

Memorandum 98-61

Trial Court Unification: New Issues

The Commission's proposed implementing legislation for SCA 4 (SB 2139 (Lockyer)) passed the Legislature and is awaiting the Governor's signature. The bill was amended several times in August to implement Commission decisions, avoid conflicts with other bills, make technical corrections, and add or revise provisions not proposed by the Commission (mostly concerning personnel issues). We do not expect the Governor to sign the bill until late September, because that will help minimize conflicts with other bills. We have tried to ensure that the Governor signs the pertinent bills in an order that avoids conflicts.

Even if the Governor signs the bills in the proper order, some clean-up legislation will be necessary next session. At present, we are aware of the following issues:

CODE OF CIVIL PROCEDURE SECTION 77

Both SB 2139 and another bill, AB 1094 (Asm. Judic.), amend Family Code Section 400, but only AB 1094 contains double-jointing provisions accounting for this conflict. To avoid overriding AB 1094's substantive change to Family Code Section 400, the Governor needs to sign AB 1094 after SB 2139.

Unfortunately, however, both bills also amend Code of Civil Procedure Section 77, concerning the structure and functioning of the appellate division of the superior court (formerly, the appellate department). Both bills contain double-jointing provisions as to this conflict, but the double-jointing provision in AB 1094 is slightly imperfect: In one place it refers to the appellate department, instead of the appellate division. Assuming that AB 1094 is signed after SB 2139 as we expect, it will be necessary to correct this reference to the appellate department to conform to the terminology used in the Constitution. See Cal. Const. art. VI, § 4 ("In each superior court there is an appellate division."). **The Commission should include an appropriate amendment of Code of Civil Procedure Section 77 in its clean-up bill.**

GOVERNMENT CODE SECTION 71042.6

SB 2139 amends Government Code Section 71042.5 as proposed by the Commission:

Gov't Code § 71042.5 (amended). Preservation of judicial districts for purpose of publication

SEC. _____. Section 71042.5 of the Government Code is amended to read:

71042.5. Notwithstanding any other provision of law, upon consolidation of judicial districts or unification of municipal and superior courts in a county, the territory embraced within the respective prior component judicial districts shall be separate judicial districts for the purpose of publication within a judicial district.

Comment. Section 71042.5 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). This preserves the effect of statutes that specify publication by judicial district, rather than by county. See, e.g., Bus. & Prof. Code § 21707; Civ. Code §§ 2924f, 3440.1, 3440.5; Code Civ. Proc. §§ 701.540, 1208.5; Com. Code §§ 6105, 7210; Rev. & Tax Code §§ 3381, 3702. *Cf.* Code Civ. Proc. § 38 (“judicial district” defined, subject to contrary statute).

The Commission’s report explains the effect of this amendment:

Publication in Former Municipal Court Districts

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

Trial Court Unification: Revision of Codes, 28 Cal. L. Revision Comm’n Reports 51, 72 (1998) (footnotes omitted).

The amendment of Government Code Section 71042.5 necessitates a conforming amendment of Government Code Section 71042.6:

Gov’t Code § 71042.6 (amended). Map to establish district boundaries

SEC. _____. Section 71042.6 of the Government Code is amended to read:

71042.6. For the purpose of establishing boundaries under Section 71042.5, upon consolidation of judicial districts or unification of municipal and superior courts in a county, a map approved by the county surveyor shall be filed with the county recorder showing the boundaries of all consolidated or unified districts and component districts as of the date of consolidation or unification.

Such map and boundaries shall be applicable to any consolidation or unification which becomes effective on or after the effective date of this section.

Such map shall be conclusively presumed to be accurate and may be used in evidence in any proceeding involving application of Section 71042.5.

Comment. Section 71042.6 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). This preserves the effect of statutes that specify publication by judicial district, rather than by county. This preserves the effect of statutes that specify publication by judicial district, rather than by county. See, e.g., Bus. & Prof. Code § 21707; Civ. Code §§ 2924f, 3440.1, 3440.5; Code Civ. Proc. §§ 701.540, 1208.5; Com. Code §§ 6105, 7210; Rev. & Tax Code §§ 3381, 3702. *Cf.* Code Civ. Proc. § 38 (“judicial district” defined, subject to contrary statute).

We would include this conforming amendment in the Commission’s clean-up legislation.

COMMENTS OF THE STATE BAR LITIGATION SECTION

The State Bar Litigation Section has sent a letter commenting on several provisions in the SCA 4 implementing legislation. (Exhibit pp. 1-3.) This letter arrived too late to consider in conjunction with SB 2139, but the Commission should consider it now in connection with its SCA 4 clean-up bill.

Code of Civil Procedure Section 198.5

SB 2139 amends Code of Civil Procedure Section 198.5 to 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)

The Litigation Section recommends rewording the last clause of Section 198.5(a) to read: “from a ~~judicial district~~ judicial districts adjacent to the judicial district in which the city is located.” (Exhibit p. 1.) It explains that a county “may have more than two judicial districts, and this change would eliminate a potential ambiguity.” (*Id.*)

The staff agrees that the proposed revision would improve clarity. This revision is not essential, however, because Code of Civil Procedure Section 17 establishes a rule of construction that the singular includes the plural. **The staff would not amend Section 198.5 merely to eliminate this minor ambiguity, which preexisted the Commission’s amendment of Section 198.5. We could address the point in a revised Comment:**

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 (a) continues former Section 198.5 without substantive change for counties with municipal courts. For guidance where there is more than one judicial district adjacent to the district in which the case is tried, see Section 17 (singular includes the plural).

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.

Code of Civil Procedure Section 395.9

The Litigation Section suggests several revisions of Code of Civil Procedure Section 395.9, which establishes a procedure for reclassifying a case that is misclassified as a limited civil case or otherwise. As passed by the Legislature, Section 395.9 provides in relevant part:

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 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 the jurisdictional classification of the case, the court shall, on motion of either party 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.

....

(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.

Two of the Litigation Section's suggestions are essentially stylistic. In subdivision (b), the Litigation Section would substitute "reclassification" for "misclassification":

[T]he motion is for reclassification. It is not a motion for "misclassification." The motion should therefore establish the grounds for "reclassification," and the word "misclassification" should be deleted.

(Exhibit p. 2.) The staff is amenable to this change but does not feel strongly about it. A party is entitled to reclassification only if a case is misclassified, so a motion for reclassification must establish that the case is misclassified. Technically, however, it would be more correct to refer to "grounds for reclassification" than "grounds for misclassification." **If we decide to propose**

substantive revisions in Section 395.9, the staff would also make this stylistic revision.

The Litigation Section also criticizes the wording of subdivision (g):

In proposed Section 395.9(g), we suggest the deletion of the phrase “ ... the excess may be remitted” That phrase should be replaced by a phrase such as, “ ... the prayer may be limited to the maximum amount which may be awarded in a limited civil case.” The word “remitted” is ambiguous and does not necessarily mean “limited to.”

(*Id.*) The language suggested by the Litigation Section is more explicit than “the excess may be remitted.” There is little danger of confusion, however, because “the excess may be remitted” has been used in similar statutes for years (e.g., Code Civ. Proc. §§ 396, 666). **The staff would not deviate from this accepted and long-used statutory terminology.**

The Litigation Section also makes two more substantive suggestions regarding Section 395.9. In subdivision (b), the Litigation Section would delete the requirement that the moving party establish good cause for not seeking reclassification earlier:

The moving party should not be required to show timeliness. A moving party should not have to run the risk of waiving attorney-client and attorney work product privileges in order to make the motion. Instead, unreasonable delay should be a matter of defense for the opponent to the motion. If a party has waited too long, so that the opposing party has been prejudiced, that should be a matter to be raised by the opponent.

(*Id.*) Essentially, the issue is who should bear the burden of proof. Should the party moving for reclassification have to show good cause for bringing the motion after the time to plead, or should the other side have to show prejudice resulting from the delay?

The staff would leave the burden where it is. Many consequences flow from whether a case is classified as a limited civil case or otherwise. (See Exhibit p. 10.) It is important that cases be properly classified as early as possible. If delay in seeking reclassification were tolerated it could be manipulated to strategic advantage (e.g., bringing the motion to interrupt scheduled discovery). Even where delay does not prejudice the plaintiff, it may interfere with effective court

administration. A standard requiring the nonmoving party to show prejudice from the delay would not ensure protection of the court's interests.

The Litigation Section also “strongly object[s]” to subdivision (h), under which the costs and fees of reclassifying a case are to be paid by the party who filed the pleading that erroneously classified the case (unless the court otherwise directs):

Unless a case was maliciously or intentionally misclassified, no sanctions should be awarded. The award of costs and fees in the case would await the final results of the case on the merits. The mere fact that a case is reclassified should not result in an award of costs and fees for the entire proceedings. Cases may be misclassified for a variety of reasons, most of them innocent. For example, plaintiff or cross-complainant may not know the actual amount of damages before a complaint or cross-complaint has to be filed to avoid statutes of limitations or other bars. To award fees as a sanction for a non-intentional or non-malicious erroneous classification would be an unconscionable burden, particularly in a limited civil case where the amount at issue is relatively small. At most, an award should be limited to the actual costs of reclassifying the case. Even then, since the reclassification will be in the same court, rather than a transfer to a different court, the amount of the costs which may be awarded in connection with reclassification ought to be *de minimis*.

(*Id.*)

The Litigation Section appears to interpret subdivision (h) as a provision calling for an award of sanctions, including attorney's fees. This is not the intent, although such an interpretation is understandable. Subdivision (h) is drawn from Code of Civil Procedure Section 396, which governs transfers for lack of subject matter jurisdiction. Section 396 provides in relevant part:

Upon the making of an order for such transfer, proceedings shall be had as provided in Section 399 of this code, the costs and fees thereof, and of filing the case in the court to which transferred, to be paid by the party filing the pleading in which the question outside the jurisdiction of the court appears unless the court ordering the transfer shall otherwise direct.

The reference to “fees” means “transfer fees,” such as the fee for filing the case in the transferee court. See, e.g., *Wheeler v. City of Santa Monica*, 219 Cal. App. 3d 1554, 1561-62, 269 Cal. Rptr. 175 (1990); R. Weil & I. Brown, Jr., *Civil Procedure Before Trial Jurisdiction and Venue* ¶¶ 3:122.2-3:122.5 (Rutter Group 1998). The

parallel language in Section 395.9 means “reclassification fees,” such as any additional amount due for filing the initial pleading (because the filing fee for a limited civil case is less than the filing fee for other cases).

We could make this more clear by revising Section 395.9, or by revising the Comment to the provision. **The staff favors revising the Comment, rather than eliminating the parallelism between Sections 395.9 and 396. We suggest the following revised Comment:**

Comment. Section 395.9 is added to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The provision is drawn from Section 396 (transfer for lack of subject matter jurisdiction), with modifications to fit the context of reclassification. Subdivision (h) does not authorize an award of attorney’s fees attributable to misclassification of a case. For authority to make such an award under limited circumstances, see Sections 128.6, 128.7.

See Sections 32.5 (jurisdictional classification), 85 (limited civil cases) & Comment.

Proposed Government Code Section 70200.5

The Commission’s report includes a proposed provision on the procedure for voting on unification (proposed Gov’t Code § 70200.5). This provision was initially included in SB 2139, but was later deleted. Judicial Council rules preserve the effect of the provision.

The State Bar Litigation Section suggests a revision of the provision, which was formerly numbered as proposed Government Code Section 70201. (Exhibit p. 3.) **We will forward this suggestion to the Judicial Council for consideration.**

Government Code Section 70216

The Commission’s report includes a proposed statute on unification during a municipal court election:

§ 70216. Unification during municipal court election

70216. (a) If unification of the municipal and superior courts within a county occurs during an election of a municipal court judge, the conduct of the direct primary election and general election is governed by the law otherwise applicable to election of a municipal court judge.

(b) A judge elected pursuant to this section shall be deemed to be a previously selected municipal court judge within the meaning of subdivision (b) of Section 23 of Article VI of the California Constitution.

(c) As used in this section, “during an election” means during the period beginning on the 127th day before a direct primary election and ending on the day of the general election.

Comment. Section 70216 is added to clarify how Article VI, Section 23 of the California Constitution applies where unification occurs during a municipal court election.

Under subdivision (a), the election proceeds as originally planned, helping to promote an orderly transition to unification. Cal. Const. art. VI, § 23(a).

Under subdivision (b), the winner of the election is a previously selected municipal court judge, and thus becomes a superior court judge through unification. Cal. Const. art. VI, § 23(b).

Subdivision (c) makes clear that Section 70216 applies where unification occurs between (1) the first day for filing a declaration of intention to become a candidate for a municipal court judgeship, and (2) the day of the general election. See Elec. Code §§ 8020 (nomination documents “shall first be available on the 113th day prior to the direct primary election”), 8022 (declaration of intention to become a candidate shall be filed “not more than 14 nor less than five days prior to the first day on which nomination papers may be presented for filing”).

This provision was incorporated into SB 2139. As the Commission may recall, the issues involved in drafting the provision were complex and politically delicate. See Memorandums 98-33, 98-47.

The Litigation Section finds the provision “awkwardly worded.” (Exhibit p. 1.) For example, says the Litigation Section, a judge would not be elected pursuant to the provision, but “would be elected pursuant to constitutional and statutory requirements found elsewhere.” (*Id.*) The Litigation Section suggests consideration of the following revision:

If unification of the municipal and superior courts within a county occurs between the 127th day before a direct primary election and the day of the general election, a candidate for the office of municipal court judge who is elected during that election shall be deemed to be a previously selected municipal court judge within the meaning of subdivision (b) of Section 23 of Article VI of the California Constitution.

(*Id.*)

At this point, the staff strongly recommends against making stylistic revisions in Section 70216. We would only reopen the issues if a significant substantive flaw is identified.

REVISED COMMENTS

There are a number of typographical errors in the Comments to the Commission's report. (See Exhibit pp. 4-9.) **The Commission should approve the Comments as corrected.** We will send this version to legal publishers for incorporation into their 1998 codes.

Respectfully submitted,

Barbara S. Gaal
Staff Counsel

LITIGATION SECTION
THE STATE BAR OF CALIFORNIA

Chair
GEORGE L. MALLORY, Jr., Los Angeles

Vice-Chair
DANA J. DUNWOODY, San Diego

Secretary
ROBERT S. GERBER, San Diego

Treasurer
JEROME SAPIRO, Jr., San Francisco

Advisors
KIMBERLY R. CLEMENT, Santa Rosa
HON. LAWRENCE W. CRISPO, Los Angeles
HON. IRMA E. GONZALEZ, San Diego
MARK W. HANSEN, San Diego
MYRL L. MACKLIN, Los Angeles
MARK C. MAZZARELLA, San Diego
HON. JEFFREY MILLER, San Diego
HON. WILLIAM F. RYLAARSDAM, Santa Ana
TERESA TAN, Scottsdale, AZ
HON. JAMES L. WARREN, San Francisco



555 FRANKLIN STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 561-8846
FAX: (415) 561-8368
WEBSITE: www.calbar.org/litigation.htm

Law Revision Commission
RECEIVED

AUG 10 1998

File: _____

Executive Committee
LAURA LEE BLAKE, Irvine
KATESSA M. CHARLES, Los Angeles
NANCI L. CLARENCE, San Francisco
DANA J. DUNWOODY, San Diego
ROBERT S. GERBER, San Diego
HOWARD L. HALM, Los Angeles
VICTORIA L. KALMAN, Grass Valley
RUSSELL LEIBSON, San Francisco
GEORGE L. MALLORY, Jr., Los Angeles
AUDREY A. MILLEMANN, Sacramento
JANICE E. MULLIGAN, San Diego
CURTIS D. PARVIN, Irvine
NORMAN J. RODICH, Irvine
JEROME SAPIRO, Jr., San Francisco
RODERICK M. THOMPSON, San Francisco

State Bar Litigation Section Administrator
REBECCA E. FINK, San Francisco

August 6, 1998

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

re: Law Revision Commission Staff Memorandum 98-47

Dear Sterling:

This letter will comment on behalf of the Litigation Section of the State Bar regarding Staff Memorandum 98-47 on Trial Court Unification, dated July 10, 1998, and the first supplement to that memorandum, dated July 16, 1998.

We find proposed Government Code section 70216 awkwardly worded. For example, a judge is not elected pursuant to that code section. A judge would be elected pursuant to constitutional and statutory requirements found elsewhere. We suggest consideration of the following revision:

If unification of the municipal and superior courts within a county occurs between the 127th day before a direct primary election and the day of the general election, a candidate for the office of municipal court judge who is elected during that election shall be deemed to be a previously selected municipal court judge within the meaning of subdivision (b) of Section 23 of Article VI of the California Constitution.

We recommend that the last clause in proposed Code of Civil Procedure section 198.5(a) be reworded to read: "... from judicial districts adjacent to the judicial district in which the city is located." A county may have more than two judicial districts, and this change would eliminate a potential ambiguity.

We submit the following observations regarding proposed Code of Civil Procedure section 395.9:

1. Proposed Section 395.9(b) is a step in the right direction. We agree with the observations of Paul Crane, Esq. However, two further changes should be made. First, the motion is for reclassification. It is not a motion for "misclassification." The motion should therefore establish the grounds for "reclassification," and the word "misclassification" should be deleted.
2. We recommend deletion from proposed Section 395.9(b) of the phrase "... and good cause for not seeking reclassification earlier." The moving party should not be required to show timeliness. A moving party should not have to run the risk of waiving attorney-client and attorney work product privileges in order to make the motion. Instead, unreasonable delay should be a matter of defense for the opponent to the motion. If a party has waited too long, so that the opposing party has been prejudiced, that should be a matter to be raised by the opponent. Just as an arbitrary thirty day limit was inappropriate for the reasons stated by Mr. Crane, not seeking reclassification earlier should not defeat a motion for reclassification unless the other parties to the case have been prejudiced by the delay.
3. In proposed Section 395.9(g), we suggest the deletion of the phrase "... the excess may be remitted" That phrase should be replaced by a phrase such as, "... the prayer may be limited to the maximum amount which may be awarded in a limited civil case." The word "remitted" is ambiguous and does not necessarily mean "limited to."
4. We strongly object to proposed Section 395.9(h). Unless a case was maliciously or intentionally misclassified, no sanctions should be awarded. The award of costs and fees in the case should await the final results of the case on the merits. The mere fact that a case is reclassified should not result in an award of costs and fees for the entire proceedings. Cases may be misclassified for a variety of reasons, most of them innocent. For example, plaintiff or cross-complainant may not know the actual amount of damages before a complaint or cross-complaint has to be filed to avoid statutes of limitations or other bars. To award fees as a sanction for a non-intentional or non-malicious erroneous classification would be an unconscionable burden, particularly in a limited civil case where the amount at

Nathaniel Sterling, Esq.
August 6, 1998
Page 3

issue is relatively small. At most, an award should be limited to the actual costs of reclassifying the case. Even then, since the reclassification will be in the same court, rather than a transfer to a different court, the amount of the costs which may be awarded in connection with reclassification ought to be de minimis.

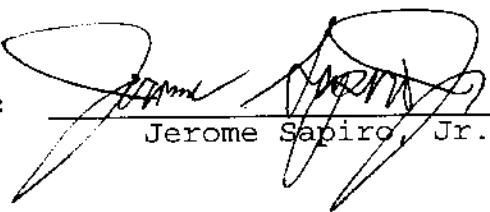
We suggest that the beginning of proposed Government Code section 70201(a) be reworded. The vote of the judges in the county is "on the issue of unification," not necessarily a vote "for" unification, and that change should be made in the first line of the proposed new section. The mere fact that a vote is called does not mean that a majority of the judges will vote in favor, and they should be free to vote either for or against the proposal.

Thank you for this opportunity to comment.

Very truly yours,

LITIGATION SECTION

By:


Jerome Sapiro, Jr.

cc: Ruth L. Robinson, Esq.
George L. Mallory, Jr., Esq.
Rebecca E. Fink, Litigation Section Administrator
David C. Long, Esq.

(JS:116:vy)

September 11, 1998

REPORT OF THE
CALIFORNIA LAW REVISION COMMISSION
ON SENATE BILL 2139

TRIAL COURT UNIFICATION

Senate Bill 2139 was introduced by Senator Bill Lockyer to implement the Commission's recommendation, *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51 (1998). The Comments set out below correct typographical and other technical errors in the recommendation, and supersede the comparable Comments in the recommendation.

Code Civ. Proc. § 77 (amended). Appellate division

Comment. Section 77 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Subdivision (a) requires adoption of court rules intended to promote the independence and quality of judges serving in the appellate division. See Cal. Const. art. VI, § 4 (expressly recognizing the goal of promoting the independence of the appellate division). Rules may provide relevant factors to be used in making appointments to the appellate division, such as length of service as a judge, reputation within the unified court, and degree of separateness of the appellate division workload from the judge's regular assignments (e.g., a superior court judge who routinely handles large numbers of misdemeanors might ordinarily not serve in the appellate division). Review by a panel of judges might include judges assigned from another county in appropriate circumstances, or even by a panel of appellate division judges from different superior courts who sit in turn in each of the superior courts in the "circuit."

Subdivision (b) continues the rule that the appellate division sits in panels of three. A judge may not participate in appellate review of any proceeding that the judge tried or heard. Section 170.1(7)(b) 170.1(b).

Subdivision (e) is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b). It is also amended to specify the jurisdiction of the appellate division in a unified superior court. For guidance on which civil cases are subject to the appellate jurisdiction of the appellate division, see Section 904.2 (taking appeal in limited civil case) and Constitution Article VI, Section 11.

Section 77 is amended throughout to replace references to the appellate department with references to the appellate division, and to replace references to the Chairperson of the Judicial Council with references to the Chief Justice. This is consistent with the terminology used in Constitution Article VI, Sections 4, 10, and 11.

Code Civ. Proc. § 85 (added). Limited civil cases

Comment. Section 85 is added to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). It facilitates differentiation among civil cases for purposes such as determining original jurisdiction in a county in which there is a municipal court (see Section 85.1), applying economic litigation procedures (see Section 91), and defining appellate jurisdiction (see Sections 904.1, 904.2).

The amount in controversy requirement of subdivision (a) derives from the \$25,000 jurisdictional limit that applied to the municipal courts. See, e.g., 2 B. Witkin, *California Procedure Courts* § 249, at 323-25 (4th ed. 1996). Now, a case is a limited civil case and subject to the procedures for a limited civil case only if the amount in controversy is \$25,000 or less. The

last sentence of subdivision (a), defining “amount in controversy,” continues the former second sentence of Section 91 without change. For discussion of calculating amounts in controversy in cases involving multiple causes, see R. Weil & I. Brown, Jr., *California Practice Guide: Civil Procedure Before Trial*, *Jurisdiction and Venue* §§ 3:97-3:111, at 3-22 to 3-24 (1997); 2 B. Witkin, *California Procedure Jurisdiction* §§ 38-44, at 582-86 (4th ed. 1996).

Subdivision (b) reflects and preserves limitations on the types of equitable relief awardable in a municipal court. See Section 580 & Comment. Where a money judgment for \$25,000 or less would fully resolve a dispute and there is no need for a declaration of future rights, the case is a limited civil case despite a prayer for declaratory relief. See *Cardellini v. Casey*, 181 Cal. App. 3d 389, 396, 226 Cal. Rptr. 659 (1986).

Subdivision (c) continues the effect of former law, under which each county had one or more municipal courts and a superior court. Causes like those now listed in subdivision (c) were within the original jurisdiction of the municipal court and subject to procedures now applicable to a limited civil case. Where a cause within the original jurisdiction of the municipal court was properly joined with one within the original jurisdiction of the superior court, the entire case would be tried in the superior court. See, e.g., *Wiggins v. Washington Nat’l Life Ins. Co.*, 246 Cal. App. 2d 840, 847-848 848, 55 Cal. Rptr. 129 (1966) (“from the moment defendant filed its cross-complaint for declaratory relief in the instant action the municipal court lost jurisdiction over the cause and was obliged to suspend further proceedings in the action and to transfer it to the superior court”); *Armstrong v. Transcontinental Land & Water Co.*, 134 Cal. App. 2d Supp. 889, 285 P.2d 1031 (1955) (joinder of equitable cross-complaint compelled transfer of entire action to superior court). Subdivision (c) continues that policy by requiring that relief in a limited civil case be exclusively of a type described in one or more of the listed provisions, or an unlisted provision if the provision classifies the case as a limited civil case or places the case within the original jurisdiction of the municipal court. See, e.g., Section 688.010 (enforcement of state tax liability pursuant to warrant or notice of levy). If another type of cause is joined, the procedures for a limited civil case do not apply.

See Sections 22 (action defined), 23 (special proceeding defined).

Code Civ. Proc. § 87 (repealed). Corporation as party

Comment. Section 87 is repealed as an unconstitutional intrusion on the power of a court to set minimum standards for who may appear in court on behalf of a corporation. *Merco Construction Engineers Constr. Eng’rs, Inc. v. Municipal Court*, 21 Cal. 3d 724, 731, 581 P.2d 636, 147 Cal. Rptr. 631 (1978) (When “when the matter at issue involves minimum standards for engaging in the practice of law, it is this court and not the Legislature which is final policy maker.”). See also *Say & Say, Inc. v. Ebershoff*, 20 Cal. App. 3d 4th 1759, 1766-67, 25 Cal. Rptr. 2d 703, 709 (1993) (“A corporation can never appear in this or the superior court in civil or criminal litigation except in limited circumstances in some small claims litigation in propria persona.”); *Albion River Watershed Protection Ass’n v. Department of Forestry & Fire Protection*, 20 Cal. App. 3d 4th 34, 37, 24 Cal. Rptr. 2d 341, 343 (1993) (“It is settled that an unincorporated association must be represented by a person licensed in this state to practice law.”); *Clean Air Transport Systems v. San Mateo County Transit Dist.*, 198 Cal. App. 3d 576, 578-79 578, 243 Cal. Rptr. 799 (1988) (“A lay person who purports to represent a corporation is engaged in the unlawful practice of law.”).

Code Civ. Proc. § 402.5 (added). Change of venue in limited civil case

Comment. Section 402.5 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section makes clear that even though a limited civil case is triable in the superior court in a county in which there is no municipal court, there may be circumstances where it is appropriate to transfer the case for trial within the same county rather than to another county. This parallels statutory authority for change of venue in misdemeanor and infraction cases. Penal Code § 1038 (Judicial Council rules). The Judicial

Council may prescribe rules governing transfers. Cal. Const. art. VI, § 6 (“To improve the administration of justice the council shall ... adopt rules for court administration, practice and procedure, ~~not inconsistent with statute~~ The rules adopted shall not be inconsistent with statute.”).

Code Civ. Proc. § 580 (amended). Relief awardable

Comment. Section 580 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

The last sentence of subdivision (a) continues former Section 86(c) without substantive change.

Subdivision (b)(1) makes explicit that although the jurisdiction of a unified superior court includes matters in which the amount in controversy exceeds the maximum for a limited civil case as provided in Section 85, the court cannot grant substantive relief exceeding that maximum in a limited civil case. Formerly, each county had one or more municipal courts and a superior court, and the jurisdictional limit of the municipal courts constrained the relief awardable in matters tried in those courts. *See* *Stokus v. Marsh*, 217 Cal. App. 3d 647, 653, 266 Cal. Rptr. 90 (1990) (“we view the jurisdictional limit of Code of Civil Procedure section 86 as applying to the substantive judgment and not the award of costs, including reasonable attorneys’ fees”); *Bakkebo v. Municipal Court*, 124 Cal. App. 3d 229, 235, 177 Cal. Rptr. 239 (1981) (“Since the substantive demand is the touchstone of jurisdiction it follows that if the recovery on that demand is within the jurisdiction of the municipal court, that court retains jurisdiction to award costs and attorney fees even though those items, when added to the substantive portion of the judgment, aggregate an amount in excess of the jurisdictional limit.”); *see also* Section 396 (“In any case where the lack of jurisdiction is due solely to an excess in the amount of the demand, the excess may be remitted and the action may continue in the court where it is pending.”). A limited civil case is equivalent to a matter within the original jurisdiction of the municipal court under former law, so Section 580(b)(1) as amended continues and codifies the effect of former law.

Similarly, subdivisions (b)(2)-(b)(5) reflect and preserve limitations on the types of equitable relief awardable in a municipal court. *See* R. Weil & I Brown, Jr., *California Practice Guide: Civil Procedure Before Trial, Jurisdiction and Venue* §§ 3:12-3:18.1, at 3-6 to 3-7 (1997). *See also* *St. James Church of Christ Holiness v. Superior Court*, 135 Cal. App. 2d 352, 362, 287 P.2d 387 (1955) (municipal court lacks jurisdiction to grant permanent injunction); *Pasadena Investment Inv. Co. v. Peerless Casualty Co.*, 134 Cal. App. 2d Supp. 902, 286 P.2d 1014 (1955) (municipal court lacks jurisdiction to grant declaratory relief). On enforcement of orders under the Family Code, *see* Family Code Sections 200, 290; ~~In re~~ *In re* *Marriage of Lackey*, 143 Cal. App. 3d 698, 191 Cal. Rptr. 309 (1983).

Cf. Sections 85, 85.1 (limited civil cases).

Code Civ. Proc. § 720.260 (amended). Undertaking by creditor

Comment. Section 720.260 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b). Formerly, each county had one or more municipal courts and a superior court, and Section 720.260 required an undertaking of \$2,500 for an action in municipal court and \$7,500 for an action in superior court. A limited civil case is equivalent to a matter within the original jurisdiction of the municipal court under former law, so Section ~~720.160~~ 720.260 as amended continues the effect of former law. *See* Section 85 (limited civil cases) & *Comment*.

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

Comment. Section 904.1 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Subdivision (a) implements California Constitution Article VI, Section 11(a), as it applies in civil cases (courts of appeal have appellate jurisdiction when superior courts have original

jurisdiction in causes of a type within appellate jurisdiction of courts of appeal on June 30, 1995, and in other causes prescribed by statute).

Paragraph (a)(1)(C), which made nonreviewable “a judgment on appeal from a municipal court or a justice court or a small claims court,” is deleted as unnecessary, because the introductory clause of Section 904.1 as amended already excludes those matters from its coverage.

Section 904.1 is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Code Civ. Proc. § 1033 (amended). Small recovery

Comment. Section 1033 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). It is also amended to reflect elimination of the justice court, Cal. Const. art. VI, §§ 1, 5(b) ; .

For guidance on what constitutes a limited civil case, see Section 85 & Comment.

Food & Agric. Code § 52514 (amended). Court jurisdiction

Comment. Section 52514 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

A limited civil case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. §§ 85, 85.1 (limited civil cases). See also Code Civ. Proc. §§ 91, 904.2, 1085 (trial procedures and writ and appellate jurisdiction for limited civil cases). The amendment to Section ~~52541~~ 52514 increases the jurisdictional amount to \$25,000, consistent with general provisions on limited civil cases and the jurisdiction of municipal courts. See Code Civ. Proc. §§ 85, 85.1.

Gov’t Code § 910 (amended). Contents of claim

Comment. Section ~~6301~~ 910 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 (limited civil cases) & Comment.

Gov’t Code § 26524 (amended). Judge as party defendant

Comment. Section ~~2652.4~~ 26524 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Gov’t Code § 69741.7 (repealed). Superior court sessions at justice courts

Comment. Section 69741.7 is repealed to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b). *Cf.* Section 69510 (superior court sessions in non-unified counties).

Gov’t Code § 70210. Transitional rules of court

Comment. Section 70210 mandates that the Judicial Council adopt rules of court to coordinate and guide the trial courts in effectively implementing trial court unification. The rules adopted by the Judicial Council may not be inconsistent with statute, including Section 77001, which requires that the Judicial Council promulgate rules that establish a decentralized system of trial court management and ensure that the trial court of each county establishes the means of selecting presiding judges and executive officers.

Subdivision (a) provides generally that the rules will ensure the orderly conversion of proceedings in the unified superior court as of the date the municipal and superior courts in a county are unified.

Subdivision (b) provides for the selection of the presiding judge, court executive officer, and appropriate committees or working groups to assist the presiding judge. The method of selection, and the specific duties and authorities for each will be set forth in the rules, as is currently the case in existing Rules 204, 205, 207, 532.5, and 532.6, and 573 of the California Rules of Court. This preserves the balance of power that currently exists between the legislature and the judiciary.

Subdivision (c) is intended to encourage the presiding judge to work closely with the court executive officer and court committees or other working groups to implement unification decisions.

Subdivision (d) provides that the courts will develop and adopt a personnel plan. The section parallels Rule 205(11).

Subdivision (e) provides for local rule adoption. As under current practice, the Judicial Council will determine which procedural issues shall be addressed by local rule and which by statewide rule. *Cf.* Section 68070 (Judicial Council shall adopt rules or procedures to encourage uniformity of requirements throughout a court and statewide).

Examples of issues that may be addressed by rule of court under subdivision (f) include the development of informational programs for the public and the Bar about unification, and education and training programs for judicial officers and court staff to facilitate the effective transition to a unified court.

Gov't Code § 70212. Transitional provisions

Comment. Subdivisions (a)-(f) of Section 70212 restate Constitution Article VI, Section 23(c). Although embodied in the Constitution, these provisions are subject to variation by statute. See Cal. Const. art. VI, § 23(c) (introductory clause).

The reference in subdivision (a) 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.")

Subdivision (g) makes clear that process issued by a municipal court remains enforceable by the superior court after unification.

Subdivision (h) is drawn from Section 71003 (powers of municipal court judge). Under this provision, if a statute provides for remand to or other proceedings in, or before a judge of, a municipal court that no longer exists as a result of the unification of the municipal and superior courts in a county, the proceedings are in the superior court in the county.

Gov't Code § 70214. Commissioners and referees

Comment. Section 70214 maintains the total authorized number of court commissioners and traffic referees or traffic trial commissioners in the county on unification of the municipal and superior courts in the county. For existing authority to appoint superior court commissioners, see Section 70141 et seq. Existing authority to appoint municipal court commissioners is found among county-specific statutes in the Government Code governing municipal courts. *Cf.* Sections 72000-74991. For existing authority to appoint municipal court traffic referees, see Section 72400. ~~For existing authority to appoint municipal court traffic trial commissioners, see Section 72400.~~

Gov't Code § 70215. County-specific legislation

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.")

Penal Code § 1214 (amended). Enforcement

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

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

Penal Code § 1538.5 (amended). Motion to return property or suppress evidence

Comment. Section 1538.5 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment. The language added to subdivision (m) is based on Cal. Const. art. VI, § 23(e)(7).

These amendments of Section 1538.5 are not intended to modify Article I, Section 28(d) of the California Constitution. *Cf.* *People v. Daan*, 161 Cal. App. 3d 22, 207 Cal. Rptr. 228 (1984).

It should be noted that procedures under this section that provide for superior court review of, or action based on, a ruling or order by a superior court judge or a magistrate must be performed by a superior court judge other than the judge or magistrate who originally made the ruling or order, unless agreed to by the parties. Section 859c.

Pub. Res. Code § 5560 (amended). Penalties and jurisdiction

Comment. Section 5560 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). In a county in which there is no municipal court, the relevant geographical unit is the county rather than judicial district. *Cf.* Code Civ. Proc. § 38 & Comment ("judicial district" defined). "District," as used in this section, means "any "regional park district, regional park and open-space district, or regional open-space district formed pursuant to this article." See Section 5500. The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

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

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