existing policy is correct. **He also recommends deleting the amendment of Code of Civil Procedure Section 237 from the draft legislation.**

CHILD PASSENGER RESTRAINT SYSTEMS

Vehicle Code Section 27360 requires use of child passenger restraint systems. A minor technical revision of subdivision (d)(1) is necessary to reflect trial court unification:

> (d) Notwithstanding any other provision of law, the fines collected for a violation of this section shall be allocated as follows:
>
> (1) Sixty percent to county health departments where the violation occurred, to be used for a child passenger restraint low-cost purchase or loaner program which shall include, but not be limited to, education on the proper installation and use of a child passenger restraint system. The county health department shall designate a coordinator to facilitate the creation of a special account and to develop a relationship with the ~~municipal~~ court system to facilitate the transfer of funds to the program. The county may contract for the implementation of the program. Prior to obtaining possession of a child passenger restraint system pursuant to this section, a person shall receive information relating to the importance of utilizing that system.
>
> ….
>
> **Comment.** Section 27360(d)(1) is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

The staff will add this amendment to the SCA 4 implementing legislation.

FUTURE STUDY TOPICS

The Commission's draft report includes a discussion of "Issues in Judicial Administration Appropriate for Future Study." **The staff recommends adding the following topics to the list of proposed future studies:**

Sessions of the superior court. The list of proposed future studies already includes a study of special superior court sessions. Cara Vonk of the Judicial Council has informed us, however, that the statutes on regular sessions of the superior court are very confusing, create problems, and also deserve study. The staff concurs in this assessment**.**

Duplicate Chapters 2.1 (commencing with Section 68650) of Title 8 of the Government Code. Two new chapters, both labeled as Chapter 2.1 of Title 8 of the Government Code (commencing with Section 68650) but dealing with different topics, were added in 1997. As a result, the Government Code now contains two Sections 68650, 68651, 68652, 68653, 68654, and 68655. This situation should be addressed to prevent confusion.

Government Code Section 68520. Government Code Section 68520 concerns reports that the courts and the Judicial Council were to submit in 1992. It appears to be obsolete. Rather than listing this statute as a separate topic, we could revise the entry on obsolete pilot projects to read: "Obsolete statutes relating to expired pilot projects or other expired programs." A reference to Government Code Section 68520 should be inserted into the corresponding footnote.

Respectfully submitted,

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THE COMMITTEE ON ADMINISTRATION OF JUSTICE
THE STATE BAR OF CALIFORNIA

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April 28, 1998

Nathanial 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 Memoranda 98-12 and 98-25

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 Memoranda 98-12 and 98-25 concerning SCA-4, Trial Court Unification.

98-12

1. Telephone Appearances at Trial Setting Conference.

The Committee concurs that the provisions for telephonic trial setting conferences should apply to all civil cases in the unified courts.

2. Motions to Reclassify an Action.

The difficulty the Committee perceives in adding the words "duly noticed" is that the absence of similar phrases in other statutes may create confusion. The Committee suggests that in proposed CCP Section 395.9, the language "application of either party" should be changed to "motion of a party." There could be added as the second sentence of the section "Service and filing of all moving and supporting papers shall be made as required by Section 1005(b)" or that provision may be assumed by the "unless otherwise . . .provided" language of Section 1005(b).

3. Motion to Reclassify Constituting an Appearance.

The Committee concurs with the approach but suggests (a) that the word application be changed to "motion" and (b) that if the section is to be rewritten, the references to "him" be deleted and neutral language utilized.

4. References to Action of the Same Classification.

The proposal to amend Sections 1140, 1171 and 1206 and 1287.4 utilize the phrase "of the same classification (limited civil case or otherwise)." The Committee suggests that for purposes of style the amendment to the sections simply be "in an action of the same classification" and that the parenthetical phrase of "limited civil case or otherwise" be added to the definition sections at the beginning of the Code of Civil Procedure so that this language need not be continually repeated in the Code. The Committee makes the same suggestion with regard to the proposed amendment to CCP Section 996.430 discussed in Memorandum 98-25.

98-25

5. Relief Affordable.

The Committee concurs with the proposed amendments to CCP Section 580.

6. Petition to Declare Minor a Ward of the Court.

The Committee concurs in the proposed amendment of Welfare & Institutions Code Section 656.

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

Very truly yours,

Paul N. Crane

PNC:pk