

Memorandum 2001-2

Report on Status of Trial Court Unification Studies

The Law Revision Commission's report on trial court unification identified a number of matters for future study. The Commission was given primary responsibility for some of these studies, which it was to conduct in consultation with the Judicial Council. Gov't Code § 70219; *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 82-86 (1998). Attached is a draft report to the Legislature on the status of these studies. The Commission consulted with the Judicial Council on these studies by circulating tentative recommendations and drafts to the Judicial Council and considering any comments received. Also attached is an update on the status of the studies for which the Judicial Council has primary responsibility (Exhibit pp. 1-8). These reports do not cover the joint study with the Judicial Council of civil procedure in light of trial court unification.

The Commission should review the attached materials and determine **(1) whether to approve the draft report on the status of its studies for printing and submission to the Legislature, and (2) whether to provide any input to the Judicial Council on the status of the studies assigned to it**, which the Judicial Council is to conduct in consultation with the Law Revision Commission. The Judicial Council has not requested any input at this time and such action does not appear necessary, because many of the studies have either been completed or the work has been assigned to the Commission by Senate Bill 2140 (Burton), 2000 Cal. Stat. ch. 1010, § 14 (Gov't Code § 71674).

Respectfully submitted,

Barbara S. Gaal
Staff Counsel



Judicial Council of California
Administrative Office of the Courts

Office of the General Counsel
455 Golden Gate Avenue ♦ San Francisco, CA 94102-3660
Telephone 415-865-7446 ♦ Fax 415-865-7664 ♦ TDD 415-865-4272

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

DENNIS B. JONES
Chief Deputy Director

MICHAEL BERGEISEN
General Counsel

TO: Nathaniel Sterling, Executive Secretary
Barbara Gaal, Staff Counsel
California Law Revision Commission

Law Revision Commission
RECEIVED

FROM: Alice Vilardi, Managing Attorney
Janet Grove, Research Attorney

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SUBJECT/PURPOSE OF MEMO: Update on studies relating to court unification

CONTACT FOR FURTHER INFORMATION:	NAME:	TEL:	EMAIL:
	Alice Vilardi	415-865-7661	alice.vilardi@jud.ca.gov
	Janet Grove	415-865-7702	janet.grove@jud.ca.gov

FAX:
415-865-7664

This memo provides an update, as you requested, on the status of the 10 studies for which the Judicial Council has primary responsibility under Government Code section 70219. These studies focus on cleanup issues related to the passage of Proposition 220 that were not addressed in SB 2139 (Stats. 1998, ch. 931). The Administrative Office of the Court's (AOC's) action on these issues falls generally into three categories: legislation has been passed or proposed, the AOC recommends further study by Judicial Council advisory committees or task forces, or the AOC has determined that no action is necessary. This update does not cover the long-term joint study with the California Law Revision Commission (CLRC) on the three tracks of civil procedure in light of unification.

Legislation passed this year directs the CLRC to determine whether any provisions of law are obsolete as a result of court unification, enactment of the Trial Court Employment

Protection and Governance Act, or enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997. (Gov. Code § 71674, Stats. 2000, ch. 1010, § 14, effective January 1, 2001.) CLRC staff are working in consultation with AOC staff on the parts of this review related to court administration. Amendments proposed as a result of this review are expected to accomplish the statutory cleanup associated with some of the following studies.

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

Included in the study on county-specific statutes (#9).

This project involves the repeal of Government Code sections dealing with prior consolidations of judicial districts or superseded justice courts. These statutes no longer have a function because they are obsolete or have been superseded. Examples include 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). Statutes relating to former judicial district boundaries also may not be needed 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.)

This study has been integrated into the study on county-specific statutes (study #9). The reason for this is that the obsolete statutes are included among the county-specific statutes and they do not need to be handled separately.

2. Superior court sessions, both general and special.

We are continuing to monitor the work of the Task Force on Court Facilities to ensure that its findings and recommendations are considered in any future revision of the statutory scheme governing court sessions. No further cleanup legislation is necessary at present for consistency with unification.

This study addresses the complex statutory scheme governing superior court sessions and locations. Revision of the statutes governing court sessions may involve policy questions including access, convenience to county residents, geographic diversity and size of the county, need for judicial presence, approval by judges, and cost factors. Any change in the current provisions is likely to be important to the counties, because at least until June 30, 2001, the boards of supervisors are generally responsible for providing "suitable and necessary facilities" for the courts. (Gov. Code, § 77654(g).)

Revision of statutory scheme for court sessions: The work of the Task Force on Court Facilities (Gov. Code, §§ 77650–77655) includes setting standards for court facilities and making recommendations regarding court locations. The work overlaps with this study because many of the statutes pertaining to superior court sessions specify the locations of court facilities, provide that the board of supervisors may determine locations for court sessions, or allow the court to determine where sessions are held. AOC staff has identified all the statutes governing court locations and provided them to the task force. The final report of the task force is due July 1, 2001.

A general statute authorizing each trial court to determine the time, location and number of sessions would be cleaner than the current statutory scheme. However, altering statutes that provide for board of supervisor approval of location of sessions may be problematic in light of the changing role of the county in court administration. Similarly, deleting statutes that dictate that sessions be held in specific locations could lead to disagreements with county governments. AOC staff is continuing to monitor the work of the Task Force on Trial Court Facilities to ensure that any major revisions proposed are consistent with its findings and recommendations.

Review for consistency with unification: Some aspects of the statutes relating to superior court sessions can be reviewed for consistency with unification without regard to the work of the task force. In reviewing the statutes, AOC staff found only two instances of potential inconsistency: discrepancies between some actual superior court locations and the locations authorized in the Government Code, and provisions on the creation of a new county. The problem of statutes that on their face prohibit sessions at a former municipal court location that is now a superior court location is addressed by Proposition 220. The constitutional amendments and implementing legislation provide that preexisting superior and municipal court locations are retained as superior court locations. (Cal. Const., art. VI, § 23(c)(2); Gov. Code, § 70212(b).) The provisions on the creation of a new county are unlikely to create problems, and may best be addressed by constitutional amendment when all counties have unified courts. Thus, no further cleanup legislation is necessary at present for consistency with unification.

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

Legislation enacted this year authorizes each trial court to appoint the number and type of subordinate judicial officers that it deems necessary, subject to approval by the Judicial Council. The statutory prescription of numbers of SJOs is obsolete. The Judicial Council is developing a comprehensive policy to guide the trial courts in their use of SJOs.

The transitional provision in Government Code section 70214 was intended to preserve the existing authority to appoint commissioners and referees following unification. This statute authorizes a unified court to have the same number of subordinate judicial officers (SJOs) as were previously authorized for the superior and municipal courts combined.

Legislation enacted this year makes cleanup legislation to reflect the number of SJOs in each unified court unnecessary. The Trial Court Employment Protection and Governance Act authorizes each trial court to appoint the number and type of SJOs that it deems necessary for performance of subordinate judicial duties authorized by law, subject to approval by the Judicial Council. (Gov. Code § 71622, Stats. 2000, ch. 1010, § 14.)

AOC staff has researched numerous issues related to SJOs and is presenting a report and recommendations to the Judicial Council at its December 2000 meeting. The recommendations are intended as initial steps toward developing a comprehensive policy to guide the trial courts in their use of SJOs.

Other legislation concerning the number of authorized SJOs was enacted last year:

- AB 1673 authorized all commissioner and referee positions that were funded and filled as of January 1, 1999. (Gov. Code, § 70140.5, added Stats. 1999, ch. 891, § 8.)
- AB 1673 authorized conversion of certain existing referee positions in Contra Costa and Santa Barbara counties to commissioner positions, subject to the AOC's certification that the courts can absorb the differential salary costs within their existing budgets. (Gov. Code, §§ 70214.5, 70214.6, added Stats. 1999, ch. 891, §§ 9, 10.)

4. Reorganization of statutes governing court fees.

Reorganization was deferred pending fee legislation in 1999. Proposed legislation has been drafted to consolidate most of the provisions that set trial court filing fees into one chapter.

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; fees for small claims courts, Code of Civil Procedure sections 116.230–116.910. Additional statutes in the Civil, Probate, Vehicle, and Welfare and Institutions codes may contain court fee provisions. This study considers whether to reorganize and consolidate the fee provisions for ease of use, perhaps replacing references to the county clerk with court executive officer.

Proposed revision of the fee statutes needs to be considered in the context of and coordinated with the efforts underway in the area of trial court funding. Additionally, there is some difference of opinion as to whether certain fees are to be paid to the court or the county. This and other issues will have to be resolved before a reorganization of the statutes can be completed.

Proposed legislation has been drafted which would consolidate most of the provisions setting trial court filing fees into one chapter. Any substantive changes will be considered by the appropriate advisory committees. Changes in the amounts of fees may be proposed separately.

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

This project was completed with the passage of SB 210 in September 1999.

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. AOC staff drafted language to extend eligibility to serve on the committee to commissioners, referees, and attorneys who have extensive experience hearing small claims cases (temporary judges), as well as judges. The amendment was approved by the Civil and Small Claims Advisory Committee in January 1999, further amended at the request of the Judicial Council in April 1999, and added to SB 210. The new description of eligible judges reads as follows:

Six judicial officers who have 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, retired judicial officers, and temporary judges. (Code Civ. Proc., § 116.950(d)(6).)

This project was completed with the passage of SB 210 (Stats. 1999, ch. 344, effective Sept. 7, 1999) in September 1999.

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

We have concluded that this issue can best be addressed by a Rule of Court providing for transfer of an appeal that was filed in the wrong court to the appropriate court, and we recommend including such a rule in revision of the appellate rules.

Proposition 220 amended the Constitution to give 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.) This item proposed a study to determine whether constructing a catalog of such cases would be desirable, and if so, to construct the catalog.

The Appellate Advisory Committee recommended that a catalog not be undertaken unless and until the issue has been sufficiently addressed by the appellate courts. Subsequently, it was agreed that any problems occurring in this area could be resolved by transfer of an appeal filed in the wrong court to the appropriate court. At present, no statutes or rules expressly provide for this, but the AOC believes the courts have inherent authority to make such a transfer, and case law supports this. The Appellate Advisory Committee and Appellate Division Task Force are revising the appellate rules, and they plan to include a rule for transfer in their proposed revisions of the Rules of Court.

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

Included in the study on county-specific statutes (#9).

This project involves the identification and repeal of obsolete statutes providing for municipal court jury commissioners in counties with unified courts. These statutes are obsolete because each superior court is required to have a jury commissioner pursuant to Code of Civil Procedure section 195. Because the obsolete statutes are county-specific, they will be handled in the study on county-specific statutes (#9).

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

The Criminal Law Advisory Committee has reviewed policy issues concerning magistrates and has concluded that the statutes governing magistrate functions should not be changed at present.

Magistrates are quasi-judicial officers who perform certain constitutionally and statutorily defined functions in connection with the criminal justice system. Generally, only judges can act as magistrates, but some commissioners are authorized to exercise portions of a magistrate's power in very limited circumstances.

Long-range policy questions affecting the magistrate statutes were referred to the Criminal Law Advisory Committee. The committee considered whether to recommend either expanding commissioners' functions to include magistrate functions or eliminating the magistrate distinction as outdated. The committee concluded that there very well may be sound policy bases for maintaining the unique office and function of magistrate, and recommended against proposing changes to the statutes, at least until the effects of court unification are more fully developed.

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

Legislation passed this year directs the CLRC to identify provisions in the statutes governing superior and municipal courts that are obsolete because of unification and to propose amendments. CLRC staff are working in consultation with AOC staff on the parts of this review related to court administration.

Most county-specific statutes requiring correction because of unification are found among the municipal court staffing statutes. (Gov. Code, §§ 72400–74991.) Other statutes that need amendment to reflect unification include statutes authorizing the number of judges (Gov. Code, §§ 69580–69641), governing official court reporters (Gov. Code, §§ 70040–70139), and governing the organization of specific municipal courts (Gov. Code, § 71001 et seq.).

Following court unification, municipal court employees became “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 may have continued to have some effect after unification.

The staffing statutes, however, now appear to be largely obsolete. The Task Force on Trial Court Employees, which was created by the Legislature to recommend a personnel system for the trial court employees in California, submitted its report to the Legislature in December 1999. Legislation was enacted this year to establish a new trial court employee personnel system. (Trial Court Employment Protection and Governance Act, Stats. 2000, ch. 1010, § 14, effective January 1, 2001.) Under this Act, each trial court is authorized to establish job classifications and make appointments as it deems necessary

for the performance of its duties. (Gov. Code § 71620(a).) The statute addresses numerous employment issues regarding trial court personnel.

The staffing statutes will likely be repealed following the CLRC's review of statutes under Government Code section 71674. Other county-specific statutes that are obsolete because of court unification will also be addressed in this review. CLRC staff will work in consultation with AOC staff on the parts of this review related to court administration.

Legislation passed this year also repealed the provision for 40 additional judges statewide (Gov. Code, § 69620) and increased the number of superior court judges in specific counties. (Stats. 2000, ch. 998 (Sen. Bill 1857).) The new numbers of superior court judges, however, did not incorporate the numbers of former municipal court judgeships in the counties with unified courts. The numbers will be changed to conform to unification in subsequent cleanup legislation.

10. Reexamination of the statutes governing jury selection.

No further cleanup legislation is required.

An amendment permitting a unified superior court with multiple locations within a county to select a jury from the area in which the session is held (rather than from the entire county) was included in SB 2139 (Code Civ. Proc., § 198.5(b), added Stats. 1998, ch. 931, § 52). No further general cleanup legislation is required. The special provisions for jury pools to be selected from local community, rather than countywide, jury pools in Placer and Nevada counties (Code Civ. Proc., §§ 199.2, 199.3.) are still useful because of the physical barriers present in those counties, and they do not need revision.

cc: Michael Bergeisen

#J-1301

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft REPORT

Trial Court Unification:
Issues Identified for Future Study

February 2001

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
650-494-1335 FAX: 650-494-1827

TRIAL COURT UNIFICATION: ISSUES IDENTIFIED FOR FUTURE STUDY

In its recommendation on revision of the codes to implement trial court unification, the Commission identified a number of issues for future study.¹ The Legislature directed the Commission to undertake primary responsibility for some of these studies, in consultation with the Judicial Council.² The Legislature assigned other studies to the Judicial Council, to conduct in consultation with the Commission.³ The Legislature also directed the Commission and the Judicial Council to jointly reexamine civil procedure in light of unification.⁴

The following is an update on the status of the studies for which the Commission has primary responsibility.⁵ This update does not cover the studies assigned to the Judicial Council or the joint study of civil procedure.

Obsolete statutes relating to expired programs

The Commission is responsible for studying obsolete statutes relating to expired pilot projects or other expired programs. The Commission has approved a final recommendation on this topic.⁶ Legislation to implement this recommendation will be introduced this year.

Appointment of receiver

The Commission has primary responsibility for studying whether to conform the statutory procedures on circumstances for appointment of a receiver.⁷ The Commission has approved a final recommendation on this topic.⁸ The proposed legislation was included in the Assembly Judiciary Committee omnibus civil practice bill (AB 1669) last session, but later deleted as too substantive for that type of bill. The Commission plans to seek enactment of the proposal again this year, perhaps with some revisions.

Good faith improver claims

The Commission is responsible for studying the procedure for good faith improver claims, particularly the jurisdictional classification of a good faith

1. *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 82-86 (1998).

2. Gov't Code § 70219; *Trial Court Unification: Revision of Codes*, *supra* note 1, at 85-86.

3. Gov't Code § 70219; *Trial Court Unification: Revision of Codes*, *supra* note 1, at 84-85.

4. Gov't Code § 70219; *Trial Court Unification: Revision of Codes*, *supra* note 1, at 82-83.

5. The Commission consulted with the Judicial Council on these studies by providing tentative recommendations and staff memorandums to the Judicial Council and considering any input that the Judicial Council provided.

6. *Expired Pilot Projects*, 30 Cal. L. Revision Comm'n Reports ____ (2000).

7. *Compare* Code Civ. Proc. § 86(a)(8) (appointment of receiver in municipal court) *with* Code Civ. Proc. § 564 (appointment of receiver in superior court).

8. *Authority to Appoint Receivers*, 30 Cal. L. Revision Comm'n Reports ____ (2000).

improver cross-complaint.⁹ The Commission approved a final recommendation on this topic.¹⁰ The proposed legislation was enacted.¹¹

Stay of mechanic's lien foreclosure action pending arbitration

The Commission is responsible for studying the procedure for stay of a mechanic's lien foreclosure action pending arbitration.¹² The Commission approved a final recommendation on this topic.¹³ The proposed legislation will be introduced this session.

Counsel for defendant in criminal case

Another topic assigned to the Commission was clarification of the provisions on obtaining counsel for a defendant in a criminal case. A number of these provisions appear to conflict with a defendant's constitutional right of self-representation,¹⁴ which applies in both capital and noncapital cases.¹⁵ The Commission decided not to propose legislation in this area, because such a proposal would go beyond the scope of the technical clean-up originally envisioned when the Commission proposed this study.

Court reporter in unified superior court

The Commission has primary responsibility for studying the role of a court reporter in a unified superior court. The Commission circulated a tentative recommendation on this topic.¹⁶ On considering the comments on the tentative recommendation, the Commission decided to circulate a revised tentative recommendation. Commission staff are preparing a draft of a revised tentative recommendation for the Commission's review.

Appealability of order of recusal in criminal case

The Commission studied and proposed legislation on the appealability of an order of recusal in a criminal case. The proposed legislation has been enacted.¹⁷

9. Code Civ. Proc. § 871.3.

10. *Jurisdictional Classification of Good Faith Improver Claims*, 30 Cal. L. Revision Comm'n Reports ___ (2000).

11. 2000 Cal. Stat. ch. 688, § 7.

12. Code Civ. Proc. § 1281.5.

13. *Stay of Mechanic's Lien Enforcement Pending Arbitration*, 30 Cal. L. Revision Comm'n Reports ___ (2000).

14. Penal Code §§ 686, 686.1, 859, 859a, 987.

15. See *Faretta v. California*, 422 U.S. 806 (1975) (noncapital case); *People v. Kirkpatrick*, 7 Cal. 4th 988, 874 P.2d 248, 30 Cal. Rptr. 2d 818 (1994) (capital case); *People v. Superior Court (George)*, 24 Cal. App. 4th 350, 29 Cal. Rptr. 2d 305 (1994) (capital case).

16. Tentative Recommendation on *Cases in Which Court Reporter Is Required* (August 2000).

17. 1999 Cal. Stat. ch. 344, § 25 (conforming Penal Code Section 1238 to Penal Code Section 1466(a)(1)(A)); *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999 (Senate Bill 210)*, 29 Cal. L. Revision Comm'n Reports 657, 664 (1999).

Publication of legal notice in county with unified superior court

The Commission is to study issues relating to publication of legal notice in a county with a unified superior court.¹⁸ The Commission is deferring work on this study until interested parties gain experience with legal publication in a unified superior court.

Numbering conflict in Government Code

The Commission was to study a numbering conflict in the Government Code.¹⁹ Legislation on this topic is unnecessary, because the conflict was eliminated in Legislative Counsel's 1998 bill to maintain the codes.²⁰

Default in unlawful detainer case

The Commission studied and proposed legislation on default in an unlawful detainer case. The proposed legislation has been enacted.²¹

Affidavit pursuant to Fish and Game Code Section 2357

The Commission was responsible for studying Fish and Game Code Section 2357, which concerns carrying of trout into an area where the season is closed. The Commission approved a final recommendation to repeal the statute.²² The proposal was enacted.²³

18. See Gov't Code § 71042.5 (preservation of judicial districts for purpose of publication).

19. In 1997, the Legislature enacted two Chapters 2.1 (commencing with Section 68650) of Title 8 of the Government Code, one entitled "Trial Court Personnel" and the other entitled "California Habeas Resource Center."

20. 1998 Cal. Stat. ch. 485, §§ 94-100.5.

21. 1999 Cal. Stat. ch. 344, § 19 (correcting cross-references in Code of Civil Procedure Section 1167.3); *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999*, *supra* note 17, at 663.

22. *Trout Affidavit*, 30 Cal. L. Revision Comm'n Reports ____ (2000).

23. 2000 Cal. Stat. ch. 167, § 1.