

First Supplement to Memorandum 99-22

Trial Court Unification: Followup Legislation

Two additional trial court unification issues warrant the Commission's attention in the context of its clean-up bill (SB 210):

TERMINOLOGY: CIVIL CASE OTHER THAN A LIMITED CIVIL CASE

In considering the Commission's proposal on reclassification of civil cases, the Civil and Small Claims Advisory Committee of the Judicial Council strongly urged that we coin a term for a civil case other than a limited civil case. Although the statutes work fine without such a term, judges working with these kinds of cases would like to have a convenient way to refer to them.

The Commission has previously considered this matter at length, but has not come up with a satisfactory label for a civil case other than a limited civil case. Some courts are now using the term "unlimited civil case." That is misleading, because some limits do apply to cases heard in superior court (e.g., the superior court cannot hear a case that is within the exclusive jurisdiction of the federal courts).

A better alternative is "general civil case." The Commission considered this alternative before, but rejected it because the term is already in use for other purposes. Although the provisions using this term are rules of court and local rules rather than statutes, the usage is so widespread that confusion is inevitable if we redefine the term to mean a case other than a limited civil case. See Cal. Rule of Court 2103 ("As used in this division 'general civil case' means all civil cases except probate, guardianship, conservatorship, family law (including proceedings under the Family Law Act, Uniform Parentage Act, and Uniform Child Custody Jurisdiction Act; freedom from parental custody and control proceedings; and adoption proceedings), juvenile court proceedings, small claims appeals, and 'other civil petitions' as defined in the Regulations on Superior Court Reports to the Judicial Council including petitions for a writ of mandate or prohibition, temporary restraining order, harassment restraining order, domestic violence restraining order, writ of possession, appointment of receiver, release of property from lien,

and change of name.”); see also Cal. Rules of Court 2104, 2105; Standards of Judicial Administration §§ 2.1, 2.3; seventy-nine different local rules using the term “general civil case.”

We could avoid this problem by using the term “general jurisdiction case.” That term is not being used in any California statute, rule of court, or local rule. It is reasonably descriptive of the types of cases we are trying to name: We have defined the jurisdiction of a unified superior court to include a subset known as limited civil cases; it is reasonable to say that the remaining cases are within the general jurisdiction of the unified superior court.

If the Commission finds the term “general jurisdiction case” acceptable, we could introduce it in the clean-up bill as follows:

Code Civ. Proc. § 88 (added). “General jurisdiction case” defined

SEC. _____. Section 88 is added to the Code of Civil Procedure, to read:

88. A civil action or proceeding other than a limited civil case is a general jurisdiction case.

Comment. Section 88 is added to provide a convenient means of referring to a civil case other than a limited civil case.

A small claims case is a type of limited civil case, not a general jurisdiction case. See Sections 85 & 86 & Comments.

If the Commission wishes, we could also substitute the term “general jurisdiction case” in each statute that now refers to “a case other than a limited civil case” (or similar phraseology). This is not technically necessary, but it would be a simple matter to accomplish if it is considered desirable.

Alternatively, the Commission could encourage the Judicial Council to select a term for a case other than a limited civil case, and memorialize it in a rule of court. Because limited civil case is a statutory term, however, it seems more appropriate to create a statutory counterpart than to leave the matter to a rule of court.

PENAL CODE SECTION 899: SELECTION OF GRAND JURY

Judicial Council staff have alerted us to an issue concerning Penal Code Section 899, which governs selection of a grand jury:

899. The names for the grand jury list shall be selected from the different wards, judicial districts, or supervisorial districts of the respective counties in proportion to the number of inhabitants therein, as nearly as the same can be estimated by the persons making the

lists. The grand jury list shall be kept separate and distinct from the trial jury list. In a county of the first class, the names for such list may be selected from the county at large.

The purpose of this provision is to ensure that grand jurors are selected in a manner that “does not systematically exclude, or substantially underrepresent, the members of any identifiable group in the community.” *People v. Newton*, 8 Cal. App. 3d 359, 388, 87 Cal. Rptr. 394 (1970); see also *People v. Navarette*, 54 Cal. App. 3d 1064, 1073, 127 Cal. Rptr. 55 (1976) (“In formulating a panel for a grand jury endowed with the criminal indictment function, officials must adhere to a standard more stringent than mere abstention from intentional discrimination; they have an affirmative duty to develop and pursue procedures aimed at achieving a fair cross-section of the community.”).

At least one county (1) used municipal court districts in selecting its grand jury before unification, and (2) wants to continue that practice post-unification. Judicial Council staff have inquired whether that practice is still permissible, and whether Section 899 should be amended to clarify this point.

As the Commission may recall, its implementing legislation for trial court unification included the following provision on judicial districts:

Code Civ. Proc. § 38 (added). Judicial districts

SEC. _____. Section 38 is added to the Code of Civil Procedure, to read:

38. Unless the provision or context otherwise requires, a reference in a statute to a judicial district means:

- (a) As it relates to a court of appeal, the court of appeal district.
- (b) As it relates to a superior court, the county.
- (c) As it relates to a municipal court, the municipal court district.
- (d) As it relates to a county in which there is no municipal court, the county.

Comment. Section 38 is intended for drafting convenience. See also Section 17 (“judicial district” includes city and county). Court of appeal districts and municipal court districts are constitutionally mandated. See Cal. Const. art. VI, §§ 3, 5. Superior court districts do not exist except in Los Angeles County. See Gov’t Code §§ 69640-69650.

By operation of this section, in a county in which the superior and municipal courts have unified, a statutory reference to a judicial district means the county rather than a former municipal court district. This general rule is subject to exceptions. See, e.g., Gov’t Code § 71042.5 (preservation of judicial districts for purpose of publication).

The impact of this provision on Penal Code Section 899 is subject to differing interpretations.

Section 899 states that the “names for the grand jury list shall be selected from the different wards, *judicial districts*, or supervisorial districts of the respective counties in proportion to the number of inhabitants therein, as nearly as the same can be estimated by the persons making the lists.” (Emphasis added.) Under Code of Civil Procedure Section 38(d), this reference to “judicial district” could be interpreted to refer to the entire county in a county with a unified superior court. So interpreted, it would make little sense to select a grand jury on the basis of “judicial districts” in a unified county. The statute would still provide guidance in a unified county, however, because it permits use of supervisorial districts and wards, as well as judicial districts. Judicial districts could continue to be used in a county in which there are municipal courts.

This construction of Section 899 is workable, free of surplusage, and consistent with Code of Civil Procedure Section 38. It does not authorize a unified superior court to use former municipal court districts in selecting a grand jury.

The rules of construction in Section 38 are, however, qualified by the phrase “[u]nless the provision or context otherwise requires.” It is possible to conclude that in the context of a unified superior court, Section 899’s reference to “judicial districts” means “former judicial districts.” The staff does not agree with this construction, but it is not out of the question.

The Commission could attempt to eliminate this ambiguity in Section 899 in its clean-up bill. The matter involves policy considerations, however, such as whether to encourage continued use of former municipal court districts. **Rather than addressing it without an opportunity for public comment** (other than what remains of the legislative process for SB 210), **the staff suggests that we follow our normal process and put any resultant proposal in another vehicle.** This approach seems particularly appropriate because Professor Kelso has already been working on other issues involving selection of grand juries, which we plan to present to the Commission in the near future. Combining these matters for Commission consideration seems the most sensible way to proceed.

Respectfully submitted,

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