

Memorandum 2001-79

Statutes Made Obsolete by Trial Court Restructuring: Miscellaneous Issues

In our review of statutes made obsolete by trial court restructuring, we have tried to categorize the statutes thematically, e.g., those relating to municipal courts, court reporters, county-specific employment, etc. However, there are a number of statutes that defy easy categorization but that require adjustment in the wake of trial court restructuring. This memorandum presents a few of these matters for Commission review. Others will be presented at future meetings.

Jury Venires

The Code of Civil Procedure authorizes smaller-than-countywide jury venires in counties where sessions of the superior court are held outside the county seat. Code Civ. Proc. § 198.5. These venires are based on municipal court districts.

A number of statutes also prescribe special rules for superior court jury venires in physically isolated areas of specified counties. See, e.g., Code Civ. Proc. §§ 199-199.5 (El Dorado, Placer, Nevada, and Santa Barbara counties). The El Dorado and Santa Barbara statutes base the special venires on supervisorial districts; the Placer and Nevada statutes base them on municipal court districts.

The staff proposes to replace these obsolete provisions with a general statute that incorporates the various existing standards in one comprehensive section, and enables the courts to adopt governing local rules. We would allow a one year deferred operative date to enable courts to adopt local rules.

Section 198.5 would be revised to read:

Code Civ. Proc. § 198.5 (amended). Superior court venires

~~198.5. (a) Except as provided in subdivision (b), in counties where sessions of the superior court are held in cities other than the county seat, the names for master jury lists and qualified jury lists to serve in those cities may be selected from the judicial district in which the city is located and, if the judges of the court determine that it is necessary or advisable, from a judicial district adjacent to a judicial district in which the city is located.~~

~~(b) In a county in which there is no municipal court, if If sessions of the superior court are held in a location other than the~~

county seat, the names for master jury lists and qualified jury lists to serve in a session may be selected from the area in which the session is held, pursuant to a local superior court rule that (1) divides the county in a manner that provides all qualified persons in the county an equal opportunity to be considered for jury service and (2) gives each prospective juror residing in the county an opportunity to elect to serve on a jury with respect to a trial held anywhere in the county. Nothing in this section precludes the superior court, in its discretion, from ordering a countywide venire in the interest of justice.

Comment. Section 198.5 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution. It incorporates provisions drawn from former Sections 199 (El Dorado County venires), 199.2 (Placer County venires), 199.3 (Nevada County venires), and 199.4 (Santa Barbara County venires).

☞ **Note.** It is proposed that Section 198.5 be amended with a one-year deferred operative date; this will allow adequate time for the superior court to revise any local rule on the matter:

The amendment by this act of Section 198.5 of the Code of Civil Procedure is operative January 1, 2004.

The county-specific statutes would be repealed:

Code Civ. Proc. § 199 (repealed). El Dorado County venires

~~199. In El Dorado County, trial jury venires for the superior court shall be drawn from residents of the supervisorial district, or a portion thereof, within which the court will sit for such trial and from residents of such other immediately adjacent supervisorial district, or portion thereof, as may be specified by local superior court rules. Such venireman shall serve the court sitting in the geographical portion of the county from which this section and such court rules specify trial jury venires shall be drawn; provided that such rules shall afford to each eligible resident of such county an opportunity for selection as a trial jury venireman. Such court may, in its discretion, order a countywide venire in the interest of justice.~~

Comment. The special rule of Section 199 is superseded by the general rule of Section 198.5 (superior court venires).

☞ **Note.** The purpose of Section 199 — to enable smaller than county-wide jury venires in El Dorado County — can be achieved by local court rule, without the need for special legislation. See Section 198.5. It is unnecessary to provide a deferred operative date for repeal of Section 199, since the El Dorado County Superior Court has a local rule on the matter. See El Dorado County Superior Court Rules, Rule 3.00.01.

Code Civ. Proc. § 199.2 (repealed). Placer County venires

~~199.2. In Placer County prospective jurors residing in the Tahoe Division of the Placer County Municipal Court, except as otherwise provided in this section, shall only be included in trial court venires for sessions of the superior court held within that division. However, each prospective juror residing in the county shall be given the opportunity to elect to serve on juries with respect to trials held anywhere in the county in accordance with the rules of the superior court, which shall afford to each eligible resident of the county an opportunity for selection as a trial jury venireman. Additionally, nothing in this section shall preclude the superior or municipal court, in its discretion, from ordering a countywide venire in the interest of justice.~~

Comment. The special rule of Section 199.2 is superseded by the general rule of Section 198.5 (superior court venires).

☞ **Note.** The purpose of Section 199.2 — to enable smaller than county-wide jury venires in Placer County — can be achieved by local court rule, without the need for special legislation. See Section 198.5. It is proposed that Section 199.2 be repealed with a one-year deferred operative date; this will allow adequate time for the Placer County Superior Court to adopt a satisfactory local rule on the matter:

The repeal by this act of Section 199.2 of the Code of Civil Procedure is operative January 1, 2004.

Code Civ. Proc. § 199.3 (repealed). Nevada County venires

SEC. ___. Section 199.3 of the Code of Civil Procedure is repealed.

~~199.3. In Nevada County, trial jury venires for the Truckee Branch of the Superior Court shall be drawn from residents of the Truckee Division of the Nevada County Municipal Court, except as otherwise provided in this section. Prospective jurors residing in the Truckee Division of Nevada County Municipal Court, except as otherwise provided in this section, shall only be included in trial court venires or sessions of the municipal and superior court held within that division. However, each prospective juror residing in the county shall be given the opportunity to elect to serve on juries with respect to trials held anywhere in the county in accordance with the rules of the superior and municipal court, which shall afford to each eligible resident of the county an opportunity for selection as a trial jury venireman. Additionally, nothing in this section shall preclude the superior or municipal court, in its discretion, from ordering a countywide venire in the interest of justice.~~

Comment. The special rule of Section 199.3 is superseded by the general rule of Section 198.5 (superior court venires).

☞ Note. The purpose of Section 199.3 — to enable smaller than county-wide jury venires in Nevada County — can be achieved by local court rule, without the need for special legislation. See Section 198.5. It is proposed that Section 199.3 be repealed with a one-year deferred operative date; this will allow adequate time for the Nevada County Superior Court to adopt a satisfactory local rule on the matter:

The repeal by this act of Section 199.3 of the Code of Civil Procedure is operative January 1, 2004.

Code Civ. Proc. § 199.5 (repealed). Santa Barbara County venires

199.5. In Santa Barbara County, trial jury venires for the superior court shall be drawn from residents of the supervisorial district within which the court will sit for that trial and from residents of such other immediately adjacent supervisorial district, or portion thereof, as may be specified by local superior court rules. The venireman shall serve the court sitting in the geographical portion of the county from which this section and such court rules specify trial jury venires shall be drawn. However, those rules shall afford to each eligible resident of such county an opportunity for selection as a trial jury venireman. The court may, in its discretion, order a countywide venire in the interest of justice.

Comment. The special rule of Section 199.5 is superseded by the general rule of Section 198.5 (superior court venires).

☞ Note. The purpose of Section 199.5 — to enable smaller than county-wide jury venires in Santa Barbara County — can be achieved by local court rule, without the need for special legislation. See Section 198.5. It is unnecessary to provide a deferred operative date for repeal of Section 199.5, since the Santa Barbara County Superior Court has a local rule on the matter. Santa Barbara County Unified Superior Court Rules, Rule 801.

We have been circulating staff drafts along these lines to interested persons, including the specifically-affected counties. There appears to be general acceptance of this approach. If the Commission agrees, we will incorporate these drafts in the tentative recommendation that is circulated more widely for comment.

Assessment of Guardianship or Conservatorship Estate for Costs

Probate Code Sections 1513.1 and 1851.5 allow the county to assess county expenses incurred for the cost of court investigation of a guardianship or conservatorship estate. The problem is, the court investigator function is no longer a county function performed at county expense. It is part of court operations, for which the state covers the funding.

Although it would be logical to revise these provisions to allow the court to recoup the cost of court investigation, this is an instance of a case in which politics, rather than logic, governs the matter. The shift of trial court funding from the counties to the state was a carefully worked out and detailed legislative compromise, which assigned specified fees to the court and left others to the county. It cannot be assumed that any provision for the county to garner fees or other income generated by court operations is obsolete. **The staff believes such provisions must remain operative until a follow-up funding package is agreed upon and enacted.** See discussion in Memorandum 2001-68.

Meanwhile, there is another anomaly in the way in which the guardianship and conservatorship provisions are drafted. They allow the county to recoup the costs of investigation conducted “at county expense.” Since the investigations are no longer conducted at county expense, it appears that neither the county nor the court may recoup the costs any longer. As a stop-gap measure, **the staff proposes to fix this problem:**

Prob. Code § 1513.1 (amended). Assessment for costs

1513.1. (a) Each county shall annually assess (1) the parent, parents, or other person charged with the support and maintenance of the proposed ward, and (2) the guardian, proposed guardian, or the estate of the proposed ward, for court or county expenses for any investigation or review conducted by the court investigator, probation officer, or domestic relations investigator incurred pursuant to Section 1513. A county may waive any or all of an assessment against the guardianship on the basis of hardship. There shall be a rebuttable presumption that the assessment would impose a hardship if the ward is receiving Medi-Cal benefits.

(b) Any amount chargeable as state-mandated local costs incurred by a county for the cost of the investigation or review pursuant to Section 1513 shall be reduced by any assessments actually collected pursuant to subdivision (a) during that fiscal year.

Comment. Section 1513.1 is amended to reflect enactment of the Trial Court Funding Act. See Gov’t Code § 68073 (responsibility for court operations and facilities); Ct. Rule 810 (court operations include probate conservatorship and guardianship investigators).

☞ Note. The Commission is reviewing whether the provision for assessment by the county, as opposed to the court, remains viable, given the enactment of the Trial Court Funding Act. The Commission solicits comments on this point.

Prob. Code § 1851.5 (amended). Assessment for costs

1851.5. (a) Each county shall annually assess each conservatee in the county for any investigation or review conducted by a court investigator at court or county expense with respect to that person pursuant to Section 1826, 1850, or 1851. The court may order reimbursement payment to the county for the cost of the investigations required by statute, unless the court finds that the assessment would pose a hardship to the estate. There shall be a rebuttable presumption that the assessment would impose a hardship if the ward is receiving Medi-Cal benefits.

(b) Any amount otherwise owing to a county pursuant to Article XIIIIB of the California Constitution and Sections 17561 and 17565 of the Government Code for costs incurred by the county for the costs of investigation or review by court investigators pursuant to Sections 1826, 1850, and 1851 shall be reduced by the amount of any assessments actually collected during the fiscal year pursuant to subdivision (a).

Comment. Section 1851.5 is amended to reflect enactment of the Trial Court Funding Act. See Gov't Code § 68073 (responsibility for court operations and facilities); Ct. Rule 810 (court operations include probate conservatorship and guardianship investigators).

☞ Note. The Commission is reviewing whether the provision for assessment by the county, as opposed to the court, remains viable, given the enactment of the Trial Court Funding Act. The Commission solicits comments on this point.

Criminal Witness Fees

Historically, the county has been responsible for certain witness fees in criminal cases. See, e.g., Gov't Code § 72232 ("Witnesses and jurors in criminal cases shall be paid by the county in the manner provided for the payment of such fees in the county or city and county in which any such municipal court is situated."); Penal Code § 1329 (court may "direct the county auditor to draw his warrant upon the county treasurer in favor of such witness for witness' fees").

The treatment of criminal witness fees under the Trial Court Funding Act is unclear. Witness fees are not made part of "court operations" for purposes of that act. See also California Rules of Court, Rule 810.

We have received correspondence from county officials in San Diego County arguing that this is not properly a county expense. They would like to see Penal Code Section 1329 revised to cure the problem. Such a revision might look like this:

Penal Code § 1329 (amended). Witness fees

1329. (a) When a person attends before a magistrate, grand jury, or court, as a witness in a criminal case, whether upon a subpoena or in pursuance of an undertaking, or voluntarily, the court, at its discretion, if the attendance of the witness be upon a trial may by an order upon its minutes, or in any criminal proceeding, by a written order, direct the county auditor to draw his warrant upon the county treasurer in favor of such witness for payment of witness' fees at the rate of twelve dollars (\$12) for each day's actual attendance and for a reasonable sum to be specified in the order for the necessary expenses of such witness. The court, in its discretion, may make an allowance under this section, or under any appropriate section in Chapter 1 (commencing with Section 68070), Title 8, of the Government Code, other than Section 68093. The allowances are county charges.

(b) The court, in its discretion, may authorize payment to such a witness, if he is employed and if his the witness' salary is not paid by his the witness' employer during the time he the witness is absent from his employment because of being such a witness, of a sum equal to his the witness' gross salary for such time, but such sum shall not exceed eighteen dollars (\$18) per day. The sum is a county charge.

A person compensated under the provisions of this subdivision may not receive the payment of witness' fees as provided for in subdivision (a).

Comment. Section 1329 is amended to reflect enactment of the Trial Court Funding Act. See Gov't Code § 68073 (responsibility for court operations and facilities); see also Gov't Code § 68098 (witness fees charged against same fund as juror fees).

☞ **Note.** The Commission is reviewing whether the provision for payment by the county, as opposed to the court, remains viable, given the enactment of the Trial Court Funding Act. The Commission solicits comments on this point.

While the staff thinks an argument can be made that these fees are properly a court rather than a county expense, we also think the counties cannot have it both ways. They cannot argue to keep the benefit of statutes giving fees to the counties (because not addressed in the trial court funding compromise), and at the same time argue to be free of the burden of statutes imposing expenses on the counties (even though not addressed in the trial court funding compromise).

The staff thinks county fee and county expense statutes should be dealt with together as a package. We would not propose the amendment suggested by San

Diego County but would flag the section for attention when the remaining trial court funding issues are addressed comprehensively.

Respectfully submitted,

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Executive Secretary