

Memorandum 2001-12**Statutes Made Obsolete by Trial Court Restructuring:
County-Specific Superior Court Statutes**

Much of the following discussion is adapted from a memorandum prepared by Professor Clark Kelso for the Task Force on Trial Court Employees (draft of January 24, 2000). The memorandum addresses disposition of county-specific superior court employment statutes.

INTRODUCTION

Existing superior court staffing statutes (Gov't Code §§ 69890-70148) must be addressed following enactment of the Trial Court Protection and Governance Act (TCEPGA).

Arguably, TCEPGA makes all of the existing county-specific superior court staffing and personnel statutes obsolete since the stated purposes of TCEPGA include recognition of local trial court authority and responsibility for managing trial court personnel systems, creating a system of uniform statewide applicability and promoting organizational and operational flexibility, and recognizing state trial court funding. County-specific staffing statutes appear to be contrary to these stated purposes. The existing county-specific statutes dilute local trial court authority and responsibility in favor of legislative and/or board of supervisor control, directly undermine the goal of achieving a system of uniform statewide applicability in favor of county-specific statutes, impair organizational and operational flexibility by locking personnel decisions in statutes, and fail to recognize state trial court funding since many of the existing statutes require approval by a board of supervisors for salary changes even though court salaries are now paid by the state.

On the other hand, many of TCEPGA's provisions are in the form of minimum standards which anticipate a measure of county-specific implementation and variation. Moreover, the Legislature has a history of enacting detailed staffing statutes for a few superior courts even though such details are not constitutionally required to be in statutes. (By contrast, the

California Constitution requires relatively detailed staffing statutes for municipal courts.) Thus, enactment of TCEPGA does not necessarily imply repeal of the existing county-specific court staffing statutes.

The legal status of the existing court staffing statutes is confused. Over the course of the last decade, the Legislature and the Judicial Council have enacted far-reaching statutes and rules dealing with trial court coordination, trial court unification, trial court funding, and trial court employment relations. These statutes and rules have clearly had a substantial impact upon trial court personnel matters, but neither the Legislature nor the Judicial Council has attempted to reconcile these statutes and rules with the pre-existing trial court staffing statutes. The result is a confused and conflicting mass of provisions. The purpose of this memorandum is to clear away as much of the confusion as possible by examining the legal effect, if any, of the county-specific trial court staffing statutes.

Around 160 county-specific statutes are at issue. About 38 of the statutes dealing with trial court employees other than court reporters are found in Article 8 of Chapter 5 of Title 8 of the Government Code (§§ 69890-69915). Approximately 25 statutes dealing with subordinate judicial officers are found in Article 13 of Chapter 5 of Title 8 of the Government Code (§§ 70141-70148). The remaining 100 or so statutes dealing with court reporters are contained in Articles 9 through 12.8 of Chapter 5 of Title 8 of the Government Code (§§ 69941-70139).

The general trial court employee statutes are examined in this memorandum. Statutes governing subordinate judicial officers and court reporters are dealt with in separate memoranda. See Memorandum 2001-7 (subordinate judicial officers); Memorandum 2001-8 (court reporters).

GENERAL BACKGROUND

California Constitution Article VI, Section 4, provides in pertinent part that “The Legislature shall prescribe the number of judges and *provide for the officers and employees of each superior court.*” (emphasis added). The phrase “*prescribe the number of judges*” means the Legislature must itself set the number of judges by statute. The phrase “*provide for the officers and employees*” means that the Legislature must enact one or more statutes that make provision for superior court officers and employees, but the Legislature may “provide for” by

delegating power over personnel matters to some other agency of government, such as the county or the superior court. There is no constitutional requirement for detailed superior court staffing statutes.

By contrast, California Constitution Article VI, Section 5(c), provides in pertinent part that the Legislature “shall prescribe for each municipal court the number, qualifications, and compensation of judges, officers, and employees.” Thus, with respect to municipal courts, the Legislature is constitutionally required to enact detailed staffing statutes. Trial courts in 57 of California’s 58 counties have unified. The trial courts in Kings County have obtained preclearance from the United States Department of Justice for unification. Municipal court staffing statutes need to be maintained in this county pending unification. All other municipal court staffing statutes can be repealed since they are obsolete. See Memorandum 2001-10.

Although the Legislature is not constitutionally obligated to enact detailed staffing statutes for superior courts, the Legislature has enacted statutes for a few superior courts, particularly in the larger counties.

With respect to those superior courts for which there is no staffing statute, the authorization for the employment of trial court employees has historically derived from the general authority granted to each county to hire employees. See Cal. Const., art. XI, § 1(b) (“The governing body [of a county] shall provide for the number, compensation, tenure, and appointment of employees”); § 4 (“County charters shall provide for: ... (f) The fixing and regulation by governing bodies, by ordinance, of the appointment and number of assistants, deputies, clerks, attaches, and other persons to be employed”); Gov’t Code § 25300 (“The board of supervisors shall prescribe the compensation of all county officers and shall provide for the number, compensation, tenure, appointment and conditions of employment of county employees”). Employment of trial court employees in these counties has been, until recently, entirely a matter of negotiation between the county, the superior court, and recognized employee organizations, if any, and the Legislature has not been involved in any significant way. With respect to these counties, there is no staffing statute that needs to be repealed.

When the Legislature has passed a superior court staffing bill for a particular county, it has generally enacted one of two distinct types. One type of statute, sometimes applicable to only specific superior courts and sometimes applicable to all superior courts, pertains to a single classification of court employee (“classification-specific statutes”). The second type of statute appears to deal

comprehensively with superior court employees in a particular county (“comprehensive county statutes”).

Classification-Specific Statutes

The classification-specific statutes, most of which apply to only one or a handful of counties, are:

Section	Last Amended	Position	Scope
69890	1953	Secretary	Los Angeles, San Francisco, Alameda, San Diego
69891	1953	Stenographer or secretary	Riverside, San Mateo, Sonoma, Stanislaus, Tulare
69891.1	1969	Secretary	Solano
69891.5	1957	Secretary	Sonoma
69892	1961	Secretary, assistant secretaries	Butte and larger counties excluding Los Angeles (which encompasses 25 counties)
69892.1	1994	Executive officer	Los Angeles
69893	1953	Jury commissioner	All counties where there is a secretary
69895	1984	Executive officer and assistant executive officer	San Francisco
69896	1961	Jury commissioner	All counties but Los Angeles
69897	1953	Probate commissioner	San Francisco, Alameda
69898	1978	Executive officer	All counties
69905	1998	Research assistants	All counties
69906.5	1987	Assistant and deputy probation officer	Mendocino
69912	1996	Assistant executive officer	San Luis Obispo
69915	2000	Sheriffs and marshals	Merced, Orange, Shasta

A few features of these statutes are worthy of comment. First, half of these statutes were last amended in 1961 or earlier, and only three of the statutes were amended in the 1990s. While age alone does not render a statute legally obsolete, the likelihood that twenty- and thirty-year-old personnel statutes are still being followed in the affected counties seems small.

Second, most of the statutes contain the following types of provisions: permissive authority to hire a particular type of employee; “at will” status for that employee; salary set by statute (e.g., \$350 per month) or power to set salary delegated to county; a requirement that the salary be paid by the county; and, a provision that the employee receive the same benefits as county employees. The provisions providing for salary to be paid by the county are obsolete in light of state trial court funding. The other provisions are either covered by TCEPGA (e.g., authority to hire and benefits) or inconsistent with the substance of TCEPGA (e.g., “at will” status, statutorily defined salary or salary set by county).

The staff believes that, presumptively, the inconsistent provisions of these statutes may be repealed. We will circulate the draft repealers to interested persons, who will have an opportunity to review them and explain why a particular provision may need to remain in effect.

Comprehensive County Statutes

The “comprehensive county statutes” are:

Section	Last Amended	Scope	Summary of Provisions
69893.5	1994	Sacramento	General authority to establish classifications and to hire subject to county approval; compensation set by county; salary for juvenile court referees and commissioners set at 85% of superior court judge’s salary; juvenile court referee and court commissioner authorized to perform other subordinate judicial duties.
69893.7	1996	Yolo	General authority to establish classifications and to hire subject to county approval; court reporters are “at will”; compensation and benefits set by county; court employees subject to county personnel regulations, memoranda of understanding and affirmative action plan; authority to appoint pro tem reporters compensated at a rate jointly set by court and county with compensation in criminal cases charged to county.
69894	1999	Los Angeles	Permissive authority to appoint specified officers and employees; all employees are “at will”.
69894.1	1999	Los Angeles	Salary for specified employees set by reference to Los Angeles County Code; commissioners and referees compensated at 85% of superior court salary.
69894.2	1968	Los Angeles	General authority to establish additional classifications and to hire subject to county approval; compensation adjusted by joint action of county and court; appointments or adjustments shall be on an interim basis and shall expire 90 days after the adjournment of the next regular session of the Legislature unless ratified at such session.
69894.3	1994	Los Angeles	Benefits as directed by rules of court; lump sum payments for sick leave and vacation the same as available to county employees; right to transfer to other county departments; when requested by court, county shall provide recruitment and employment services.
69894.4	1959	Los Angeles	Court employees entitled to actual traveling and necessary expenses the same as county employees; expenses for travel outside of county requires prior approval of county; county may assign an automobile in lieu of travel expenses; salaries paid from county fund.
69894.5	1961	Los Angeles	Court may by rule employ and assign officers or attaches to perform interpreter duties.
69894.6	1994	Los Angeles	Judges may appoint 362 “at will” court reporters at specified salaries.

69899.5	1999	Orange	General authority to court to appoint officers and employees at salaries determined by court; funding for court operations paid by state; all employees are "at will"; benefits as determined by memorandum of understanding or personnel rules; when requested by court, county shall provide recruitment and employment services; court employees entitled to actual traveling and necessary expenses.
69900	1993	San Francisco	Permissive authority to appoint specified employees at specified salaries; court may establish additional titles and pay rates as required with approval of the county; compensation for all officers and employees may be altered by joint action of court and county; salaries paid by the county.
69903	1979	Alameda	Permissive authority to appoint specified employees at specified salaries; all employees "at will" and exempt from civil service; each judge may appoint a phonographic reporter; court may establish additional titles and pay rates as required with approval of the county, but such appointments shall be on an interim basis and shall expire on the effective date of appropriate ratifying or modifying state legislation; compensation may be adjusted by joint action of court and county; all employees but pro tem reporters shall be included in county retirement system and shall receive county benefits.
69903.3	1973	Alameda	Compensation for administrative assistant and chief calendar deputy.
69904	1998	San Diego	Permissive authority to establish classifications and to hire as necessary at rates of compensation determined by court; all employees exempt from civil service and "at will"; benefits the same as provided for county employees; salary set for juvenile court referees; juvenile court referees and legal research assistants may be reimbursed for State Bar dues.
69906	1992	San Bernardino	Permissive authority to establish classifications and to hire as necessary with approval of the county; all employees are "at will"; at request of court, county shall provide recruitment and employment services; salaries fixed and adjusted by court and county; benefits shall be the same as for comparable county classifications; court employees other than pro tem reporters shall be included in county retirement system.
69908	1990	Madera	Permissive authority to establish titles and to hire as necessary with approval of the county; at request of court, county shall provide recruitment and employment services; official reporters, official interpreters, research attorneys and other nonclerical positions are "at will"; salaries fixed and adjusted by agreement of court and county; benefits shall be the same as for comparable county classifications; court employees other than pro tem reporters shall be included in county retirement system.
69911	1997	Kern	Permissive authority to appoint specified employees at specified salaries; all employees shall be noncivil service and "at will"; court may establish additional titles as required subject to county approval; compensation may be adjusted by joint action of court and county; additional titles made on an interim basis; benefits same as provided to county employees.

In general, these statutes have been kept more current than the classification-specific statutes. All of these statutes, except for the two statutes governing Alameda County, have been last amended in the 1990s.

The provisions in these statutes substantially overlap with the provisions of TCEPGA. Generally, these statutes provide permissive authority for the court to appoint specified employees at specified salaries, with the possibility of establishing additional titles only with county approval. When salaries are not set by the statute, the provisions generally permit salaries to be set by joint action of the court and county. Benefits are generally required to be the same as for comparable county positions. Positions established by these statutes are generally “at will” and exempt from civil service.

Under TCEPGA, permissive authority to establish titles and to hire is granted exclusively to the court by Section 71620. Salaries are set by the court pursuant to Section 71623, with benefits available from the county pursuant to Sections 71624-71629. Most employees are protected under TCEPGA by the employment protection system.

To the extent that these statutes require county approval for establishing titles and rates of compensation, the statutes appear to be contrary to the basic principles of local court authority and state trial court funding. The “at will” status of employees under these statutes is inconsistent with the employment protection system. The other provisions in these statutes (e.g., permissive authority to establish titles and participation in county benefit programs) are essentially duplicated in TCEPGA, rendering these provisions obsolete. The Commission should focus its attention upon whether the inconsistent provisions should be retained after enactment of TCEPGA.

The staff believes that, like the classification-specific court staffing statutes, inconsistent provisions in the comprehensive county statutes may likewise presumptively be repealed. Again, we will circulate the draft repealers to interested persons, who will have an opportunity to review them and explain why a particular provision may need to remain in effect.

THE IMPACT OF TRIAL COURT UNIFICATION ON STAFFING STATUTES

Overview

One of the consequences of trial court unification is to make most of the staffing statutes for unified counties legally obsolete with respect to existing

employees. Thus, the provisions of staffing statutes which set the number of different types of positions and establish salaries and benefits have no legal effect in a unified county and may be repealed.

The unification of superior and municipal courts within a county created personnel issues in the newly unified superior court that demanded legislative attention. Proposition 220 (Trial Court Unification) expressly authorized the Legislature to enact statutes to deal with trial court personnel issues in newly unified courts. Proposition 220 added a new Section 23 to Article VI of the California Constitution. Section 23 provides, in relevant part, as follows:

SEC. 23. (a) The purpose of the amendments to Sections 1, 4, 5, 6, 8, 10, 11, and 16, of this article, and the amendments to Section 16 of Article I, ... is to permit the Legislature to provide for the abolition of the municipal courts and unify their operations within the superior courts. Notwithstanding Section 8 of Article IV, the implementation of, and orderly transition under, the provisions of the measure adding this section may include urgency statutes that create or abolish offices or change the salaries, terms, or duties of offices, or grant franchises or special privileges, or create vested rights or interests, where otherwise permitted under this Constitution.

...

(c) Except as provided by statute to the contrary, in any county in which the superior and municipal courts become unified, the following shall occur automatically in each preexisting superior and municipal court:

(1) Previously selected officers, employees, and other personnel who serve the court become the officers and employees of the superior court.

...

In 1998, the Legislature enacted statutes to implement Proposition 220. 1998 Cal. Stat., ch. 931 (S.B. 2139) (eff. Sept. 28, 1998). The statutes were drafted by the Law Revision Commission and the Legislature enacted the Commission's recommended statutes virtually without change. The Commission's report containing its recommendation and explanatory comments is published at *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51 (1998).

Interim Provisions

To ensure that the unification implementation statutes were given proper effect, the Legislature enacted a provision to the effect that general statutes

governing unification of the courts prevail over any inconsistent statutes that otherwise would apply within a county, including statutes dealing with personnel issues. That provision (Section 70215) states:

70215. This article and other statutes governing unification of the municipal and superior courts in a county shall prevail over any inconsistent statutes otherwise applicable to the municipal or superior courts in the county, including, but not limited to, statutes governing the number of judges, selection of a presiding judge, selection of a court executive officer, and employment of officers (including subordinate judicial officers), employees, and other personnel who serve the court.

The Law Revision Commission's recommendation did not include changes to the trial courts' staffing statutes or to other county-specific statutes. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports, at 62 ("This recommendation proposes only revisions of the laws of the state relating to the courts generally. It does not propose revisions of the special statutes relating to the courts in a particular county."). The Commission explained the difficulty with the county-specific statutes as follows:

Employment issues are among the most difficult matters to resolve in unifying the municipal and superior courts in a county. Hundreds of statutes in the Government Code specify employees' salaries, benefits, privileges, and so forth, in every municipal court district in the state. Bargaining rights, salary parity, seniority, and other issues must be addressed in each court that unifies. The proposed legislation does not attempt to deal with these issues. *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports, at 76 (footnote omitted).

Although the Commission's recommendation did not attempt to address in specific terms the trial courts' staffing statutes, the Legislature was constitutionally obligated to "provide for" superior court employees in a unified court, and the Legislature satisfied this obligation by enacting a *general* statute to govern trial court personnel matters in a unified court. The Commission explained the reason for the adoption of such a general statute as follows:

Recent legislation addresses [trial court] employee rights and establishes a mechanism for rationalizing the system – the Task Force on Trial Court Employees. It is likely, however, that immediate problems will be triggered by unification and will need

to be statutorily addressed on an urgency basis before the Task Force is able to complete its work.

Trial Court Unification: Revision of Codes, 28 Cal. L. Revision Comm'n Reports, at 76 (footnotes omitted).

Unification Transitional Provision

The general statute that governs trial court personnel issues in a unified superior court is Government Code Section 70217, which was enacted in 1998 and amended in 1999. It provides:

70217. On unification of the municipal and superior courts in a county, until adoption of a statewide structure for trial court employees, officers, and other personnel by the Legislature:

(a) Notwithstanding any other provision of law contained in this title [i.e., Title 8. The Organization and Government of Courts], upon unification, previously selected officers, employees, and other personnel who serve the courts shall become the officers, employees, and other personnel of the unified superior court at their existing or equivalent classifications, and with their existing salaries, economic and noneconomic benefits and other existing terms and conditions of employment that include, but are not limited to, accrued and unused vacation, sick leave, personal leave, health and pension plans, civil service or merit system coverage, and other systems that provide similar employment protections. The status, position, and rights of such persons shall not be affected by the unification and shall be retained by them as officers, employees, and other personnel of the unified superior court. This provision shall be retroactive to the date of unification and shall supersede any other provision of law governing at-will employment or exemption from civil service coverage applicable to these employees. It is the intent of the Legislature to ensure that officers, employees, and other personnel of the superior court do not lose employment protections to which they were entitled when unification took effect as a result of unification.

(b) Permanent employees of the municipal and superior courts on the effective date of unification shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary employees on the effective date of unification shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(c) Employment seniority of an employee of the municipal or superior courts on the effective date of unification shall be counted toward seniority in the unified superior court, and all time spent in

the same, equivalent, or higher classification shall be counted toward classification seniority.

(d) No officer or employee with peace officer status shall lose that status as a result of unification, and any officer or employee authorized to perform notice and process services or court security services in the municipal court is authorized to perform those services in the unified superior court.

Section 70217 in effect freezes trial court personnel matters in a unified court with respect to existing employees as of the date of unification until adoption by the Legislature of a statewide structure for trial court employees. Upon unification, previously selected municipal and superior court employees become employees of “the unified superior court at their existing or equivalent classifications, and with their existing salaries, economic and noneconomic benefits and other existing terms and conditions of employment ...” Section 70217 does not provide any mechanism for either decreasing or increasing the salaries, economic and noneconomic benefits and other existing terms and conditions of employment for trial court employees in unified courts.

Section 70217 comprehensively provides for personnel matters in unified trial courts with respect to existing employees “until adoption of a statewide structure for trial court employees, officers, and other personnel by the Legislature” (Gov’t Code § 70217), and Section 70217’s provisions “shall prevail over any inconsistent statutes otherwise applicable to the municipal or superior courts in the county” (Gov’t Code § 70215). The consequence of these two statutes — Section 70217, which comprehensively regulates trial court personnel matters in unified courts, and Section 70215, which provides that Section 70217 “prevails” over inconsistent county-specific statutes — is that, with limited exceptions discussed below, *all* trial court personnel statutes for counties that have unified are legally ineffective and obsolete with respect to existing employees (to the extent that a personnel statute includes provisions that go beyond personnel matters, e.g., statutes that set fees for court reporting services, those provisions would *not* be rendered obsolete by Sections 70215 and 70217 and may be retained). In unified counties, Section 70217 is the *sole* legal source of authority for trial court personnel matters with respect to existing employees until adoption of a statewide structure (which has now been done in the form of TCEPGA).

Summary of Effect of Unification

Many of the county-specific statutes contain provisions authorizing the court to establish new classifications, to hire new employees, and to set salaries and benefits for those new employees, often with a requirement of approval by the board of supervisors. These provisions would arguably not be preempted by Sections 70215 and 70217, since neither of those sections purports to deal with new employees; instead, Sections 70215 and 70217 deal only with existing employees as of the date of unification. The provisions authorizing the court to establish classifications, to hire and to set salaries are covered in TCEPGA by Sections 71620, 71622, and 71623.

The staff believes that the concept of TCEPGA is that the board of supervisors and the Legislature will not continue to play a significant role in court personnel matters. Presumptively, the inconsistent provisions of existing law may be repealed. Again, we will circulate the draft repealers to interested persons, who will have an opportunity to review them and explain why a particular provision may need to remain in effect.

As of this date (January 2001), fifty-seven of California's fifty-eight counties have voted to unify. Kings County has not unified; it has now been granted preclearance from the United States Department of Justice with respect to the Voting Rights Act for unification. Accordingly, with limited exceptions discussed below, the staffing and personnel statutes in all counties except Kings are technically obsolete by virtue of unification, and provisions dealing with existing employees should be repealed, including provisions dealing with subordinate judicial officers and court reporters. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Rev. Comm'n Reports, at 345 (Comment to Section 70215 provides that "[t]he reference [in Section 70215] to officers, employees, and other personnel who serve the court includes court commissioners, traffic referees, court reporters, and all other municipal court personnel"). See Memorandum 2001-7 (subordinate judicial officers), Memorandum 2001-8 (court reporters), Memorandum 2001-10 (county-specific municipal court statutes).

Post-Unification Statutes

The Legislature enacted certain personnel statutes after the effective date of Section 70215. Because these statutes were enacted after Section 70215, they arguably may not be subject to Section 70215's otherwise broadly preemptive language. Instead, these statutes might be considered to have impliedly repealed

Section 70215 with respect to the particular subject matter covered by them. The statutes are:

- Gov't Code §§ 69894 and 69894.1. Los Angeles staffing statutes
- Gov't Code § 69899.5. Orange County staffing statute
- Gov't Code § 69904. Trial court employees in San Diego
- Gov't Code § 69905. Research assistants
- Gov't Code § 69915. Consolidation of marshal and sheriff services in Merced, Orange and Shasta counties
- Gov't Code § 70044.5. Court reporters in San Mateo County
- Gov't Code § 70050.5. Court reporters in San Francisco
- Gov't Code § 70141. Appointment of court commissioners

Los Angeles Superior Court Staffing Statute

The Los Angeles staffing statutes were enacted after the effective date of Section 70215. However, at the time these statutes were enacted, Section 70215 did not even apply to Los Angeles. Accordingly, Sections 69894 and 69894.1 applied to Los Angeles entirely separate and apart from Sections 70215 and 70217. However, Los Angeles unified its superior and municipal courts effective January 23, 2000. After that date, trial court personnel issues in Los Angeles are governed by Sections 70215 and 70217, and Sections 69894 and 69894.1 are legally obsolete and repealable.

Orange County Superior Court Staffing Statute

Section 69899.5, a staffing bill for Orange County Superior Court, was last amended in 1999. Stat. 1999, ch. 891. Section 69899.5 contains the following provisions:

1. Permissive authorization to the court or court executive to appoint officers and employees at salaries set by the court's Executive Committee.
2. A reiteration of the state's responsibility to fund trial court operations.
3. A provision making all employees "at will".
4. Authorization to create new titles and to employ additional subordinate judicial officers.
5. Authorization for benefits as may be provided in a memoranda of understanding or personnel rules.

6. A provision equating rules providing benefits with local ordinances if a statute requires a local ordinance to extend benefits to local employees.
7. A provision authorizing rules of court to include personnel rules.
8. A provision requiring the county to provide recruitment and personnel services to the trial court if requested.
9. A provision guaranteeing reimbursement of travel and necessary expenses.
10. A statement that the section does not alter existing employment status or meet and confer obligations.

All of these provisions are obsolete in light of duplicative or conflicting provisions in TCEPGA. Permissive authorization to hire and salary setting (1 & 4 above) is covered in Sections 71620, 71622, and 71623. State trial court funding (2 above) is already covered elsewhere in the Government Code. The “at will” status of trial court employees (3 above) is contrary to the employment protection system. The provision of benefits by memoranda of understanding or personnel rules (5 & 9 above) is covered by Sections 71624-71629 and Article 3 of TCEPGA. The technical rules provisions (6 & 7 above) are covered by Section 71613. Prof. Kelso reports that the court executive officer has confirmed that the recruitment and personnel services provision (8) is obsolete. Finally, the labor provision (10 above) is covered by TCEPGA’s transition provisions.

Accordingly, all of the provisions in Section 69899.5 are obsolete, and the section may be repealed.

San Diego Superior Court Staffing Statute

Section 69904 is the staffing bill for the San Diego Superior Court, and it was last amended in 1998. The bill was signed by the Governor on September 29, 1998, and was effective January 1, 1999. Stat. 1998, ch. 973. Meanwhile, effective December 1, 1998, the San Diego trial courts unified. As of December 1, personnel matters in the San Diego unified superior court would have been governed by Sections 70215 and 70217. Because of the timing of the unification vote and the effective date of the amendment to Section 69904, an issue arises about the applicability of Sections 70215 and 70217. It could be argued that Section 69904 governs the San Diego Superior Court since Section 69904 became effective on January 1, 2000, *after* the unification vote (and after Section 70215 and 70217 were made applicable to courts in San Diego County).

As a matter of legislative intent, this argument should be rejected. Section 69904 was amended in 1998 at a time when the San Diego courts were *not* unified, and the section was drafted to apply to a non-unified court. It would defeat the purpose of Sections 70215 and 70217, and be contrary to the context in which Section 69904 was drafted, to apply Section 69904 to the unified superior court in San Diego.

Moreover, when Section 70217 was further amended in 1999 (*after* the San Diego unification), language was added to Section 70217(a) to make Section 70217 “retroactive to the date of unification.” This language was specifically inserted into Section 70217 in response to personnel issues that had arisen in San Diego and expresses the Legislature’s intent that personnel matters in San Diego should be governed by Sections 70215 and 70217 notwithstanding the enactment of Section 69904. For these reasons, Section 69904 is obsolete and should be repealed.

Research Assistants

Section 69905 now provides that the superior court may appoint research assistants and that the compensation for research assistants shall be paid by the county. Section 69905 was amended in 1998 to remove a requirement that the number and compensation of research assistants be set by the board of supervisors. The permissive authorization to appoint research assistants and to set salaries is covered in TCEPGA by Sections 71620 and 71623. Under state trial court funding, salaries for trial court employees are no longer paid by the county. Section 69905 is therefore obsolete in its entirety and should be repealed.

Marshal and Sheriff Consolidation Statute

For discussion of Section 69915, relating to sheriffs and marshals, see Memorandum 2001-9.

San Mateo County Court Reporters

Section 70044.5, which deals with court reporters in San Mateo County, was amended in 1998. It has provisions specifying the level of compensation (i.e., salary and benefits) and authorizing the board of supervisors to increase the level of compensation on an interim basis pending legislative approval. The status of court reporter statutes is discussed in Memorandum 2001-8.

Court Reporters in San Francisco

For discussion of Section 70050.5, relating to court reporters in the City and County of San Francisco, see Memorandum 2001-8.

Appointment of Court Commissioners

For discussion of Section 70141, relating to appointment of court commissioners, see Memorandum 2001-9.

SUPERIOR COURT STAFFING STATUTE IN KINGS COUNTY (NON-UNIFIED COURTS)

As explained above, only one county does not have a unified superior court. Kings County has now received preclearance from the United States Department of Justice for unification. Although this county has not unified, its superior court staffing statute is unnecessary in light of TCEPGA's provisions.

There are no superior court staffing statutes applicable solely to Kings County. Accordingly, the only staffing statutes applicable to superior courts in that county are those few classification-specific statutes that have statewide application. Those statutes are as follows: 69892 (secretary and assistant secretaries), 69893 (jury commissioner), 69896 (jury commissioner), 69898 (executive officer), and 69905 (research assistants).

As explained above, Section 69905, which grants permissive authority to hire research assistants and purports (incorrectly) to make the county responsible for compensating research assistants, is completely unnecessary in light of the Sections 71620 and 71623 of TCEPGA.

Section 69898, which permissively authorizes the appointment of an executive officer, is incorporated in TCEPGA as Section 71620(b). Section 69898 should therefore be repealed.

The three remaining statutes, 69892, 69893 and 69896, were last amended in 1961, 1953, and 1961, respectively, and deal with positions (secretaries and jury commissioners) that are covered by Sections 71620 and 71623.

Accordingly, the repeal of these classification-specific statutes will have no impact upon Kings County.

THE LEGAL IMPACT OF MEMORANDA OF UNDERSTANDING

In 1997, the Judicial Council adopted Rules of Court 2201 to 2210 "which create a mechanism for setting the terms and conditions of employment between

a trial court or its representatives and the personnel of the trial court or the representatives thereof.” Gov’t Code § 68650. In Government Code Sections 68650-68655, the Legislature recognized the legal enforceability of memoranda of understanding reached pursuant to Rules of Court 2201 to 2210. Section 68650 provides in pertinent part that “[n]otwithstanding any other provision of law, these rules shall be given full force and effect.” Section 68654 then provides in pertinent part that “any agreements reached pursuant to negotiations held pursuant to Rules 2201 to 2210, inclusive, of the California Rules of Court are binding on the parties and may be enforced pursuant to Section 1085 or 1103 of the Code of Civil Procedure.”

The legal effect of these provisions is to render obsolete county-specific personnel statutes in those counties which have memoranda of understanding with represented trial court employees with respect to those employees and the subject matters encompassed by the memoranda of understanding. These memoranda typically encompass job classification, salaries, economic and noneconomic benefits, and employee protection systems. These are the same type of issues dealt with in county-specific statutes, and it therefore appears that in counties with memoranda of understanding, the county-specific statutes have no legal effect with respect to trial court employees encompassed by the memoranda. These statutes are therefore obsolete and should be repealed.

Some memoranda of understanding apparently have provisions that make their enforceability depend on the enactment by the Legislature of a staffing statute that, in effect, ratifies the terms of the agreement reached between the trial court and represented employees. To ensure that these memoranda are not affected by the repeal of court staffing statutes (which is unlikely in any event because an attempt to break an existing memorandum of understanding by statute would probably constitute an unconstitutional impairment of contract), we should add a provision that the repeal of trial court staffing statutes does not affect enforceability of existing memoranda of understanding.

Uncodified (added). Saving clause

SEC. __. If an existing memorandum of understanding provides that a right, privilege, duty, authority, or status is subject to legislative ratification of the terms of the memorandum of understanding, and if the legislative ratification is repealed by this act, the memorandum of understanding nonetheless continues in effect for the period provided in it, or if none, for a period of two years after the effective date of this act, unless before that time the

memorandum of understanding is amended or is superseded by a new memorandum of understanding.

☛ **Staff Note.** The two-year duration suggested here is intended to preclude a repealed statute from controlling employment issues in perpetuity, and to encourage renegotiation in the context of the restructured trial court. The two-year period is drawn from TCEPGA. See Sections 71615 (employment terms of existing memorandum of understanding continue in effect for two years), 71617 (two-year limit on municipal court action that varies from court staffing statute)

In the future, a trial court and a trial court employee organization may include in a memorandum of understanding a clause making its enforceability contingent upon a legislative enactment. However, such clauses would seem to be contrary to the ultimate goal expressed by TCEPGA of maximizing local trial court control and autonomy. Moreover, after repeal of trial court staffing statutes, the Legislature may become less interested in enacting county-specific staffing statutes. Repeal of existing county-specific statutes will give trial courts, employee organizations and the Legislature a fresh opportunity to reconsider the wisdom and necessity for enacting new county-specific trial court staffing statutes.

Respectfully submitted,

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