

Memorandum 2001-7

Statutes Made Obsolete by Trial Court Restructuring: Subordinate Judicial Officers

The California Constitution authorizes the Legislature to provide for subordinate judicial officers. Cal. Const. art. VI, § 22 (“The Legislature may provide for the appointment by trial courts of record of officers such as commissioners to perform subordinate judicial duties.”) Subordinate judicial officers include commissioners and referees.

The Legislature has provided for subordinate judicial officers through a number of statutes. See, e.g., Gov’t Code §§ 70140-70148 (court commissioners). Although various statutes prescribe powers and duties of subordinate judicial officers, a key substantive provision is Code of Civil Procedure Section 259:

Code Civ. Proc. § 259. Powers of court commissioners

259. Subject to the supervision of the court, every court commissioner shall have power to do all of the following:

(a) Hear and determine *ex parte* motions for orders and alternative writs and writs of habeas corpus in the superior court for which the court commissioner is appointed.

(b) Take proof and make and report findings thereon as to any matter of fact upon which information is required by the court. Any party to any contested proceeding may except to the report and the subsequent order of the court made thereon within five days after written notice of the court’s action. A copy of the exceptions shall be filed and served upon opposing party or counsel within the five days. The party may argue any exceptions before the court on giving notice of motion for that purpose within 10 days from entry thereof. After a hearing before the court on the exceptions, the court may sustain, or set aside, or modify its order.

(c) Take and approve any bonds and undertakings in actions or proceedings, and determine objections to the bonds and undertakings.

(d) Administer oaths and affirmations, and take affidavits and depositions in any action or proceeding in any of the courts of this state, or in any matter or proceeding whatever, and take acknowledgments and proof of deeds, mortgages, and other instruments requiring proof or acknowledgment for any purpose under the laws of this or any other state or country.

(e) Act as temporary judge when otherwise qualified so to act and when appointed for that purpose, or by written consent of an appearing party. While acting as temporary judge the commissioner shall receive no compensation therefor other than compensation as commissioner.

(f) Hear and report findings and conclusions to the court for approval, rejection, or change, all preliminary matters including motions or petitions for the custody and support of children, the allowance of temporary spousal support, costs and attorneys' fees, and issues of fact in contempt proceedings in proceedings for support, dissolution of marriage, nullity of marriage, or legal separation.

(g) Hear actions to establish paternity and to establish or enforce child and spousal support pursuant to subdivision (a) of Section 4251 of the Family Code.

(h) Hear, report on, and determine all uncontested actions and proceedings subject to the requirements of subdivision (e).

(i) Charge and collect the same fees for the performance of official acts as are allowed by law to notaries public in this state for like services. This subdivision does not apply to any services of the commissioner, the compensation for which is expressly fixed by law. The fees so collected shall be paid to the treasurer of the county, for deposit in the general fund of the county.

(j) Provide an official seal, upon which must be engraved the words "Court Commissioner" and the name of the county, or city and county, in which the commissioner resides.

(k) Authenticate with the official seal the commissioner's official acts.

☛ **Staff Note.** Later in this project we will need to take a closer look at the fee provision in subdivision (i) to determine whether it is compatible with the state's current trial court funding structure. This is currently a political issue between the counties and courts.

The statutes relating to subordinate judicial officers are affected by trial court restructuring in several different ways:

(1) Unification requires that the functions of superior court and municipal court subordinate judicial officers be combined. This involves primarily statutory changes to create one set of qualifications, one manner of selection, one set of responsibilities, and one salary schedule in the unified court. The Law Revision Commission noted in its report on unification that, "This will be the subject of a follow-up Commission recommendation if trial court unification is approved by the voters." *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1, 58 (1994).

(2) As a matter of personnel management, on unification of the municipal and superior courts in a county, subordinate judicial officers of the courts became subordinate judicial officers of the unified court by operation of law. Cal. Const. Art. VI, § 23(c); Gov't Code § 70212(a). The trial court unification transitional provisions provide additional detail on subordinate judicial officers:

§ 70214. Commissioners and referees

70214. When the municipal and superior courts in a county are unified:

(a) Until revised by statute, the total number of authorized court commissioners in the unified superior court shall equal the previously authorized number of court commissioners in the municipal court and superior court combined.

(b) Until revised by statute, the total number of authorized traffic referees or traffic trial commissioners in the unified superior court shall equal the previously authorized number of court traffic referees or traffic trial commissioners in the municipal court.

(c) The superior court or its judges may make appointments previously authorized to be made by a municipal court or its judges.

(d) Commissioners and referees of the unified superior court shall have all of the powers and authority of commissioners and referees of superior courts and of municipal courts.

This provision maintains the total number of authorized commissioners and referees in a county in which the courts have unified, and preserves existing authority to appoint commissioners and referees. *Cf.* Gov't Code §§ 70141 et seq. (existing authority to appoint superior court commissioners), Sections 72000-74991 (existing authority to appoint municipal court commissioners found among county-specific statutes in the Government Code governing municipal courts), 72400 (existing authority to appoint municipal court traffic trial commissioners).

(3) The Trial Court Employment Protection and Governance Act identifies a subordinate judicial officer as “an officer appointed to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution, including, but not limited to, a court commissioner, probate commissioner, referee, traffic referee, juvenile referee, and pro tem judge.” Section 71601(i). Subordinate judicial officers may be court “employees” within the meaning of the act. Section 71601(m). However, they are excluded from

competitive selection and promotion processes and are not covered by the employment protection system. Sections 71643 and 71650.

The Act also provides far-reaching provisions relating to subordinate judicial officers that appear to eclipse much of existing law relating to authorization and appointment of subordinate judicial officers.

§ 71622. Subordinate judicial officers

71622. (a) Each trial court may establish and may appoint such subordinate judicial officers as are deemed necessary for the performance of subordinate judicial duties as are authorized by law to be performed by subordinate judicial officers. However, the number and type of subordinate judicial officers in a trial court shall be subject to approval by the Judicial Council. Subordinate judicial officers shall serve at the pleasure of the trial court.

(b) The appointment of a subordinate judicial officer shall be made by order entered in the minutes of the court.

(c) The Judicial Council shall promulgate rules establishing the minimum qualifications and training requirements for subordinate judicial officers.

(d) The presiding judge of a superior court may cross-assign one type of subordinate judicial officer to exercise all the powers and perform all the duties authorized by law to be performed by another type of subordinate judicial officer, but only if the person cross-assigned satisfies the minimum qualifications and training requirements for the new assignment established by the Judicial Council pursuant to subdivision (c).

(e) The superior courts of two or more counties may appoint the same person as court commissioner.

(f) As of the implementation date of this chapter, all persons who were authorized to serve as subordinate judicial officers pursuant to other provisions of law shall be authorized by this section to serve as subordinate judicial officers at their existing salary rate, which may be a percentage of the salary of a judicial officer.

Thus the Legislature has now exercised its constitutional authority to “provide for” appointment of subordinate judicial officers by delegating the matter to the courts, subject to the control of the Judicial Council. This renders obsolete much of the existing statutory structure relating to subordinate judicial officers. Presumptively, these statutes may be repealed.

It should be noted that there are at least two politically sensitive issues here beyond the otherwise routine cleanout of obsolete statutes:

(1) Government Code Section 70141.11, relating to subordinate judicial officers in Contra Costa County, provides that, “Any court reporting functions for the commissioner may be by electronic or mechanical means and devices.” This is an issue that would be better avoided in what should be a nonsubstantive project. We will deal with the issue in a separate memorandum relating to court reporters. See Memorandum 2001-8.

(2) Government Code Section 72450, relating to appointment of traffic trial commissioners, provides that the commissioners “shall be selected from a list of qualified applicants openly recruited after advertisement for the position in a newspaper of general circulation pursuant to Sections 6000 and 6061.3.” This provision is proposed for repeal. We know from past experience, however, that the newspaper lobby will resist in the Legislature any diminution of required publications.

There follows a sampling of subordinate judicial officer statutes, showing how we would dispose of them, and, by extension, how we would dispose of those that are similar in character.

Gov’t Code § 69897 (amended). Probate commissioners

SEC. . Section 69897 of the Government Code is amended to read:

~~69897. The (a) Subject to Section 71622, the superior court of any county with a population of over 600,000 and under 900,000 may appoint a probate commissioner to assist the probate court in disposing of its business connected with the administration of justice. The person appointed shall be designated as probate commissioner of such the county. He shall be a citizen of the United States, a resident of this State and have been admitted to practice before the Supreme Court of this State. He shall hold office during the pleasure of the courts appointing him.~~

~~The appointment of the probate commissioner shall be made by order entered in the minutes of the court.~~

~~(b) Every probate commissioner so appointed shall be in attendance at all sessions of the court. He The probate commissioner shall examine all the files and proceedings and advise the court on them. He The probate commissioner shall have the powers and duties delegated to him by the appointing court, including the powers conferred on court commissioners by this title or the Code of Civil Procedure.~~

Comment. Section 69897 is amended to repeal obsolete provisions. The obsolete provisions are superseded by Section 71622 (subordinate judicial officers).

Gov't Code §§ 70140-70148 (repealed). Court commissioners

SEC. . Article 13 (commencing with Section 70140) of Chapter 5 of Title 8 of the Government Code is repealed.

Comment. Sections 70140 to 70148, relating to superior court commissioners, are repealed as obsolete. They are superseded by the following provisions:

71612 (existing terms of employment not affected)

71622 (subordinate judicial officers)

71623 (salaries)

71624 (retirement plans)

71626, 71626.5 (retiree group insurance)

71629 (trial court employment benefits not affected)

71643 (excluded positions)

77200 (state funding of court operations)

☛ **Staff Note.** The staff is researching the following matter, which will be dealt with separately:

Ethics (private practice of law)

The text of the repealed provisions is set out below.

ARTICLE 13. COURT COMMISSIONERS

70140. (a) Except as provided in subdivision (b) and notwithstanding any other provision of law, the superior court in any county with a unified superior court pursuant to subdivision (e) of Section 5 of Article VI of the California Constitution may establish the salary of a former municipal court commissioner or referee at a salary not to exceed that of a superior court commissioner in that court, other than a commissioner established pursuant to subdivision (e) of Section 70141, subject to certification by the court that it is able to support the proposed salary levels within the court's current allocation. In a county where no superior court commissioner or referee existed, other than a commissioner established pursuant to subdivision (e) of Section 70141, prior to the unification of the superior and municipal courts, the salary of a commissioner or referee shall be set at a rate not to exceed the percentage of a superior court judge's salary that the commissioner or referee received of a municipal court judge's salary prior to unification.

(b) No commissioner shall have his or her current salary reduced below that salary in effect on June 1, 1998, by application of this section.

70140.5. All trial court commissioner and referee positions in the superior courts that were funded and filled as of January 1, 1999, and that are not authorized under any other section of the

Government Code are hereby authorized under this section. This section is not intended to replace, modify, or otherwise alter the terms, conditions, or qualifications of any existing section pertaining to the appointment of trial court commissioners and referees.

70141. (a) To assist the court in disposing of its business connected with the administration of justice, upon approval by the Judicial Council, the superior court of any city and county may appoint not exceeding 10 commissioners, and the superior court of every county, except a county with a population of 4,000,000 or over, may appoint one commissioner. Each person so appointed shall be designated as "court commissioner" of the county.

(b) Until July 1, 1997, in addition to the court commissioners authorized by subdivision (a) or any other provision of law, either the superior court or the municipal court, but not both, of any county or city and county may appoint one additional commissioner, at the same rate of compensation as the other commissioner or commissioners for that court, upon adoption of a resolution by the board of supervisors pursuant to subdivision (c).

(c) The county or city and county shall be bound by, and the resolution adopted by the board of supervisors shall specifically recognize, the following conditions:

(1) The county or city and county has sufficient funds for the support of the position and any staff who will provide direct support to the position, agrees to assume any and all additional costs that may result therefrom, and agrees that no state funds shall be made available, or shall be used, in support of this position or any staff who provide direct support to this position.

(2) The additional commissioner shall not be deemed a judicial position for purposes of calculating trial court funding pursuant to Section 77202.

(3) The salary for this position and for any staff who provide direct support to this position shall not be considered as part of court operations for purposes of Sections 77003 and 77204.

(4) The county or city and county agrees not to seek funding from the state for payment of the salary, benefits, or other compensation for such a commissioner or for any staff who provide direct support to such a commissioner.

(d) The court may provide that the additional commissioner may perform all duties authorized for a commissioner of that court in the county. In a county or city and county that has undertaken a consolidation of the trial courts, the additional commissioner shall be appointed by the superior or municipal courts pursuant to the consolidation agreement.

(e) In addition to the court commissioners authorized by subdivisions (a) and (b), the superior court of any county or city and county shall appoint additional commissioners pursuant to Sections 4251 and 4252 of the Family Code. These commissioners shall receive a salary equal to 85 percent of a superior court judge's salary.

70141.1. (a) In El Dorado County, a majority of the judges of the superior court, may appoint one or more commissioners up to one full-time equivalent, subject to the availability of funding. The superior court may provide that the commissioner, in addition to the duties prescribed in Section 259 of the Code of Civil Procedure, shall perform the duties of a probate commissioner appointed pursuant to Section 69897 or any other duties authorized by law for a commissioner to perform. The superior court may also authorize the commissioner to perform the duties of a juvenile court referee appointed pursuant to Section 247 of the Welfare and Institutions Code.

(b) Any commissioner appointed pursuant to this section shall receive compensation equivalent to 70 to 91 percent of a superior court judge's salary.

The salary shall be adjusted by the county at the time and in the manner specified in Section 68203. The court shall determine the level of salary to be received by a court commissioner, making adjustments in accordance with qualifications, performance, and other factors deemed relevant by the court. The commissioner position shall be included in the El Dorado County personnel allocation. The commissioner shall be a member of the Public Employee's Retirement system and shall receive vacation, sick leave, management leave and fringe benefits identical to unrepresented management employee classifications in El Dorado County.

(c) The presiding judge of the superior court shall specify the days, hours, and court locations for the commissioner. Each commissioner shall also be allowed actual traveling expenses pursuant to Section 70148.

(d) Any commissioner appointed pursuant to this section shall have been admitted to practice law in California for not less than five years, shall hold office at the pleasure of the superior court, and shall not engage in the private practice of law.

70141.4. In any county with a population exceeding 500,000 and not exceeding 557,000 as determined by the 1970 federal census, the superior court may provide that commissioners, in addition to the duties prescribed by Section 259 of the Code of Civil Procedure, shall perform the duties prescribed by Section 259a of the Code of Civil Procedure and in addition thereto the duties of a probate

commissioner appointed pursuant to Section 69897 of this code. A court commissioner shall receive a salary representing 70 percent, 75 percent, or 80 percent of the annual salary for a superior court judge. The court shall determine the level of salary to be received by a court commissioner, making adjustments on the three levels in accordance with the qualifications, performance, and other factors deemed relevant by the court.

70141.5. In any county with a population exceeding 291,000 and not exceeding 900,000, as determined by the 1950 federal census, the superior court may provide that the commissioner, in addition to the duties prescribed in Section 259 of the Code of Civil Procedure, shall perform the duties prescribed by Section 259a of the Code of Civil Procedure and in addition thereto the duties of a probate commissioner appointed pursuant to Section 69897 of this code. Any commissioner who is authorized to perform such duties in any county with a population exceeding 291,000 and not exceeding 900,000 shall receive an annual salary of eight thousand four hundred dollars (\$8,400). Such commissioner shall be allowed actual traveling expenses pursuant to Section 70148.

70141.6. (a) In Kern County, the superior court may provide that the commissioner, in addition to the duties prescribed in Section 259 of the Code of Civil Procedure, shall perform the duties prescribed by Section 259a of the Code of Civil Procedure and the duties of a probate commissioner appointed pursuant to Section 69897.

(b) The commissioner shall receive a salary equal to 70 to 85 percent of the annual salary for a superior court judge. The commissioner shall be paid biweekly pursuant to the payroll procedures in effect in the County of Kern in an amount equivalent to 70 to 85 percent of a superior court judge's salary. The court shall recommend to the board of supervisors the level of salary to be received by the commissioner based on qualifications, performance, and other factors deemed relevant by the court, and the board of supervisors shall determine the salary level within the specified range. The biweekly salary rate of the commissioner shall be adjusted at the same time and manner and in the same percentage amount as set forth in Section 68203. The commissioner shall also be allowed actual traveling expenses pursuant to Section 70148.

(c) In addition to the compensation provided for in this section, the commissioner shall be entitled to and shall receive on the same basis as other county employees, the same benefits and privileges, with respect to retirement, group insurance, sick leave, and vacation. The commissioner shall observe the same holidays as other court employees.

70141.7. In any county with a population exceeding 650,000 and not exceeding 700,000, as determined by the 1970 federal census, the superior court may appoint four commissioners. The superior court may appoint a fifth commissioner if the superior court eliminates an occupied juvenile court referee position. The superior court may provide that the commissioners, in addition to the duties prescribed in Section 259 of the Code of Civil Procedure, shall perform the duties prescribed in Section 259a of the Code of Civil Procedure and in addition thereto the duties of a probate commissioner appointed pursuant to Section 69897 of this code. The superior court may also authorize the commissioners to perform the duties of a juvenile court referee appointed pursuant to Section 553 of the Welfare and Institutions Code. Any commissioner authorized to perform the duties set forth above shall receive a salary equal to 80 percent of the salary of a judge of the superior court; provided, that upon the adoption of a resolution of the board of supervisors so providing, which takes effect on or after January 1, 1987, the salary shall be equal to 85 percent of the salary of a judge of the superior court. The salary shall be automatically increased periodically at the time and in the manner specified by Section 68203. Each commissioner shall also be allowed actual traveling expenses pursuant to Section 70148.

70141.8. In any county with a population exceeding 290,000 and not exceeding 291,000, as determined by the 1950 federal census, the superior court may provide that the commissioner in addition to the duties prescribed in Section 259 of the Code of Civil Procedure, shall perform the duties prescribed by Section 259a of the Code of Civil Procedure and in addition thereto the duties of a probate commissioner appointed pursuant to Section 69897 of this code. Any commissioner authorized to perform such duties shall receive an annual salary of twelve thousand dollars (\$12,000).

70141.9. In a county of the 11th class, the superior court, subject to prior approval by the board of supervisors, may appoint four commissioners. However, at such time as the board of supervisors finds that there are sufficient funds for up to seven commissioners, and adopts a resolution to that effect, there shall be seven commissioners for the superior court. Authorization of the fifth, sixth, and seventh positions shall not increase trial court funding provided to Riverside County pursuant to Sections 77003 and 77004. The superior court may provide that the commissioners, in addition to the duties prescribed in Section 259 of the Code of Civil Procedure, shall perform the duties of a probate commissioner appointed pursuant to Section 69897. The superior court may also authorize the commissioners to perform the duties of a juvenile court referee appointed pursuant to Section 247 of the Welfare and

Institutions Code. Any commissioner authorized to perform the duties set forth above shall receive a salary equal to 75, 80, or 85 percent of the salary of a judge of the superior court. The court shall determine the level of the salary to be received by a court commissioner, making adjustments on the three levels in accordance with the qualifications, performance, and other factors deemed relevant by the court. The salary shall be adjusted by the court at the time and in the manner specified in Section 68203. Each commissioner shall also be allowed actual traveling expenses pursuant to Section 70148.

The amendment of this section made at the 1985-86 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law.

70141.10. In the County of Marin, the superior court may provide that the commissioner, in addition to the duties prescribed in Section 259 of the Code of Civil Procedure, shall perform the duties prescribed by Section 259a of the Code of Civil Procedure and in addition thereto the duties of a probate commissioner appointed pursuant to Section 69897 of this code.

Any commissioner appointed pursuant to this section shall have been admitted to practice law in California for not less than five years and shall receive a salary recommended by the superior court and approved by the board of supervisors.

If the board of supervisors, in its sole discretion, appropriates the necessary funds therefor, any court commissioner who has been duly appointed and has thereafter been retired from service, may be assigned by the presiding judge of the superior court to serve as a court commissioner for such periods as he is needed for the prompt and efficient discharge of the business of the court. If the board of supervisors, in its sole discretion, appropriates the necessary funds therefor, any court commissioner who has been duly appointed and has thereafter been retired from service, may be assigned by the presiding judge of the municipal court to serve as a court commissioner of the municipal court. While so serving, he shall receive his retirement allowance and, in addition, the county shall pay him the amount equal to the difference between such retirement allowance and the full compensation of a court commissioner. Such employment shall not operate to reinstate him as a member of the county retirement system or in any way affect his retirement rights or allowances, and no deduction shall be made from his compensation contributions to the retirement system.

70141.11. In Contra Costa County, the superior court may provide that the commissioner, and the referee who shall have been a member of the State Bar for a period of at least five years immediately preceding his or her appointment and has been

appointed pursuant to Section 247 of the Welfare and Institutions Code, shall, in addition to the duties prescribed in Section 259 of the Code of Civil Procedure, perform the duties of a probate commissioner appointed pursuant to Section 69897 of this code.

This section shall not affect any of the powers or duties otherwise authorized for the referee appointed pursuant to Section 247 of the Welfare and Institutions Code.

The commissioner shall be paid the salary recommended by the superior court and approved by the board of supervisors plus reimbursement for necessary, reasonable and actual expenses in connection with official duties. Any court reporting functions for the commissioner may be by electronic or mechanical means and devices.

70141.12. (a) In Stanislaus County, the judges of the superior court, by majority vote, may appoint two court commissioners to replace two existing referees appointed pursuant to Section 247 of the Welfare and Institutions Code. The superior court may provide that the commissioners, in addition to the powers and duties specified in Section 259 of the Code of Civil Procedure, shall perform the duties of a probate commissioner appointed pursuant to Section 69897 and, if appointed by the presiding judge of the juvenile court, shall perform the duties of a juvenile court referee as specified in Section 247 of the Welfare and Institutions Code.

(b) Any commissioner appointed pursuant to this section shall have been admitted to practice law in California for not less than five years, shall hold office at the pleasure of the superior court, and shall not engage in the private practice of law.

(c) The salary of a commissioner for all duties performed pursuant to this section shall be equal to 75 percent of the annual salary of a judge of a superior court. The commissioner shall receive vacation, sick leave, and fringe benefits identical to those provided Stanislaus County management employees.

70141.13. (a) In Santa Cruz County, the superior court may provide that the commissioner, in addition to the duties prescribed in Section 259 of the Code of Civil Procedure, shall perform the duties of a juvenile court referee appointed pursuant to Section 247 of the Welfare and Institutions Code, and other duties as specified by the superior court.

(b) Any commissioner appointed pursuant to this section shall have been admitted to practice law in California for not less than five years, shall hold office at the pleasure of the court, and shall not engage in the private practice of law.

70142. Every court commissioner shall be a citizen of the United States, a resident of this state, and, if required by the court for

which he is to be a commissioner, shall have been admitted to practice before the Supreme Court of the state for a period of at least five years immediately preceding his appointment. He shall hold office during the pleasure of the court appointing him and shall not engage in the private practice of law.

Notwithstanding any other provision of law, a court commissioner in any county with a population of 3,000,000 or more who has been duly appointed and has thereafter been retired for service, may be assigned by the presiding judge of a court to serve as a court commissioner of the court for such periods as he is needed for the prompt and efficient discharge of the business of that court. While so serving, he shall be paid the full compensation of a court commissioner, payable as follows: He shall continue to receive his retirement allowance, and in addition the county shall pay him the amount equal to the difference between such retirement allowance and such full compensation. Such employment shall not operate to reinstate him as a member of the county retirement system or to terminate or suspend his retirement rights or allowance, and no deductions shall be made from his compensation as contributions to the retirement system.

70142.11. (a) In lieu of the court commissioner authorized pursuant to Section 70141, in Solano County, the judges of the superior court, by majority vote, may appoint two court commissioners and may provide that the commissioners, in addition to the powers and duties specified in Section 259 of the Code of Civil Procedure, may perform the duties of a probate commissioner specified in Section 69897 and, if appointed by the presiding judge of the juvenile court, shall perform the duties of a juvenile court referee as specified in Section 247 of the Welfare and Institutions Code.

(b) Any commissioner appointed pursuant to this section shall have been admitted to practice law in California for not less than five years, shall hold office at the pleasure of the superior court, and shall not engage in the private practice of law.

(c) The salary of the commissioners for all duties performed pursuant to this section shall be set by the board of supervisors, not to exceed the annual salary of a judge of a superior court. The commissioners shall be members of the Solano County Retirement System and shall receive vacation, sick leave, and fringe benefits identical to those provided to Solano County administrative management employees.

(d) The commissioner positions shall not be counted in the calculation of trial court funding pursuant to Section 77202, and the salary for these positions shall not be considered as a part of "court

operations” for Solano County for purposes of Sections 77003 and 77204.

70142.12. (a) In Sonoma County, the judges of the superior court, by majority vote, may appoint a court commissioner. The superior court may provide that the commissioner, in addition to the powers and duties specified in Section 259 of the Code of Civil Procedure, shall perform the duties of a probate commissioner appointed pursuant to Section 69897 and, if appointed by the presiding judge of the juvenile court, shall perform the duties of a juvenile court referee as specified in Section 247 of the Welfare and Institutions Code.

(b) Any commissioner appointed pursuant to this section shall have been admitted to practice law in California for not less than five years, shall hold office at the pleasure of the superior court, and shall not engage in the private practice of law.

(c) The salary of the commissioner for all duties performed pursuant to this section shall be equal to 78 percent of the annual salary of a judge of a superior court. The commissioner shall be a member of the Sonoma County Retirement System and shall receive vacation, sick leave and fringe benefits identical to those provided Sonoma County administrative management employees.

70142.13. (a) In lieu of appointing a juvenile court referee pursuant to Section 247 of the Welfare and Institutions Code, the judges of the superior court in Tulare County, by majority vote, may appoint a court commissioner. The superior court may provide that the commissioner, in addition to the powers and duties specified in Section 259 of the Code of Civil Procedure, shall perform the duties of a probate commissioner appointed pursuant to Section 69897 and, if appointed by the presiding judge of the juvenile court, shall perform the duties of a juvenile court referee as specified in Section 247 of the Welfare and Institutions Code.

(b) Any commissioner appointed pursuant to this section shall have been admitted to practice law in California for not less than five years, shall hold office at the pleasure of the superior court, and shall not engage in the private practice of law.

(c) The salary of the commissioner for all duties performed pursuant to this section shall be up to 85 percent of the annual salary of a judge of a superior court. The commissioner shall be a member of the Tulare County Retirement System and shall receive vacation, sick leave, and fringe benefits as determined by the board of supervisors.

(d) Notwithstanding subdivision (c) of Section 77202, the court commissioner position shall be counted in determining the number of subordinate judicial positions in the county and shall be

considered as part of the court operations for the county for purposes of Sections 77003 and 77204.

70142.16. (a) In the County of Placer, the court commissioner appointed pursuant to Section 70141 shall hold office at the pleasure of a majority of the judges. Subject to subdivision (c), the superior court may provide that the commissioner, in addition to the duties prescribed in Section 259 of the Code of Civil Procedure, shall perform the duties of a probate commissioner appointed pursuant to Section 69897 of the Government Code. The superior court may also authorize the commissioner to perform the duties of a juvenile court referee appointed pursuant to Section 247 of the Welfare and Institutions Code, and other duties as specified by the superior court.

(b) The superior court shall not appoint a commissioner pursuant to Section 70141 unless there is a prior finding by the board of supervisors that there are sufficient funds for this purpose.

(c) Any commissioner authorized to perform additional duties pursuant to this section shall have been admitted to practice law in California for not less than five years, but in no case shall a commissioner engage in the practice of law during his or her period of service as a commissioner.

(d) Any commissioner authorized to perform additional duties pursuant to this section shall receive compensation pursuant to a salary recommended by the superior court and approved annually by the board of supervisors. The presiding judge of the superior court shall specify the days, hours, and court locations for the commissioner.

(e) The commissioner appointed pursuant to Section 70141 shall not be counted in the calculation of trial court funding pursuant to Sections 77200 and 77202, and the salary for this position shall not be considered as a part of court operations for Placer County for purposes of Sections 77203 and 77204.

70143. The judges of the superior courts of two or more counties may appoint the same person as court commissioner.

70144. The appointment of a court commissioner shall be made by order entered in the minutes of the court.

70145. Court commissioners appointed pursuant to Section 70141 are of two grades, Grade 1 and Grade 2. The superior court at the time of appointment shall designate the grade of the commissioner and fix his annual salary, and in the case of a commissioner, Grade 1, may increase such salary from time to time not to exceed the limit authorized by Section 70146. Commissioners, Grade 1, are those commissioners who have performed the duties of a court commissioner or of a clerk of

superior court judges or have had equivalent experience for a period of at least five years, and who have been approved by the court for appointment to Grade 1. All other commissioners are Grade 2.

70146. Unless otherwise prescribed by law, when appointed pursuant to Section 70141 court commissioners, Grade 1, shall receive an annual salary of an amount not in excess of seven thousand two hundred dollars (\$7,200) as fixed by the superior court, and court commissioners, Grade 2, shall receive an annual salary of an amount not in excess of five thousand one hundred dollars (\$5,100) as fixed by the superior court.

70147. The salary of a court commissioner appointed pursuant to this article shall be paid in monthly installments out of the salary fund of the county or, if there is none, out of such fund as other salary demands against the county are paid. Such salary shall be allowed and audited in the same manner as the law requires for other salary demands against the county.

70148. The court commissioners as provided for in Sections 70140 and 70141 shall be allowed actual traveling expenses incurred in the performance of their duties. Such expenses shall be audited, allowed, and paid out of the general fund of the county.

Gov't Code § 70214.5 (repealed). Conversion of Contra Costa County referees to commissioners

SEC. . Section 70214.5 of the Government Code is repealed.

~~70214.5. Subject to certification by the court to the Administrative Office of the Courts that the court is able to absorb the differential salary costs within the court's existing budget, the Contra Costa County Superior Court may convert and reclassify four existing referee positions to four additional court commissioner positions.~~

Comment. Section 70214.5, relating to conversion of referee positions to commissioner positions in Contra Costa County, is repealed as obsolete. It is superseded by 71622 (subordinate judicial officers).

Gov't Code § 70214.6 (repealed). Conversion of Santa Barbara County traffic referee to commissioner

SEC. . Section 70214.6 of the Government Code is repealed.

~~70214.6. Subject to certification by the court to the Administrative Office of the Courts that the court is able to absorb the differential salary cost within the court's existing budget, the Santa Barbara County Superior Court may convert and reclassify~~

~~one existing traffic referee position to one additional court commissioner position.~~

Comment. Section 70214.6, relating to conversion of a traffic referee position to a court commissioner position in Santa Barbara County, is repealed as obsolete. It is superseded by 71622 (subordinate judicial officers).

Gov't Code § 72190 (amended). Municipal court commissioners

SEC. . Section 72190 of the Government Code is amended to read:

72190. Within the jurisdiction of the court and under the direction of the judges, commissioners of municipal courts shall exercise all the powers and perform all of the duties authorized by law to be performed by commissioners of superior courts and such additional powers and duties as may be prescribed by law. At the direction of the judges, commissioners may have the same jurisdiction and exercise the same powers and duties as the judges of the court with respect to any infraction or small claims action. ~~The commissioners of municipal courts shall possess the same qualifications the law requires of a judge and shall hold office during the pleasure of the court appointing them and shall not engage in the private practice of law. They shall be ex officio deputy clerks.~~

~~Notwithstanding any other provision of law, a commissioner of a municipal court or a justice court of any judicial district in this state who has been duly appointed and has thereafter been retired for service, or a commissioner of a superior court in this state who has been duly appointed and has thereafter been retired from service, may be assigned by the presiding judge or sole judge of a municipal court to serve as a court commissioner of the court for any periods of time as he or she is needed for the prompt and efficient discharge of the business of that court. While serving, he or she shall be paid the full compensation of a court commissioner, payable as follows: he or she shall continue to receive his or her retirement allowance, and in addition the county shall pay him or her the amount equal to the difference between the retirement allowance and full compensation. That employment shall not operate to reinstate him or her as a member of the county retirement system or to terminate or suspend his or her retirement rights or allowance, and no deductions shall be made from his or her compensation as contributions to the retirement system.~~

Comment. Section 72190 is amended to repeal obsolete provisions. The obsolete provisions are superseded by Sections 70214 (commissioners and referees) and 71622 (subordinate judicial officers).

☛ **Staff Note.** The staff is researching the following matters, which will be dealt with separately:

Deputy clerks

Ethics (private practice of law)

Gov't Code § 72190.1 (amended). Arraignments

SEC. . Section 72190.1 of the Government Code is amended to read:

72190.1. A commissioner ~~of a municipal court~~ may conduct arraignment proceedings ~~in the court~~ if directed to perform those duties by the presiding ~~or sole~~ judge of the court, including the issuance and signing of bench warrants.

Comment. Section 72190.1 is amended to repeal obsolete provisions. The obsolete provisions are superseded by Sections 70211 (effect of unification on judgeships) and 70214 (commissioners and referees).

☛ **Staff Note.** For discussion of the presiding “or sole” judge issue, see Memorandum 2001-6.

Gov't Code § 72190.2 (amended). Bench warrants

SEC. . Section 72190.2 of the Government Code is amended to read:

72190.2. If directed to perform such duties by the presiding judge ~~or sole judge of the court~~, a commissioner ~~of the municipal court~~ may issue and sign a bench warrant for the arrest of a defendant who fails to appear in court when required to appear by law or who fails to perform any act required by court order.

Comment. Section 72190.2 is amended to repeal obsolete provisions. The obsolete provisions are superseded by Sections 70211 (effect of unification on judgeships) and 70214 (commissioners and referees).

☛ **Staff Note.** For discussion of the presiding “or sole” judge issue, see Memorandum 2001-6.

Gov't Code § 72190.5 (repealed). Authorization of unauthorized positions

SEC. . Section 72190.5 of the Government Code is repealed.

72190.5. ~~All trial court commissioner and referee positions in the municipal courts that were funded and filled as of January 1, 1999, and that are not authorized under any other section of the Government Code are hereby authorized under this section. This section is not intended to replace, modify, or otherwise alter the terms, conditions, or qualifications of any existing section pertaining to the appointment of trial court commissioners and referees.~~

Comment. Section 72190.5 is repealed as obsolete. It is superseded by Section 71622 (subordinate judicial officers).

Gov't Code § 72400 (repealed). Traffic referees

SEC. . Section 72400 of the Government Code is repealed.

~~72400. The judges of a municipal court having three or more judges may appoint one traffic referee, who shall hold office at the pleasure of the judges. The judges of a municipal court having more than 20 judges and located in a county containing a population, as determined by the 1970 federal decennial census, of 1,300,000 and under 1,400,000, may appoint two traffic referees, who shall hold office at the pleasure of the judges. A traffic referee shall serve his court full time or, if appointed to serve two or more courts, sufficient time with each to total full time. A person is ineligible to be a traffic referee unless he is a member of the State Bar of California or has had five years' experience as a justice court judge in this state within the eight years immediately preceding his appointment as a traffic referee.~~

Comment. Section 72400 is repealed as obsolete. It is superseded by Section 71622 (subordinate judicial officers).

Gov't Code § 72403 (amended). Powers and duties

SEC. . Section 72403 of the Government Code is amended to read:

~~72403. The traffic referee shall have the power of a deputy clerk of the court, and shall perform such other duties as may be assigned to him by the court, and shall be a member of any retirement system which includes the attaches of the court. In addition if he possesses the qualifications prescribed by law for such office he may be appointed and serve as a commissioner of the court and receive the monthly salary provided by law for a commissioner of the court.~~

Comment. Section 72403 is amended to delete obsolete provisions. The obsolete provisions are superseded by the following provisions:

71612 (existing terms of employment not affected)

71622 (subordinate judicial officers)

71623 (salaries)

71624 (retirement plans)

71629 (trial court employment benefits not affected)

☛ **Staff Note.** The staff is researching the following matter, which will be dealt with separately:

Deputy clerks

Gov't Code § 72404 (repealed). Salary

SEC. . Section 72404 of the Government Code is repealed.

~~72404. Unless otherwise provided by statute the traffic referee shall receive a salary equal to 50 percent of the salary of a judge of the municipal court.~~

Comment. Section 72404 is repealed as obsolete. It is superseded by Section 71622 (subordinate judicial officers).

Gov't Code § 72405 (repealed). Cross assignment of commissioner
SEC. . Section 72405 of the Government Code is repealed.

~~72405. Any commissioner of the court having the qualifications prescribed in this article for a traffic referee or those prescribed in Section 72190 for commissioners may at the direction of the court exercise any of the powers which a traffic referee may exercise.~~

Comment. Section 72405 is repealed as obsolete. It is superseded by Section 71622 (subordinate judicial officers).

Gov't Code § 72406 (repealed). Grandfather clause

SEC. . Section 72406 of the Government Code is repealed.

~~72406. Notwithstanding the provisions of Section 72400 any person who was performing duties substantially comparable to those set forth in this article on the effective date of this article and who has performed such duties for a period of at least one year prior to July 1, 1969, shall be eligible for appointment to the position of traffic referee and shall receive a salary equal to 65 percent of the salary of a judge of the municipal court.~~

Comment. Section 72406 is repealed as obsolete. It is superseded by Section 71622 (subordinate judicial officers).

Gov't Code § 72407 (repealed). Retired annuitants

SEC. . Section 72407 of the Government Code is repealed.

~~72407. Notwithstanding any other provision of law, a traffic referee in any county with a population of 3,000,000 or more who has been duly appointed and has thereafter been retired for service, may be assigned by the presiding judge of a court to serve as a traffic referee of the court for such periods as he is needed for the prompt and efficient discharge of the business of that court. While so serving, he shall be paid the full compensation of a traffic referee, payable as follows: He shall continue to receive his retirement allowance, and in addition the county shall pay him the amount equal to the difference between such retirement allowance and such full compensation. Such employment shall not operate to reinstate him as a member of the county retirement system or to terminate or suspend his retirement rights or allowance, and no deductions shall be made from his compensation as contributions to the retirement system.~~

Comment. Section 72407 is repealed as obsolete. It is superseded by Section 71622 (subordinate judicial officers).

Gov't Code § 72408 (amended). Santa Barbara County

SEC. . Section 72408 of the Government Code is repealed.

~~72408. (a) Notwithstanding Section 72400, in Santa Barbara County, upon adoption of a resolution described in subdivision (b) by the board of supervisors, the judges of the municipal court may appoint a traffic referee or a hearing officer who may hear traffic matters and exercise the powers of a traffic referee. Either the traffic referee or the hearing officer shall hold office at the pleasure of the judges of the municipal court.~~

~~(b) The county shall be bound by, and the resolution adopted by the board of supervisors shall specifically recognize, the following conditions:~~

~~(1) The county has sufficient funds for the support of either position and any staff who will provide direct support to the position, agrees to assume any additional costs that may result therefrom, and agrees that no state funds shall be made available, or shall be used, in support of this position or any staff who provide direct support to this position.~~

~~(2) Neither the traffic referee nor the hearing officer shall be deemed a judicial position for purposes of calculating trial court funding pursuant to Section 77202.~~

~~(3) The salary for either position and for any staff who provide direct support to the position shall not be considered as part of court operations for purposes of Sections 77003 and 77204.~~

~~(4) The county agrees not to seek funding from the state for payment of the salary, benefits, or other compensation for such a referee or hearing officer or for any staff who provide direct support to the position.~~

Comment. Section 72408 is repealed as obsolete. It is superseded by Section 71622 (subordinate judicial officers).

☛ **Staff Note.** The repeal proposed here seems to demand the following conforming revision in Section 71601:

(i) "Subordinate judicial officer" means an officer appointed to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution, including, but not limited to, a court commissioner, probate commissioner, referee, traffic referee, traffic hearing officer, juvenile referee, and pro tem judge.

Gov't Code § 72450 (repealed). Traffic trial commissioners

SEC. . Article 10 (commencing with Section 72450) of Chapter 8 of Title 8 of the Government Code is repealed.

Comment. Section 72450 is repealed as obsolete. It is superseded by Section 71622 (subordinate judicial officers). See also Sections 77200 (state funding of trial courts), 71623 (salaries), 70212 (transitional provisions).

The text of the repealed provision is set out below.

ARTICLE 10. TRAFFIC TRIAL COMMISSIONERS

72450. A municipal court, if the board of supervisors finds there are sufficient funds for the position, may appoint a traffic trial commissioner to serve, at the pleasure of the court. The traffic trial commissioner shall be selected from a list of qualified applicants openly recruited after advertisement for the position in a newspaper of general circulation pursuant to Sections 6000 and 6061.3. A traffic trial commissioner shall serve full time but may be appointed to serve two or more courts. Each traffic trial commissioner shall have the qualifications of a judge of the municipal court and shall not engage in the private practice of law. A traffic trial commissioner may exercise all the powers and perform all the duties authorized by law to be performed by commissioners of municipal courts. Unless otherwise expressly provided by law, a traffic trial commissioner shall receive the same salary provided by law for municipal court commissioners in the county. In a county where there is no salary established for a municipal court commissioner, a traffic trial commissioner shall receive a salary of not less than 75 percent of that paid to a judge of the municipal court.

☛ **Staff Note.** The repeal proposed here seems to demand the following conforming revision in Section 71601:

(i) "Subordinate judicial officer" means an officer appointed to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution, including, but not limited to, a court commissioner, probate commissioner, traffic trial commissioner, referee, traffic referee, juvenile referee, and pro tem judge.

The staff is researching the following matter, which will be dealt with separately:

Ethics (private practice of law)

Gov't Code §72602.9 (repealed). Citrus Judicial District

SEC. . Section 72602.9 of the Government Code is repealed.

~~72602.9. Notwithstanding any other provision of law, there shall be seven judges in the Citrus Judicial District; provided that at such time as the Los Angeles County Board of Supervisors finds there are sufficient funds for one additional judge for that district and adopts a resolution to that effect, there shall be eight judges in the Citrus Judicial District; and further provided that, following the appointment of an eighth judge, there shall be no more than one court commissioner in the Citrus Judicial District unless and until~~

~~the Los Angeles County Board of Supervisors finds that there are sufficient funds for a second court commissioner for that district and adopts a resolution to that effect, at which time there shall be two court commissioners in the Citrus Judicial District.~~

Comment. Section 72602.9 is repealed as obsolete. The Citrus Judicial District no longer exists, as the result of unification with the Los Angeles County Superior Court effective January 22, 2000. The provisions relating to number of judges are superseded by Section 69586 (number of judges in Los Angeles County). The provisions relating to court commissioners are superseded by Section 71622 (subordinate judicial officers).

Gov't Code §72602.20 (repealed). Compton Municipal Court District

SEC. . Section 72602.20 of the Government Code is repealed.

~~72602.20. In addition to the number of judges prescribed in Section 72602, at such time as the Los Angeles County Board of Supervisors finds there are sufficient funds for up to three additional judges for the Compton Municipal Court District and adopts a resolution or resolutions to that effect, there shall be a total of up to three additional judges for the Compton Municipal Court District. Following the appointment of the first additional judge there shall be only 2.6 court commissioners in the district, following the appointment of the second additional judge there shall be only 1.6 court commissioners in the district. The part-time commissioner in the Compton Municipal Court District shall be compensated at six-tenths of that received by a commissioner, unless and until the Los Angeles County Board of Supervisors finds that there are sufficient funds for up to three additional court commissioners for that district and adopts a resolution or resolutions to that effect, at which time there shall be such additional number of court commissioners as stated in the resolution or resolutions for the Compton Municipal Court District.~~

Comment. Section 72602.20 is repealed as obsolete. The Compton Municipal Court District no longer exists, as the result of unification with the Los Angeles County Superior Court effective January 22, 2000. The provisions relating to number of judges are superseded by Section 69586 (number of judges in Los Angeles County). The provisions relating to court commissioners are superseded by Section 71622 (subordinate judicial officers).

Gov't Code §72701 (repealed). Los Angeles Municipal District court commissioners

SEC. . Section 72701 of the Government Code is repealed.

~~72701. The judges of the municipal court shall appoint as many commissioners, not exceeding 22, as the business of the court~~

~~requires. Each commissioner shall possess the same qualifications as the law requires of a judge of the court. Within the jurisdiction of the court and under the direction of the judges, each commissioner shall exercise the powers and perform the duties authorized by law to be performed by commissioners of the superior court and such additional powers and duties as may be prescribed by law. Each commissioner shall hold office at the pleasure of the judges and shall receive a monthly salary in the same sum as is paid the court commissioners of the Superior Court of the County of Los Angeles. If, however, the amount of the salary is fixed under a step plan of compensation based upon tenure of service, each incumbent shall nevertheless receive a salary equal to the top step thereof. In no event shall such salary exceed the salary provided for the judges of the municipal courts. The commissioners shall be ex officio deputy clerks of the court and shall be members of any retirement system which includes attaches of the court. They shall not engage in the private practice of law.~~

Comment. Section 72701, relating to Los Angeles Municipal District court commissioners, is repealed as obsolete. The Los Angeles Municipal Court no longer exists, as the result of unification with the superior court effective January 22, 2000. This section is superseded by Sections 70212 (transitional provisions), 71612 (existing terms of employment not affected), 71622 (subordinate judicial officers), 71623 (salaries), 71624 (retirement plans).

☛ **Staff Note.** The staff is researching the following matters, which will be dealt with separately:

Deputy clerks

Ethics (private practice of law)

Welf. & Inst. Code § 247 (repealed). Juvenile court referees

SEC. . Section 247 of the Welfare and Institutions Code is repealed.

~~247. The judge of the juvenile court, or in counties having more than one judge of the juvenile court, the presiding judge of the juvenile court or the senior judge if there is no presiding judge, may appoint one or more referees to serve on a full-time or part-time basis. A referee shall serve at the pleasure of the appointing judge, and unless the appointing judge makes his order terminating the appointment of a referee, such referee shall continue to serve as such until the appointment of his successor. Except as otherwise provided by law, the amount and rate of compensation to be paid referees shall be fixed by the board of supervisors. Every referee first appointed on or after January 1, 1977, shall have been admitted to practice law in this state and, in addition, shall have been~~

~~admitted to practice law in this state for a period of not less than five years or in any other state and this state for a combined period of not less than 10 years. Nothing in this section shall be construed to apply to the qualifications of any referee first appointed prior to January 1, 1977.~~

Comment. Former Section 247 is superseded by Government Code Sections 71622 (subordinate judicial officers).

Uncodified (added). Saving clause

SEC. . If a right, privilege, duty, authority, or status (including but not limited to a qualification for office, salary range, or employment benefit) is based on a provision of law repealed by this act, and if a statute, order, rule of court, memorandum of understanding, or other legally effective instrument provides that the right, duty, authority, or status continues for a period beyond the effective date of the repeal, that provision of law continues in effect for that purpose, notwithstanding its repeal by this act.

☛ **Staff Note.** It is not clear that a provision such as this is really necessary. The staff solicits comment on whether a provision such as this serves a useful purpose. Moreover, Section 71622(f) already provides a limited saving clause: “As of the implementation date of this chapter, all persons who were authorized to serve as subordinate judicial officers pursuant to other provisions of law shall be authorized by this section to serve as subordinate judicial officers at their existing salary rate, which may be a percentage of the salary of a judicial officer.”

Due to the size of this project, it is likely that several bills will be needed to effectuate the statutory cleanup. If we adopt a provision such as this, a similar saving clause in each bill is probably mechanically simpler than a single codified section that somehow subsumes all bills.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary