Study J-1300 July 16, 1998

First Supplement to Memorandum 98-47

Trial Court Unification: Issues on Implementing Legislation

The Commission has received a number of new suggestions regarding the implementing legislation for Proposition 220 (SCA 4). These include:

JURY SELECTION

Two issues have come up concerning jury selection. One relates to the local rule required by proposed Code of Civil Procedure Section 198.5(b); the other concerns county-specific jury selection statutes.

Content of Local Rule

Proposed Code of Civil Procedure Section 198.5(b) currently provides:

> (b) In a county in which there is no municipal court, if a session of the superior court is held in a location other than the county seat, the names for master jury lists and qualified jury lists to serve in that session may be selected from the area in which the session is held, pursuant to a local superior court rule that provides all qualified persons in the county an equal opportunity to be considered for jury service.

Judge Julie Conger (Alameda County Municipal Court) contacted the Commission because she and other Alameda County judges did not understand what the local rule contemplated by proposed Section 198.5(b) should contain. She expressed concern that the local rule would merely be duplicative of Code of Civil Procedure Section 191, which says it is state policy that "all qualified persons have an equal opportunity … to be considered for jury service in the state."

Upon receiving and considering the portion of Memorandum 98-47 discussing Section 198.5 (pp. 7-10), Judge Conger gained a better appreciation of the Commission's intent in drafting proposed Section 198.5(b), and her concern about duplication of Section 191 was alleviated. She suggested, however, that proposed Section 198.5(b) be redrafted to improve clarity.

In light of Section 198.5(b)'s obvious potential for confusion, the staff agrees that clarification would be helpful. Having explored several options with Judge Conger, **the staff would revise the last clause of proposed Section 198.5(b) along the following lines:**

> (b) In a county in which there is no municipal court, if sessions of the superior court are held in a location other than the county seat, the names for master jury lists and qualified jury lists to serve in a session may be selected from the area in which the session is held, selection to be accomplished pursuant to a local superior court rule that divides the county in a manner that provides all qualified persons in the county an equal opportunity for jury service.

Judge Conger supports this approach.

Combining this recommendation with the staff's recommendation on the issues discussed in Memorandum 98-47 (pp. 7-10), the proposed amendment would read:

> 198.5. ~~In~~ (a) Except as provided in subdivision (b), in counties where sessions of the superior court are held in cities other than the county seat, the names for master jury lists and qualified jury lists to serve in those cities may be selected from the judicial district in which the city is located and, if the judges of the court determine that it is necessary or advisable, from a judicial district adjacent to a judicial district in which the city is located.
>
> (b) In a county in which there is no municipal court, if sessions of the superior court are held in a location other than the county seat, the names for master jury lists and qualified jury lists to serve in a session may be selected from the area in which the session is held, selection to be accomplished pursuant to a local superior court rule that divides the county in a manner that provides all qualified persons in the county an equal opportunity for jury service.
>
> **Comment.** Section 198.5 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). Subdivision (b) is drawn from Section 191 (policy of state to select jury from population of area served by court; all qualified persons to have an equal opportunity to be considered for jury service). A local rule promulgated pursuant to subdivision (b) may differentiate between misdemeanors and limited civil cases, on the one hand, and felonies and civil cases other than limited civil cases, on the other. See Code Civ. Proc. § 85

(limited civil cases) & Comment; Penal Code § 691 (definitions) & Comment.

Unlike the staff proposal in Memorandum 98-47, this proposal does not refer to infractions in the Comment, because a defendant is not entitled to a jury trial on an infraction. Penal Code § 19.6.

County-Specific Statutes on Jury Selection

Code of Civil Procedure Section 199.3 is a special jury selection provision for Nevada County:

> 199.3. In Nevada County, trial jury venires for the Truckee Branch of the Superior Court shall be drawn from residents of the Truckee Division of the Nevada County Municipal Court, except as otherwise provided in this section. Prospective jurors residing in the Truckee Division of Nevada County Municipal Court, except as otherwise provided in this section, shall only be included in trial court venires or sessions of the municipal and superior court held within that division. However, each prospective juror residing in the county shall be given the opportunity to elect to serve on juries with respect to trials held anywhere in the county in accordance with the rules of the superior and municipal court, which shall afford to each eligible resident of the county an opportunity for selection as a trial jury venireman. Additionally, nothing in this section shall preclude the superior or municipal court, in its discretion, from ordering a countywide venire in the interest of justice.

There are similar provisions for a few other counties. Code Civ. Proc. §§ 199, 199.2, 199.5; *see also* Code Civ. Proc. § 200. Judge Anders Holmer (Nevada County Superior Court) "generally concur[s] with the staff's analysis of Section 198.5 in Memorandum 98-47, but is concerned "regarding the continued need of CCP § 198.3." (Exhibit p. 1.)

He explains:

> Although the proposed amendment of CCP § 198.5(b) satisfies the same basic goal of CCP § 198.3, the proposed revision is silent on the issue of whether residents of Eastern Nevada County have to travel to the county seat for jury service. The legislative history of CCP § 198.3 reveals that the legislation was prompted only to minimize juror hardship. As you may be aware, residents of Eastern Nevada County are 54 miles away from the county seat and the extreme snow conditions of Donner Pass and the Sierra Nevada

> mountains make winter time travel inconvenient at best and dangerous at worst.
>
> My fear is that unless you receive comments from judges like me that someone may feel there is no longer a need for the type of laws reflected in CCP §§ 199.2, 199.3 and 199.5. Although it is true that the judges of each county could, by local rule, eliminate the need for jurors traveling from one portion of the county to another, I believe the better choice is to have this exemption codified in the Code of Civil Procedure.

(*Id.*) He requests that the Commission propose an amendment of Section 199.3, as well as the proposed amendment of Section 198.5. (Exhibit p.2.)

Including an amendment of Section 199.3 in its recommendation would be inconsistent with the Commission's approach to county-specific statutes. As explained in the preliminary part:

> 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. 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.

(Memorandum 98-48, p. 3 of the attachment (footnotes omitted).)

The Commission took this approach because there are dozens of county-specific statutes relating to the courts, most of which concern personnel matters that need to be addressed by the Legislature and the judicial branch, not the Commission (e.g., a statute providing that there shall be a certain number of municipal court judges in a particular county). As a stopgap measure pending the enactment of county-specific legislation implementing SCA 4, the Commission included the following provision in its draft:

> **Gov't Code § 70215 (added). County-specific legislation**
>
> 70215. The provisions of this article and other statutes governing unification of the municipal and superior courts in a county shall prevail over inconsistent statutes otherwise applicable to the municipal or superior courts in the county, including but not limited to statutes governing the number of judges, selection of a presiding judge, selection of a court executive officer, and employment of officers (including subordinate judicial officers), employees, and other personnel who serve the court.
>
> **Comment.** Section 70215 is added to accommodate prompt unification of the municipal and superior courts in a county when

approved by a majority of the judges of those courts. Cal. Const. art. VI, § 5(e). If the courts in a particular county elect to unify, the codes should be reviewed at that time to determine whether special statutes relating to the courts in that county should be revised or repealed. Section 70215 provides guidance pending enactment of such legislation.

The reference to officers, employees, and other personnel who serve the court includes court commissioners, traffic referees, court reporters, and all other municipal court personnel. See *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1, 82 (1994) (Article VI, § 23(c)(1) Comment) ("Among the previously selected officers, employees, and other personnel who serve the court and who become officers and employees of the superior court pursuant to subdivision (c)(1) are persons such as commissioners and referees appointed to perform subordinate judicial duties as provided for pursuant to Section 22 (subordinate judicial officers, court reporters, interpreters and translators, court clerks, and sheriffs, marshals, and constables).")

This provision may work well with regard to the personnel issues, but it may pose problems as applied to the county-specific jury selection provisions. For instance, it could be interpreted to mean that (1) Section 198.5 overrides Section 199.3 (the special jury selection provision for Nevada County), and (2) Section 198.5 permits less-than-countywide jury selection only pursuant to a local rule, which may not be in place by the time it is needed.

Nonetheless, the staff is very hesitant to attempt to amend the county-specific jury selection provisions in SB 2139, because the bill is close to enactment and there is little time to craft and obtain consensus on such provisions. **Instead, we suggest revising Section 70215 to give courts greater flexibility in harmonizing inconsistent provisions pending the enactment of county-specific legislation and local rules implementing unification:**

Gov't Code § 70215 (added). County-specific legislation

70215. ~~The~~ (a) Except as provided in subdivision (b), the provisions of this article and other statutes governing unification of the municipal and superior courts in a county shall prevail over inconsistent statutes otherwise applicable to the municipal or superior courts in the county, including but not limited to statutes governing the number of judges, selection of a presiding judge, selection of a court executive officer, and employment of officers (including subordinate judicial officers), employees, and other personnel who serve the court.

(b) Notwithstanding subdivision (a), the court may preserve the effect of existing statutes governing jury selection in the county.

This should allow Nevada County to accommodate the needs of its jurors, until an appropriate amendment is passed or a local rule is established.

Reexamination of Jury Selection Statutes

Analyzing the various issues relating to jury selection has convinced the staff and Professor Kelso that the jury selection provisions are in need of reexamination. **We would add this to the list of future studies in the Commission's report.** Although some aspects of jury selection would be encompassed in the proposed study on taking full advantage of unification, other aspects would not, making it appropriate to list the matter separately (e.g., Judge Conger reports that it would save much expense if the Department of Motor Vehicles was required by statute to cull noncitizens from the juror source lists it provides to the courts).

CODE OF CIVIL PROCEDURE SECTION 395.9: MISCLASSIFICATION AS LIMITED CIVIL CASE OR OTHERWISE

Proposed Code of Civil Procedure Section 395.9 is the Commission's key provision on misclassification of civil cases. The current draft provides:

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 paragraph (1) of subdivision (b) of Section 581, but shall, on the motion 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. A motion for reclassification does not extend the moving party's time to answer or otherwise plead.

(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 motion of either party within 30 days after the party became or reasonably should have been 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) 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.

(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.

Attorney Paul Crane has alerted the Commission to some important issues relating to this provision. (Exhibit pp. 3-4.)

In particular, he expresses concern about "the concept of making a motion within thirty days after the party should have become aware of the grounds for misclassification." (Exhibit p. 3.) He explains:

> I am presently the attorney for the defendant in a personal injury action which was filed in Superior Court. The action alleges damages in excess of $25,000.00. I knew from discussing this with my client that the damages were trivial. In due course, I served interrogatories which revealed that there was one hospital emergency room visit for a total cost of $300.00. Two or three months later, when the case came up for trial setting, I orally moved the court to have the matter sent to Municipal Court, which motion was granted.
>
> I do not think this experience is unusual. …. Under proposed CCP § 395.9, does the thirty days begin to run when the client told me that damages were trivial or when I received the response to interrogatories, and in either event, was it necessary for me to make a special trip to court to get the action sent to Municipal Court or under the new system, to have it re-classified as a limited action?

(*Id.*)

The staff agrees that the proposed provision is ambiguous regarding precisely when the thirty-day period begins to run. In many instances, it may be difficult to identify the moment when a party became or reasonably should have been aware of the grounds for misclassification. Even if a party has a basis for alleging misclassification, it may be premature to bring the motion until some discovery is conducted and the motion can be properly supported. Even then, the amount at stake may not warrant a separate trip to court to seek reclassification.

The staff therefore suggests the following revision of proposed Section 395.9:

> (b) ~~If an action or proceeding is commenced as a limited civil case or otherwise pursuant to Section 422.30, and it later~~ If it 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 motion of either party ~~within 30 days after the party became or reasonably should have been aware of the grounds for misclassification, or five days in a proceeding for unlawful detainer, forcible detainer, or forcible entry~~ establishing the grounds for misclassification and good cause for not seeking reclassification earlier, or on the court's own motion at any time, reclassify the case.

Mr. Crane agrees with this approach.

PROPOSED GOVERNMENT CODE SECTION 70201: CONDUCT OF VOTE

To provide a clear procedure, the Commission proposed the following provision on conducting a vote for unification:

> **Gov't Code § 70201 (added). Conduct of vote**
>
> 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.
>
> **Comment.** Section 70201 does not specify a manner of voting (e.g., secret ballot). This matter is left to Judicial Council rules. See Section 70200(c).

This provision was incorporated into the stopgap version of SB 2139, but was later deleted to eliminate controversy. Judicial Council rules for the conduct of a vote preserve the effect of the provision.

The Commission needs to decide whether to retain the provision in its report, despite the deletion from SB 2139. **The staff believes that the provision gives valuable guidance, so we would keep it in the report.** In any event, **the staff will renumber subsequent provisions in the report to conform to the numbering in SB 2139.**

Respectfully submitted,

Barbara S. Gaal
Staff Counsel

NEVADA COUNTY SUPERIOR COURT

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C. ANDERS HOLMER
Judge

PAULA J. CARLI
Court Executive Officer

July 15, 1998

Barbara S. Gaal, Staff Counsel
California Law Revision Commission
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Palo Alta, CA 94303-4739

FAX # 650-494-1827

Dear Ms. Gaal:

Thank you for submitting an excerpt from CLRC Staff Memorandum 98.47 which is subject to consideration at the July 17, 1998 CLRC meeting on the topic of CCP §198.5.

As you are aware, a revision to CCP §198.5 has become necessary for many counties in light of the passage of Proposition 220.

I generally concur with the staff memorandum and proposed amendments to CCP §198.5(b). However, I felt I should advise you of my thoughts regarding the continued need of CCP §198.3.

Although the proposed amendment of CCP §198.5(b) satisfies the same basic goal of CCP §198.3, the proposed revision is silent on the issue of whether residents of Eastern Nevada County have to travel to the county seat for jury service. The legislative history of CCP §198.3 reveals that the legislation was prompted only to minimize juror hardship. As you may be aware, residents of Eastern Nevada County are 54 miles away from the county seat and the extreme snow conditions of Donner Pass and the Sierra Nevada mountains makes winter time travel inconvenient at best and dangerous at worst.

My fear is that unless you receive comments from judges like me that someone may feel there is no longer a need for the type of laws reflected in CCP §§199.2, 199.3 and 199.5. Although it is true that the judges of each county could, by local rule, eliminate the need for jurors traveling from one portion of the county to another, I believe the better choice is to have this exemption codified in the Code of Civil Procedure.

I would recommend that the Law Revision Commission contemplate an amendment to CCP §199.3 as well as the proposed amendment to CCP §198.5(b). I believe CCP §199.3 should be revised as follows:

> Not withstanding CCP §198.5(b), in Nevada County, trial jury venires for the Truckee Branch of the Superior Court shall be drawn from residents of Eastern Nevada County as defined in local rules of Nevada County Superior Court, except as otherwise provided in this section. Prospective jurors residing in the area served by the Truckee Branch of the Superior Court, except as otherwise provided in this section, shall only be included in trial court venires or sessions of the Truckee Branch of the Superior Court. However, each prospective juror residing in the county shall be given the opportunity to elect to serve on juries with respect to trials held anywhere in the county in accordance with the rules of the Superior Court, which shall afford to each eligible resident of the county an opportunity for selection as a jury trial venireman. Additionally, nothing in this section shall preclude the Superior Court, in its discretion, from ordering a county-wide venire in the interest of justice.

Please feel free to contact me if you have any questions about my suggestions. I appreciate the opportunity of providing input to the California Law Revision Commission.

Sincerely,

C. Anders Holmer

C. ANDERS HOLMER
Judge of the Nevada County Superior Court

CAH:mo

cc: Paula Carli
Court Executive Officer

Judge Ersel L. Edwards
Presiding Judge of the Nevada County Superior Court

Judge W. Jackson Willoughby
Presiding Judge of the Placer County Superior Court

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FILE NO. 934.68

July 15, 1998

VIA FACSIMILE AND U.S. MAIL

Nathaniel Sterling, Esq.
California Law Revision Commission
4000 Middlefield Road, Suite D1
Palo Alto, CA 94303

Re: SCA4 - Implementing Legislation

Dear Mr. Sterling:

I have just had an opportunity to review the Commission Minutes of June 4, 1998 and have the following concern with proposed CCP § 395.9(b) with particular reference to the concept of making a motion within thirty days after the party should have become aware of the grounds for misclassification.

I am presently the attorney for the defendant in a personal injury action which was filed in Superior Court. The action alleges damages in excess of $25,000.00. I knew from discussing this with my client that the damages were trivial. In due course, I served interrogatories which revealed that there was one hospital emergency room visit for a total cost of $300.00. Two or three months later, when the case came up for trial setting, I orally moved the court to have the matter sent to Municipal Court, which motion was granted.

I do not think this experience is unusual. (It was unusual for me, in that ordinarily I do not handle personal injury matters.) Under proposed CCP § 395.9, does the thirty days begin to run when the client told me that damages were trivial or when I received the response to interrogatories, and in either event, was it necessary for me to make a special trip to court to get the action sent to Municipal Court or under the new system, to have it re-classified as a limited action?

My suggestion would be that it may work better to eliminate a fixed time period in which a party can bring a motion, but instead to provide that the court may deny the motion or grant the transfer as of a future date if the immediate transfer of the

action would [unreasonably] interfere with the court's calendar or otherwise [unreasonably] inconvenience the court or the parties.

Kindest regards.

Sincerely,

Paul N. Crane

PNC:pk

cc: Jerry Sapiro, Esq.

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