Study J-1400 June 15, 2001

Memorandum 2001-56

Statutes Made Obsolete by Trial Court Restructuring: Discussion of Issues

This memorandum addresses two matters in the project to recommend repeal of statutes made obsolete by trial court restructuring — (1) the status of work on the project, and (2) issues relating to revision of the California Constitution.

STATUS OF WORK ON THE PROJECT

The staff is busily at work reviewing statutes and compiling proposed revisions along the lines approved by the Commission at previous meetings. We have not been moving as rapidly on this task as we would like due to diversion of staff resources to wrapping up other active projects and the time-consuming demands of the Commission's legislative program. However, a lot of that is starting to fall away and we are beginning to allocate more significant staff resources to this endeavor.

We have been in constant contact with personnel at the Administrative Office of the Courts and in individual courts. All have pledged their assistance and have been helpful in responding to inquiries and providing information. In this connection, it is worth noting that the Commission's Chair, David Huebner, addressed a conference of court executive officers and presiding judges in May, alerting them to this project and the need for their attention to it. That appears to have been quite helpful in terms of ensuring the active involvement of the courts.

At this point, despite the immensity of the project, the staff still anticipates we will be able to follow our normal course of staff work to prepare a draft tentative recommendation, Commission circulation of the tentative recommendation for review and comment, and issuance of a final Commission recommendation by the statutory deadline of January 1, 2002.

The staff is building up a database of proposed revisions to go into the tentative recommendation. In addition, we are circulating staff drafts of particularly problematic revisions to interested persons for their input. For example in mid-June we circulated drafts relating to sheriffs and marshals. We

plan to do something similar with drafts relating to court reporters and drafts relating to court personnel in individual counties.

There is one caveat in all this. Despite the fact that trial court restructuring has been in place for several years, there remain many unsettled issues relating to trial court funding and trial court employment. Are statutes relating to deposit in the county treasury of fees collected by the courts really obsolete? Can statutes prescribing compensation and civil service protections for court employees be repealed before new memoranda of understanding are fully implemented? Are general saving clauses a satisfactory response to these types of concerns?

The further we get into the details of the statutes, the more it begins to appear that it may be premature to regard as obsolete and to propose for repeal many statutes relating to funding and employment. It is conceivable that on January 1, 2002, the Commission could recommend repeal of obsolete statutes relating to trial court unification, along with an extension of the time to recommend repeal of obsolete statutes relating to trial court funding and employment.

REVISION OF THE CALIFORNIA CONSTITUTION

Causes of a Type Within the Appellate Jurisdiction of the Courts of Appeal on June 30, 1995

In connection with the repeal of obsolete statutes, the Commission has under consideration a proposed cleanout of obsolete constitutional provisions relating to the former municipal courts. The Commission has asked the staff to investigate possible relocation of a Court of Appeal jurisdictional provision from the Constitution to the statutes.

The provision in question is problematic language inserted into the Constitution as part of the trial court unification package:

> **Cal. Const. Art. VI, § 11. Appellate jurisdiction**
>
> SEC. 11. (a) The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when superior courts have original jurisdiction **in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995,** and in other causes prescribed by statute. **When appellate jurisdiction in civil causes is determined by the amount in controversy, the Legislature may change the appellate jurisdiction of the courts of appeal by changing the jurisdictional amount in controversy.**

(b) Except as provided in subdivision (a), the appellate division of the superior court has appellate jurisdiction in causes prescribed by statute.

(c) The Legislature may permit courts exercising appellate jurisdiction to take evidence and make findings of fact when jury trial is waived or not a matter of right.

This provision is the result of concern expressed by some Court of Appeal judges about possible loss of the Court of Appeal's historic jurisdiction to superior court appellate divisions. (At the same time, other Court of Appeal judges had the opposite concern — the workload of the Court of Appeal was too great and something needed to be done about it!)

In any event, the compromise language inserted into the Constitution is problematic in part because as time goes by it will become ever more difficult to determine just what causes were "of a type" within the Court of Appeal's jurisdiction on June 30, 1995. In fact it probably would not have been possible even on June 30, 1995, to compile a comprehensive catalog of "types" of causes within the Court of Appeal's jurisdiction.

Transfer of Appeal to Proper Court

The Judicial Council was assigned responsibility for developing a catalog of cases within the Court of Appeal's jurisdiction on June 30, 1995, in consultation with the Law Revision Commission. When the project proved problematic, the Commission suggested an alternate approach — provide for transfer to the appropriate court, rather than dismissal, of an appeal filed in the wrong court. The Judicial Council has accepted this approach in principle. The Administrative Office of the Courts states that although there are no express rules on the matter, the courts have inherent authority to order such a transfer, and that case law supports this. They also state that their Appellate Advisory Committee and their Appellate Division Task force are revising the appellate rules and plan to include a rule for transfer in their proposed revisions of the Rules of Court.

Although the Commission suggested this approach two years ago, the need for it has apparently become more acute in recent months due to the Court of Appeal ordering dismissal of cases filed in the wrong court. See, e.g., *People v. Shoup*, 2001 DJ DAR 5202 (3d App. Dist., May 24, 2001).

Constitutional v. Statutory Limitation

The Commission has suggested it would be appropriate to delete from the Constitution the June 30, 1995, language and relocate it to the statutes. This would have the benefit of cleaning out of the Constitution detailed verbiage that doesn't belong in it. Placing the same language in the statutes would make it easier to amend in the future. For that very reason, however, the change could be objectionable to the judges who managed to get the language inserted in the Constitution in the first place.

It would be possible to impose some sort of constraint on ready amendment of statutory language defining Court of Appeal jurisdiction, such as a supermajority vote requirement. Apparently, though, such a constraint would have to be authorized by the Constitution. The Legislature itself cannot bind future legislatures in that way without constitutional sanction. (We are researching this matter more fully, and will be in a position to give the Commission definitive advice on it at the Commission meeting, should the Commission be interested in pursuing this approach.)

Constitutional Amendment

A better approach, in the staff's opinion, would be to make a direct statement of the Court of Appeal's jurisdiction in the Constitution itself. The Court of Appeal has appellate jurisdiction in cases historically within the original jurisdiction of the superior court. At the time the unification framework was adopted, we did not have a straightforward way of describing that concept for civil cases, other than to use a circumlocution such as "causes of a type within the appellate jurisdiction of the Court of Appeal on June 30, 1995." Since then we have developed language that captures the concept more directly — those types of causes are defined as "unlimited" civil cases. Code Civ. Proc. § 88.

Thus the staff proposes a direct revision of Article VI, Section 11 of the Constitution:

> **Cal. Const. Art. VI, § 11 (amended). Appellate jurisdiction**
>
> SEC. 11. (a) The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction ~~when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995,~~ in felony cases and unlimited civil cases, and in other causes prescribed by statute. ~~When appellate jurisdiction in civil causes is determined by the~~

~~amount in controversy, the Legislature may change the appellate jurisdiction of the courts of appeal by changing the jurisdictional amount in controversy.~~

(b) Except as provided in subdivision (a), the appellate division of the superior court has appellate jurisdiction in causes prescribed by statute.

(c) The Legislature may permit courts exercising appellate jurisdiction to take evidence and make findings of fact when jury trial is waived or not a matter of right.

Comment. Section 11 is amended to restate the basis of Court of Appeal jurisdiction. Generally speaking, felonies and unlimited civil cases were the types of causes within the appellate jurisdiction of the Court of Appeal on June 30, 1995. See Code Civ. Proc. § 904.1 (civil appeal); Penal Code § 1235 (criminal appeal). See also Code Civ. Proc. § 88 ("unlimited civil case" defined); Penal Code § 691(f) ("felony case" defined).

One concern with such a revision is that a case may combine several types of causes. For example, a civil case may include causes that are both limited and unlimited; a criminal case may include both misdemeanor and felony charges. In that situation, the civil case is treated as an unlimited civil case. Code Civ. Proc. § 85. Such a criminal case is treated as a felony case. Penal Code § 691 & Comment. These mixed cases would go to the Court of Appeal even though the matter might be more appropriate for review in the appellate division of the Superior Court because the significant issues in the case are misdemeanor or limited civil issues.

A good way to handle the problem is, again, to provide for transfer. Existing law can be read to authorize it already. See Cal. Const. art. VI, § 12. However, the staff thinks it would be better to make the matter crystal clear, as long as we are amending the Constitution anyway:

Cal. Const. Art. VI, § 12 (amended). Transfer and review

SEC. 12. (a) The Supreme Court may, before decision, transfer to itself a cause in a court of appeal. It may, before decision, transfer a cause from itself to a court of appeal or from one court of appeal or division to another. <u>A court of appeal may, before decision, transfer to itself a cause in the appellate division of a superior court within its district, or transfer a cause from itself to the appellate division of the superior court from which the cause was appealed.</u> The court to which a cause is transferred has jurisdiction.

(b) The Supreme Court may review the decision of a court of appeal in any cause.

(c) The Judicial Council shall provide, by rules of court, for the time and procedure for transfer and for review, including, among other things, provisions for the time and procedure for transfer with instructions, for review of all or part of a decision, and for remand as improvidently granted.

(d) This section shall not apply to an appeal involving a judgment of death.

Comment. Section 12 is amended to make clear the authority of the Court of Appeal to transfer a cause of review to or from the appellate division of the superior court. This may be appropriate, for example, where a civil case includes both limited and unlimited civil causes, or where a criminal case includes both misdemeanor and felony charges. *Cf.* Section 11 & Comment (appellate jurisdiction). See also Code Civ. Proc. § 911 (transfer from appellate division to court of appeal).

If this is done, a concomitant change could be added to Government Code Section 68915, which evidently implements the constitutional provision:

Gov't Code § 68915 (amended). Transfer of appeal to proper court

68915. No appeal ~~taken to the Supreme Court or to a court of appeal~~ shall be dismissed for the reason only that the same was not taken to the proper court, but the cause shall be transferred to the proper court upon such terms as to costs or otherwise as may be just, and shall be proceeded with therein, as if regularly appealed thereto.

Comment. Section 68915 is amended to broaden its application to appeals improperly taken to the appellate division of the superior court.

Note. This provision is currently found in an article and chapter relating to the Supreme Court. It probably should be relocated.

Respectfully submitted,

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