

Memorandum 99-16

Trial Court Unification: Followup Legislation

BACKGROUND

This memorandum reviews the status of our trial court unification followup work. This work is of three types:

Technical cleanup. The Commission at the December 1998 meeting approved miscellaneous technical cleanup revisions to implement trial court unification. These we expect will be included in a Senate Judiciary Committee bill on the matter. A few additional matters are discussed in the First Supplement to Memorandum 99-16, for possible inclusion in the bill.

Issues for future study. Followup legislation is required on a number of issues identified in the Commission's report for future study. Primary responsibility for each of these issues is assigned either to the Law Revision Commission or to the Judicial Council. The agency not assigned primary responsibility for a particular issue is to be consulted by the other. A number of the issues are scheduled for discussion at the Commission's February 1999 meeting. Others will be scheduled throughout the year. This memorandum reports on the status of the various studies.

Civil and criminal procedures in unified courts. The major followup study is to be a joint project of the Law Revision Commission and the Judicial Council. This is a study of the civil (and criminal) procedures used in the courts and a determination of whether there ought to be revisions in unified courts to realize the full potential of unification.

ISSUES FOR FUTURE STUDY

The trial court unification legislation directs the Commission and the Judicial Council to do followup studies identified in the Commission's report to the Legislature.

Gov't Code § 70219. Followup studies

70219. On submission by the California Law Revision Commission of its report to the Governor and Legislature pursuant to Resolution Chapter 102 of the Statutes of 1997 recommending statutory changes that may be necessitated by court unification, the Judicial Council and the California Law Revision Commission shall study and make recommendations to the Governor and Legislature on the issues identified in the report as appropriate for future study, including consideration of the experience in counties in which the courts have unified. Each agency shall assume primary or joint responsibility for the studies and recommendations as outlined in the report, and each agency shall consult with the other in the studies and recommendations. This section does not limit any authority of the Judicial Council or the California Law Revision Commission to conduct studies and make recommendations authorized or directed by law.

Law Revision Commission Primary Responsibility

The following topics are the primary responsibility of the Law Revision Commission. Their status is indicated immediately following the description of the topic.

Obsolete statutes relating to expired pilot projects or other expired programs. The McGeorge Institute for Legislative Practice has a project to collect the relevant statutes. The staff is deferring work on this until we have received the results of the Institute for Legislative Practice project.

Whether to conform the statutory provisions on circumstances for appointment of a receiver. This item is on the agenda for the Commission's February 4-5 meeting. See Memorandum 99-9.

Procedure for good faith improver claims. This item is on the agenda for the Commission's February 4-5 meeting. See Memorandum 99-10.

Procedure for obtaining a stay of a mechanic's lien foreclosure action pending arbitration. This item will be on the agenda for the Commission's April meeting.

Whether to make revisions regarding the repository for the duplicate of an affidavit pursuant to Fish & Game Code Section 2357. This item is on the agenda for the Commission's February 4-5 meeting. See Memorandum 99-15.

Clarification of provisions relating to obtaining counsel for defendant in a criminal case. This item is on the agenda for the Commission's February 4-5 meeting. See Memorandum 99-12.

Role of court reporter in a county in which the courts have unified, particularly in a criminal case. This item will be on the agenda for the Commission's April meeting.

Appealability of order of recusal in a criminal case. This is a technical revision, requiring addition of a cross-reference to the statutes. The Commission at its December 1998 meeting approved it for inclusion in the technical cleanup bill.

Publication of legal notice in a county with a unified superior court. A number of statutes call for legal publication in the "judicial district" in which something is located. Existing law preserves pre-unification judicial districts for this purpose. The issue here is whether to modernize the old statutes. This is a matter about which the Newspaper Publishers Association cares deeply. The staff believes it is premature to consider this topic, until we have some experience with legal publications under unification.

Resolving the numbering conflict in the two Chapters 2.1 (commencing with Section 68650) of Title 8 of Government Code. The numbering conflict was resolved in the 1998 maintenance of the codes bill. It is no longer an issue.

Default in an unlawful detainer case. This is a technical revision, requiring correction of subdivision numbers. The Commission at its December 1998 meeting approved it for inclusion in the technical cleanup bill.

Judicial Council Primary Responsibility

The following topics are the primary responsibility of the Judicial Council:

- Obsolete statutes relating to prior court and personnel restructurings.
- Superior court sessions, both general and special.
- Number of authorized commissioners and referees in a county in which the courts have unified.
- Reorganization of statutes governing court fees.
- Eligibility of judges to serve on the small claims advisory committee.
- Catalogue of cases within the appellate jurisdiction of the courts of appeal on June 30, 1995.
- Consolidation of jury commissioner functions for the courts in each county.
- Magistrate as judicial officer of the state or judicial officer of a particular court.
- Correction of county-specific statutes after unification in that county.

The Judicial Council is making progress on all of these topics. We expect to receive from them in the near future a memorandum detailing the scope of each topic and their proposed schedule for completing work on it. We will bring that information to the Commission's attention when we receive it.

CIVIL AND CRIMINAL PROCEDURES IN UNIFIED COURTS

The major study, which is assigned jointly to the Commission and the Judicial Council, is a review of procedures in unified courts.

In the process of preparing proposed statutory revisions to implement trial court unification, the Commission has identified a number of issues that are appropriate for future study. In particular, although the implementing legislation would preserve existing procedural distinctions between traditional superior court cases, traditional municipal court cases, and small claims cases, the Commission strongly recommends that the Legislature direct a study reexamining this three track system and its underlying policies in light of unification. Such a study may entail elimination of unnecessary procedural distinctions, reassessment of the jurisdictional limits for small claims procedures and economic litigation procedures, and reevaluation of which procedures apply to which type of case. Organizations with expertise suitable for conducting the proposed study include the Judicial Council and the Law Revision Commission; a joint study and report is advisable.

Note that, while this description of a review of court procedures focuses on civil procedure, the same kinds of concerns apply with respect to criminal procedure. And in fact the Commission's basic authorizing resolution to make recommendations to the Legislature for statutory changes necessitated by unification is not limited to civil procedure.

This is a longer-term study than the individual problem areas that have been identified. We have discussed with Judicial Council staff appropriate ways to coordinate the joint study. We have agreed that during the next two years the Judicial Council will gather detailed procedural data concerning cases in unified courts. During the same period we will retain an expert civil procedure consultant to prepare a background study on issues and possible approaches. The expense of the consultant is to be shared between the two agencies (with the possible participation of the State Bar; we have not yet approached them about this possibility). We may also be able to use the assistance of the Hastings Public

Law Research Institute in developing papers on individual aspects of judicial procedures. At the end of the two year period we will be in a position to focus on the issues and start developing recommendations for the Legislature.

If this approach appears acceptable to the Commission, we will proceed along those lines.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary