

Study J-1400

November 14, 2001

First Supplement to Memorandum 2001-96**Statutes Made Obsolete by Trial Court Restructuring:
Official Reporter**

Attached to this Memorandum as an Exhibit is a communication from Karen Sundermier of the Administrative Office of the Courts. Ms. Sundermier details the concerns AOC has with the staff draft of Government Code Section 69947 (compensation of official reporter).

Their concerns appear to the staff to be, in general, well-taken. At the Commission meeting we will consider the individual points they raise.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Exhibit

EMAIL FROM KAREN SUNDERMIEF

Date: Wed, 14 Nov 2001 14:34:58 -0800
From: "Sundermier, Karen" <Karen.Sundermier@jud.ca.gov>
To: <sterling@clrc.ca.gov>
Cc: "Brown, Deborah" <Deborah.Brown@jud.ca.gov>,
"Grove, Janet" <Janet.Grove@jud.ca.gov>, <ckelso@uop.edu>

Re: Memorandum 2001-96

Nat,

We are writing to confirm the issues we discussed with you yesterday regarding the California Law Review Commission's proposed Government Code section 69947. We appreciate the time and effort you have put in to addressing a very complicated statutory area. This letter provides a summary of the concerns that we have about proposed section 69947 and its inconsistency with the Trial Court Employment Protection and Governance Act (TCEPGA) and the potential for confusion and problems with interpretation.

First, notwithstanding our general concern with such a provision, at a minimum, the definition of "compensation" in subsection (a)(1) is overbroad. Specifically, we believe that the use of "benefits, privileges, fees, and allowances" in the proposed statute will give rise to confusion and problems. Benefits are a highly regulated area, and employees' benefits are subject to vesting requirements and other statutory rights and restrictions that apply regardless of proposed section 69947. In addition, benefits are one of the main subjects of discussion in negotiations, and the parties often agree to modify benefits (for example, a modification of the employee contribution or co-payment amount) as part of an overall improvement in the compensation package. Furthermore, the Task Force on Trial Court Employees conducted extensive research in this area, the result of which are specific statutes in the TCEPGA that address among other things, complex issues such as transition from provision of benefits from the county to the court, provision of federally regulated benefits, transition of accrued leave, as well as defined-benefit retirement systems for court employees. (See Gov. Code, §§ 71624, 71625, 71627, 71629.) These detailed provisions related to court employee benefits in the TCEPGA are intended to replace statutory provisions relating to benefits, many of which refer to court personnel as county employees or the provision of benefits to court personnel by the county.

Also, in proposed section 69947, "privileges" and "allowances" are undefined, and, for that reason, also could cause confusion and problems with interpretation. If there are specific statutes that currently address items that may be considered to

be either “privileges” or “allowances,” it may be more prudent to leave those statutes in place. Finally, fees are a matter separate from compensation and already are addressed in the current statutory scheme. (See Gov. Code, §§ 69947-69954.) In particular, under Government Code section 69950, it is the Legislature, rather than the courts, that sets the fee for transcripts.

Second, again, as a general matter, we think that subsection (d) is contrary to both the TCEPGA and subsection (b)(1) of this provision. If the CLRC continues to propose this type of provision, however, we would suggest, at a minimum, certain changes to avoid confusion and problems with interpretation: (1) As discussed above, we suggest that "compensation," as it is written twice in the first sentence, be replaced by "salary." (2) We suggest that "otherwise provided by law " in the first sentence be replaced with "otherwise provided by statute." This change is necessary to confirm that the statute only seeks to set as a floor salaries set by statute, not salaries agreed to in a contract or memorandum of understanding. As you know, a statute cannot impair a contract. Accordingly, this floor can only apply to salaries set by statute. (3) We suggest deleting the reference to "any computation of retirement benefits based on transcription fees." As noted above, benefits are a separate issue, already governed by existing law, and carefully addressed in the TCEPGA in order to preserve the continuity of court employee participation in county benefit plans, if applicable. In addition, with respect to the specific provisions that address computation of salary for purposes of retirement benefits, we believe it would be less confusing to simply leave those statutes in place. (4) We question the remainder of the provision, starting with, "However, the compensation is subject to modification . . . " In short, the issues we raised are: (a) the utility of setting an arbitrary three-year floor; and (b) the failure of the provision to address how salary may be modified for unrepresented court reporters.

We appreciate the Commission's consideration of our comments. Please do not hesitate to contact either Debbie Brown (415-865-7667) or me (415-865-7715) with questions on these issues. Debbie Brown will attend the Commission's meeting on November 17, 2001.

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