

First Supplement to Memorandum 99-16

Trial Court Unification: Clean-up Legislation

At the December meeting, the Commission approved clean-up legislation on trial court unification. The proposed legislation is included in SB 210 (Senate Judiciary Committee), which may also include some related material from the Judicial Council. The following issues have arisen in connection with this bill:

RECLASSIFICATION PROCEDURE

Code of Civil Procedure Sections 395.9 and 399.5 set forth procedures for reclassification of a civil case that is misclassified. At the December meeting, the Commission approved the following amendment of Section 395.9:

Code Civ. Proc. § 395.9 (amended). Reclassification as limited civil case or otherwise

SEC. _____. Section 395.9 of the Code of Civil Procedure is amended 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 shall not extend the moving party's time to answer or otherwise respond.

(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~~ reclassification and good cause for not seeking reclassification earlier, 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 reclassification appear on the face of the challenged pleading. All moving and supporting papers, opposition papers, and reply papers shall be filed and served in accordance with Section 1005.

(d) An action or proceeding that 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. Where a party *erroneously* classifies a case as a limited civil case and the case is reclassified, the party shall pay as a cost and fee of reclassification the difference between the fee paid for filing the first paper in a limited civil case and the fee for filing the first paper in a case other than a limited civil case. A similar adjustment shall be made for other fees paid before reclassification. Where a party *erroneously* fails to classify a case as a limited civil case and the case is reclassified, the party shall not have to pay a new fee for filing the first paper in a limited civil case, but the party shall not be entitled to a refund of the difference between the fee for filing the first paper in a case other than a limited civil case and the fee for filing the first paper in a limited civil case. Other fees paid before reclassification shall be handled in the same manner.

Comment. Subdivision (h) of Section 395.9 is amended to clarify the fees due on reclassification. See Gov't Code §§ 26820.4 (fee for filing first paper in case other than a limited civil case), 72055 (fee for filing first paper in limited civil case).

Section 395.9 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.

Section 395.9 is also amended to make technical changes.

The Judicial Council has since alerted us to two new concerns involving this provision. Some judges have questioned whether the term “erroneous” (shown in italics) connotes fault or mistake, rather than referring to all pleadings that require reclassification. Other courts are confused about payment of fees where a limited civil case is reclassified. Our proposed amendment would make clear that upon reclassification, the court is entitled to collect the difference between the \$80 fee for filing the defendant's first paper in a limited civil case (Gov't Code § 72056) and the \$182 fee for filing the defendant's first paper in a case other than a limited civil case (Gov't Code § 26826). This difference amounts to \$102. An ambiguity remains because our proposed amendment does not explicitly state who is to pay this difference — the plaintiff or the defendant.

In considering these points, the staff noticed additional ambiguities in Section 395.9. The provision does not clearly address the situation where a plaintiff recognizes the need for reclassification and amends the complaint accordingly. Similarly, the provision does not expressly state how it is to apply where a defendant in a limited civil case files a cross-complaint that exceeds the \$25,000 maximum for a limited civil case, or otherwise fails to meet the requirements for a limited civil case. The provision is also silent on whether a party must attempt to resolve a reclassification issue informally before filing a motion for reclassification.

We could address these ambiguities in Section 395.9 by further revising the section as set forth at Exhibit pages 1-3. Alternatively, **we could repeal Sections 395.9 and 399.5, which are already quite lengthy, and restate the reclassification provisions in a new chapter of the Code of Civil Procedure, with appropriate modifications to address the ambiguities.** When we drafted Sections 395.9 and 399.5 last year, we modeled them on the existing provisions governing transfers for lack of subject matter jurisdiction (Sections 396 and 399) and placed them adjacent to those provisions. This served to emphasize the similarities between the new provisions and existing law. As a consequence of this approach, however, the resulting provisions are long and cumbersome (like the models), and are crowded in chapter replete with such awkward statutes. Rather than

perpetuating and exacerbating this situation, **the staff recommends moving and reorganizing the reclassification provisions into manageable units as set forth at Exhibit pages 4-13.** This would improve accessibility and facilitate any further revisions that may be necessary as courts use and discover ways to improve the new reclassification procedures.

LAW LIBRARY BOARD IN SAN DIEGO COUNTY

Business and Professions Code Section 6301.1 is a special provision governing the composition of the law library board in San Diego County. In light of the recent unification of the municipal and superior courts in San Diego County, Section 6301.1 clearly needs revision: It calls for election of two municipal court judges but San Diego County no longer has a municipal court.

The Judicial Council has primary responsibility for correcting county-specific statutes to accommodate trial court unification. Gov't Code § 70219; *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 85 (1998). The Commission has, however, received a letter from the Council of California County Law Libraries proposing an amendment of Section 6301.1, which has been approved by the San Diego County Law Library Board of Trustees. (Exhibit pp. 14-16.) The Council requests that this amendment be included in the Senate Judiciary Committee clean-up bill. (*Id.* at 14.)

This matter appears substantively noncontroversial. A technical revision of the proposed amendment is necessary, however, because it refers to “the effective date of this Act.” Section 6301.1 as amended would be a statute, not an Act. It would also be clearer to refer to the “superior court judges of the county”, instead of to the “San Diego County Judicial District”.

We therefore recommend that the Commission insert the following amendment into the clean-up bill, subject to the Judicial Council's approval:

Bus. & Prof. Code § 6301.1 (amended). Board of law library trustees in San Diego County

SEC. _____. Section 6301.1 of the Business and Professions Code is amended to read:

6301.1. Notwithstanding Section 6301, in San Diego County the board of law library trustees shall be constituted, as follows:

(a) ~~Two~~ Four judges of the superior court, to be elected by and from judges in the San Diego County Judicial District the superior court judges of the county. Each superior court judge so elected shall serve a three-year term. In order to maintain overlapping

terms, those judges holding office as of the date of unification of the municipal and superior courts of San Diego County shall remain in office until the expiration of their original terms.

~~(b) Two judges from the municipal courts of the county. The courts may, by joint agreement, determine the pattern of representation on the board. Each municipal court judge so elected shall serve a three-year term.~~

(e) ~~(b)~~ The board of supervisors shall appoint three attorneys resident in the county to the board of law library trustees, to serve overlapping three-year terms. In order to stagger the three appointments, the board of supervisors shall, in January of 1997, appoint one attorney to a one-year term, one attorney to a two-year term, and one attorney to a three-year term; and as each term expires, the new appointee shall thereafter serve three-year terms. At least one attorney appointed pursuant to this subdivision shall be a member of the San Diego County Bar Association.

~~(d)~~ ~~(c)~~ In the event a trustee cannot serve a full term, the appointing authority for that individual shall appoint another qualified person to complete that term. Interim appointments may be made by the board of law library trustees in accordance with Section 6305.

Comment. Section 6301.1 is amended to accommodate unification of the municipal and superior courts in San Diego County. Cal. Const. art. VI, § 5(e).

SMALL CLAIMS ADVISORY COMMITTEE

Code of Civil Procedure Section 116.950 specifies the composition of the Small Claims Advisory Committee, which studies small claims practices and procedures. Among the members of the committee are “[s]ix judges of the municipal court, or of the superior court in a county in which there is no municipal court, who have had extensive experience as judges of small claims court, appointed by the Judicial Council.” (Code Civ. Proc. § 116.950(d).) In its report on trial court unification, the Law Revision Commission suggested studying whether this provision should be “broadened to allow any judge with extensive experience as a small claims judge (including a retired judge, an appellate court justice, or a judge of a non-unified superior court) to serve on the committee.” *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 84 n.120 (1998). The Judicial Council was given primary responsibility for this study. *Id.* at 84; Gov’t Code § 70219.

The Judicial Council referred this matter to its Civil and Small Claims Advisory Committee, which has studied the issues and approved the following amendment of Section 116.950:

Code Civ. Proc. § 116.950 (amended). Advisory committee; operation of section

SEC. _____. Section 116.950 of the Code of Civil Procedure is amended to read:

116.950. (a) This section shall become operative only if the Department of Consumer Affairs determines that sufficient private or public funds are available in addition to the funds available in the department's current budget to cover the costs of implementing this section.

(b) There shall be established an advisory committee, constituted as set forth in this section, to study small claims practice and procedure, with particular attention given to the improvement of procedures for the enforcement of judgments.

(c) The members of the advisory committee shall serve without compensation, but shall be reimbursed for expenses actually and necessarily incurred by them in the performance of their duties. The advisory committee shall report its findings and recommendations to the Judicial Council and the Legislature.

(d) The advisory committee shall be composed as follows:

(1) The Attorney General or a representative.

(2) Two consumer representatives from consumer groups or agencies, appointed by the Secretary of the State and Consumer Services Agency.

(3) One representative appointed by the Speaker of the Assembly and one representative appointed by the President pro Tempore of the Senate.

(4) Two representatives, appointed by the Board of Governors of the State Bar.

(5) Two representatives of the business community, appointed by the Secretary of the Trade and Commerce Agency.

(6) ~~Six judges of the municipal court, or of the superior court in a county in which there is no municipal court, who have had extensive experience as judges of small claims court, appointed by the Judicial Council~~ judicial officers who have had extensive experience presiding in small claims court, appointed by the Judicial Council. Judicial officers appointed under this subdivision may include judicial officers of the superior court, judicial officers of the municipal court, judges of the appellate courts, and retired judicial officers.

(7) One representative appointed by the Governor.

(8) Two clerks of the court, appointed by the Judicial Council.

(e) Staff assistance to the advisory committee shall be provided by the Department of Consumer Affairs, with the assistance of the Judicial Council, as needed.

We recommend that the Commission also approve this amendment for inclusion in SB 210. We would add the following Comment:

Comment. Section 116.950(d) is amended to broaden the range of judicial officers eligible to serve on the Small Claims Advisory Committee.

PROGRESS OF THE JUDICIAL COUNCIL

The Judicial Council has provided us with a report of its progress on the studies assigned to it by Government Code Section 70219 and the Commission's report on trial court unification. This progress report is attached as Exhibit pages 17-30.

Respectfully submitted,

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Exhibit

**PROPOSED AMENDMENT OF
CODE OF CIVIL PROCEDURE SECTION 395.9**

Code Civ. Proc. § 395.9 (amended). Reclassification as limited civil case or otherwise

SEC. _____. Section 395.9 of the Code of Civil Procedure is amended to read:

395.9. (a) ~~In a county in which there is no municipal court, if~~ In a county in which there is no municipal court:

(a)(1) If a plaintiff, cross-complainant, or petitioner files an amended complaint or other amended initial pleading that changes the jurisdictional classification in the caption, or files an amendment to the complaint or other initial pleading to change the jurisdictional classification in the caption, and the plaintiff, cross-complainant, or petitioner simultaneously pays the costs and fees of reclassification provided in this section, the clerk of the superior court shall promptly reclassify the case as provided in subdivisions (d) and (e) of Section 399.5. The time to respond to the amended initial pleading or initial pleading as amended runs from the date of service of the amended pleading or amendment, or from the date of service of the notice of reclassification pursuant to Section 399.5, whichever is later.

(2) If a cross-complainant in a limited civil case files a cross-complaint that exceeds the maximum amount in controversy for a limited civil case, or otherwise fails to satisfy the requirements for a limited civil case as prescribed by Section 85, and the cross-complainant simultaneously pays the costs and fees of reclassification provided in this section, the clerk of the superior court shall promptly reclassify the case as provided in subdivisions (d) and (e) of Section 399.5. The time to respond to the cross-complaint runs from the date of service of the cross-complaint, or from the date of service of the notice of reclassification pursuant to Section 399.5, whichever is later.

(b) 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 may file a motion for reclassification 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. The court may bring its own motion for reclassification at any time. A motion for reclassification shall not extend the moving party's time to answer or otherwise respond. The court shall grant the motion and enter an order for reclassification if the caption of the initial pleading erroneously states the jurisdictional classification of the case, regardless of any fault or lack of fault. Except as provided in Section 403.060 or paragraph (1) of subdivision (b) of Section 581, the action or proceeding shall not be dismissed.~~

~~(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 reclassification and good cause for not seeking reclassification earlier, or on the court's own motion at any time, reclassify the case. (c) If a defendant or cross-defendant files a motion for reclassification after the time for that party to respond to the complaint, cross-complaint, or other initial pleading, the court shall grant the motion and enter an order for reclassification only if both of the following conditions are satisfied:~~

~~(1) The caption of the initial pleading erroneously states the jurisdictional classification of the action or proceeding.~~

~~(2) The moving party shows good cause for not seeking reclassification earlier.~~

~~(d) Before filing a motion for reclassification, a party seeking reclassification shall request that the plaintiff, cross-complainant, or petitioner amend the initial pleading to correct the erroneous caption. In making the request, the party seeking reclassification shall explain the basis for seeking reclassification.~~

~~(e) (e) 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 reclassification appear on the face of the challenged pleading. All moving and supporting papers, opposition papers, and reply papers shall be filed and served in accordance with as provided in Section 1005.~~

~~(f) (f) An action or proceeding that 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.~~

~~(g) (g) Nothing in this section shall be construed to preclude or affect the right to amend the pleadings as provided in this code.~~

~~(h) (h) 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) (i) 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) (j) 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, are to be paid by the party filing the pleading that erroneously classified the case. ~~Where~~ If a party erroneously classifies a case as a limited civil case and the case is reclassified, the party shall pay as a cost and fee of reclassification the difference between the fee paid for filing the first paper in a limited civil case and the fee for filing the first paper in a case other than a limited civil case. A similar adjustment shall be made for other fees paid before reclassification, and shall also be ~~paid by the party that erroneously classified the case.~~ Where If a party erroneously fails to classify a case as a limited civil case and the case is reclassified, the party shall not have to pay a new fee for filing the first paper in a limited civil case, but the party shall not be entitled to a refund of the difference between the fee for filing the first paper in a case other than a limited civil case and the fee for filing the first paper in a limited civil case. Other fees paid before reclassification shall be handled in the same manner.

(k) If a party seeks reclassification by filing an amended pleading, an amendment to a pleading, or a cross-complaint pursuant to subdivision (a), the costs and fees of reclassification shall be determined in the same manner as where the court makes an order for reclassification. The party seeking reclassification shall pay all of those costs and fees. If the party seeking reclassification pays an amount for refiling the pleading of another party, the other party shall promptly reimburse the party seeking reclassification.

Comment. Section 395.9 is amended to clarify its application.

Subdivision (a) is added to provide guidance where a plaintiff or cross-complainant recognizes and acknowledges the need for reclassification.

Subdivision (b) is amended to improve clarity and expressly negate any inference that a motion for reclassification may only be granted upon a finding of fault. The former second sentence is deleted as redundant. See Section 399.5.

Subdivision (c) is amended to improve clarity. The reference to a motion by the court is deleted as redundant. See subdivision (b).

Subdivision (d) is added to encourage informal resolution of reclassification issues.

Subdivision (h) of Section 395.9 (j) is amended to clarify the fees due on reclassification pursuant to order of the court. See Gov't Code §§ 26820.4 (fee for filing first paper in case other than a limited civil case), 26826 (fee for filing defendant's first paper in case other than a limited civil case), 72055 (fee for filing first paper in limited civil case), 72056 (fee for filing defendant's first paper in limited civil case).

Section 395.9 is drawn from Section 396 (transfer for lack of subject matter jurisdiction), with modifications to fit the context of reclassification. Subdivision (h) (j) 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.

Under subdivision (k), if a plaintiff seeks reclassification of a limited civil case by filing an amended complaint pursuant to subdivision (a), and the defendant has already answered the original complaint, the costs and fees of reclassification include the difference between the fee for

filing the defendant's first paper in a limited civil case (Gov't Code § 72056) and the fee for filing the defendant's first paper in a case other than a limited civil case (Gov't Code § 26826). The plaintiff must pay this amount to obtain reclassification (as well as the other costs and fees of reclassification), but is entitled to prompt reimbursement from the defendant.

Section 395.9 is also amended to make technical changes.

PROPOSED REORGANIZATION OF RECLASSIFICATION PROVISIONS

Heading of Title 4 (commencing with Section 392) (amended)

SEC. _____. The heading of Title 4 (commencing with Section 392) of Part 2 of the Code of Civil Procedure is amended to read:

TITLE 4. OF THE JURISDICTIONAL CLASSIFICATION AND THE PLACE OF TRIAL OF CIVIL ACTIONS

Comment. The heading "Title 4. Of the Place of Trial of Civil Actions" is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See Section 32.5 (jurisdictional classification).

Code Civ. Proc. § 395.9 (repealed). Reclassification as limited civil case or otherwise

SEC. _____. Section 395.9 of the Code of Civil Procedure is repealed:

~~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 shall not extend the moving party's time to answer or otherwise respond.~~

~~(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.~~

~~(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 filed and served in accordance with Section 1005.~~

~~(d) An action or proceeding that 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. For organizational clarity, Section 395.9 is repealed and recodified in “Chapter 2. Reclassification of Civil Actions and Proceedings.”

The first and third sentences of former Section 395.9(a) are continued without substantive change in Section 403.040 (motion for reclassification). The second sentence of former Section 395.9(a) is continued without substantive change in Section 403.070 (procedure on refiling case as reclassified).

Former Section 395.9(b) is continued in subdivision (b) of Section 403.040 (motion for reclassification), with revisions to improve clarity.

Former Section 395.9(c) is continued without substantive change in subdivision (d) of Section 403.040 (motion for reclassification).

Former Section 395.9(d) is continued without substantive change in subdivision (c) of Section 403.070 (procedure on refiling case as reclassified).

Former Section 395.9(e)-(g) are continued without substantive change in subdivisions (e)-(g) of Section 403.040 (motion for reclassification).

Former Section 395.9(h) is continued without substantive change in Section 403.050 (costs and fees of reclassification).

Code Civ. Proc. § 399.5 (repealed). Reclassification pursuant to Section 395.9

SEC. _____. Section 399.5 of the Code of Civil Procedure is repealed:

~~399.5. (a) Where an order is made for reclassification of an action or proceeding pursuant to Section 395.9, the clerk shall refile the case as reclassified on satisfaction of both of the following conditions:~~

~~(1) Costs and fees have been paid in accordance with Section 395.9.~~

~~(2) Either the time within which to file a petition for writ of mandate pursuant to Section 400 has expired and no writ has been filed, or a writ has been filed and a judgment denying the writ has become final.~~

~~(b) If the costs and fees have not been paid in accordance with Section 395.9 within five days after service of notice of the order for reclassification, then any~~

~~party interested in the case, regardless of whether that party is named in the complaint, may pay the costs and fees, and the clerk shall refile the case as if the costs and fees had been paid in accordance with Section 395.9. The costs and fees are then a proper item of costs of the party paying them, recoverable if that party prevails in the action or proceeding. Otherwise, the costs and fees shall be offset against and deducted from the amount, if any, awarded to the party responsible for the costs and fees under Section 395.9, in the event that party prevails in the action or proceeding.~~

~~(c) The cause of action shall not be further prosecuted in any court until the costs and fees of reclassifying the case are paid. If those costs and fees are not paid within 30 days after service of notice of an order for reclassification, or if a copy of a petition for writ of mandate pursuant to Section 400 is filed in the trial court, then within 30 days after notice of finality of the order for reclassification, the court on a motion by any party may dismiss the action without prejudice to the cause on the condition that no other action on the cause may be commenced in another court before the costs and fees are paid. Where a petition for writ of mandate does not result in a stay of proceedings, the time for payment of those costs and fees is 60 days after service of the notice of the order.~~

~~(d) At the time of refiling the case as reclassified, the clerk shall mail notice to all parties who have appeared in the action or proceeding, stating the date when refiling occurred and the number assigned to the case as refiled.~~

~~(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 allow or 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.~~

Comment. For organizational clarity, Section 399.5 is repealed and recodified in “Chapter 2. Reclassification of Civil Actions and Proceedings.”

Former Section 399.5(a)-(c) are continued without substantive change in Section 403.060 (proceedings on order granting motion for reclassification).

Former Section 399.5(d)-(e) are continued without substantive change in subdivisions (a)-(b) of Section 403.070 (procedure on refiling case as reclassified).

Code Civ. Proc. § 400 (amended). Petition for writ of mandate

SEC. _____. Section 400 of the Code of Civil Procedure is amended to read:

400. When an order is made by the superior court granting or denying a motion to change the place of trial or a motion to reclassify an action or proceeding pursuant to Section 395.9, the party aggrieved by the order may, within 20 days after service of a written notice of the order, petition the court of appeal for the district in which the court granting or denying the motion is situated for a writ of mandate requiring trial of the case in the proper court or proper classification of the action or proceeding pursuant to Section 395.9. The superior court may, for

good cause, and prior to the expiration of the initial 20-day period, extend the time for one additional period not to exceed 10 days. The petitioner shall file a copy of the petition in the trial court immediately after the petition is filed in the court of appeal. The court of appeal may stay all proceedings in the case, pending judgment on the petition becoming final. The clerk of the court of appeal shall file with the clerk of the trial court, a copy of any final order or final judgment immediately after the order or judgment becomes final.

Comment. For organizational clarity, Section 400 is amended to delete the references to reclassification, which are continued without substantive change in Section 403.080 (petition for writ of mandate).

Code Civ. Proc. §§ 403.010-403.080 (added). Reclassification of civil actions and proceedings

SEC. _____. Chapter 2 (commencing with Section 403.010) is added to Title 4 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 2. RECLASSIFICATION OF CIVIL ACTIONS
AND PROCEEDINGS

§ 403.010. Application of chapter

403.010. This chapter applies in a county in which there is no municipal court.

Comment. Section 403.010 is added to clarify the application of “Chapter 2. Reclassification of Civil Actions and Proceedings”.

§ 403.020. Reclassification by amending initial pleading

403.020. If a plaintiff, cross-complainant, or petitioner files an amended complaint or other amended initial pleading that changes the jurisdictional classification in the caption, or files an amendment to the complaint or other initial pleading to change the jurisdictional classification in the caption, and the plaintiff, cross-complainant, or petitioner simultaneously pays the costs and fees of reclassification provided in Section 403.050, the clerk of the superior court shall promptly reclassify the case as provided in Section 403.070. The time to respond to the amended initial pleading or the initial pleading as amended runs from the date of service of the amended pleading or amendment, or from the date of service of the notice of reclassification pursuant to Section 403.070, whichever is later.

Comment. Section 403.020 is added to provide guidance where a plaintiff recognizes and acknowledges the need for reclassification.

See Section 32.5 (jurisdictional classification). See also Sections 403.030 (reclassification of limited civil case by cross-complaint), 403.040 (motion for reclassification), 422.030 (caption).

§403.030. Reclassification of limited civil case by cross-complaint

403.030. If a cross-complainant in a limited civil case files a cross-complaint that exceeds the maximum amount in controversy for a limited civil case, or otherwise fails to satisfy the requirements for a limited civil case as prescribed by Section 85, and the cross-complainant simultaneously pays the costs and fees of

reclassification provided in Section 403.050, the clerk of the superior court shall promptly reclassify the case as provided in Section 403.070. The time to respond to the cross-complaint runs from the date of service of the cross-complaint, or from the date of service of the notice of reclassification pursuant to Section 403.070, whichever is later.

Comment. Section 403.030 is added to provide guidance where a cross-complainant in a limited civil case recognizes and acknowledges the need for reclassification.

See also Sections 403.020 (reclassification by amending initial pleading), 403.040 (motion for reclassification), 422.30 (caption).

§ 403.040. Motion for reclassification

403.040. (a) If the caption of a 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 defendant or cross-defendant may file a motion for reclassification within the time allowed for that party to respond to the initial pleading. The court may bring its own motion for reclassification at any time. A motion for reclassification does not extend the moving party's time to answer or otherwise respond. The court shall grant the motion and enter an order for reclassification if the caption of the initial pleading erroneously states the jurisdictional classification of the case, regardless of any fault or lack of fault. Except as provided in Section 403.060 or paragraph (1) of subdivision (b) of Section 581, the action or proceeding shall not be dismissed.

(b) If a defendant or cross-defendant files a motion for reclassification after the time for that party to respond to the complaint, cross-complaint, or other initial pleading, the court shall grant the motion and enter an order for reclassification only if both of the following conditions are satisfied:

(1) The caption of the initial pleading erroneously states the jurisdictional classification of the action or proceeding.

(2) The moving party shows good cause for not seeking reclassification earlier.

(c) Before filing a motion for reclassification, a party seeking reclassification shall request that the plaintiff, cross-complainant, or petitioner amend the initial pleading to correct the erroneous caption. In making the request, the party seeking reclassification shall explain the basis for seeking reclassification.

(d) A motion for reclassification 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 reclassification appear on the face of the challenged pleading. All moving and supporting papers, opposition papers, and reply papers shall be filed and served in as provided in Section 1005.

(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.

Comment. The first and second sentences of Section 403.040(a) continue the first and third sentences of former Section 399.5(a) without substantive change. The third sentence of Section 403.040(a) is added to expressly negate any inference that a motion for reclassification may only be granted upon a finding of fault.

Subdivision (b) continues former Section 395.9(b), with revisions to improve clarity. The reference to a motion by the court is deleted as redundant. See subdivision (a).

Subdivision (c) is added to encourage informal resolution of reclassification issues.

Subdivision (d) continues former Section 395.9(c) without substantive change.

Subdivisions (e)-(g) continue former Section 395.9(e)-(g) without substantive change.

For the procedure upon granting a motion for reclassification, see Sections 403.060 (proceedings on order granting motion for reclassification), 403.070 (procedure on refiling case as reclassified). For the costs and fees of reclassification, see Section 403.050. See also Sections 403.020 (reclassification by amending initial pleading), 403.030 (reclassification of limited civil case by cross-complaint).

§ 403.050. Costs and fees of reclassification

403.050. (a) Upon the granting of a motion for reclassification and entering of an appropriate order, proceedings shall be had as provided in Sections 403.060 and 403.070. Unless the court ordering the reclassification otherwise directs, the costs and fees of those proceedings, and other costs and fees of reclassifying the case, are to be paid by the party filing the pleading that erroneously classified the case. If a party erroneously classifies a case as a limited civil case and the case is reclassified, the party shall pay as a cost and fee of reclassification the difference between the fee paid for filing the first paper in a limited civil case and the fee for filing the first paper in a case other than a limited civil case. A similar adjustment shall be made for other fees paid before reclassification, and shall also be paid by the party that erroneously classified the case. If a party erroneously fails to classify a case as a limited civil case and the case is reclassified, the party shall not have to pay a new fee for filing the first paper in a limited civil case, but the party shall not be entitled to a refund of the difference between the fee for filing the first paper in a case other than a limited civil case and the fee for filing the first paper in a limited civil case. Other fees paid before reclassification shall be handled in the same manner.

(b) If a party seeks reclassification by filing an amended pleading or an amendment to a pleading pursuant to Section 403.020 or a cross-complaint pursuant to Section 403.030, the costs and fees of reclassification shall be determined in the same manner as where the court makes an order for reclassification. The party seeking reclassification shall pay all of those costs and fees. If the party seeking reclassification pays an amount for refiling the pleading of another party, the other party shall promptly reimburse the party seeking reclassification.

Comment. The first and second sentences of Section 403.050(a) continue former Section 395.9(h) without substantive change. Former Section 395.9 was drawn from Section 396 (transfer for lack of subject matter jurisdiction), with modifications to fit the context of reclassification. Like former Section 395.9(h), Section 403.050 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.

The third through sixth sentences of Section 403.050 are added to clarify the fees due on reclassification pursuant to order of the court. See Gov't Code §§ 26820.4 (fee for filing first paper in case other than a limited civil case), 26826 (fee for filing defendant's first paper in case other than a limited civil case), 72055 (fee for filing first paper in limited civil case), 72056 (fee for filing defendant's first paper in limited civil case).

Under subdivision (b), if a plaintiff seeks reclassification of a limited civil case by filing an amended complaint pursuant to Section 403.020, and the defendant has already answered the original complaint, the costs and fees of reclassification include the difference between the fee for filing the defendant's first paper in a limited civil case (Gov't Code § 72056) and the fee for filing the defendant's first paper in a case other than a limited civil case (Gov't Code § 26826). The plaintiff must pay this amount to obtain reclassification (as well as the other costs and fees of reclassification), but is entitled to prompt reimbursement from the defendant. The same approach applies where a cross-complainant seeks reclassification of a limited civil case by filing a cross-complaint pursuant to Section 403.030.

See Section 403.040 (motion for reclassification). See also Section 422.30 (caption).

§ 403.060. Proceedings on order granting motion for reclassification

403.060. (a) Where an order is made for reclassification of an action or proceeding pursuant to Section 403.040, the clerk shall refile the case as reclassified on satisfaction of both of the following conditions:

(1) Costs and fees have been paid as provided in Section 403.050.

(2) Either the time within which to file a petition for writ of mandate pursuant to Section 403.080 has expired and no writ has been filed, or a writ has been filed and a judgment denying the writ has become final.

(b) If the costs and fees have not been paid as provided in Section 403.050 within five days after service of notice of the order for reclassification, then any party interested in the case, regardless of whether that party is named in the complaint, may pay the costs and fees, and the clerk shall refile the case as if the costs and fees had been paid as provided in Section 403.050. The costs and fees are then a proper item of costs of the party paying them, recoverable if that party prevails in the action or proceeding. Otherwise, the costs and fees shall be offset against and deducted from the amount, if any, awarded to the party responsible for the costs and fees under Section 403.050, in the event that party prevails in the action or proceeding.

(c) The cause of action shall not be further prosecuted in any court until the costs and fees of reclassifying the case are paid. If those costs and fees are not paid within 30 days after service of notice of an order for reclassification, or if a copy of a petition for writ of mandate pursuant to Section 403.080 is filed in the trial court, then within 30 days after notice of finality of the order for reclassification, the court on a motion by any party may dismiss the action without prejudice to the cause on the condition that no other action on the cause may be commenced in

another court before the costs and fees are paid. Where a petition for writ of mandate does not result in a stay of proceedings, the time for payment of those costs and fees is 60 days after service of the notice of the order.

Comment. Section 403.060(a)-(c) continue former Section 399.5(a)-(c) without substantive change. For the procedure on refiling a case as reclassified, see Section 403.070.

§ 403.070. Procedure on refiling case as reclassified

403.070. (a) At the time of refiling the case as reclassified, the clerk shall mail notice to all parties who have appeared in the action or proceeding, stating the date when refiling occurred and the number assigned to the case as refiled.

(b) 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 allow or 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.

(c) An action or proceeding that 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.

Comment. Section 403.070(a)-(b) continue former Section 399.5(d)-(e) and the second sentence of former Section 395.9(a) without substantive change. Section 403.070(c) continues former Section 399.5(d) without substantive change.

For the costs and fees of reclassification, see Section 403.050. See also Sections 403.020 (reclassification by amending initial pleading), 403.030 (reclassification of limited civil case by cross-complaint), 403.040 (motion for reclassification), 422.30 (caption).

§ 403.080. Petition for writ of mandate

403.080. When an order is made by the superior court granting or denying a motion to reclassify an action or proceeding pursuant to Section 403.040, the party aggrieved by the order may, within 20 days after service of a written notice of the order, petition the court of appeal for the district in which the court granting or denying the motion is situated for a writ of mandate requiring proper classification of the action or proceeding pursuant to Section 403.040. The superior court may, for good cause, and prior to the expiration of the initial 20-day period, extend the time for one additional period not to exceed 10 days. The petitioner shall file a copy of the petition in the trial court immediately after the petition is filed in the court of appeal. The court of appeal may stay all proceedings in the case, pending judgment on the petition becoming final. The clerk of the court of appeal shall file with the clerk of the trial court, a copy of any final order or final judgment immediately after the order or judgment becomes final.

Comment. Section 403.080 continues without substantive change the references to reclassification that were deleted from Section 400.

Heading of Chapter 2 (commencing with Section 404) (amended)

SEC. _____. The heading of Chapter 2 (commencing with Section 404) of Title 4 of Part 2 of the Code of Civil Procedure is amended to read:

CHAPTER-2 3. COORDINATION

Comment. The heading of “Chapter 2. Coordination” is renumbered to reflect the addition of new “Chapter 2. Reclassification of Civil Actions and Proceedings” (commencing with Section 403.010).

Code Civ. Proc. § 422.30 (amended). Caption

SEC. _____. Section 422.30 of the Code of Civil Procedure is amended to read:

422.30. (a) Every pleading shall contain a caption setting forth:

(1) The name of the court and county, and, in municipal courts, the name of the judicial district, in which the action is brought; and

(2) The title of the action.

(b) In a limited civil case in a county in which there is no municipal court, the caption shall state that the case is a limited civil case, and the clerk shall file the case accordingly.

Comment. Section 422.30(c) is amended to clarify that the clerk is to rely on the caption in determining how to classify a civil case that is brought in a unified superior court. For the rules governing reclassification, see “Chapter 2. Reclassification of Civil Actions and Proceedings.” See also Section 32.5 (jurisdictional classification).

Code Civ. Proc. § 871.3 (amended). Good faith improver

SEC. _____. Section 871.3 of the Code of Civil Procedure is amended to read:

871.3. A good faith improver may bring an action in the superior court or, subject to ~~Sections 395.9 and 396~~ Section 396 and Chapter 2 (commencing with Section 403.010) of Title 4, may file a cross-complaint in a pending action in the superior or municipal court for relief under this chapter. In every case, the burden is on the good faith improver to establish that he is entitled to relief under this chapter, and the degree of negligence of the good faith improver should be taken into account by the court in determining whether the improver acted in good faith and in determining the relief, if any, that is consistent with substantial justice to the parties under the circumstances of the particular case.

Comment. Section 871.3 is amended to reflect relocation of the provisions governing reclassification of a civil case.

Code Civ. Proc. § 1014 (amended). Appearance by defendant

SEC. _____. Section 1014 of the Code of Civil Procedure is amended to read:

1014. A defendant appears in an action when the defendant answers, demurs, files a notice of motion to strike, files a notice of motion to transfer pursuant to Section 396b, moves for reclassification pursuant to Section ~~395.9~~ 403.040, gives the plaintiff written notice of appearance, or when an attorney gives notice of appearance for the defendant. After appearance, a defendant or the defendant’s

attorney is entitled to notice of all subsequent proceedings of which notice is required to be given. Where a defendant has not appeared, service of notice or papers need not be made upon the defendant.

Comment. Section 1014 is amended to reflect relocation of the provisions governing reclassification of a civil case.

COUNCIL OF CALIFORNIA COUNTY LAW LIBRARIES

1023 H STREET, SUITE A
SACRAMENTO, CA 95814

January 14, 1999

(916) 444-2458 • (916) 444-6909 (Fax)

Ms. Barbara Gaal
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303

VIA TELECOPY
(650) 494-1827

**RE: PROPOSED AMENDMENTS TO B&P §6301.1
RELATING TO LAW LIBRARY BOARD COMPOSITION**

Dear Ms. Gall:

Enclosed please find a proposal to amend California Business and Professions Code, Section 6301.1, as it applies to composition of the San Diego County Law Library Board of Trustees.


The first page is the actual resolution which was adopted by the San Diego County Law Library Board of Trustees, authorizing the amendments.

The second page is my abbreviated mock-up of the actual language to be stricken and renumbered.

We are submitting this to you with hopes that this amendment may be included in the Senate Judiciary Committee court consolidation clean-up bill.

Please call me direct with questions or comments. Otherwise, I await your favorable response.

Sincerely,


TONY NEVAREZ

Law Revision Commission
RECEIVED

JAN 19 1999

File: J-1307

**San Diego County Public Law Library
Board of Trustees
Meeting of December 16, 1998**

Item No. 5

5. Trustee Appointments in 1999; Proposed Legislation for 1999, effective January 1, 2000.

Requested Action: That the Board approve the following language to amend California Business and Professions Code section 6301.1:

SEC. 1. California Business and Professions Code section 6301.1, sub-sections (a) and (b) are repealed, and in their place shall be:

(a) Four judges of the superior court, to be elected by and from the San Diego County Judicial District. Each superior court judge so elected shall serve a three-year term. In order to maintain overlapping terms, those judges presently holding office as of the effective date of this Act shall remain in office until the expiration of their original terms.

California Business and Professions Code section 6301.1, sub-sections (c) and (d) shall be renumbered (b) and (c) respectively.

Discussion: The Secretary composed the language in accordance with the wishes of the Board at its last meeting. If the Board approves, he will submit it to the Superior Court for its approval and submit it to the Legislative Representative for the Council of California County Law Librarians, with a request that it be included in any clean-up bill for court consolidation before the Legislature this next session, or some other appropriate bill. The present statute is attached.

Also attached are the finished letters to the Superior Court and the Board of Supervisors regarding next year's appointments, including updated descriptions of the workload of trustees.

Secretary's Recommendation: Approve the proposed legislation.

CCCLL TRUSTEES MANUAL

§ 6301.1. San Diego County; membership of board; terms; interim appointments
Notwithstanding Section 6301, in San Diego County the board of law library trustees shall be constituted, as follows:

(a) Four judges of the superior court, to be elected by and from the San Diego County Judicial District. Each superior court judge so elected shall serve a three-year term. In order to maintain overlapping terms, those judges presently holding office as of the effective date of this Act shall remain in office until the expiration of their original terms.

(b) The board of supervisors shall appoint three attorneys resident in the county to the board of law library trustees, to serve overlapping three-year terms. In order to stagger the three appointments, the board of supervisors shall, in January of 1997, appoint one attorney to a one-year term, one attorney to a two year term, and one attorney to a three-year term; and as each term expires, the new appointee shall thereafter serve three-year terms. At least one attorney appointed pursuant to this subdivision shall be a member of the San Diego Bar Association.

(c) In the event a trustee cannot serve a full term, the appointing authority for that individual shall appoint another qualified person to complete that term. Interim appointments may be made by the law library trustees in accordance with Section 6305.

[Added by Stats 1996, ch 242 (A.B.2566), § 1.]

TO: Starr Babcock
Kate Harrison

FROM: Cara Vonk
Janet Grove

DATE: February 3, 1999

SUBJECT: Studies relating to court unification

Background

Government Code section 70219, added by Senate Bill 2139 ("SB 2139") directs the Judicial Council ("council") and the California Law Revision Commission ("commission") to study and make recommendations to the Governor and Legislature on issues identified in the commission's report as appropriate for future study. The report lists two sets of studies, one for which primary responsibility is given to the council, and one for which primary responsibility is given to the commission.¹ The council and commission are to consult with each other on these studies, and joint efforts may be appropriate in some areas of review. In addition, a more extensive long-term study reviewing the current procedural distinctions between cases in light of unification is to be done jointly by the council and commission.

Most of the listed studies will require the amendment or repeal of existing statutes. Proposed changes requiring council-sponsored legislation will need to be approved by the Policy Committee ("PCLC"). The timeline for the process will vary depending upon how soon the proposals can be drafted and presented and how much time is needed for the Legislature to enact them. A separate draft timeline is included for each item listed below.

Members of the commission and of the Council and Legal Services ("CALS") and Trial Court Services ("TCS") divisions of the Administrative Office of the Courts ("AOC") have met on several occasions to identify the issues involved and the actions needed and to assign the various tasks required. Participants in these meetings included Starr Babcock, Kate Harrison, Dale Sipes, Anthony Williams, Nat Sterling (Executive Director and Secretary of the commission), Clark Kelso (Consultant to the commission and liaison to the AOC), Cara Vonk, Jennifer Tachera, and Janet Grove ("AOC/CLRC working group").

¹ See Trial Court Unification: Revision of Codes, 28 Cal. L. Revision Comm'n Reports 51, 84-86 (1998), copy at Tab 1.

The ten studies listed below are those for which the Judicial Council and AOC have primary responsibility. The descriptions of the issues, tasks, and proposed goals result from discussions at the AOC/CLRC working group meetings. Each summary includes a proposed timeline and the names of the divisions and people with primary responsibility.

Proposed Scope of Judicial Council Studies

1. Obsolete statutes relating to prior court and personnel restructurings.

Issues:

A number of sections dealing with prior consolidations of judicial districts or superseded justice courts were not repealed by SB 2139. These statutes no longer have a function because they are obsolete or have been superseded. Examples of such statutes include Government Code sections 71040.5 (consolidation of judicial districts in Madera County, superseded by § 73750) and 71040.8 (consolidation of Ukiah and Little Lake justice courts in Mendocino County).² Statutes relating to former judicial district boundaries may not be needed³ because maps showing these boundaries are filed with the county recorder and may be used as evidence in proceedings involving publication within a judicial district. (Gov. Code, §§ 71042.5, 71042.6.)

Except for staffing statutes that may still have some effect, as discussed in item number 9 below, the repeal of these sections would likely be a technical change that could be done in a clean-up bill.

Timeline:

February 15, 1999	Identify statutes to be repealed.
March 31, 1999	Consult with courts in each county affected.
April 29, 1999	Submit to PCLC for approval.
May/June 1999	Bill expected to pass first house of Legislature.
July/August 1999	Bill expected to pass second house and be signed within 30 days.

Lead: CALS (Cara Vonk, Janet Grove) – identification of statutes.
TCS (Kate Harrison, Jennifer Tachera) – consultation with courts.

² See copies of these sections at Tab 2.

³ Counties affected by the Voting Rights Act may be an exception.

2. Superior court sessions, both general and special.

Issues:

Numerous statutes now govern court sessions. Many contain cross-references to other sections, or are modified by provisions in other sections. Many sections require or permit court sessions at locations based on population, distance from the county seat, and other demographic factors. Some are county-specific. Some allow judges to authorize sessions at new locations; some require approval by the board of supervisors. Some statutes refer to places where court sessions were held as of particular dates, allowing sessions at certain locations to be “grandfathered” in. (See, e.g., Gov. Code, §§ 69749, 69752.)⁴

The statutory scheme governing court locations may be overly complex, and some parts of it may be obsolete following unification of the courts. One approach to simplification that has been proposed would be to repeal most of the sections on court sessions and allow the courts to determine the locations of sessions by local rule. However, any change in the current provisions is likely to be important to the counties, because until June 30, 2001, the boards of supervisors are generally responsible for providing “suitable and necessary facilities” for the courts. (Gov. Code, § 77654(g).)⁵ Whether the state will be responsible for all facilities after June 30, 2001 has not been determined.

Policy questions would be involved in revision of the statutes governing court sessions. Factors for the council to consider include the policy goals of access, convenience to county residents, geographic diversity and size of the county, need for judicial presence, approval by judges, and cost factors, among other matters.

The work of the Task Force on Court Facilities (Gov. Code, §§ 77650–77655) overlaps with this study because many of the statutes pertaining to superior court sessions govern the locations of court facilities. Responsibilities of the task force include documenting the current state of court facilities and the need for new ones, the effects that trial court coordination and consolidation have on court facility needs, and making recommendations on funding sources and mechanisms for court facilities. (Gov. Code, § 77654(d).) The task force’s reports will include recommendations for locations of courts.⁶ It may be most appropriate to wait until the task force has gathered its findings before proposing

⁴ Copies of these and other examples of sections governing court sessions are attached at Tab 3.

⁵ See copy of statute at Tab 4.

⁶ The timeline for the reports of the Task Force on Court Facilities is as follows: interim report due July 1, 1999, second interim report due January 1, 2001, and final report due July 1, 2001. (Gov. Code, § 77654.)

major changes in the statutory scheme governing the locations of courts. The task force itself may make such proposals.

Other aspects of the statutes relating to superior court sessions can be reviewed for consistency with unification without waiting for the results of the work of the task force. Some statutes govern timing or another aspect of court sessions other than location. Some statutes governing court locations may be inconsistent with unification because unification may have created additional superior court locations (former municipal court locations). Statutes that prohibit superior court sessions within certain distances of other superior courts may, on their face, prohibit sessions at a former municipal court location that is now a superior court location. This problem may have been addressed by Proposition 220, which provides that preexisting superior and municipal court locations are retained as superior court locations. (Cal. Const., art. VI, § 23(c)(2).) Nevertheless, we should consider what, if any, clarifying legislation may be required. Additionally, revision of statutes governing municipal court locations in counties that now have unified courts may be appropriate.

Timeline:

January 20, 1999	Met with staff of Task Force on Court Facilities to identify issues and obtain agreement to review statutes governing court locations.
January 20, 1999	Provided draft list of statutes dealing with court sessions / facilities to task force.
March 1, 1999	Identify statutes that may be inconsistent with unification.
March 15, 1999	Draft proposed amendments.
April 29, 1999	Present proposals to council and PCLC for approval as sponsored legislation.
May 1999	Submit proposals to Legislature.
May/June 1999	Bill expected to pass first house of Legislature.
July/August 1999	Bill expected to pass second house and be signed within 30 days.

Lead: CALS (Cara Vonk, Janet Grove)

3. Number of authorized commissioners and referees in a county in which the courts have unified.

Issues:

The transitional provisions of Proposition 220 and SB 2139 merely preserve existing authority to appoint commissioners and referees. Government Code

section 70214 allows a unified court to have the same number of commissioners as were previously authorized for the superior and municipal courts combined.⁷ The statutes currently governing the numbers of commissioners include section 70141 et seq. (superior court commissioners), section 72400 et seq. (municipal court traffic trial commissioners), and some sections among the municipal court staffing statutes, 72000–74997. The existing referee and commissioner positions enumerated in the staffing bill from last year (SB 1825, or Stats. 1998, ch. 934) are still in place.

For counties in which courts have unified, revising these statutes may be desirable to reflect the current status and number of commissioners. This might be done most efficiently as part of the process of revising the staffing statutes. Some counties may wish the Legislature to delegate future staffing decisions to the superior court if the court does not already have that authority.

One issue to consider is conversions of referees to commissioners, approved by the council pursuant to a Court Profiles report. Additionally, we are aware of 10 commissioners now employed by the courts without statutory authorization. This should be brought to the council's attention for consideration of whether to amend the statutes to authorize these additional commissioners.

Timeline:

January 22, 1999	Complete issue memo on whether to authorize some or all of the 10 commissioners now lacking statutory authorization for presentation at February issues meeting.
February 1999	Request staffing requirements from the courts (due to TCS in March).
March 10, 1999	Present issue of 10 unauthorized commissioners to council.
March 1999	Submit commissioner staffing requests to Court Profiles Advisory Committee.
April 29, 1999	Submit staffing requests to council for vote.
May 1999	Submit proposals to Legislature.
May/June 1999	Bill expected to pass first house of Legislature.
July/August 1999	Bill expected to pass second house and be signed within 30 days.

Lead: TCS (Kate Harrison, Jennifer Tachera, John Larson)

⁷ See copy of §§ 70212 and 70214 attached at Tab 5.

4. Reorganization of statutes governing court fees.

Issues:

Existing statutes governing court fees are organized by court (superior or municipal) rather than by cause of action.⁸ The commission's report points out that it may be appropriate to reorganize and consolidate the fee provisions for ease of use, and to replace references to the county clerk with court executive officer.

It will be necessary to examine the issues and ramifications of such a reorganization. In particular, close attention should be paid to the impact of changing references to clerk of the court to the court executive officer. To this end, it may be necessary to study this issue during 1999 in order to gather the data necessary to support legislation in 2000.

Currently, the statutes governing trial court fees are organized generally as follows: superior court and county clerk fees, Government Code sections 26820–26863; municipal court fees, Government Code sections 72054–72073. In addition, the fees for filings in small claims court are specified in the Code of Civil Procedure, and there may be additional statutes in the Civil, Probate, Vehicle and Welfare and Institutions codes that contain court fee provisions.

Any action on this issue also needs to be considered in the context of, and coordinated with, other efforts underway in the area of trial court funding. Finance, Trial Court Services, and Office of Governmental Affairs staff have been involved in developing options that may be undertaken to generate additional fee revenues for the trial courts and to repeal obsolete or inapplicable fees that were enacted as part of the Lockyer-Isenberg Trial Court Funding Act of 1997.

Because reorganization of court fees is not essential to the implementation of trial court unification, it may be appropriate to postpone action until the issues related to such a reorganization can be fully studied during 1999 to support a legislative effort in 2000. However, since it is likely that there will be significant legislative work in the area of court fees this year it may make sense to enact the changes simultaneously.

If it is decided that reorganization of court fees should occur this year, the following timeline is recommended:

⁸ See copies of examples of statutes at Tab 6: Gov. Code, §§ 26800 et seq. (fees collected by county clerk), and 72055 et seq. (municipal court fees).

Timeline:

February 1, 1999	Introduce a spot bill.
February 15, 1999	Catalog all court fee codes and develop a proposed reorganization.
March 1, 1999	Present proposed reorganization to AB 233 working group.
March 15, 1999	Prepare legislative amendments to reorganize fee codes.
April 29, 1999	Present proposals to council and PCLC for approval as sponsored legislation.
March–July 1999	Amend the bill and move through the legislative process.

Lead: OGA (Anthony Williams)
Finance (Martin Moshier, Frank Schultz)
TCS (Kate Harrison, Jennifer Tachera)

5. Eligibility of judges to serve on the small claims advisory committee.

Issues:

This item refers to an advisory committee to be established under Code of Civil Procedure section 116.950 if the Department of Consumer Affairs determines that funds are available. As the section now stands, the membership of the committee is to include “six judges of the municipal court, or of the superior court in a county in which there is no municipal court, who have had extensive experience as judges of small claims court,” appointed by the Judicial Council. (§ 116.950(d)(6).)⁹ The commission’s report suggests broadening this provision to permit any judge with extensive small claims experience, including a retired judge or an appellate court justice, to serve on the committee. This would likely be a technical change that could be done in clean-up legislation.

Subdivision (d)(6) could be amended to read: “Six judges who have had extensive experience as judges of small claims court, appointed by the Judicial Council. Judges appointed under this subdivision may include judges of the superior court, judges of the municipal court, judges of the appellate courts, and retired judges.” This revision could be included in the urgency legislation sponsored by the commission.

⁹ See copy at Tab 7.

Timeline:

January 29, 1999	Submit to Civil and Small Claims Advisory Committee for approval.
February 4, 1999	Submit to commission for possible inclusion in committee bill.
February 8, 1999	Submit to PCLC for approval.
May/June 1999	Bill expected to pass first house of Legislature.
July/August 1999	Bill expected to pass second house and be signed within 30 days.

Lead: CALS (Cara Vonk)

6. Catalog of cases within the appellate jurisdiction of the courts of appeal on June 30, 1995.

Issues:

The California Constitution, as amended by Proposition 220, gives the courts of appeal appellate jurisdiction “when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995.” (Cal. Const., art. VI, § 11.)¹⁰ This item proposes a study to determine whether constructing a catalog of such cases would be desirable, and if so, to construct the catalog.

An initial analysis of the usefulness of such a catalog and the work involved in compiling it has led to the conclusion that it should not be drafted as legislation at present. Producing a catalog would be less efficient than addressing jurisdictional questions on a case-by-case basis. (See memorandum attached at Tab 9.)

Timeline:

February 15, 1999	Determine whether to produce the catalog and in what form.
April 1, 1999	Draft catalog, if determined useful, as rule or other appropriate form.

Lead: CALS (Joshua Weinstein)

¹⁰ See copy at Tab 8.

7. Consolidation of jury commissioner functions for the courts in each county.

Issues:

Code of Civil Procedure section 195 requires each county to have a jury commissioner appointed by the judges of the superior court. For some specific counties statutes also provide for appointment of municipal court jury commissioners. (See, e.g., Gov. Code, § 73737 (jury commissioner of municipal court in Imperial County).) In the vast majority of counties, jury commissioner functions have been consolidated under court coordination plans.

TCS will review statutes providing for municipal court jury commissioners and contact those courts to determine the extent to which jury commissioner functions have been consolidated, and how counties have done this. Any statutory changes that may facilitate this process will be considered.

Timeline:

January 20, 1999	Identify statutes providing for municipal court jury commissioners (Clark Kelso will send list to TCS).
February 1-15, 1999	TCS will contact affected courts.
April 29, 1999	Submit any recommended changes to PCLC for approval.
May/June 1999	Bill expected to pass first house of Legislature.
July/August 1999	Bill expected to pass second house and be signed within 30 days.

Lead: TCS (Kate Harrison, Linda Theuriet)

8. Magistrate as judicial officer of the state or judicial officer of a particular court.

Issues:

Magistrates are quasi-judicial officers who perform certain constitutionally and statutorily defined functions in connection with the criminal justice system. These include issuing arrest warrants and search warrants (Penal Code §§ 807, 1523), conducting preliminary hearings and either releasing or binding the defendant over for trial (Penal Code § 858 et seq.), and conducting peace bond proceedings (Penal Code § 858 et seq.). Generally, only judges can act as magistrates. (Penal Code § 808.) In limited circumstances, some commissioners are authorized to exercise certain portions of a magistrate's power.

There are two issue areas that need to be addressed in separate timelines. One involves technical inconsistencies in the code sections, which can be addressed in cleanup legislation. The other area involves policy considerations concerning magistrate functions, and it is likely a long-range project. This will be referred to the Criminal Law Advisory Committee. It may be best to defer any statutory changes until all courts in California have unified.

Timeline:

January 20, 1999	Clark Kelso will circulate proposed technical changes to CLRC (Nat Sterling) and CALS (Cara Vonk).
February 4, 1999	Submit to commission for possible inclusion in committee bill.
March 10, 1999	Refer long-range issues to Criminal Law Advisory Committee

Lead: CALS (Cara Vonk, Joshua Weinstein)

9. Correction of county-specific statutes after unification in that county.

Issues:

SB 2139 revised laws relating to the courts generally. It proposed few revisions of special statutes relating to the courts in particular counties. Thus, some statutes that are specific to individual counties may be obsolete or inconsistent with unification. Government Code section 70215 helps facilitate the transition to a unified court by providing that general statutes governing court unification prevail over inconsistent county-specific legislation.¹¹ When the courts in a particular county unify, however, the special statutes relating to the courts in that county should be reviewed to determine whether they should be revised or repealed. Revision may include reorganization to incorporate some provisions regarding specific municipal courts that have been superseded by unification into parts of the code that govern the superior court in that county.

The greatest number of county-specific statutes are found among the municipal court staffing statutes. (Gov. Code, §§ 72000–74991.) These may be revised in the separate process of staffing statute revision as discussed above in item number 3. Additionally, some county-specific statutes relating to superior courts need amendment to reflect unification. These include statutes authorizing the number of judges and those governing official court reporters, for example. (See, e.g., Gov. Code, §§ 69580 et seq. (number of superior court judges), 70045 et seq.

¹¹ See copy of statute at Tab 10.

and others (court reporters).¹² Changes in the statutes governing the numbers of authorized personnel in the superior and municipal courts in a county need to be coordinated so that the totals are not changed inadvertently.

Other kinds of county-specific statutes also affect the courts, and may need revision to be consistent with unification. These include provisions governing jury trial venires in certain counties (see, e.g., Code Civ. Proc., §§ 199.2, 199.3, 199.5), filing fee surcharges (see, e.g., Gov. Code, § 26826.1), and law library board membership (see, e.g., Gov. Code, § 6301.1).¹³

Because the courts may be best informed about the functions of the provisions in statutes specific to them, the best approach may be to identify all county-specific statutes relating to courts that are now unified and confer with the court in each county. The court executive officer could be asked what language in statutes relating to superseded municipal courts needs to be retained in a superior court statute for that county, and what can be deleted. These proposals would then be forwarded to the AOC for review by staff and inclusion in proposed legislation.

Revising the staffing statutes to reflect court unification is a longer-term project. Until the judges of a unified superior court adopt a written personnel plan and it is approved by the Legislature, persons who were employed in the superseded municipal court “become the officers, employees, and other personnel of the unified superior court at their existing or equivalent classifications, and at their existing salaries and benefits . . .” (Gov. Code, § 70217.) For this reason, many of the provisions in the statutes governing municipal court employees remain effective even after unification.

A full revision of these and other employment statutes (such as those relating to court reporters) should await the results of the work of the Task Force on Trial Court Employees. The task force will submit a report recommending a personnel structure for trial court employees in September 1999.

Timelines:

Staffing bill:

February 1999	Request staffing requirements from the courts.
April 29, 1999	Submit staffing requests to council for vote.
May 1999	Submit staffing proposals to Legislature.
May/June 1999	Bill expected to pass first house of Legislature.

¹² See examples at Tab 11.

¹³ See copies at Tab 12.

July/August 1999	Bill expected to pass second house and be signed within 30 days.
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Other county-specific statutes:

March 31, 1999	Identify statutes that need to be revised for consistency with unification:
	1/30/99 Number of judges
	2/15/99 Court reporters
	3/15/99 Other county-specific statutes
April 1999	Submit proposed revisions to court executive officers.
May 1999	Submit proposed revisions to PCLC for approval.
June 1999	Finish draft revisions.
July 15, 1999	Submit proposed revisions to council for approval.
January 2000	Submit to Legislature.

Lead: TCS (Jennifer Tachera, Joe Phillips)
CALs (Cara Vonk, Janet Grove)

10. Reexamination of the statutes governing jury selection.

Issues:

This study may include points such as whether to make revisions regarding countywide jury selection at the county seat (Code Civ. Proc., § 198.5) and whether to require the Department of Motor Vehicles to cull noncitizens from juror source lists (Code Civ. Proc., §§ 197, 203(a)(1)).¹⁴ The issues involved in this study overlap substantially with those being studied by the Jury System Improvement Task Force. This item could be referred to them for consideration.

Timeline:

February 1999	Identify statutes governing jury selection that may need revision for improved efficiency and consistency with unification.
March 1999	Submit relevant statutes and issues involved to task force.
April 29, 1999	Submit any recommended changes to PCLC for approval.
May/June 1999	Bill expected to pass first house of Legislature.
July/August 1999	Bill expected to pass second house and be signed within 30 days.

¹⁴ See copies of these and other jury selection statutes at Tab 13.

2001	Consideration of whether there should be a statewide jury list.
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Lead: TCS (Linda Theuriet)

11. Long-term study (procedures in unified courts)

In addition to the studies listed above, the commission recommended a joint study by the council and commission to reexamine the three-track system of traditional superior court cases, traditional municipal court cases (limited civil cases), and small claims cases. The policies underlying this system and their implementation may need to be reevaluated in light of unification. This could include consideration of which procedural distinctions remain necessary or desirable, whether the current jurisdictional limits for small claims procedures and economic litigation procedures are still appropriate, and which procedures should apply to which types of cases. A similar evaluation should be done with respect to procedures in criminal cases. The end result of the study would be a joint report by the council and commission. A meeting of the AOC/CLRC working group is to be set in February 1999 to explore plans for the study in more detail and develop a specific timeline.

Summary

<i>Subject:</i>	<i>Lead:</i>	<i>Final staff deadline:</i>
1. Obsolete statutes	CALS, TCS	April 29, 1999
2. Superior court sessions	CALS	April 29, 1999
	Task Force on Court Facilities	July 2001 (final report)
3. Court commissioners	TCS	April 29, 1999
4. Court fees	OGA	April 29, 1999
5. Small claims advisory committee	CALS	February 8, 1999
6. Cases within court of appeal jurisdiction on 6/30/95	CALS	April 1, 1999 (catalog drafted if needed)
7. Jury commissioners	TCS	April 29, 1999
8. Magistrates	CALS	February 4, 1999 (technical amendments)
	CALS / Criminal Law Advisory Committee	March 10, 1999 / to be determined
9. County-specific statutes	TCS	April 29, 1999 (staffing bill)
	Task Force on Trial Court Employees	September 3, 1999 (final report)
	CALS, TCS	July 15, 1999

10. Jury selection	TCS (Jury System Improvement Task Force)	April 29, 1999
		2001 (consideration of statewide jury list)
11. Long-term study (procedures in unified courts)	AOC / CLRC	To be determined

cc: Dale Sipes
Anthony Williams
Jennifer Tachera
Nathaniel Sterling
Clark Kelso

Attachments

- Tab 1 Studies recommended in the Commission's report
- Tab 2 Gov. Code, §§ 71040.5, 71040.8
- Tab 3 Examples of statutes governing superior court sessions
- Tab 4 Gov. Code, § 77654
- Tab 5 Gov. Code, §§ 70212, 70214
- Tab 6 Examples of statutes governing court fees in superior and municipal courts
- Tab 7 Code Civ. Proc., § 116.950
- Tab 8 Cal. Const., art. VI, § 11
- Tab 9 Memo from Joshua Weinstein on cataloguing of cases within appellate jurisdiction of courts of appeal on June 30, 1995
- Tab 10 Gov. Code., § 70215
- Tab 11 Examples of county-specific statutes relating to numbers of judges authorized and court reporters
- Tab 12 Examples of county-specific statutes relating to juries, filing fees, and boards of law library trustees
- Tab 13 Examples of statutes governing jury selection