

Memorandum 2002-3

Statutes Made Obsolete by Trial Court Restructuring (Discussion of Issues)

The Commission has circulated for comment its tentative recommendation on statutes made obsolete by trial court restructuring. The comment deadline is February 15, which should allow the staff sufficient time to analyze the issues and present them for Commission resolution at the March 14-15 meeting. Our plan is to make appropriate amendments to the bill after that meeting, and then have the matter set for hearing.

Meanwhile, there are issues not addressed in the tentative recommendation, or that have surfaced in the interim, that should be addressed. This memorandum presents those issues for resolution.

COMPENSATION OF JUDGES

Government Code Section 68202 prescribes the compensation of trial court judges. The Commission's tentative recommendation would delete the reference to the salary of a municipal court judge.

68202. Effective January 1, 1985, the annual salary of each of the following judges is the amount indicated opposite the name of the office:

(a) Judge of the superior court, seventy-two thousand seven hundred sixty-three dollars (\$72,763).

(b) Judge of a municipal court, sixty-six thousand four hundred forty-nine dollars (\$66,449).

The Commission solicits comment in the tentative recommendation on the question whether this and other salary statutes ought to be updated to reflect current salaries.

The staff understands from discussions with key people involved in the legislative process that it would be inadvisable to tinker with these statutes. While it makes sense from a theoretical perspective to update them, that just puts the numbers into play and is likely to generate a legislative battle — something we are trying to avoid in the context of the present technical bill.

We would, however, further simplify the drafting of the section without touching the superior court salary figure:

~~68202. Effective January 1, 1985, the annual salary of each of the following judges is the amount indicated opposite the name of the office:~~

~~(a) Judge a judge of the superior court ~~is~~ is seventy-two thousand seven hundred sixty-three dollars (\$72,763).~~

~~(b) Judge of a municipal court, sixty-six thousand four hundred forty-nine dollars (\$66,449).~~

COMPENSATION OF OFFICIAL REPORTER

A major gap in the tentative recommendation is treatment of compensation of official reporters. The tentative recommendation would repeal the various county-specific compensation statutes, but does not propose any replacement statute. The tentative recommendation solicits comment on the matter. See Note to Gov't Code § 69947:

Issues involving official reporter compensation have not yet been resolved. Principal questions include whether existing statutes specifying the amount of compensation or the manner of determining compensation are or should be superseded by the Trial Court Employment Protection and Governance Act, including statutes providing that in certain counties salaries are determined by salaries in Los Angeles County and that in certain counties transcript fees are included in the determination of retirement benefits. The Commission solicits comments on these issues.

Working Group Session

When the Commission last considered the matter, at the November 15-16 meeting in Los Angeles, the Commission concluded it might be helpful to get the various interested parties together to see if there is any common ground. The staff assembled a working group that included representatives from the Administrative Office of the Courts (AOC), selected superior courts (including Los Angeles), labor unions, and court reporter professional associations, as well as the Commission's consultant Professor Clark Kelso and a member of Senator Burton's staff. The working group held one 3-hour session at which we reviewed the issues, stated positions, and discussed a few compromise options.

The only significant benefit of the meeting, so far as the staff is able to tell, is that the parties clearly staked out their positions, and the battle lines are drawn.

There were perhaps a few elements of common ground — agreement that the municipal court statutes are irrelevant and the focus of concern is the superior court statutes, and acknowledgment that benefits may need to be treated differently from salaries. There is also possibly a sense that statutes linking Orange, San Francisco, and Ventura county salaries to Los Angeles County salaries may be a different kettle of fish. The parties appeared generally to take the position that official reporters should not be treated specially or differently from other court employee groups. The parties do not appear at this point to have much inclination to move toward serious compromise.

Commission Decision

The Commission has been aware from early on that this would be the most difficult part of the project. The Commission must now decide how to proceed. The staff can see a number of feasible options the Commission might recommend:

(1) **Repeal the county-specific court reporter statutes** in reliance on compensation setting mechanisms of the Trial Court Employment Protection and Governance Act (TCEPGA). That is what we are proposing for all other employee groups, and that appears to be the effect of existing law. This would be supported by AOC but opposed by official reporters.

Without predicting the outcome of such a battle in the Legislature, the staff believes this is not a good option. The Legislature does not really want to have to deal with this issue. They would like the Commission to come up with a proposal that can take care of the statutes without causing problems.

(2) Do a partial repeal of the county-specific official reporter statutes, **leaving compensation provisions intact** but taking out other provisions that are in conflict with TCEPGA, such as limitations on the number of official reporters in each court and provisions that make official reporter appointments “at pleasure”. The virtue of this approach is that it would allow us to clean a substantial volume of deadwood out of the codes while putting off the tough issues for later determination.

The problem with this approach is it would require a fair amount of staff work and, if enacted, would appear to constitute a legislative endorsement or determination that compensation statutes are not superseded by TCEPGA. We could arguably avoid that interpretation by adding legislative intent language

that there is no intention, by repealing other statutes, to determine that issue pending further work by the Commission.

(3) Repeal county-specific court reporter compensation statutes that are clearly a dead letter, but **leave in place statutes that appear to provide a real and current benefit to reporters**. This would go a step further than the previous alternative by making inroads into the compensation statutes themselves. Its benefit is that it would winnow the statutes down to those that actually make a difference.

Its disadvantages are the same as the previous alternative, only more so.

(4) Construct some sort of **compromise approach** along the lines previously suggested by the staff. For example, repeal the compensation statutes in reliance on TCEPGA but guarantee existing salary and per diem rates for a three-year period, after which they would be subject to full negotiation. This would have the benefit of enabling the cleanout of existing statutes. That should not cause any practical difficulty since it is unlikely that salaries will fall anyway and, even if they do, the protection only lasts a limited term.

The drawback of proposing this or any other compromise is that it only makes sense if the parties buy into it. And so far we haven't seen any inclination for the parties to come to an agreement. It may be better to leave it to the legislative process to forge a compromise, if that's what it comes to.

(5) Leave the existing county-specific statutes **intact**, to be addressed another day. This would recognize that there is no agreement among stakeholders that the existing statutes are in fact obsolete. Ergo, they are not ripe for repeal. Arguably over time the stakeholders would come to some agreement as to disposition of the statutes and they could be repealed, either as a body or on a county by county basis as part of the bargaining process in that county.

The drawback of such an approach is that it would continue, perhaps indefinitely, the confusing situation of two inconsistent bodies of law — TCEPGA and the county-specific statutes. Which one prevails? For example, do reporters receive civil service protection as provided by TCEPGA or do they serve at the pleasure of the judges as provided by the county-specific statutes? It was this type of problem that prompted referral of the matter to the Commission for resolution, and we would be dodging it.

As a practical matter, however, that is the current state of the law — both TCEPGA and the county-specific statutes are in effect simultaneously — and courts seem to be functioning OK. Generally the parties appear simply to be

ignoring the county-specific statutes and bargaining in good faith. The county-specific provisions are there in case an issue arises, but issues don't seem to be arising.

(6) Repeal the existing body of law and replace it with a **saving clause**. This would have the benefit of maintaining the status quo pending resolution of the issues, but at the same time would allow cleanout of a mass of statutory material.

That would make it very difficult to find the law, though, and next to impossible to repeal the old law on a county by county basis. Of course, it can be argued that the old law has no practical impact anyway, so no one will ever really need to look at it, but the saving clause is there as a safety net just in case.

(7) Repeal the county-specific statutes, but with a **deferred operative date**, e.g. five years. This would give the parties plenty of opportunity to establish new patterns of bargaining and new memoranda of understanding with the old statutory underpinning as a safety net. Yet it would clean out the statutes simply by passage of time, and allow adequate time to reenact important provisions if experience demonstrates the need for them.

There would be uncertainty in the interim as to which statute controls, but this would not seem generally to present any problems in practice. It would not preclude earlier repeal of the same statutes on a county by county basis.

Staff Recommendation

Unless we can get the stakeholders talking to each other, most of these options appear unpalatable to the staff. We are not eager to ignite a battle in the Legislature. Depending on the Commission's decision, we may want to introduce two bills — one to deal with all of the statutes except official reporter statutes and the other devoted exclusively to official reporter issues.

It is possible, as some of the working group participants have suggested, that as the time for legislative action approaches, we will see some give on both sides and a movement towards an agreed outcome. That may well prove to be true.

Of the various options outlined above, the staff likes numbers (5) and (7) — either leave the law alone for now, or repeal it but with a deferred operative date.

Among the other benefits of these options is that they cope with a matter not heretofore mentioned — the nonemployee official reporter. While most official reporters and official reporters pro tempore are court employees, that is not universally true, and the compensation-setting mechanisms of TCEPGA do not apply to independent contractors. Repeal of any or all of the county-specific

statutes would knock the underpinnings out of their compensation packages. As a practical matter, though, most of the county-specific statutes are so old they have no practical relevance to independent contractors, and in all probability the statutes that most concern court employee official reporters do not apply to independent contractors at all.

Of the two options, the staff has a modest preference for (5) — leave it alone for now. Option (7) — repeal with a sufficiently-deferred operative date — would work but its presence in the recommendation could be used by the stakeholders to try to impose unacceptable amendments. Moreover, the staff is not completely happy with leaving existing law intact for the deferral period, with all the questions that could be generated by the conflict in the laws during that period.

Option (5) would be cleaner — it would just leave the matter out of the bill. If any party wants to address it now, they can do it in their own bill — they needn't burden the cleanout of clearly obsolete statutes with their approach to official reporter compensation.

Option (5) would in essence say that we haven't finished working on that part of the statute, and it's not ripe to be addressed, at least by the Commission. That would buy time and perhaps enable us to try to reach a rational solution. Now that the issues and positions of the stakeholders have been aired, more time looking at details may enable us to move towards a satisfactory and early disposition of the county-specific statutes, perhaps with proposed legislation ready for the 2003 legislative session.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary